

WTO 2000: THE NEXT ROUND

HEARING BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION OF THE COMMITTEE ON COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTH CONGRESS

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WTO 2000: THE NEXT ROUND

THURSDAY, NOVEMBER 4, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Largent, Rogan, Shimkus, Bliley (ex officio), Markey, Eshoo, Luther, Sawyer, and Dingell (ex officio).

Staff present: David Cavicke, majority counsel; Brian McCullough, professional staff; Robert Simison, legislative clerk; and Bruce Gwinn, minority professional staff.

Mr. TAUZIN. The subcommittee will please come to order with my sincere apologies for keeping you waiting.

The subcommittee will consider the important work of the World Trade Organization in the upcoming Seattle Ministerial Conference. The WTO exists to promote open and free trade throughout the world. The 1997 Accord on Trade in Services, which was entered into in the last Ministerial Conference, has been particularly helpful to U.S. providers of financial and other services by encouraging countries with restrictive practices to end them.

Since the creation of WTO in 1994, American exports have risen by over \$200 billion annually. The WTO also provides a system for settling trade disputes. The United States has filed the most cases of any member and has a strong record of prevailing in those cases. There are a number of things that we would like to learn at this hearing this morning as we consider the upcoming Conference.

First, what are the U.S. negotiating goals for Seattle? What trade barriers will we be focusing on removing? In particular, how do we hope to encourage the European Union and the other areas to reduce barriers to telecommunications and high tech services in which the U.S. is a clear world leader?

Second, what has been the follow-up of the successful 1997 round and the implementation of general trade and services? Have countries like Malaysia which promised to eliminate barriers to U.S. insurers, actually repealed those barriers? What steps have been taken to encourage countries to sign the GATS? Third, with respect to the emergence of electronic commerce, what steps are being taken to keep the Internet tax free and free of other restrictive barriers to worldwide commerce? Our witness on the first panel, Mr.

Joseph Papovich, the U.S. Trade Representative is charged with developing and implementing our trade strategy for the WTO negotiations. The second panel of witnesses will be from J.P. Morgan, Corning, and Chubb regarding what specific concerns these industries have with world trade.

We look forward to their testimony. It is my pleasure to welcome the Ranking Minority Member, Mr. Markey, for an opening statement.

Mr. MARKEY. Thank you, Mr. Chairman. As a Democrat who voted for GATT and NAFTA and who has been a member of this subcommittee since he arrived in Congress in 1976, I do believe that it is critical for the United States to continue to expand its global economic presence and for us to capture as many of the technological opportunities that have been created largely by the policies that have been created domestically by this committee so that our companies, including telecommunications and computers and software down the line have the benefits of the global marketplace.

I also believe that we have to have an integrated plan that includes trade policy, education, a universal service, and tax policy that prepares the next generation of Americans with the skill sets necessary to succeed in the new economy.

And that is why I think it is imperative for us to work as effectively as possible to ensure that foreign markets are open. And I think that the upcoming meeting in Seattle gives us an excellent opportunity to gauge our progress in this respect.

Without question, there are also important issues surrounding foreign efforts to get the U.S. to soften some of its positions and eliminate antidumping or countervailing duty remedy laws at the Seattle meeting.

In addition, it remains unclear whether the nature and extent to which worker concerns and labor rights issues will be given prominence by the administration at the upcoming meeting in Seattle.

I look forward to hearing from our witnesses on these issues because without question, while all of these economic opportunities are being opened up to the largest companies and to the most well-educated within our society, it is critical as well that we have a national strategy that articulates quite clearly how we ensure that every worker, regardless of income and regardless of race, is allowed to be able to participate in the benefits of this new global economy.

I thank you, Mr. Chairman.

Mr. TAUZIN. I thank my friend. The Chair is now pleased to recognize the vice chairman, Mr. Oxley, from Ohio.

Mr. OXLEY. Thank you, Mr. Chairman, for holding this hearing and giving Members the opportunity to explore the telecommunications and finance issues that will be debated in Seattle at the ministerial meeting to begin at the end of this month. I want to welcome all of our witnesses and particularly those from Charlene Barshefsky's office for doing such a tremendous job in preparing for this ministerial. I look forward to seeing you in Seattle, and I know a strong delegation from Congress will be there to support your efforts.

The United States goes into this new round with a strong and unified position again leading the world on free trade. I recently co-

ordinated a letter from 19 members supporting Ambassador Charlene Barshefsky's initiative to keep electronic telecommunications tariff-free worldwide. Clearly the Internet has taken the more advanced countries by storm in the last few years, and that is happening more and more in the lesser developed countries as well. So it is a critical moment and a critical decision to maintain that environment. If we lose it, we are never going to be able to get it back, and I want the U.S. Trade Representative to know that she has rock solid support on this point from the Congress.

Another key goal of interest to this committee is to draw more countries into the WTO's financial services agreement. Technological advances have expanded the breadth and depth of this industry in ways that demand the deregulation of international financial and credit markets. That is why 102 WTO countries made market opening commitments in late 1997 in Geneva encompassing \$18 trillion in securities assets, \$38 trillion in bank lending, and \$2.5 trillion in insurance premiums.

Hopefully, through Seattle and the new round of negotiations, we will be able to bring in more WTO members under that umbrella and further promote free trade in that industry. We hope to make similar kinds of progress under the 1997 basic telecommunications agreement. We want to bring more countries in and press them to meet their commitments to liberalize trade. Mr. Chairman, I look forward to the largest trade event ever to be held in the United States where we can discuss these issues with representatives from the 133 member countries of the WTO. I look forward to hearing the witness' testimonies.

Mr. TAUZIN. I thank gentleman. The Chair is now pleased to recognize the ranking minority member from the full Commerce Committee, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, thank you for your courtesy. I also want to thank you for holding this hearing. Trade is one of the areas in which public policy is hardly ever clear. Too often one set of priorities is advocated to please a certain group while conflicting priorities are advocated to placate a different group with competing interests. This "be everything to everybody" approach on trade may have certain short-term tactical advantages, but it creates a long-term danger in that the issues become confused and blurred and we lose sight of our real trade interests and how to serve these interests. And in this world, that is very important to this country. We must be clear about our commitment to fair trade, not only in foreign markets but also here in our domestic market. The U.S. merchandise trade deficit is currently running at an annualized rate of more than \$330 billion, 35 percent higher than last year's deficit.

When I came here, the real deficit in trade was something like \$4 billion a year. Our trade deficit in goods and services is already \$61 billion ahead of where it was last year at this time. More and more our trade deficits are being fed by battles that we are losing here on our home ground, not in foreign markets. Whether it is steel, semiconductors, photographic paper, softwood lumber, cement, or agricultural products, American workers and American industry are increasingly being forced to compete against foreign

products that are unfairly subsidized or dumped in the United States market, and unfair trade practices abound.

I believe the administration understands this which is why both the President and the Vice President have repeatedly stated their opposition to negotiated changes to U.S. antidumping and countervailing duty laws in the upcoming world trade round. I hope that they will maintain this position very strongly because if they don't, they will have significant problems here in this Congress.

Unfortunately, our trading partners don't take the administration or the U.S. concerns seriously. Clearly the administration's views have either been ignored or misunderstood by others in the WTO General Council, especially by the chairman who recently called on those who will attend the upcoming Seattle Ministerial meeting to adopt a declaration proposing changes to WTO dumping and subsidy laws which would gut U.S. antidumping and countervailing duty laws, something which is clearly unacceptable to this country. If the WTO leadership is not responsive to the U.S. position on changes to the dumping and subsidy codes, how can anyone, the administration or anyone in this Congress, really think that anyone else takes the U.S. position seriously.

The administration must not allow there to be any doubt of its resolve to ensure and I repeat, to ensure that a future agreement does not require changes to U.S. fair trade laws. More than half the Members of the House, 223 members, including 25 Democrat and Republican members of this committee, a majority, have co-sponsored H.Res. 298. This resolution calls on the President not to participate in any trade negotiation where changes to the dumping and subsidy codes are part of the agenda.

It is time for both the President and the Vice President to make it clear: One, they are opposed to the inclusion of trade law changes in a new millennium round agreement; and two, they would refuse to submit trade law changes for approval by the Congress under fast track or any other expedited approval procedures should such expedited procedures be reauthorized.

I want to make it clear that a lot of us here in the Congress who want to support fair trade, because of the unfairness of the situation, find ourselves incapable of doing so. The situation which we are now confronting in this country with regard to trade, trade rules, and things of that kind, is converting a lot of us here and a lot of people out there from free traders and fair traders and driving us to oppose these kinds of agreements and even these kinds of negotiations.

I would point out that undercutting the last viable fair trade remedies under U.S. law is far too high a price to pay to win support for any future trade agreements, and I will not support them under those conditions. Any changes to these vital trade laws should be considered by the Congress under normal legislative procedures. And I think this is a warning to all that fast track is in trouble simply for this reason if not for others. Without strong and effective U.S. trade laws, companies like Corning, Intel, Motorola, and their employees would not have enjoyed the success and fortune that they have attained; hundreds and thousands of Americans would be living poorly; and a lot of jobs that we now have in

this country would not be here to benefit our workers and our economy.

Had Corning not been successful years ago in its petition to prevent the dumping of foreign television picture tubes in our market, it may not have been able to develop and market optical fiber cable and other telecommunications equipment which now account for so much of its business. These and many other American companies are viable today because they are able to use U.S. antidumping and countervailing duty laws to force foreign manufacturers to compete fairly right here in the U.S. market.

If we permit U.S. trade laws to be weakened, we sacrifice the ability of American companies to compete fairly and successfully in the future. No agreement is worth denying U.S. companies the ability of innovate and to reap rewards of their innovation. The sooner the WTO leadership and WTO partners of the United States understand this, the sooner we can begin to focus on things that will open markets and ensure all parties the ability to compete fairly and openly in world trade.

I would make one last observation and that is anyone who thinks that free trade measures are going to face an easy time here is making a prodigious mistake, and one of the reasons that the difficulty confronts those kinds of measures is simply the kind of statements that we have heard from the WTO leadership and the fact that we are not permitted to insist on fair treatment for the United States, for its people, for its workers, and for our economy. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Dingell.

The Chair now recognizes the gentlelady from California, Ms. Eshoo, for an opening statement.

Ms. ESHOO. Good morning, Mr. Chairman, and thank you for holding this hearing. I look forward to hearing the testimony of our witnesses and getting the preliminary snapshot of the issues that will be negotiated and discussed at the upcoming Seattle Ministerial conference.

I have written a number of letters to Ambassador Barshefsky regarding several issues which I believe deserve attention during the Seattle Ministerial conference, and specifically the trade related aspects of intellectual property, known as the TRIPs agreement should not be extended. The TRIPs agreement bound participating countries to provide a basic set of protections to prevent the international theft of films, music, software, video games and pharmaceuticals.

The deadline for implementing the basic set of protections is January 1, 2000 which is not very far away, and all countries have had 5 years to comply with this agreement. I am hopeful that we will hold fast to this date.

Additionally, I believe we should oppose any further cultural exemptions limiting the sale and import of U.S. entertainment products. Last week, we heard an update of the WIPO agreement; and I left the hearing with at least some hope that the entertainment and high technology industries will come to an agreement which will facilitate the sale of movies and entertainment products over the Internet. If trade barriers are imposed on the sale of these products, the agreement will only work domestically limiting the

scope of these industries reach and more importantly, I think, will stifle the growth of e-commerce.

So I thank you, Chairman Tauzin, for calling this hearing, and I look forward to hearing more about the game plan for Seattle from today's witnesses. I yield back the balance of my time.

Mr. TAUZIN. Further requests for opening statements? The gentleman from Ohio, Mr. Sawyer, is recognized.

Mr. SAWYER. Thank you, Mr. Chairman. I have a longer opening statement that I request permission to submit to the record.

Mr. TAUZIN. Without objection, so ordered.

Mr. SAWYER. In lieu of reading that entire statement, just let me suggest that my appreciation to the Chair for calling this hearing, and I thank the witnesses for being here. The whole notion of removing trade barriers, making the WTO process more transparent and accessible, the need to ensure the implementation of current commitments and encourage increased economic integration and promote environmental standards are all very important to all of us regardless of the side of the aisle that we sit on.

My opening statement concentrates primarily on e-commerce, and I would associate myself with the statements of the gentleman from Massachusetts regarding labor standards and an early warning process for dispute resolution.

In conclusion, just let me say thank you to the administration for its leadership and the WTO ministerial and offer my support in all of our efforts to further liberalize trade to the benefit of the global trading system and to the continuing strength of America's position within it. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman. Any further opening statements?

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

The Commerce Committee has always been committed to improving competition in all areas of our jurisdiction. Competition lowers prices and improves services for consumers. The Committee has taken considerable effort to deregulate the telecommunications industry, we are ready to enact financial modernization legislation. We continue to move forward on fostering fair retail electricity markets. These efforts benefit consumers.

Despite all the improvements that allow new entrants to compete in our country, trade barriers to international commerce still remain. The recent conference on financial services modernization raised solutions to problems US financial companies encounter when it comes to competing abroad. This is good, but I fear it is not enough.

As our economy continues to rely on foreign trade partners, it is essential that a structure exists to permit a global economy that is fair. Without providing advantage to one country over another.

In this regard, the USTR has been able to make significant progress. Two years ago in Geneva, the WTO adopted the General Agreement on Trade in Services for financial services. Agreements were reached to allow our insurance and securities companies, and banks to compete in Foreign markets that were previously closed. That is only fair. That is the progress we need across all international trade fronts that maintain significant hurdles to free trade.

I look forward to hearing the testimony of our witnesses today and I am interested to learn in more detail the plans for the upcoming Ministerial Conference in Seattle at the end of this month. I will be on the look out for progress in promoting fair competition in the global economy. Thank you Mr. Chairman for conducting this hearing today.

Mr. TAUZIN. The Chair will now recognize and welcome our first witness, Mr. Joseph Papovich, Assistant U.S. Trade Representative

for Services, Investment, and Intellectual Property. Mr. Papovich, we have heard stories that Seattle may look like the Democratic convention in Chicago before it is over. We will not impose the 5 minute rule on you in the interest of making sure that we get a full statement.

STATEMENT OF JOSEPH S. PAPOVICH, ASSISTANT U.S. TRADE REPRESENTATIVE FOR SERVICES, INVESTMENT, AND INTELLECTUAL PROPERTY, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Mr. PAPOVICH. Thank you, Mr. Chairman. I too have had that image flash through my mind.

I am here to discuss today specifically our objectives and aspirations and goals for services in this new round that will be launched in Seattle.

As the President has said, opening trade and services is among our central goals in the round that we expect to launch at the Ministerial Conference in Seattle. With this event now less than a month away, I welcome this opportunity to testify on our services trade agenda.

In few areas, Mr. Chairman, are the potential rewards of successful trade negotiations as great as they are in services. Our services industries range from finance and telecommunications to distribution, health, education, environment, environmental services, travel and tourism, construction, law, engineering, architecture, it is really a vast part of our economy.

We estimate that more than 86 million jobs are involved in these firms and companies and entities. Over \$5.5 trillion worth of production, 70 percent of the American GDP, more than one in seven in world economic activity. American service providers are very successful exporters. The U.S. is in fact the leading exporter of services with \$246 billion in private sector services exports last year, and we have an \$80 billion trade surplus in services.

Some of the sectors, the magnitude of some of the exports of some of the sectors is interesting. There is \$71 billion in travel services last year; \$37 billion in royalties and licensing fees for such things as audiovisual services, software, copyright payments, franchise fees, and other services; \$25 billion in freight and port services; \$24 billion in business professional and technical services; \$14 billion in financial services; \$4 billion in construction services; \$4 billion in telecommunications services exports.

This is some of the most thriving parts of our economy. But these are also diverse industries, and our world leadership in them rests on widely applicable principles. We are generally open to both domestic and foreign competition here in the U.S., and we combine this with high standards of consumer protection and transparent impartial regulation where many parts of our services economy are not regulated. Our goal in services trade policy, speaking broadly, is to open markets and foster the same kind of competition transparency and efficiency in the world economy that we enjoy here at home.

Over the past decade, we have built a foundation for achieving this goal. Through the Uruguay Round of trade negotiations which created the WTO, we completed the General Agreement on Trade

and Services which is generally called the GATS which established a framework of multilateral rules governing trade in services.

Then in 1997, we reached agreements on basic telecommunications and financial services which brought us further with commitments to market access and national treatment in two of the highest value service fields. These commitments are now showing impressive results.

Since the basic telecommunications agreement went into effect 18 months ago, it has progressively eroded the ability of dominant carriers in foreign countries to keep rates artificially high and depress demand for telecommunications services and electronic commerce. This has helped bring down rates by half to levels as low as 10 to 20 cents a minute for calls between the U.S. and countries like Japan and Mexico in just the past 18 months. As a result of the broader market access and increased investor stability provided by WTO commitments, new investment in undersea fiberoptic cables may result in an fiftyfold increase in capacity by the end of 2001 compared to mid-1999.

The financial service agreement came into effect even more recently, at the end of 1997. It has already helped U.S. service suppliers expand existing operations and find new market opportunities across a wide spectrum of developed countries and emerging markets through both investment in foreign markets and cross-border trade. Growth potential for competitive financial service suppliers is high, including in helping emerging markets modernize their financial service systems and to improving their infrastructure for trade in goods and services.

At the same time, our regional initiatives in Europe, Latin America, Asia, and Africa together with our negotiations with 33 economies who are acceding to the WTO helped create models and set precedents for future openings in services in the WTO.

But these are only the first steps. While the 1990's have seen a fundamental change for the better, services trade remains restricted in too many areas. This significantly inhibits American exports and has broader costs as well. A few examples, telecommunications markets reserved for government monopolies make service worse for consumers and business more difficult for firms. Inefficient pollution-prone power and transport reduce efficiency, worsen the quality of life, and waste investment. Monopolies and distribution reduce the efficiency of farms, fisheries, and manufacturers throughout economies. And the recent financial crisis highlighted the need to work to strengthen the world's financial systems and make them more open and competitive.

Our agenda for the round, this new round will help address these problems and open opportunities for Americans. We have worked closely with Congress as well as with our own government agencies like the Treasury Department and Commerce Department, for example, with private industry, State and local government or regulatory associations, and others to set the following objectives for market access in this round for services:

As a general principle, we will strive to liberalizing substantially a broad range of services sectors. This must include broader and deeper commitments in areas like telecommunications and financial services, and fundamental improvements in the commitments

of existing—of the commitments of existing WTO members in such sectors as distribution, audiovisual, construction, travel and tourism, education and training, health, and environmental services.

We are proposing three approaches in pursuit of this objective. This is in services now. We have three specific proposals that we are putting on the table that we want to see reflected in the ministerial declaration that is approved in Seattle.

The first is for the possibility of sectorial agreements in service sectors developed through creation of model sets of GATS' commitments for key sectors of interest in the United States. These model schedules or what one might call templates would be equivalent to the zero for zero tariff elimination that we have already achieved in certain goods sectors. These model schedules would create significant movement toward free trade, in particular service sectors, through removal of as many restrictions in that sector as possible.

Second, we are proposing that we agree in the negotiation to pursue horizontal methods of services liberalization, and that may not mean much to some people but that means to pursue commitments that would cut across all of the services sectors, for improving regulatory policies across sectors requiring countries to provide transparency and good government practices to ensure that domestic regulations don't undermine the value of our trading partners' commitments. This could include, for example, across the board commitments to services liberalization such as agreeing to common levels of ownership across sectors. That would be foreign ownership across sectors.

And then third, the third approach which was the one used in the Uruguay Round. The sole approach used in the Uruguay Round is called request and offer. It is country by country, issue by issue where we would make specific requests of other countries to make commitments in specific sectors and then they would bind those commitments in their GAT schedules.

All three of these areas would be used to get the deepest and broadest commitments that we can in the most efficient way possible given that this is just a 3 year negotiation. Our objectives for the Seattle declaration and for the negotiation beyond would also include disciplines to underpin market access and national treatment commitments by ensuring that regulations in services are transparent and fair. This is a major problem that U.S. service providers complain about in other countries, that regulations that they have to comply with are not transparent in certain instances and they are not fair, they are discriminatory in favor of local service providers.

At the same time, we need to maintain the ability of regulators to meet legitimate objectives and that is important on the opposite side of that as well.

Other objectives that we would seek to pursue in these negotiations are increasing participation in the basic telecom and financial services agreements, get more countries to sign up. Another is to ensure that service rules anticipate the development of new technologies which is very important in this area.

We want to prevent discrimination against particular modes of delivering services, including, for example, electronic commerce or the right to establish. Separate from the services negotiation itself

but also essential to success is our work on electronic commerce. Clearly a number of services, for example, financial services, telemedicine, distance education, various forms of entertainment, and news are efficiently and easily delivered electronically.

We are therefore pursuing broad electronic commerce objectives at the WTO beginning in Seattle with our duty-free cyberspace proposal in which we seek continuation of the WTO's current moratorium on the application of tariffs to electronic transmissions. Over the longer term, we are seeking to ensure that our trading partners avoid measures that unduly restrict development of electronic commerce. We also seek to ensure WTO rules that do not discriminate against new technologies or methods of trade, to accord proper agreement of digital products under WTO rules, and to ensure full protection of intellectual property rights on the Internet. With this, we must add capacity building, that is helping developing countries strengthen their ability to use the net so that our companies can then exploit the net in making sales in those countries.

In addition to these things, we are developing ideas for transforming and improving the WTO in areas directly related to services. One example is trade facilitation. We have a separate initiative underway that we hope to accomplish in time for the Seattle Ministerial in an area called trade facilitation where we are pushing for improved rules and commitments from countries regarding timely and reliable customs procedures. This is especially important for providers of distribution services, express delivery services, Federal Express, United Parcel Service, who need to move packages quickly; and to the extent customs procedures are complicated, it is very damaging to them. This is also important for smaller and medium-sized companies who don't have batteries of customs agents to combat each country's customs service officers.

Another idea that we are pursuing is upgrading the WTO capacity-building function to insure that WTO members, especially the least developed countries, are able to make and comply with commitments in the services field. I have to say some developing countries I think, particularly the least developed, have a hard time understanding some of these areas like services, like intellectual property which are so high technology in orientation. We need to help them build capacity for handling the rules that we want them to commit to.

In addition to building consensus on these substantive goals, we are working with other WTO members to set a 3-year timetable for the overall negotiations with benchmarks for progress along the way that will ensure that the round yields significant benefits rapidly. At this point, most WTO members agree to such a schedule and to these benchmarks.

In conclusion, Mr. Chairman, the task ahead of us in services trade is challenging but offers the potential for immense rewards. It can create new export opportunities for American service providers, and it can help us develop a more stable, efficient, and environmentally sustainable work economy. We look forward to close consultation and cooperation with the committee as the round begins and as the negotiations proceed. Thank you very much.

[The prepared statement of Joseph S. Papovich follows:]

PREPARED STATEMENT OF JOSEPH S. PAPOVICH, ASSISTANT U.S. TRADE
REPRESENTATIVE FOR SERVICES, INVESTMENT AND INTELLECTUAL PROPERTY

Mr. Chairman, Congressman Markey, Members of the Subcommittee

Thank you very much for inviting me to testify on our services trade agenda. We are rapidly approaching the WTO Ministerial Conference in Seattle next month, and the new Round of international trade negotiations we expect to launch at the event. And as the President said in his address on the WTO last week, in this Round, opening trade in services will be a central goal.

SERVICES IN THE U.S. ECONOMY

Let me begin with some basic observations on the services industries, their place in our economy, and the rules we have developed thus far at the WTO to facilitate trade in these fields.

The American services sector includes a vast array of industries: from finance and telecommunications to distribution, health, education, environmental, travel and tourism, construction, law, engineering, architecture and more. These industries provide 86 million private-sector jobs and over \$5.5 trillion worth of production—more than 75% of America's private-sector economic production, and more than one dollar in seven of world production.

In addition to this productive capacity, services play a subtle but essential role in our industrial economy, to which they directly contribute about 2.1% of GDP in the form of construction, and provide the infrastructure which allows manufacturing industry and farmers to function.

- Efficient transport and distribution allow farmers to get their products to market without spoilage, ensures that auto parts reach the plant in time for efficient production, and enables exporters to compete effectively over the Internet for retail customers in other countries.
- Strong insurance, accounting, finance and legal industries ensure that farmers and manufacturers have access to capital; that contracts guarantee predictable, transparent and reliable business decisions; and that consumers have high standards of protection.
- Telecommunications, software and news dissemination are essential to the functioning of all modern industries.
- And new technologies now developing, in particular but not only the Internet and electronic commerce, promise a vast increase in the efficiency and productivity of American service industries in the years ahead.

In many of these fields, the U.S. is the world's leader. As a general matter, our success rests on our openness to both domestic and foreign competition, combined with guarantees of high standards of consumer protection through transparent, fair and impartial regulation where relevant. The competition this creates speeds innovation and helps develop a productive, efficient economy.

SERVICES IN AMERICAN TRADE

American services industries are highly successful exporters. In fact, the United States is by far the world's leading exporter of services, with \$246 billion worth of private-sector services exports last year (the U.S. government also exported approximately \$18 billion in services) as compared with \$165 billion in private sector services imports. To cite some specific examples, this includes:

- \$71.3 billion in travel services;
- \$36.8 billion in royalties and licensing fees from audiovisual services, software, copyright payments, franchise fees and other sources;
- \$25.5 billion in freight and port services;
- \$24.3 billion in unaffiliated business, professional and technical services, including among others:
 - \$4.1 billion in construction, architecture, engineering and mining;
 - \$3.7 billion in equipment installation, maintenance and repair;
 - \$2.5 billion in legal services;
 - \$2.0 billion in computer and data processing;
 - \$1.2 billion in medical services;
 - \$0.9 billion in research and development;
 - \$140 million in sports and performing arts;
- \$13.7 billion in financial services;
- \$9.0 billion in education;
- \$3.7 billion in telecommunications services exports.

Altogether, our two-way services trade makes up over 16% of the total \$1.4 trillion in world services trade. The pattern of U.S. trade in these industries is some-

what different from our trade in goods. In particular, the European Union and Japan take 46% (\$114 billion) of our private sector services exports, as opposed to 30% of our goods exports.

CURRENT STATUS OF MULTILATERAL SERVICES AGREEMENTS

These figures indicate how much services industries now contribute to our economic growth, and to our export performance. Our goal in services trade policy, speaking very broadly, is to open markets and foster competition, transparency, and efficiency in the world economy, as in our domestic services markets. This will facilitate American exports of services, and also have potential to help create a more stable, efficient and productive world economy.

1. General Agreement on Trade in Services

In contrast to goods trade policy, however, trade policy in services is a relatively new development. In fact, as recently as 1993, the world trading system had no rules for trade in services.

Thus, a major achievement of the Uruguay Round trade negotiations was completion of the General Agreement on Trade in Services (GATS), which for the first time established a framework of rules governing services trade, as well as commitments in many individual services industries.

Implementation of these commitments has been generally good. And we have since made substantial additional progress, with commitments to market access and national treatment in two of the highest-value service fields through the Agreement on Basic Telecommunication and the Agreement on Financial Services.

2. Basic Telecommunications Agreement

The Basic Telecommunications agreement, now in effect for a year and a half, is already showing benefits. Through commitments on market access, national treatment and regulatory safeguards by over 70 WTO Members, its pro-competitive principles have encouraged billions of dollars in international investment in new telecommunications facilities, much of it led by U.S. firms. As a result, low-cost telecommunications services are removing geography (and borders) as a constraint on the delivery of a broad range of services and products.

Since this agreement went into effect, the ability of dominant carriers in foreign countries to keep rates artificially high and depress demand for telecommunications services and electronic commerce has weakened significantly. This has helped to bring down rates by half, to levels as low as 10 to 20 cents per minute, for calls between the United States and countries such as Japan and Mexico in the past 18 months, benefitting consumers here and abroad. And as a result of the broader market access and increased investor stability provided by WTO commitments, new investment in undersea fiber optic cables may result in a fifty-fold increase in capacity by the end of 2001, compared to mid-1999. Such expansion has created competition for investment to develop regional data and electronic commerce hubs, encouraging many WTO members—e.g. Hong Kong, Korea, Japan, India, Singapore and Jamaica—unilaterally to improve their market access commitments.

At the same time, U.S. exports of telecommunications services and equipment have increased significantly following the entry into force of the WTO basic telecommunications services agreement in February 1998, (as well as the Information Technology Agreement, which is on course to eliminate import duties on virtually all equipment related to the Internet.)

These results are tribute to the quality of the agreement, and also to our active enforcement program mandated under Section 1377 of the 1988 Trade Act, for telecommunications trade agreements. For example, thanks to Section 1377 actions:

- Canada last year eliminated discriminatory rules that prevented use of U.S.-based networks for routing of Canadian domestic and international long distance calls;
- Japan agreed to lower substantially its interconnection rates and took a variety of steps to deregulate its telecommunications services market under our bilateral deregulation initiative, now in its third year. We are now strongly urging Japan to build on these actions through implementation of a telecommunications “Big Bang.”
- European industry compromised with U.S. firms in developing standards for third generation mobile telecommunications systems, and we are actively pushing for steps by EU Member State regulators to assure fair licensing rules by the end of this year, to allow American technology unfettered access in Europe;
- Taiwan agreed last year to lower interconnection rates for mobile telecommunications services firms by approximately 40% over three years; and

—Mexico and Germany currently are under out-of-cycle Section 1377 monitoring as we await regulatory decisions that will implicate their WTO commitments and which will be important to U.S. firms operating in those markets.

3. *Financial Services Agreement*

Likewise, the 1997 Financial Services Agreement represents a successful effort by the United States to open global financial services markets to U.S. suppliers of insurance, banking, securities and financial data services. While it came into effect more recently than the Basic Telecommunications Agreement, the Financial Services Agreement has already contributed to the ability of U.S. service suppliers to expand existing operations and find new market opportunities across a wide spectrum of developed country and emerging markets, including Asia, Europe, Eastern Europe and Latin American.

The improvements encompass the ability to supply services through investment in foreign markets or via cross-border trade. And as in other WTO agreements, these benefits are “locked in” through recourse to the GATS dispute settlement mechanism, if necessary. Growth potential for competitive U.S. financial services suppliers is high, including to help emerging markets modernize their financial services systems and to improve their infrastructure for trade in goods and services. The Agreement will provide an effective launching pad for further negotiation of financial services trade issues in GATS 2000.

THE WORK AHEAD

These are, however, only the first steps. While the 1990s have seen a fundamental change for the better, services trade remains highly restricted in many areas. This significantly inhibits American exports; the costs to the world of closed markets in services are far greater:

- Inefficient, pollution-prone power and transport reduce efficiency, worsen the quality of life and waste investment.
- Telecommunications markets still reserved for government monopolies make service worse for consumers and business more difficult for firms.
- Monopolies in distribution reduce the efficiency of farms, fisheries and manufacturers throughout economies, and make exports much more difficult for many American industrial and agricultural producers as well.
- And the recent financial crisis has highlighted the need to work to strengthen the world's financial systems, and make them more open. Measures like those exemplified by the Financial Services Agreement are important steps in that direction. Foreign participation with fair competition in financial services is a key ingredient in building a reliable and durable financial system. This in turn builds confidence, fosters growth, and is thus critical for stability.

PREPARING FOR THE ROUND

Our agenda for the Round will help us address these problems as we open new opportunities for Americans. Since the WTO's last Ministerial in 1998 reconfirmed that we would open negotiations in services this year, in consultation with the Committee, U.S. industries, and trading partners interested in services trade, we have been developing an agenda that can bring significant liberalization, opening of markets, and reforms throughout the world services economy. We have worked closely with our colleagues in a number of other agencies and the business community to develop these objectives. The result of this work is as follows:

First, as we prepare for the Seattle Ministerial, our goal is to launch a negotiation which enables us to secure maximum liberalization in a broad array of sectors from all WTO members, through a broadening and deepening of the services commitments of all WTO countries. In preparation for these negotiations, we have set both objectives and a negotiating process which will allow us to achieve the greatest liberalization possible. This includes:

- Liberalizing substantially a broad range of service sectors:* This should include deeper commitments in finance and telecommunications, together with fundamental improvements in the commitments of existing WTO members on distribution, audiovisual, construction, travel and tourism, the professions, education and training, health, express delivery, energy and environmental services. (Liberalization of distribution services is also a critical aspect of liberalizing trade in goods, helping ensure that agricultural goods and manufactured products reach markets as rapidly as possible.) This would include several different types of approaches, capable of achieving substantial liberalization in many industries, as follows:

- Sectoral agreements*, developed through creation of “model” sets of GATS commitments for key sectors of interest to the United States. These model schedules, or “templates,” would be equivalent to the zero-for-zero tariff elimination we have already done for goods. The model schedules would, in essence, create significant movement toward free trade in a services sector through removal of as many restrictions in that sector as possible.
- Examining cross-sectoral or “horizontal” methods of service liberalization*, by improving regulatory policies across industries, for example, for all countries to provide transparency and good-government practices to ensure that domestic regulations do not undermine the value of our trading partners’ commitments. This could also include across-the-board commitments to services liberalization, such as agreeing to common levels of ownership across sectors.
- And “request-offer” talks like those under the Uruguay Round*, in which we selected top priorities for liberalization of services in the economies of particular trading partners.
- Ensuring that services rules anticipate the development of new technologies*. Examples of the potential of new telecommunications, information technologies and the Internet to support trade in services are obvious in almost every field, from colleges which can teach, hold examinations and grant degrees via the Internet; to home entertainment products delivered by satellite; long-distance environmental monitoring of air and water quality; and advanced health care delivered directly to the home or to rural clinics via telemedicine. Service providers in years to come will find many new opportunities to use new technologies to deliver their products overseas, and should not encounter discrimination based on choice of technology.
- Preventing discrimination against particular modes of delivering services*, such as electronic commerce or rights of establishment.
- Increasing participation in the Basic Telecommunications and Financial Services Agreements*: Expanding country participation is a goal in several of our regional initiatives, notably in Africa, and will also be a focus in the Round.

RELATED ISSUES

1. *Electronic Commerce*

Separate from the services negotiations, but essential to success, are the U.S. goals in electronic commerce. While we believe broad classification of digital products as goods or services is premature, clearly a number of services—telemedicine, distance education, some forms of entertainment, news—can be efficiently and easily delivered electronically. We therefore have a broad program underway at the WTO to help ensure unimpeded development of electronic commerce.

This begins at the Seattle Ministerial with our “duty-free cyberspace” program, in which we are seeking extension of the WTO’s current moratorium on application of tariffs to electronic transmissions. We will also embark upon a program to ensure that our trading partners avoid measures that unduly restrict development of electronic commerce; ensure WTO rules do not discriminate against new technologies and methods of trade; accord proper treatment of digital products under WTO rules; and ensure full protection of intellectual property rights on the Net. Together with this is a capacity-building program, to help developing countries develop their ability to use the Internet, speeding their development and technological progress.

2. *WTO Reform: Trade Facilitation and Capacity-Building*

At the same time, we are developing ideas for reforming and improving the WTO in some of the areas directly related to services.

One example is trade facilitation, with a special focus on ensuring timely and reliable customs procedures. This is especially important in the context of distribution services—an efficient distribution network can lose much of its value if long delays let food spoil in transit or delay shipment of auto parts and semiconductors for factories.

A second is upgrading the WTO’s capacity-building function, to ensure that members are able to make and comply with commitments in the services field. Services trade is a new and highly complicated issue for many WTO members, especially the least developed countries. The National Statements circulated by many of these nations at the WTO’s 1998 Ministerial Conference in Geneva, for example, showed a widely shared concern that domestic regulatory agencies are having trouble meeting even existing WTO commitments. As we seek greater participation in the Basic Telecommunications and Financial Services agreements, and liberalization of further sectors, it is essential to address these concerns to ensure that services commitments will have meaning in the real world.

PREPARING FOR A SUCCESSFUL NEGOTIATION

In addition to building consensus on these substantive goals, we are working with other WTO members to create a timetable and process that will ensure that the Round yields significant benefits rapidly.

1. *Timetable*

One element of this is agreement on a limited time-table for completing the negotiations. At this point, most WTO members agree with us that a three-year schedule would be appropriate.

In practical terms, the schedule would be as follows. At Seattle, the Ministers will take decisions launching the Round, agreeing on the subject matter, and setting out in specific terms the objectives of the three-year negotiations. Negotiations should begin in earnest at the beginning of 2000, with, as some WTO members suggest, the formal tabling of initial negotiating proposals by the middle of the year. Further benchmarks to ensure progress would follow, such as a possible "mid-term" Ministerial review at the 18-month point.

2. *Manageable Agenda*

Second, we are working toward consensus on an agenda which meets the top priorities of all participants in the Round, and is broad enough to create political consensus among WTO members; but is also focused and manageable enough to complete within three years. Of particular importance for the services negotiations, many developing countries have raised concerns about a negotiating agenda so large that it would make implementation difficult. We have stressed this point in a number of international discussions, most recently in Switzerland last week.

3. *Consultations at Home*

In addition, we are consulting intensively at home on specific objectives for each sector with Congress, industry, labor, and civil society groups, as well as Governors, state regulatory officials, and state legislators. This will continue, of course, beyond the Ministerial through conclusion of the Round.

Consultations with state officials are especially important if the Round is to succeed. In America as in some other countries, service standards and regulations are often established by state governments or private professional associations rather than national governments; and there are often good reasons for this. Trade policy must respect and work with the relevant bodies.

4. *Toward Seattle*

Finally, we are working toward consensus on several specific achievements, to be completed by the Ministerial, that will yield concrete benefits, build momentum for the services negotiations and help us achieve our broader goals. These include progress toward an agreement on transparency in government procurement, which is a major purchaser of services worldwide; and as I noted earlier, in electronic commerce, work toward extension of the moratorium on tariffs applied to electronic transmissions.

ROLE OF ACCESSIONS AND REGIONAL INITIATIVES

Last, let me note our services initiatives in two other areas—the 33 separate negotiations on accessions to the WTO now underway, and the regional initiatives we have begun in Europe, Africa, Asia, the Middle East and the Western Hemisphere. These offer their own immediate benefits for American service providers; but also help us set precedents and develop models for the goals we have set in the Round.

1. *WTO Accessions*

With respect to the WTO accessions, in the past year we have completed the accessions of Latvia and Kyrgyzstan. Estonia has also completed its accession, and will enter the WTO on November 13th. We have completed bilateral negotiations with Albania, Croatia, Georgia and Taiwan; and made significant progress on a number of other accessions, including those of Armenia, Jordan, Lithuania and Oman. Significant progress has also been achieved with respect to China's accession. In each of these accessions we have sought commitments in broader ranges of service sectors, and agreement to participate in the Financial Services and Basic Telecommunications agreements. These set a foundation from which we can work in the WTO Round.

2. *Regional Initiatives*

Regional initiatives also play an important role, again for their direct and intrinsic benefits but also as models for what we might hope to achieve worldwide.

An especially important case is the work toward establishment of a Free Trade Area of the Americas (FTAA). These talks include a Negotiating Group entirely devoted to trade in services, which like the other FTAA Groups has completed an "annotated outline" of an FTAA services chapter this fall. This will help us build a Western Hemisphere consensus on shared goals as the Round approaches. Likewise, the FTAA has established a special Committee to advise us on ways to develop electronic commerce in the hemisphere.

The Transatlantic Economic Partnership (TEP) with the European Union—our largest overseas services market, taking over a third of our private sector services exports last year—offers another forum. Here, we aim to make it easier for U.S. professionals and firms to operate in Europe, safeguard U.S. interests as the EU expands, and set an example of bilateral liberalization which the world can follow in the Round. Under the "TEP Action Plan," we are working with the EU toward an agreement setting a framework for negotiating Mutual Recognition Agreements—that is, agreeing to recognize accreditation or licensing granted under one another's regulatory standards—in services fields, as appropriate.

Our bilateral work in Japan has similar goals. Our initiatives are aimed at improving access for US firms and professionals to Japan's vast market, through negotiation and enforcement of agreements covering such sectors as insurance and telecommunications. During Prime Minister Obuchi's visit to Washington this summer, through the Enhanced Initiative on Deregulation and Competition Policy we agreed that Japan will take concrete deregulatory measures in sectors including telecommunications, financial services, energy and distribution services, as well as broader horizontal issues such as transparency.

The President's Africa initiative offers another dimension of experience. This encourages deeper services commitments—Ghana and Uganda have this year agreed to join the Financial Services Agreement—and includes a major capacity-building component to help African nations develop regulatory, legislative and technical capabilities in services sectors. One prominent example is USAID's Southern Africa Regional Telecommunications Restructuring Program, which helps promote modern telecommunications laws and regulation in six southern African nations through technical advice, seminars for regulatory officials and suggestions on legislation. Another is the Leland Project, which has helped eight African countries develop Internet gateways and enter electronic commerce. This experience will help the WTO strengthen its own capacity-building work, and is crucial to ensuring strong developing country support for a new Round.

CONCLUSION

In conclusion, Mr. Chairman, the task ahead of us in services trade is very challenging, and will offer immense rewards both in terms of new export opportunities for American service providers, and for the development of a more stable, efficient, and environmentally sustainable world economy. We look forward to close consultation and cooperation with the Committee as the Round begins, and as the negotiations proceed.

Thank you very much.

Mr. TAUZIN. Thank you, Joe.

We have a vote on the floor. Mr. Largent has already voted, and so we will just continue the hearing. We will come back from the voting in just a few minutes. I am going to recognize Mr. Largent as the Chair that he might continue the hearing.

I just want to lay some things down. How many members now in WTO?

Mr. PAPOVICH. I think it is 134.

Mr. TAUZIN. I read your statement on the new accessions that you are working on, but obviously China is the biggest of the companies who are still out of WTO. How close are we to agreements with China on WTO accession?

Mr. PAPOVICH. It is not my area of responsibility so I cannot speak definitively. We have been frustrated in recent months that we have not been able to get back to the table.

Mr. TAUZIN. Are there any other major countries not part of WTO that we ought to be concerned with?

Mr. PAPOVICH. Russia, and they are also in the accession process; but I must be frank in saying that they are very reluctant to make the kinds of commitments that we feel countries must make in order to become a WTO member.

Mr. TAUZIN. However, there have been accessions with Latvia. You mention volatile negotiations with Albania, Croatia, Georgia, Taiwan, and significant progress on Armenia, Jordan, Lithuania, and Oman, and so the process still continues?

Mr. PAPOVICH. Right. These countries are making commitments. They have to buy their way in. They are making commitments beyond what many WTO members have made.

Mr. TAUZIN. Tell us about what countries are part of the FTAA, Free Trade Area of the Americas.

Mr. PAPOVICH. There are 34 countries with democratically elected governments in this hemisphere, and that is everyone I believe but Cuba, I could be wrong. And all of those countries, we are one of them, all of us are participating together to try to conclude a Free Trade Area of the Americas by 2005. This week, there was a ministerial meeting in Toronto on that subject.

Mr. TAUZIN. I am going to recognize Mr. Largent as the Chair, and he can continue questioning.

Mr. LARGENT [presiding]. I have several questions here, Mr. Papovich. I don't know if I have enough to last until the rest of the members get back, but we can have a good conversation anyway.

The upcoming meetings that are going to occur in Seattle, and by the way if you need to know a couple of good restaurants, I can give you some recommendations. But some of the improvements that USTR is attempting to make in trade, in telecommunications and financial services, that is your area of expertise, isn't it?

Mr. PAPOVICH. Right. I don't know how much time I will have to visit any of those restaurants. I would love to have the chance, but I don't know.

First in telecommunications, one of the great achievements of the 1997 agreement was the so-called reference paper. It established what is called pro-competitive regulatory principles. Basically countries—yes, in the telecom areas, so often countries have a dominant supplier, a dominant telecommunications company which has to make its line available for competitors to compete against them.

This reference paper has a number of aspects to it, but one of its most important is that countries commit that this will happen, that the lines will be made available at competitive rates, and that the regulatory authority that oversees this, every country has an FCC-like entity, will be independent of the major—if there is a major dominating telecommunications companies.

We want to get more companies to sign on. Sixty-two signed on as part of the 1997 agreement. As I said a little while ago, there are 134 members of the WTO, we want to get more of those countries to sign onto that paper. We also want to get companies to guarantee national access and national treatment for our telecommunications companies. We would like to make the telecom paper in effect—one of our goals is not just to get more countries to sign onto this reference paper, but to make it mandatory, make it such that everybody who is a member of the WTO must adhere

to the principles of the telecommunications reference paper. So those are the goals.

We are still developing our specific proposals, and this is the way that it is for all sectors of the WTO. We are—for the Seattle Ministerial, we want to have fairly broad, specifically as possible but a fairly broad mandate so we can pursue all of the goals that we want. Then from January until June of next year, we would be putting on the table specific proposals sector by sector throughout the services area. In the months—we have already started, but we will intensify our efforts working with Congress and private sector parties to fine-tune the demands that we will put in writing on the table once the negotiations begin. Those are the general things that we want to achieve in the telecommunications area.

One other thing that is important to say in telecommunications, 70 countries signed this important telecommunications reference paper that I referred to. So far—

Mr. LARGENT. You said 62 earlier.

Mr. PAPOVICH. Seventy signed the telecommunications agreement. So far 62 have signed onto this reference paper; and of the 70 that signed the telecommunications agreement, 5 have not yet ratified the agreement. In many instances, that means that they have to get legislative approval for the commitments that they undertook throughout the telecommunications agreement which is more than just this reference paper. There are what we will call five laggards who we are pushing to ratify the agreement as quickly as possible. So in addition to the goals that we have for getting more countries to sign on, we want to get those five remaining to get that done.

Mr. LARGENT. I have a question about that. Is Taiwan one of the countries—

Mr. PAPOVICH. No, they are not a WTO member, and their membership is linked to China's entry. We have completed an agreement with them, but they are not yet a WTO member.

Mr. LARGENT. In the agreement—it is my understanding that a part of the agreement that was reached with Taiwan had to do with opening their telecom market?

Mr. PAPOVICH. Uh-huh.

Mr. LARGENT. And their regulators have proposed that U.S. carriers be subject to an up-front investment and build-out requirements. From my view, that is not consistent with the agreement that was reached with Taiwan. And that USTR had sent a letter regarding that. Have you had a response?

Mr. PAPOVICH. Yes. And there are talks underway, and we are trying to negotiate this out. It is hard to predict exactly when those negotiations will end, but we are hopeful that in the next couple of months they will be done and we will solve this problem. We agree this is a problem that needs to be corrected.

Mr. LARGENT. Go ahead. I didn't mean to interrupt you.

Mr. PAPOVICH. On financial services, again our specific goals still—our objectives still need to be finalized working with industry. But the general goals we have are the following.

First, as I said in my testimony, my statement, 70—we also have, in 1997, specific agreement on financial services separate from telecommunications and separate from all of the rest of the

services agreement. Seventy signed the services agreement. So far 60 have ratified that agreement, so our first objective is to get the other ten to finish their process. Most have to enact legislative measures, and in some countries their legislative process is slower than others. So we have to get those ten to ratify that important agreement.

Second with respect to what is next, again, we want to do a number of things in the area of market access and national treatment. We want to get improved commitments with respect to what is called commercial presence. That is another word for investment. Improved commitments from countries allowing our financial service providers to invest in their countries, whether it is through majority joint ventures or 100 percent foreign-owned subsidiaries or branches. We want to get more on that.

We also seek improved national treatment commitments and improved commitments for cross-border financial services, delivering financial services from here rather than having to go there to establish, including the electronic means.

Third, we want to work with these countries to—in the area of regulation, again regulation and financial services is always a high—let's face it banking, insurance, securities, there are important prudential issues when it comes to these areas. In some instances, we still know of significant areas where those regulations are nontransparent or not sufficiently transparent, where they are discriminatory and otherwise unfair; and we want to explore with countries how to fix that. That is very important.

And I know on the next panel after me, you will have a representative of the financial services industry. I am sure that he will stress this. We know that we have to put more energy into this.

Finally in financial services, we want to do some more work on the definitions of what is covered by financial services. For example, among other things, recently the U.S. insurance industry has brought to us the fact that as populations age, many countries have been establishing private pension systems. Still public ones too but where there are private pension systems and private entities are managing those systems, that there should be an opportunity for U.S. pension and private pension providers to be able to participate; and I know that our financial services industry, particularly the insurance folks, would like to have us do more in this next round in giving them opportunities to deliver their services in the pension area and in other insurance areas that didn't get much attention the last time around.

So those are our essential goals. Again, we will have to fine-tune them considerably in the coming months as we put our offer on the table for the negotiations.

Mr. LARGENT. One of the issues that we talk about in this sub-committee is the advent and rapid growth of electronic commerce. From my perspective, it almost seems like electronic commerce is pushing the WTO maybe faster that it is willing to go or can go which is a good thing. We talk about the global economy all of the time and that is really what the WTO serves to serve—or to enhance. One of the concerns we have about that is, you know, I think one of the reasons that we have seen the growth in it is that we have basically said this is something that we don't know a lot

about and let's first adhere to the Hippocratic oath, do no harm; and so we have stayed away from tariffs or taxation on the Internet. What is the USTR guiding principles in terms of protecting the Internet and looking at the tariff structures that I think many companies are considering imposing on electronic commerce?

Mr. PAPOVICH. You are absolutely right, the Internet is moving too fast and governments, by nature, are slow. It is zipping ahead of us.

The essence of what you are saying is exactly the same view that we have. This is an area that needs to be left free to develop. This is an area that is also to our advantage because the U.S. is a huge participant in electronic commerce. U.S. companies are huge participants, but we feel strongly that it needs to stay free. I want to say a few words about that. That is clearly our operating—our *modus operandi*. That is what we want to have happen. I am not so sure that is where other countries are. I think they are still more into a let's regulate everything mode than the U.S. tends to be.

To our benefit, I don't think that the means exist yet for folks to apply taxes and duties to electronic commerce so we have a moment in time at least when we can accomplish something before anybody can figure out how to tax and apply tariffs to the Internet.

Our goals for Seattle are the following, and we will be taking these issues beyond Seattle because this is not going to get all resolved there:

First, at the last WTO Ministerial meeting which was in May last year, not this past May, we achieved for the first time this moratorium on any tariffs on Internet transmissions. Everybody agreed, whatever number of countries, 130 or whatever, agreed to temporarily not apply any tariffs to Internet transmissions; but that moratorium only runs through this next Ministerial and then it ends.

Our preference would be to make it permanent. I don't know that we can accomplish that. So we want to have our next position which we are now articulating an indefinite extension. Rather than an extension to the next ministerial after this one, we want people to agree to an indefinite extension. It is almost the same as a permanent and then with a view to making this commitment permanent at the earliest possible time. That is important to getting—an agreement on extending the moratorium is very important to achieve by Seattle because otherwise it ends.

We are also seeking commitments from WTO members in the following areas, and I touched on this in my statement. We want them to affirm that the existing agreements, like the GATS agreement, are technology neutral so that the rules that currently apply to physical trade, national treatment, commitments not to discriminate, et cetera, automatically apply to electronic transmission so we don't have to negotiate a new agreement on electronic commerce, it is already fixed in place.

We also want countries to agree that they will refrain from taking measures that will inhibit the growth of electronic commerce. We want to get agreement that existing WTO commitments apply to the delivery of services on the Internet. We have a little debate with our European colleagues about whether all electronic trans-

missions are services or whether some can be goods. Most electronic transmission, like data that is transmitted by a bank, that is clearly a service. But if a book gets reduced to an electronic form or software gets reduced to an electronic form and it is transmitted and sold to someone over the Internet, is that book a service? That book is a product.

So we think that WTO rules governing trading goods which, frankly, are more extensive because the GATT has been around a lot longer than the GATS, should apply to electronic transmissions. We don't want to foreclose the fact that some transmissions are goods and some are services.

Finally, we want WTO members to commit that whatever they do when it comes to electronic transmissions, that countries will behave—take the most trade liberalizing approach possible to electronic commerce. There is nothing specific there, but countries make a commitment to us if they come to the place where they will regulate the Internet, our own country may decide to apply taxes to Internet transmissions, I don't know, but we are dealing with tariffs here. Whatever countries do when it comes to regulating the Internet, they will do it in a way that is as trade liberalizing as possible. Those are the kinds of things that we want to get countries to agree to now on electronic commerce.

Mr. LARGENT. I have one other question, and then, Ms. Eshoo, if you have questions, I will yield to you.

Mr. LARGENT. When I came to Congress 5 years ago, one of the questions that I got asked all the time was what was it like being in the locker room of an NFL football game. The answer was pretty easy, just a bunch of big hairy, sweaty, nasty guys.

I am curious, how many Ministerial meetings like the one in Seattle have you participated in, and how does it actually work? When the doors close and you have how many countries, 134 countries in the WTO, how do you actually negotiate this process?

Mr. PAPOVICH. The negotiations are actually happening as we speak in Geneva. One of the most important products coming out of this meeting in Seattle will be the declaration. It will be the rules for the negotiations that we will conduct over the next 3 years. And I explain in my statement that we have these three objectives for services negotiations: Sectorial, horizontal, request/offer. We want to make sure that the declaration incorporates those ideas into it. So we want the declaration to say that.

We are negotiating that now. Hopefully, as much of that as possible will be done when we get to Seattle. In the services area, we are actually optimistic that most of it will be done and that there will not be too much negotiating left to do.

In some other areas, they may not be able to resolve all of the issues on the declaration before Seattle; and in that case, there are going to have to be some around-the-clock negotiating sessions in Seattle.

There are a lot of small group negotiating sessions. If you put 134 individuals in one room, it is difficult to have meaningful give and take. Fortunately, as large as we are, everyone needs to include us.

But you have a lot of arm twisting and giving and taking that goes on. As you probably know, we have serious offensive interests,

and we also have serious defensive interests. Congressman Dingell spoke to some of those in his opening statement, and we need to guard against some and get what we really need. And in the context of that, do some giving and taking so that all of the countries feel that they come out of this with some—their interests addressed in some way.

Mr. LARGENT. Thank you. I yield to the gentlelady from California for questions.

Ms. ESHOO. Thank you, Mr. Largent; and thank you, Mr. Papovich for your testimony.

As I mentioned in my opening statement, I am concerned about the pressure being placed on the United States to agree that the WTO's rules on trade in services and not its rules on trade in goods should govern electronic commerce. I had to leave the room during some of your statement to vote, so I may have missed—obviously I missed some parts of your presentation.

Can you tell members of the subcommittee what kinds of assurances you can give us that the WTO will classify Internet transactions individually depending on the kind of product involved, be it service or good or intellectual property rather than lumping these very different transactions together? I think maybe when I came back into the room you were just beginning to touch on it. But if you would like to elaborate, I think you can be very instructive to us on that issue.

Mr. PAPOVICH. We have a disagreement with a major trading partner across the Atlantic on that. They happen to think that all electronic transmissions should be classified as services. We don't agree and—but we hold very strongly to our view. Basically it is what you just said. We are not going to concede this point.

My guess is that by the Seattle Ministerial we will not be able to solve this, but the importance—and probably the important thing coming out of the ministerial is that we don't concede the issue. And we will have to continue to work on it during this next Round in some way so when we come out the other end, this is clarified.

I don't know that we are hurt by having a delay. In my consultations with our service providers who rely upon the Internet and who are worried about this and many of them are in the IP area, as you probably know, I think they are comfortable with that outcome. As long as we don't concede the issue, we are okay. But we have no intention in conceding the issue that all Internet transmissions are just services.

Ms. ESHOO. Thank you for your good work and certainly that of our Trade Representative, Charlene Barshefsky. She is absolutely outstanding, and the contributions that you are making are enormous. I salute you for the work that you are doing. Thank you, and thank you, Mr. Chairman.

Mr. TAUZIN. The Chair asks unanimous consent that Mr. Jack Metcalf be permitted to join the panel and ask questions. Without objection, so ordered.

Mr. Papovich, I know that you responded to the tariff free question that was proposed to you by Mr. Largent, but I want to expand on that just a bit. GATS, as you know, allows countries to have border adjustable taxes, and many countries do. Countries such as

those in the European Union who have value added taxes often rebate those taxes to the manufacturers when their products are sold in this country.

I go to Britain today and buy a product, I fill out a form and get the taxes back. In effect, they are importing to America value added tax free. The American tax system is not border adjustable. Income taxes basically become part of the purchase price of products we sell. That is inevitably true of services we sell over the Internet. If I am a service provider in America and all of my employees and I are paying income taxes and we are hiring accountants and lawyers to deal with the IRS, those costs are part of our cost of doing business which eventually become part of our product cost as we send those services over the Internet or receipts.

The dean of the Harvard Economics School estimates that the average additional cost to American products because of the income tax code is 25 percent. That is a pretty big number. Here is my question.

If GATS allows countries who are part of the WTO to import telecommunications services into America value added tax free, and American companies without a border adjustable tax are in competition with them both here and abroad with a 25 percent IRS average cost impact on their products, until and unless we adopt a border adjustable tax which as you probably know I have been advocating for a long time, aren't we at a significant disadvantage if all we accomplish is a tariff-free cyberspace?

In short, if we simply substitute value added taxes collected by the country of import on American services, rebate it on their exports to America, haven't we set ourselves up to continue to lose American jobs to folks who can import their services into this country value added tax free and who can sell their services in their own country in a competitive marketplace where American services carry the extra 25 percent income tax burden and are then value added taxed in those countries? In short, has a value added tax replaced the tariff as an unfair trade barrier to American competition?

Mr. PAPOVICH. I was unprepared for this one. First, you are asking me a question about tax policy which is not my agency's area of responsibility. And I say anything, it risks—Treasury Department may be unhappy with what I say.

Mr. TAUZIN. That is okay.

Mr. PAPOVICH. Your question applies equally to trading goods or trading physical products?

Mr. TAUZIN. It may be especially true in electronics because there we enjoy a significant trade advantage.

Mr. PAPOVICH. We say that any taxation should be nondiscriminatory. That is neutral and consistent. I don't know how that applies to your question because implicit in your question is there is a discriminatory aspect to all of this.

In the OECD, there is an international forum where we are apparently trying to reach a global consensus on this question, and Treasury is an active participant in this process. They are addressing international tax issues on exactly this question, I am told by looking at this paper. I can't take the answer much further because I simply don't know.

Mr. TAUZIN. The point of my question is to alert you to the problem and through you to alert Charlene Barshefsky to the problem. Pat Buchanan is rallying peasants with pitch forks to assault the fortresses of GATT and NAFTA as if they are the objects of the problems in our trade deficits, when as I examine the problem, the peasants with pitch forks ought to be assaulting the fortress we call IRS.

We are literally entering an age and it is going to be serious when it comes to Internet commerce where here in America we are debating how do we handle taxation of commerce when it is an Internet commerce instead of a brick and mortar commerce. What local and State jurisdiction has the right to levy a sales tax or a consumer tax on that transaction.

I don't know that we are paying enough attention to the fact that GATT and NAFTA allow consumer taxes to be placed upon American imports and consumer taxes to not be placed upon foreign exports into this country and more and more countries are doing that, and they are literally substituting VAT taxes for tariffs. So while we are bragging how we are getting everybody to lower the tariffs, they are quietly raising the VAT taxes, and those VAT taxes become as effective a tariff as there ever was as long as we in America don't reciprocate. As long as we in America have income taxes that are not border adjustable and they have VAT taxes that are border adjustable, it seems to me that we are trading away our labor and our manufacturing base.

In the electronic commerce area, we may be trading away our advantages. To put it very simply, if I am an electronic commerce retailer in America and I can't rebate the income taxes, the American taxes, on my sales overseas, I don't get that rebate, and my competitor overseas does get a rebate when it sells those goods into this country, and they also additionally tax my products when they go over there, not with a tariff but with a value added consumer tax. It seems to me that—duh—we are going to continue to have a trade deficit ad infinitum, and it is going to continue to grow. And the advantages that we have in some markets like electronics and intellectual property sales are going to be quickly lost.

At a 25 percent disadvantage, how can we survive when in an electronic commerce age the cost of doing business on the Internet is exponentially going down.

I know that you don't have an answer, and I know that you can't put yourself on a grill for someone at Treasury to roast you, but I hope you and our Trade Representative become increasingly sensitized to that fact. The answer is if we sign trade agreements that allow our friends across the world to get rid of the tariffs and substitute VAT taxes for tariffs, we have to be smart enough in America to get rid of the income tax code and go to some kind of a consumer, border adjustable tax. I have suggested the retail sales tax.

We have to do something, or we have to quit signing these trade agreements. All of the countries that are permitted to substitute VAT for tariffs have to quit doing that, and we have to negotiate our way out of this mess.

I am particularly sensitized to it because I have spent the last year debating with Dick Armey around the country on tax policy. And I am particularly keen to the fact that having signed these

treaties, we ought to be smart enough to understand what our next step is; and we are not taking that next step.

I want to sign fast track agreements and get China in WTO, and I want to open up America to free trade in our own hemisphere. But if we keep doing this and we are stupid enough to let our trading partners substitute VAT for tariffs and we don't have tariffs or VATs, we are going to get killed; and we deserve to get killed. Just be sensitized to that, please and we will have a lot more discussions about it in the future.

Mr. PAPOVICH. And I guarantee that I will point that out to Representative Barshefsky. So far, no one has figured out how to apply taxes or tariffs to electronic transmissions and services, so we have a little breathing space.

Mr. TAUZIN. And you have the moratorium. But as you told Mr. Largent, your focus is on getting tariffs eliminated, and you have also drawn a clear line between the capacity of countries to tax internally American products sitting on the shelf next to their own domestic products. If that continues to be the way that we treat this issue, we are going to get killed. An American product carrying a 25 percent American income tax effect sits on the shelf with a British product and then gets taxed with the British VAT. That is the way that it works. The British product comes to America not having the American income tax effect on it, and there are no VAT taxes on it when it comes to America. We don't put a national sales tax on it, and we wonder why they have an advantage. I mean, duh.

Mr. PAPOVICH. I hear you.

Mr. TAUZIN. The Chair yields to the gentleman from Ohio, Mr. Sawyer.

Mr. SAWYER. I am going to pass for a moment, Mr. Chairman.

Mr. TAUZIN. The Chair yields to Mr. Metcalf.

Mr. METCALF. I don't have any questions at this time.

Mr. TAUZIN. Mr. Oxley is just arriving in time to be recognized.

Mr. OXLEY. Thank you, Mr. Chairman.

Mr. Papovich, you testified that we have an \$80 billion surplus in trade services. I have always been curious as to why when the trade deficit figures always come out that it is a merchandise trade deficit and we never include services, as if they don't count.

Why is that? And shouldn't we take a look at the real benefits of expanding trade and services, as you obviously spoke to, and the real benefits for our economy, just the same way that the merchandise and the agricultural products are reported—wouldn't that give the average person who reads these figures a little more realistic view of what is going on out there in regard to international trade?

Mr. PAPOVICH. You are right, but I want to check on that. I am not an expert on the data that gets collected.

But I think that when they say merchandise trade, they include services as well as food products.

Mr. OXLEY. I don't think that is right. I don't think that is correct. And I have always been curious as to why that dichotomy existed. I understand—I know that it is not your shop that does those statistics?

Mr. PAPOVICH. It is the Commerce Department.

Mr. OXLEY. Commerce Department. I think separating those leaves misinformation out there regarding the trade deficit, and the trade deficit in the past has always been a very volatile political issue which in many ways hurts our efforts at free trade.

We are about to enact—as a matter of fact this afternoon—major reform of our financial services laws that will allow cross ownership of securities firms, banks, and insurers. Glass-Steagall will no longer be the law of the land. When we were negotiating with Europeans, they cited Glass-Steagall as anti-competitive U.S. law, and that took place in the last round in Geneva. With the elimination of Glass-Steagall, can we make progress in the financial services area?

Mr. PAPOVICH. I am still waiting to see what the final results of your work are, but I think so. This has often been cited as a barrier that countries have vis-a-vis us, and so I would hope that we can get something in return for that.

Mr. OXLEY. You may have noticed an article in the Washington Post regarding the WTO and the number of anti-WTO types that are running around out there, and I think there are 45 anti-WTO websites and the like.

In that article there was a reference to the fact that the anti-WTO forces had won a victory regarding the financial services area, I don't know whether you picked that up or not, but it stuck out like a sore thumb to me, and I am wondering what kind of a victory that might have been, because as you cited in your testimony, there are over a hundred countries signed to the financial services agreement which I think is the second agreement under the WTO after telecommunications; is that correct?

Mr. PAPOVICH. Under services.

Mr. OXLEY. Under services, right. Do you know of anything like that?

Mr. PAPOVICH. The last 3 days there has been a world services Congress in Atlanta, Georgia. So I didn't get to see the Post for the last 3 days so I didn't see that article. Based on what I know, those who oppose us at Seattle, based on what I know of their objectives, I can't imagine what would be in the—in this act.

Mr. OXLEY. I will be glad to send you that article.

Mr. PAPOVICH. I can get it.

Mr. OXLEY. I would love to hear your take.

Mr. PAPOVICH. Okay.

Mr. OXLEY. Last April, the administration rejected a very favorable deal with China on that country's WTO entry. And in fact, at that time China was offering unprecedented access for U.S. insurance companies, was willing to grant U.S. firms up to 51 percent ownership of Chinese telecommunications ventures. At that time, the administration refused to take yes for an answer, and here we are now trying to put Humpty-Dumpty back together again.

It looks like from what I can read that we will be forced to accept a less favorable deal in advance of the Ministerial as it related to insurance and telecommunications. We have been historically wide open to foreign telecommunications investment since the FCC implemented the WTO telecom agreement, which I strongly supported. I understand that USTR is going to accept the Chinese pro-

hibition of majority foreign investment in Chinese telecommunications companies. Is that correct?

Mr. PAPOVICH. I am not personally involved in negotiating, and I don't know that that is the case. I read that in the newspaper myself. I talked to my counterpart who is responsible for China, and he said that is not so. We would need to ask our China negotiator to talk to you about exactly what is happening in the negotiation.

I don't know, in fact, that there are negotiations going on. I talked to my counterpart about that, and he was a little surprised about these articles and these assertions that we have seen in the press about making concessions like the one you just mentioned.

What I do know is that in the April agreement or the status of the April negotiation, there were some significant things we still wanted to get. And in my area, services, we still felt that the Chinese had not done enough in banking, and securities and the audiovisual areas. So there were improvements that we felt that we needed to get. It has been regrettable that all of these months have gone by, and we still don't have an agreement.

It is also not clear to me that this is going to get done in time for the Seattle Ministerial. The press has given the impression that suddenly the process has started again. I don't know that is so.

Mr. OXLEY. We were briefed before Jiang Zemin's visit, the Commerce Committee was briefed at least once, maybe twice, and all of us, I think, left those meetings with a very solid feeling that the deal was going to be completed during Jiang Zemin's visit.

When that did not happen, I think there was a lot of disappointment up here on the Hill. Frankly, we were given information from Ms. Barshefsky personally that they felt very comfortable with where those offers were and that they were ready, I got the distinct impression that we would accept that offer and that would, of course, have solved a lot of problems and obviated the need to do this dance before Seattle.

And so we are hopeful, of course, that that can be completed, but based on what we saw in April, all of us are not necessarily holding our breath. I yield back the balance of my time.

Mr. TAUZIN. I thank the gentleman. The Chair recognizes the ranking minority member from Massachusetts, Mr. Markey.

By the way, Mr. Papovich, why did your statement end in a half sentence?

Mr. PAPOVICH. There is a mistake, obviously.

Mr. TAUZIN. I would like to know what the rest of the statement says.

I recognize Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman. On the other hand, many verbal presentations by witnesses before this committee have been interrupted in a way that when reading the transcript will always leave historians wondering what the witness would have said when the congressman interrupted.

I understand that Ms. Eshoo has already raised questions in the areas that I am about to pursue.

Electronic commerce in many ways renders the distinction between goods and services obsolete or at least more confusing. I would like your views on this issue. If I receive a book, a physical

book, from a transaction with amazon.com, would that be treated as a good or a service from your perspective?

Mr. PAPOVICH. The problem is that we don't know. As a practical matter, there are no duties or other restrictions in the WTO on electronic transactions right now, partly because technologically know how to do it, so we need to sort that out.

Mr. MARKEY. What is your view?

Mr. PAPOVICH. If you received a book in electronic form, I would say it is a good.

Mr. MARKEY. It is a good?

Mr. PAPOVICH. Uh-huh.

Mr. MARKEY. If I get the same book downloaded onto my computer to read on-line or peruse as an electronic book, does the answer change?

Mr. PAPOVICH. I don't know the answer to your question. This is what—

Mr. MARKEY. Do we have a position as a country?

Mr. PAPOVICH. Working closely with industry, we are still formulating a position. We talked about this before.

I said that some of our trading partners would like to finalize this debate now, and their argument is that it is a service. Anything that is transmitted electronically is a service.

And because this is such a new technology and these sorts of transmissions like books being transmitted on-line are so new, we don't have a final view. Let me check with my colleagues. Maybe I should make sure that I am speaking correctly.

Mr. MARKEY. Okay, that is good.

Mr. PAPOVICH. We want to keep the question open for the time being.

Mr. MARKEY. The duties on goods are generally higher than on services as a general rule. How do we handle that issue?

Mr. PAPOVICH. There are no duties on services. It is not something that has been dutiable in the past. There are duties on goods, and of course they are coming down. In certain areas, like textiles and footwear, they are still very high. But in technology products, duties are very low. In fact, we have an agreement that we have negotiated already, it is called the ITA, it is the Information Technology Agreement; and we are now negotiating ITA II to add more products which would provide zero duties on as many physical information technology products as possible.

So what we are trying to do is move to a point where there is no duty on any good or service in the information technology area.

Mr. MARKEY. You note in your testimony that services comprises a very significant percentage of our trade and a very large portion of our employment, and obviously economic growth within the United States is largely driven by this sector over the last decade.

This services area is a very knowledge-based employment sector. In other words, it is not widgets, it is software dependent, people-oriented provision of services. That means that there are new issues being raised. In today's Washington Post, there is an article about hackers who have cracked the encryption protecting DVD movies and software from being copied. My question relates to how we address trade relations and trade deals where piracy and low cost labor make us as a country seemingly so vulnerable in an era

where increasingly we rely economically on service-oriented, software-based employment opportunities here at home. How are we doing?

Mr. PAPOVICH. This is another third of my portfolio, the IP part. We have one major effort underway, and then we are just starting again because it is so new on the other—which is the Internet side.

One of the biggest problems that we have in terms of piracy is the ease with which people can make pirated versions of these disks, whether it is a compact disk or a CD-ROM or in Asia they have video compact disks. And I just finished a six country trip where we are putting pressure on countries in a coordinated way to put in place policies to prevent nefarious individuals from setting up facilities to make millions of copies of these disks. That is today's technology, and that is something that we at least know what to do about.

We have started meeting with the motion picture association, the music people, the business software alliance about Internet piracy, and they have shown us the programs they are beginning to put in place, the monitoring that they do.

Mr. MARKEY. They thought that they had reached an agreement on a technology on DVD ROM drive that now a group of programmers has duplicated the software equivalent to a skeleton key and placed it on the Internet for anyone to download. And The Washington Post staffer downloaded a Monty Python movie in a matter of minutes using the code.

So this is—if you can just give us some larger view of what is going on because obviously globally we are going to have piratical activity targeting the creative work of the most imaginative and productive people of our generation going to the best universities of our country without full financial return.

Mr. PAPOVICH. In 1997, we negotiated at the World Trade Organization a new copyright treaty establishing definitively that Internet transmissions are covered by copyright law and all countries have to ensure that it is a violation of copyright law to do the types of things that you described.

Last year, Congress enacted the Digital Millennium Copyright Act modifying our own copyright law to make it a clear crime to do this sort of behavior and to establish obligations on not only those who would—to make it a crime to do the sort of thing that you just said, and to also establish obligations on Internet service providers that if they are notified that someone has put something up on their service that is pirated, that they are obligated to take down that service, remove it from their Web sites and the services that they provide.

There is going to be a need, first, for continued vigilance probably in the first instance by the industry associations to be patrolling what is put up on the Internet, and then an ability to move quickly to get action against those who put the product out there for consumers to see and download. And the role of government is still evolving on this. Here domestically there is a role for our Copyright Office and our Patent and Trademark Office and the FBI and Justice.

For us in the international trade area, the role in the first instance is making sure that countries ratify this WIPO treaty and make it clearly a crime in their country when this happens.

But I think—earlier I said that it is good that governments have not been able to figure out how to tax and tariff Internet transmissions, it is moving faster than we are moving, similarly the pirating activities are moving faster than we in the private sector or government can move to stop them.

Mr. MARKEY. I went with the President to China last summer for 10 days. When we were in Beijing and we went out to the area where all of the pirates were, they sell these movies from the United States and they—what they had done, it is like a giant Blockbuster store. Think of a Blockbuster ten times bigger than the biggest store you have ever seen. The Chinese had cleaned out all of these alleys in the week before we arrived so when we walked down them, none of these American movies were for sale, none of the software were for sale, and they were policing the area because it is only two blocks from our embassy.

Everyone in our embassy knows this because a lot of people might clandestinely go out and buy the movies themselves. And so there is a duality some American negotiators might have, and I can't name any individual, but I suspect. It is a huge issue that American negotiators are very familiar with, and the Chinese would clearly not like an American delegation arriving that might not have the intimate relationship with them to observe.

Have the hackers stolen a good or a service that you know of?

Mr. PAPOVICH. That I know of or the example that you gave me?

Mr. MARKEY. Yes. What you would use in a negotiation as an example in terms of what hackers are doing?

Mr. PAPOVICH. In the first instance, the bigger problem now is what you described a few moments ago, the bazaar is full of physical product. No. 1, that is a bigger more commercially damaging problem; and No. 2, one that is easier to deal with.

And the way we are trying to deal with it, we are trying to stop the production. Rather than arresting all of the merchants, if you walk not too far from my office you can find venders who are selling fake Rolex watches and other things. Rather than arresting those people and stopping the production of pirated physical product, and we work very hard with industry on that, the hackers, the Internet side, making sure that countries have laws in place, a lot of countries don't have laws in place making illegal that sort of behavior. At least we have a law then.

If our law drives these people out of the U.S. if we can possibly be successful, we have got to make sure that people don't flee to somewhere else because you can transmit on the Internet pirated product from anywhere in the world.

Mr. MARKEY. That is my point. It goes from the virtual to the real. You can transmit it digitally across international boundaries, turned in a physical product, and then it is sold in these bazaars around the world. I think that is a big problem. Thank you, Mr. Chairman.

Mr. TAUZIN. I might, as a reference for Mr. Papovich, point out that one of the problems with negotiations between Hollywood, the electronic manufacturers, and the internet folks is that they have

left out the broadcasters in those negotiations, and the broadcasters are being pushed by Congress to move their analog broadcasts to digital.

And once they do, they will have many of the same problems, particularly when their broadcasts are loaded up on satellites and moved around. For example, when Disney wants to show the Lion King in digital format on a Disney channel, the future means that they have to wait until all of the value in other productions of that product are exhausted because they know once they put it in digital form in a broadcast format, it is gone. It is gone in multiples of hundreds of thousands and perhaps millions of copies, and they have been left out of these negotiations.

They are very interested in joining in those negotiations because they are totally perplexed how they are going to enter this digital world without some technology or legal protections. I would suggest that you advise Charlene that you might want to invite representatives of the broadcast industry into your negotiations on the international side as well.

The Chair will recognize the gentlelady from California.

Ms. ESHOO. Thank you, Mr. Chairman.

Mr. Papovich, I want to go back to something, a question that I asked you, and what I heard you saying to Mr. Markey when he asked you a similar question. There is a difference between the answers, and I think that it is important to get some clarification here because I think it is a very important area.

Just to refresh your memory, I asked you what further assurance you could give both myself and the members of the subcommittee that the WTO will classify Internet transactions individually depending on the kind of product involved, be it a service, a good or intellectual property rather than lumping these very different transactions together.

Your response was that you had, we have no intention of conceding on this issue. You were very clear which left me feeling very, very comfortable, when I sensed in your answer to Mr. Markey that you were back-pedaling in classifying the sources and the goods by saying we don't know yet.

Which set of words do you want to retract?

Mr. PAPOVICH. As he took me in his discussion, the conversation evolved I guess I could say. We have no intention of conceding this issue at Seattle. We are—some would like us to concede it now that it is a service and that is all that it is. We have said no, we will not concede that.

But when Mr. Markey pressed me to say have you decided, in fact, that certain transmissions are in all cases a good? And he took me through these different verifications, a book.

I had to say, we don't have a definitive knowledge ourselves that certain types of products and certain types of products transmitted over the Internet will, in all instances, be a good and others will be a service.

Ms. ESHOO. You must have some sense of clarification of defining what these things are?

Mr. PAPOVICH. In some instances that was sort of the problem with how he was taking me along. In some instances, in my view, it is clear, like the transmission of the hypothetical book, it is clear-

ly a good. And one can't say it is always going to be a service. No, we feel there are instances when it is a good; but are there other instances when that transmitted product in the way, in the final analysis it might end up being a service, and my answer was I don't know definitively. And that, in essence, is why it is important that we not concede the issue now.

Ms. ESHOO. Are you going to concede the issue in the future?

Mr. PAPOVICH. I am not saying that we will concede it ever. I am saying that we are keeping the issue open until we have a clearer understanding in our own mind on this topic. I don't have the final answer.

Ms. ESHOO. I am going to leave this area now less comfortable with what you have said than when I first posed the question to you because I think it is an enormously important area for the United States to bring some definition to. If we are going to say that we are not going to concede on something, it is because we have clarity about what we would be conceding.

And so I suggest that you go back and bone up on this because I think someone else could really have us for lunch.

Mr. PAPOVICH. I will do that, but I will say that when I sit and talk with industry people, and I will talk to them again, that they are not certain that in all instances that the item being transmitted is definitively a good versus some other format definitively a service.

Ms. ESHOO. It seems to me that we had some of these debates during the WIPO discussion in this very hearing room.

Well, I thank you for being as frank as you have been, but again I am not leaving here very comfortable with the answer.

Thank you.

Mr. TAUZIN. I thank the gentlelady. The Chair would advise the members that you ain't seen nothing yet. When we get the report from the Internet taxation committee in April as to how to handle it internally in this country, there is going to be a lot of unease in this room and around Congress. The gentleman from Ohio.

Mr. SAWYER. Thank you, Mr. Chairman. I share the lady's discomfort. I suspect that we are dealing in an area of definition that we have very little experience. There are not good analogs. It sounded like the debate in the course of this century whether light is a wave or a particle; and the answer is yes, it is. Is it a good or a service, and the answer is that we are dealing in a different arena.

I represent Akron, Ohio, and we made tires for automobiles. We have not done that for 20 years, and we are in better economic condition than we have been for a very long time because we have not tried to recapture what we once were and have tried to build on things that we can do better.

We are still a command and control center for a global tire industry and research and development center for all of—not just tires but all of the synthetic materials that come out of that; and when people ask me what we make in Akron, they say if you don't make tires, what do you make?

I say that we make decisions, and we make progress.

The very topic that you are talking about is at the heart of the potential strength of my local economy deep into the next century if we continue to do things well that we are doing well now.

So the ability to come to decisions about this sort of thing is not, I am sure, to be taken lightly. I know that you don't take it lightly. You would have given a casual answer if it were possible, but it is not wise nor possible. I am actually more comforted that you didn't resort to a quick answer to this because it is going to be an abiding question with us for some time.

Let me turn specifically to the whole business of dispute resolution and the kind of thing as you would say in your terms horizontally spreads across an awful lot of areas.

The whole business of trying to develop a transparent dispute resolution mechanism, an early warning system, before WTO panels are established, it seems to me is enormously important. Can you talk about our current experience with that kind of consultive process and whether there will be discussion on how to improve it at the Ministerial?

Mr. PAPOVICH. I can't say too much because it is not my area of responsibility. We have been making—

Mr. SAWYER. But in your area of responsibility, if these kind of discussions mean anything, you will rapidly be confronting the need for that kind of system.

Mr. PAPOVICH. We have brought more—my statistics show the U.S. has instituted more WTO disputes on intellectual property than any other single area. We have used the TRIPS agreement very vigorously. There have been proposals made to try to make the dispute settlement process more open and transparent, and we have made our own proposals to, for example, require that the decisions be issued promptly and these decisions are not short. It is not just guilty or not guilty, they are long papers, that these be published promptly to enhance transparency.

We have argued that there should be the possibility for third parties to file amicus briefs and that sort of thing. We are trying to get agreement on at least some of these things that the ministers could approve for Seattle. There will be further negotiations required because we will not get everything that we want, so we will continue to negotiate over the Round. But we have hopes that at Seattle we can get agreement, for example, on the prompter publishing of the results just so that the public knows sooner what is being done here.

So we are hopeful to have, A, a decision point in Seattle, but it is not going to be the definitive decision. There is a lot of resistance to things like amicus briefs and opening the process for public witnessing of what is going on. There is a lot of opposition.

Mr. SAWYER. Thank you, Mr. Chairman.

Mr. TAUZIN. We have got a vote on the floor. Joe, we are going to thank you and dismiss you, and with the agreement of the second panel, we are going to recess until 3 p.m. to give everybody a chance to go to lunch. We will alert all of the members to be back at 3 so we can have a full and uninterrupted discussion.

Joe, before you leave, let me make one point again. I think we have two ways to go as we move into the future of free trade, particularly as we tackle the tough issues of cyberspace. Whether you

decide a book on the Internet is a good or a service. One way to confront the tax issue is to begin trying to negotiate agreements that will not allow people to substitute VAT taxes for tariffs on American products as they are shipped overseas; otherwise in this country we are going to have to recognize that we don't have any choice but to move to a border adjustable position ourselves.

It may help if we get some situation from all of you at the tradeoffice whether or not it is even possible to think of new WTO, a new GATT agreement that would prevent the substitution of VAT taxes for tariffs. Because if that is not possible, I think that tells us as a people, as a Congress that we have to consider an alternative here in our own country in order to deal with this inequity that I think is growing and could create a lot more problems.

Let me say that the anger and the protesting and the shouts and the noise that you are going to hear in Seattle from people in this country who are concerned about free trade are centered right on that notion. If free trade isn't truly fair in terms of the way in which in a globalized free trade society some of these new forms of taxes and new forms of discrimination are permitted under our agreements, then workers in this country are going to continue to oppose any further extensions of free trade.

We are going to have the backlash that Tom Freedman talks about in this book in this country. We cannot have the backlashes in our own country disrupting the progress of free trade agreements around the world. You folks need to focus on that.

I have been told that we lose 19,000 American jobs for every billion dollars of trade deficit. If that number is accurate, that explains why there will be noise in Seattle and why backlashes are developing here and around the world. I urge you to please focus on it.

Joe, thank you for your excellent presentation. We will dismiss you and recess the hearing until 3.

[Brief recess.]

Mr. TAUZIN. The subcommittee will please come back to order.

We have notified all of the members. Hopefully, we will get some members in. We are going to be interrupted by votes about every half hour.

We will get the testimony on the record. Your written statements, as you know, are part of our record already, so you don't need to read them to us, but we would appreciate if you would kind of summarize for the record the highlights of your testimony.

We will begin with Mr. Mark Brickell, Managing Director of J.P. Morgan, which is a small mom-and-pop company.

STATEMENTS OF MARK C. BRICKELL, MANAGING DIRECTOR, J.P. MORGAN AND CO.; TIMOTHY REGAN, VICE PRESIDENT FOR GOVERNMENT AFFAIRS, CORNING INC.; AND BRANT W. FREE, SENIOR VICE PRESIDENT, INTERNATIONAL EXTERNAL AFFAIRS, THE CHUBB CORPORATION

Mr. BRICKELL. Mr. Chairman, thank you for inviting me to join this panel. The new round of WTO negotiations is important to J.P. Morgan where I work. We are a global bank, and in an average year about half of our revenues come from international operations.

Controls on international trade and on capital flows have far-reaching and destructive effects, and eliminating those barriers is critically important. The United States in this round of trade talks should encourage other nations to open their borders to trade and should lead the way by eliminating its own trade barriers. As part of that policy, we should ensure that there are no barriers, no tariff barriers to e-commerce, and we should look beyond the elimination of tariffs and quotas and find other ways to strengthen international trade. We should encourage the enforcement of contracts here and abroad. These policies will be good for Americans and for our friends overseas.

Free trade and capital flows are very close to Morgan's heart and its history. Our bank was founded in the 1800's as the New York affiliate of a London merchant bank. After the war between the States, free trade permitted us to move our headquarters from London to New York, and we continued doing business in both places, and we still have our international character.

In the same way that we were channeling foreign capital into the emerging U.S. economy in the 1800's, in recent years we have helped Americans find promising investments in other parts of the world; and as globalization goes on and as trade barriers are reduced, our business has grown. We believe that these are powerful, important, and highly desirable trends.

I would like to say a couple of words about free trade and a couple of words about policies for financial services.

Few things have survived the test of time better than the economic case for free trade. Economists of all political stripes have made that case. Dropping barriers to trade enables consumers to save money and investors to earn more.

In the simplest terms, free trade makes human beings happier because they get to do what they want to do as government steps out of the way. The increase in WTO membership shows that more and more countries subscribe to this view, but there are some groups which argue to exceptions to the principle of free trade. They worry about individuals and businesses who will be hurt as they adjust to the new business environment when trade barriers fall, and they are right. Those adjustments can be painful.

But business conditions change every day, and most of the changes have little to do with trade policy. We run low on some resources, we invent better ways to do things, old jobs disappear, new jobs are found. Whaling ships don't set sail from New Bedford, Massachusetts, any more. We found cheaper sources of energy and new jobs pumping oil from the seabed off the Louisiana shore.

Mr. TAUZIN. Good example, by the way.

Mr. BRICKELL. The creative destruction of those kinds of shifts in the marketplace requires adjustments that dwarf the disruptions that are caused by breaking down trade barriers.

Change will sweep across our workplace in America as a result of e-commerce over the next decade. That will cause far greater disruption than would the dropping of all U.S. trade barriers, but no one would repeal the Internet.

The benefits of free trade are so great that in 1963, when he wrote the book *Capitalism and Freedom*, Milton Friedman urged America to move unilaterally to a free trade policy, and he pointed

to Hong Kong where there were thousands of newly arrived Chinese immigrants as a country that had low trade barriers and he predicted that would benefit them. It was still true last year. The Index of Economic Freedom published by the Wall Street Journal and Heritage Foundation gave Hong Kong the highest rating for free trade policies. So we have a country that shows us what happens when you follow a free trade policy.

In 1970, a few years after Friedman wrote his book, per capita GDP in Hong Kong was \$957 per person. That was about 40 percent of the per capita income back in the United Kingdom. In the next 3 decades, the income of Hong Kong people went rocketing up. Last year, per capita GDP there hit nearly \$25,000. The free trade policy and other sound economic policies and low taxes drove income up so fast that citizens of Hong Kong now have higher GDP than those in the United Kingdom where trade is not so free.

The fact is a good reminder that free trade for the United States is most important because it will raise the living standard for American workers.

Turning to financial services, for most of this century financial services have been a protected industry, and barriers to free trade have included capital and exchange controls, restrictions on foreign ownership and taxes on foreign investment. We believe these obstacles to free exchange should be reduced and eliminated. Fortunately, over the past 2 decades these barriers have been reduced.

Perhaps the most fundamental advance in this direction is taking place today as the financial services modernization legislation you and Chairman Bliley and others on this committee have worked so hard to pass is adopted. That law will tear down barriers between American financial firms at home, and it will also tear down barriers that have prolonged the separation of American financial institutions from the rest of the world. We seem to be headed back to the future toward an era of competitiveness and opportunity similar to the time when J.P. Morgan was formed. We are glad to see this trend. We are glad that the WTO has included financial services on its agenda. Formal barriers to trade and finance are becoming less and less important as obstacles to free trade in financial services.

Instead, it is our experience at J.P. Morgan that some of the most significant barriers in trade and finance consist of differences among countries in the enforceability of contracts. Financial relationships should be governed by this principle: When two parties agree to a contract, each party should be able to rely on performance by the other. If a party has second thoughts and can exit that contract without making the other party whole, even a market that is totally open to trade and financial services would not be attractive.

Sanctity of contract and the rule of law are cornerstones of free trade, and it should be U.S. policy to foster those values at home and abroad because you cannot build financial markets without this foundation. Not all trade barriers are as explicit as tariffs and quotas and ownership limits. U.S. trade negotiators and international trade bodies should reinforce sanctity of contracts and the rule of law as a key to trade and investment.

What else should concern the U.S. negotiators? Obstacles to commerce on the Internet would be a major setback. We believe that there should be no tariffs on the Internet, and we commend the U.S. Trade Representative and the administration for pursuing this policy.

Mr. Chairman, we appreciate the fact that the administration has taken a leading role in encouraging the liberalization of trade policy, and we are glad that this committee is overseeing those efforts. We hope to see further progress as a result of the Seattle meetings and the Millennium Round. Thank you.

[The prepared statement of Mark C. Brickell follows:]

PREPARED STATEMENT OF MARK C. BRICKELL, J.P. MORGAN & CO. INCORPORATED

Mr. Chairman, members of the Committee, thank you for inviting me here today to testify about the importance of the next round of WTO negotiations. I work for J. P. Morgan, a global financial services firm that provides products and services for businesses, governments, and individuals worldwide. In an average year, about half our revenues result from international operations.

Mr. Chairman, controls on international trade and capital flows have far-reaching and destructive effects. Reducing and eliminating those barriers to trade is a critically important endeavor. The United States, in the Millennium Round, should encourage other nations to open their borders and should lead the way by eliminating its own trade barriers. That policy will be good for Americans and our friends overseas. This Congress has already led the way on Internet policy, by insuring that the United States imposes no duties on Internet commerce. We should also encourage the enforcement of contracts here and abroad.

Free trade and capital mobility are close to J.P. Morgan's heart and to its history. Our bank was founded as a New York affiliate of a London merchant bank. Free trade in financial services between England and the United States permitted us to adapt to new business conditions. After the War Between the States, we move our headquarters from London to New York but continued doing business in both places. We have never lost our international character.

We understand the U.S. economy and the world economy and the growing links between the two. Just as we channeled foreign capital into the emerging U.S. economy in the 1800s, so, in recent years, we have helped Americans find promising investments in other parts of the world. Our business has been stimulated by globalization—the inexorable liberalization of trade flows over the last 50 years and capital flows over the last two decades. We believe these are powerful, important and highly desirable trends.

In the next few minutes, I would like to touch on two topics. One is the benefit of free trade; because others have made the case before, our statement will be brief. The other topic is trade in financial services, in which we have a more direct stake.

Why do we favor free trade?

Few things have survived the test of time better than the economic case for free trade. Economists of all political stripes have made that case, from Nobel Laureate Milton Friedman to MIT's Paul Krugman. Dropping trade barriers enables producers and consumers to buy and sell freely. Consumers save money and have more choices, resources flow to their most efficient use, and human beings are happier because they get to do what they want to do as government steps out of the way.

Reducing trade barriers is an increasingly accepted goal among nations. But, in the short run, some individuals and businesses will be hurt as they adjust to competitive changes. Of course, business conditions change every day. We run out of some resources, we invent better ways to do things, old jobs disappear and new ones must be found. Whaling ships don't set sail from New Bedford, Massachusetts, anymore. We've found cheaper sources of energy—and new jobs—pumping oil from the seabed off the Louisiana shore.

The "creative destruction" of the marketplace requires adjustments that dwarf the disruptions that are caused by breaking down of trade barriers. Change will sweep across the American workplace over the next decade as e-commerce grows. That will cause far greater disruption than would the dropping all U.S. trade barriers. But no one would repeal the Internet.

The benefits of free trade are so great that, in 1963, when he wrote *Capitalism and Freedom*, Milton Friedman urged America to move unilaterally to free trade.

"We are a great nation, and it ill behooves us to require reciprocal benefits' from other countries, he said. Let us set the pace."

Friedman pointed to Hong Kong, where thousands of newly arrived Chinese refugees were hard at work, as a rare example of a country with low trade barriers. And it was still true last year; The Index of Economic Freedom, published by the Wall Street Journal and the Heritage Foundation, gave Hong Kong the highest rating for free trade policies.

What happens to the countries that follow a free trade policy? In 1970, a few years after Friedman wrote his book, per capita GDP in the Hong Kong colony was \$957—only 43 percent of per capita income back in the United Kingdom. In the next three decades, the income of Hong Kong people went rocketing up. Last year per capita GDP there hit nearly \$25,000. The free trade policy, and other sound policies, drove income up so rapidly that citizens of Hong Kong now have higher GDP per capita than those in the United Kingdom where trade is not as free.

That fact is a good reminder that free trade for the United States is most important because it will raise the living standard for American workers.

Financial services

Let me turn now to our own industry, financial services. For most of this century, financial services have been a protected industry, both in the United States and other countries. Barriers to free trade in financial services have taken many forms. They include capital and exchange controls, restrictions on foreign ownership, and taxes on foreign investment. We believe these obstacles to free exchange should be reduced and eliminated. Fortunately, the past two decades have witnessed substantial liberalization of financial services, to the point where financial services were included in multilateral trade negotiations following the Uruguay Round, which concluded in 1994.

Mr. Chairman, we are now on the threshold of an even more fundamental advance. The Financial Services Modernization legislation, which you and Chairman Bliley have worked so hard to pass, will soon become law. The law will not simply tear down barriers that separated American financial firms from each other; it will tear down barriers that prolonged the separation of American financial markets from the rest of the world. We are headed back to the future, toward an era of competitiveness and opportunity similar to the time when J.P. Morgan was formed.

The trend today is toward free trade in financial services, despite occasional crisis-induced backsliding. Including financial services in the World Trade Organization agenda should only hasten this trend. Even where barriers continue to exist, they tend to be eroded by financial activities that place offshore. Offshore arrangements might not be the most efficient solution, but they are a means for beneficial activity to take place. Formal barriers are less and less important as obstacles to free trade in financial services.

Instead, our experience is that some of the most significant barriers to international financial trade consist of differences among countries as to the enforceability of contracts and of the sanctity of contracts in general. We believe financial relationships, wherever they occur, should be governed by the following principle: when two parties agree to a contract, each party should be able to rely on the performance of the other. Once that is gone, once a party with second thoughts can exit the contract without making the other party whole, a crucial foundation of our financial system is gone. If contracts are not consistently enforced, even an otherwise totally open market would not be attractive.

Hand in hand with upholding the sanctity of contract is adherence to the rule of law. Courts should decide cases on their merits, and not on other factors such as social policy objectives, ideological leanings, or a desire to avoid offending one's countrymen. An environment in which courts cannot be relied upon to adhere to the rule of law is an environment in which businesses will be reluctant to invest, and in which development will be stunted.

Sanctity of contracts and the rule of law are a cornerstone of free trade. It should be US policy to foster those values at home and abroad, because you cannot build financial markets without this foundation. Not all trade barriers are explicit barriers, such as tariffs, quotas, and ownership restrictions. Some consist of procedures that, while appearing to treat all the same, favor domestic competitors; others may consist of standards or restrictions that, while billed as protecting workers or the environment or safety and soundness, have the effect of excluding foreign goods and services. U.S. trade negotiators and international trade bodies should draw attention to the importance of sanctity of contracts and the rule of law to trade and investment.

What other possible impediments to free trade should concern U.S. negotiators? Obstacles to commerce on the Internet would be a major blow. Leading financial

firms have taken note of the potential for the Internet and electronic commerce in general to change drastically the way we do business. There is a general awareness among banks and other financial services firms that they ignore e-commerce at their peril. The Internet has tremendous potential for at least two reasons: First, it will change the way many clients interact directly with banks. And second, by automating transactions it will reduce the costs and risks of our businesses. Before long, the volume of financial transactions handled over the Internet will be a substantial part of the whole. But it is also possible that, if states or other governments impose tariffs on internet transactions, many of the benefits of e-commerce will be lost. Further, since the Internet is not confined to international boundaries, barriers at the state level could have international repercussions as well. We believe there should be no tariffs on the Internet, and we commend the U.S. Trade Representative for pursuing this policy.

Conclusion

Mr. Chairman, we appreciate the fact that the Administration has taken a leading role in encouraging the liberalization of trade policy. We are glad this Committee is overseeing those efforts. We hope to see further progress as a result of the Seattle meetings and the Millenium Round.

Mr. TAUZIN. Thank you very much, Mr. Brickell.
Next is Tim Regan of Corning.

STATEMENT OF TIMOTHY REGAN

Mr. REGAN. Thank you, Mr. Chairman.

I am here wearing two hats. One is for Corning and the other is for a group called the Labor/Industry Coalition for International Trade. This is a group of firms and trade unions who share a common interest in the promotion of good, high-wage jobs in America's manufacturing sector.

Mr. TAUZIN. Give us an example of some of the companies and unions involved?

Mr. REGAN. The glass workers and the communications workers are members. The AFL-CIO is no longer a part of it. The chemical workers are in it. The steelworkers are in it.

On the firm side, we have companies like Corning. We have Bethlehem Steel and Daimler-Chrysler. We have had a number of other groups involved in the past that, for a variety of reasons, are not today. We have had Motorola and Intel, folks that really make things here and are interested in exporting and promoting, if you will, high-wage jobs in America, manufacturing. And, as you know, manufacturing jobs generally, on average, pay higher wages than service sectors, many service sectors in the economy.

So it is a field which we believe has been neglected traditionally in U.S. trade policy, and we can't afford to neglect it.

I am not going to read any statement because a lot of things that were said we agree with as a group and I agree with. And some we don't agree with.

We think that the issue of trade is more complicated than free trade versus protectionism. It is really much more complicated. It is really the question of fairness. And, as my colleague just pointed out, the sanctity of contracts ultimately is an issue of fairness. And the question of whether or not countries can engage in injurious dumping and injurious subsidies is also a question of fairness, and we think that the system has to deal with these issues of fairness by establishing good, sound rules that will allow entities to compete fairly against one another in the world market.

We are very concerned—the Labor/Industry Coalition for International Trade is very concerned that the administration and the

United States will be under tremendous pressure to weaken these fundamental statutes, both statutes that exist in the international system today and in the United States.

There is no news. The Asian countries, the developing countries are putting this pressure on the United States because they want to be free to dump in this market or subsidize in this market with impunity. And we are concerned because the United States was exactly in this position in the Uruguay Round, and the United States said we are not going to weaken the laws. But in the end, in the final hours, and I was there in Geneva at the time, the United States buckled and conceded and made major concessions which have fundamentally undermined the effectiveness and the ability of the U.S. firms and workers to seek relief.

Mr. TAUZIN. Can you give us a couple of examples?

Mr. REGAN. One is sunset. Under U.S. law if you can prove that you face injurious dumping, you can get relief, and the relief comes in the form of antidumping duties, and the case also holds for subsidies.

The United States agreed as a matter of law it would cap relief at 5 years, no matter what. It was a random negotiated number that came out of the blue. Now if you happen to be in the crawfish industry back in Louisiana and you file a dumping case, which your constituents did 2 years ago, and they win, and they pay a half million dollars to win the case, they get relief, but they get relief for 5 years, and in 5 years they have to go back and fight it all over again.

Now, in these—these fights that occur over and over again cost the industries a tremendous amount of money to litigate. And again, there is no special number here. Five was literally taken out of the air. It was a negotiated limitation.

The fact of the matter is that a lot of these firms don't have the resources to go back and fight these orders again. So the system has essentially been capped at 5 years. I know that one of the industries we are involved in, we have decided not to pursue the defense of sunset because of the cost associated with doing it and the likelihood of succeeding. The likelihood of succeeding is extremely low.

So I think that it is very important that the Congress send a signal—and I know that you just voted on this issue across the street, and it is truly unfortunate that essentially we send a message to the rest of the world that when Charlene Barshefsky goes in there and says, I am not going to negotiate an unfair trade, they are going to say, why not. She is going say, because the Congress is against it; and they are going to point to those votes and say, why didn't they pass a nonbinding resolution to tell us that they are not willing to vote for it.

I think we have now set ourselves into a course of events which is going to make it more difficult for her, not less difficult for her going forward. And I don't mean to be critical.

I should also add that your points this morning about indirect taxes are absolutely right on the mark. You couldn't be more accurate in your perception. The fact that we have these—face these indirect taxes on our exports and then we face rebates of indirect taxes on products coming into the United States is a fundamental

issue. I would say it is probably the biggest barrier that we face in the world.

Because when we show up in Brazil with fiberoptics, we are showing up there having paid our 34 percent corporate income tax. We show up in Brazil, and we get slapped with a 17 percent tax. And our European counterparts show up, and they got their taxes rebated at the border, and they get a 17 percent tax, but their total tax burden is less, and it hurts. It hurts everywhere. It is in China, Europe, everywhere we go, and today it is a huge problem.

So I would endorse what you are trying to do strongly. I think it is the right way to go. I think that the United States ought to take a stand and tell the world either we are going to fix this problem internationally or we are going to fix it at home.

Then I would like to move on to some of Corning's concerns. Corning is the inventor of optical fiber. We export about 50 percent of what we make, and we make it here in America, and this is a classic case. We employ former textile workers in our plant in North Carolina. We have 4,000 people down there, and we are able to export because we have high returns to scale for the manufacture of this product. We pay high wages, and this stuff is so light you can ship it in air freight. You can have a delivery in 24 hours anywhere in the world. It is a perfect export product, but we face barriers everywhere we go in the world.

Mr. TAUZIN. I saw a figure that said that we lay enough fiberoptic in America to wrap the world every year 800 times?

Mr. REGAN. I don't know about that figure, but we lay about 28,000 miles a day in the world. It is quite phenomenal, and it is being driven, to a large degree, by what has happened with e-commerce and what happened with the Telecommunications Act.

And I will move on and use that as a segue to e-commerce.

E-commerce is huge. Whether it continues to be developed around the world at the pace it has been developed around here depends on what governments do to inhibit it, and there is the propensity to inhibit it, and is much greater overseas than it is here.

You have heard that story this morning. I want to reinforce the notion that we want to encourage governments to keep their hands off. It is in everybody's interest. They are going to be better off if somebody in Brazil can sell their product in the United States without having to necessarily have a presence in the United States. Just like it is good for us. So it is good for everybody for e-commerce to work.

I would also like to note that for e-commerce to continue to prosper in the United States—and this gets off track; it gets into the debate on telecommunications policy—we need to move forward to get truly high-speed bandwidth capability for residences in America. The fact is that we don't have high-speed capability to most residences.

The Telecommunications Act has worked very effectively in accelerating the deployment of this capability to businesses, and all you have to do is drive down the street and see how many different holes are dug for MFS or next level or MCI. The other day I saw three trenches, one for each one. It was marked in the street. That shows you what is happening. It is happening because of what you did.

The competition for the business customers are phenomenal. That is where the opportunity is going to be in terms of lower prices and better quality and higher speed. But the residences really do face a struggle. There is a lot that can be done in terms of removing barriers to investment and adopting incentives for investments. We have to replace about \$200 billion of existing infrastructure in this country in terms of copper wire and outmoded circuit switching to really bring it on home.

Finally, I want to warn the committee against the prospects of what I call unfair tariff deals. We have a peculiar situation in telecommunications equipment, and that is that the rest of the world can discriminate against us, and we can't discriminate against them. The reason for that is there is a provision that goes back to 1947 that was put in the GATT that says that governments can discriminate in the procurement of goods for their own use, and since most of the world has public telephone and telegraph administrations which are owned by their governments, these entities are free under that provision to discriminate, and there is really nothing we can do about it. We have faced it time and time again where we go over there and we say we can't get in the door because they have a buy national policy, and we have been told, unfortunately, that is okay, it is a loophole.

Any tariff deal in the United States on which we agree to eliminate our tariffs and telecom equipment which does not involve a comprehensive deal to get at tariff and nontariff barriers overseas, particularly the discriminatory procurement provision or loophole, is tantamount to unilateral disarmament, and we ought not to do it.

Thank you very much.

[The prepared statement of Timothy Regan follows:]

PREPARED STATEMENT OF TIMOTHY REGAN ON BEHALF OF THE LABOR INDUSTRY
COALITION FOR INTERNATIONAL TRADE AND CORNING INCORPORATED

I appreciate this opportunity to testify on the Seattle Ministerial and the proposed new round of WTO talks. I am wearing two hats today—one for Corning, a world leader in telecommunications, where I am Vice President for Government Affairs, and one for the Labor/Industry Coalition for International Trade (LICIT), of which Corning is a founding member.

I. LICIT'S CONCERNS

For two decades, LICIT has brought companies and unions together in support of increased and equitable international trade. Companies and unions affiliated with LICIT include: American Flint Glass Workers; AMT—The Association for Manufacturing Technology; Bethlehem Steel Corp.; Communications Workers of America; Corning Incorporated; DaimlerChrysler; International Brotherhood of Electrical Workers; Milacron Inc.; Paper, Allied-Industrial, Chemical & Energy Workers International Union (PACE); Union of Needletrades, Industrial and Textile Employees (UNITE); and United Steelworkers of America/United Rubber Workers Conference.¹

The goal of the Seattle Ministerial is to launch and set parameters for a new round of multilateral trade negotiations. The agreed "built-in agenda" for these talks involves revisions to the existing WTO rules on agriculture trade, services trade and intellectual property. There is much that the United States can and should seek to accomplish in these areas. However, none of these positive results can be achieved unless the United States resolutely blocks efforts by a handful of WTO Members to go outside this agreed list of topics and reopen debate over the WTO's antidumping and anti-subsidy rules.

¹Members do not necessarily associate themselves with every LICIT report or recommendation.

Antidumping Rules Should Not Be Reopened

Antidumping and antisubsidy rules are a pillar of the multilateral trading system. From its inception, the GATT has provided that injurious dumping "is to be condemned" and has provided for remedies to offset and deter dumping and trade-distorting government subsidies. These rules are designed to ensure a basic level of fairness in international trade and to prevent abuse. The clear intent of the countries who want to reopen these rules, however, is to weaken them. Allowing this effort to succeed would inevitably lead to abuse of the world's open markets—including that of the United States, the world's most open market—and would rapidly undermine confidence in the WTO.

As the United States observed in a 1998 submission to the WTO Working Group on the Interaction between Trade and Competition Policy, the antidumping remedy is:

necessary to the maintenance of the multilateral trading system. Without this and other remedial safeguards, there could have been no agreement on broader GATT and later WTO packages of market-opening agreements, especially given the imperfections which remain in the multilateral trading system... [T]he anti-dumping rules represent an effort to maintain a "level playing field" between producers in different countries... [and] are a critical factor in obtaining and sustaining necessary public support for the shared multilateral goal of trade liberalization.

From the standpoint of the trading system, there is no reason to reopen these rules in a new round, and there are many reasons not to do so. *First*, the current rules were concluded only with great difficulty during the Uruguay Round, have hardly been tested, and certainly have not proven defective. Another divisive fight over antidumping would only make the new round impossible to conclude, or its results impossible for the United States to ratify. *Second*, there are many new users of antidumping laws, often developing countries, trying to come into compliance with Uruguay Round rules. What is needed is a period of repose and certainty, not continued shifting of the rules which could spur confusion and negatively affect all WTO Members' exports. *Third*, antidumping measures affect only a tiny fraction of world trade. Where applied, they simply ensure a modicum of fairness, but even if that were not the case, it would hardly be plausible to argue that use of antidumping is a major problem in international trade. There is other, much more important, work to do in Geneva.

Permitting these rules to be undermined would not only put the trading system's prior accomplishments at risk and preclude progress on the core WTO trade agenda; it would also rob U.S. industries of their last remaining remedy against injurious, unfair trade. Chairman Tauzin, your own crawfish industry in Louisiana has been beset in recent years by dumping and would have been defenseless without an effective antidumping law. Likewise, Louisiana's softwood lumber industry would have had no remedy to huge Canadian subsidies without a strong and effective CVD law.

You can imagine our concern, then, upon learning last month that the incumbent WTO General Council Chairman, Ali Mchumo, had released a draft "Declaration" for the Seattle Ministerial with a lengthy list of proposed changes to WTO dumping and subsidy rules—changes that would, if adopted, eviscerate the U.S. fair trade laws and the relief those laws provide to domestic industries injured by dumped and subsidized imports. The Mchumo draft recites almost verbatim a series of negotiating demands tabled by countries seeking to alter the deal they signed in the Uruguay Round. Although clothed as suggestions relating to "implementation" of the Uruguay Round rules, these proposals actually seek to reopen those rules and dramatically alter the balance of rights and obligations achieved in the Uruguay Round.

While many of the Mchumo proposals are designed to provide special benefits for developing countries, some of the worst proposals apply to all countries and would introduce a bias in international trade rules favoring all dumpers and subsidizers. Meanwhile, the special rules proposed for developing countries are both dangerous—they would provide a license and a road map for engaging in unfair trade—and unnecessary since the claim that developing country exports are being shut off by trade remedy measures **has no basis in fact**. In the last official study by the U.S. International Trade Commission, no developing country in the GATT system had even 1% of its U.S.-bound exports subject to antidumping orders. The Mchumo draft, however, proposes such far-reaching changes as:

- requiring national authorities to impose duties that are less than the calculated margin of dumping or subsidy;
- slanting the *Antidumping Agreement's* criteria on product comparisons and exchange rate shifts so as to minimize or erase dumping margins;

- exempting developing countries altogether from discipline on the worst forms of subsidies—export subsidies and import-substitution subsidies;
- sharply increasing the already-liberal *de minimis* dumping, subsidy and market share thresholds below which trade remedies cannot be imposed on developing country products; and
- imposing lengthy moratoriums on antidumping actions in particular sectors such as textiles and apparel.

Several of these ideas were floated in the Uruguay Round and were soundly rejected. There was no basis for them then, and there is none now. Yet, Mr. Mchumo has proposed many amendments to take effect immediately—as if a basis for them had somehow already been established, which plainly is *not* the case.

The Mchumo draft represents an assault *emanating from the WTO itself* on the U.S. trade laws and on the international rules of fair trade which underlie U.S. acceptance of the WTO agreements. This is not what America bargained for when it joined the Organization and ratified the WTO agreements.

Forceful intervention by Congress is urgently needed. The most important and immediate step is to pass H Res. 298—introduced last month by Reps. Visclosky and Ney—which directs the President to *refuse to participate* in any new negotiations on antidumping and anti-subsidy rules, and to *refrain from submitting* to Congress any agreement that might undercut current U.S. trade laws or enforcement practices. By passing this important measure, Members of Congress can bolster the existing U.S. position and send a strong message that Congress will not tolerate attacks by or within the WTO on our fair trade laws.

The Commerce Committee and this Subcommittee have traditionally supported America's manufacturing base and the fair trade remedies which are essential to keeping that base healthy. Unfortunately, fewer than half the members of the Committee are presently signed on as co-sponsors of H Res. 298. LICIT respectfully urges those Committee members who have not signed on to join the more than 220 of your colleagues in the House who have stood up for America's working men and women by co-sponsoring this important measure.

The resolution reaffirms existing U.S. policy as articulated by both the Congress and the Administration. Here in the House, the Committee on Ways and Means, in 1997 approved and reported out a provision instructing U.S. negotiators to **reject** any agreement that would weaken current disciplines against dumping and subsidies:

In the course of negotiations conducted under this title, the United States Trade Representative shall—... preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping and countervailing duty laws, and avoid agreements which lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies...

Formalizing this position through prompt passage of H Res. 298 will provide crucial support to the Administration as the Seattle Ministerial approaches and send a strong message that the Congress is not prepared to compromise the effectiveness of our fair trade laws.

Reforms to the WTO Dispute Settlement Understanding (DSU)

Experience during the last 5 years has highlighted the need for DSU reforms. These reforms, which were supposed to be completed by the end of 1998 as a result of a review scheduled in 1994, are essential if the WTO and its dispute settlement mechanism are to succeed in the new Millennium.

The key U.S. priority at this point must be “defensive” concerns. Although the United States has been more frequently a complainant than a defendant, this pattern cannot be expected to continue, and there is now an alarming pattern of attacks on U.S. trade law measures coupled with panel decisions fabricating new restrictions on those measures which were never accepted in negotiations. The United States should therefore insist that any legal instrument extending the DSU (1) reaffirm the critical importance of the *Antidumping Agreement* standard of review, and (2) expressly clarify the applicability of that standard to CVD disputes.

The United States should also seek reform in the following areas:

- *Transparency.* A revised DSU should require Members participating in dispute settlement proceedings to submit, promptly after each submission to a panel, a public version sufficient to permit a full understanding of the arguments. It should also require panel and Appellate Body meetings to be open to all WTO Members and to the public, and should allow affected private parties to participate in panel proceedings. These changes will enhance the credibility and performance of the system while allowing governments to utilize fully the resources and expertise of private parties who have the most direct stake in WTO cases.

- *Limits on the WTO Secretariat's role.* Secretariat officials often have strongly-held personal views on how to interpret agreements they participated in drafting, and in many cases they do not agree with the substantive rules which it is the responsibility of panels to enforce. It is not appropriate for these officials to be involved, other than perhaps in a purely secretarial capacity, with the work of dispute settlement panels. The Secretariat does not exist to espouse positions attacking individual articles of the GATT, or to side with particular Members who want to rewrite the existing rules in particular subject areas. This has already been a problem in WTO dispute settlement, and if not corrected it threatens the system's credibility and future.

II. CORNING'S CONCERNS

E-commerce

Now I would like to address the issues before the Committee in which Corning has a significant concern. As you know, Corning is the inventor and world's leading manufacturer of optical fiber and photonic components. We are thus greatly affected by both globalization and convergence, the two major driving forces of our time in the world economy.

The power of convergence—that is the combined use of computing and networking—has brought E-commerce to the forefront. In the last two weeks alone, E-commerce has been the subject of feature articles in such widely read weeklies as *Time* and *Fortune*. It is indeed a phenomenon that is affecting the way we work and the way we play—the ultimate realization of the value inherent in the information economy.

Whether E-commerce continues to evolve at a rapid pace will depend on whether governments worldwide take steps to constrain it.

So far, in the United States, we've done a good job of nurturing it by virtue of our willingness to trust the marketplace and to avoid excessive regulation. Our challenge now is to ensure that "true broadband," as opposed to wideband solutions like ADSL, is deployed to every business and to every home in America as soon as possible. This will require additional measures by government to eliminate barriers that are inhibiting deployment and to adopt technology neutral incentives to accelerate deployment.

On the international side, we need to adopt an aggressive program to move E-commerce into the forefront of the discussion for the WTO Ministerial. It is critically important that Ministers agree in principle to refrain from taking any measures that restrict or inhibit the development of E-commerce. They need to adopt four specific commitments to keep E-commerce "barrier-free," an environment which will enable this new phenomenon to develop at an optimal pace to the benefit of the world economy.

At Seattle, the Ministers must:

- agree to continue May 20, 1998 Moratorium on Customs Duties on Electronic Commerce for at least the duration of the New Round, and to clarify that the exemption from tariff applies to both the transmissions themselves and their contents;
- reaffirm that current WTO obligations, rules, disciplines, and commitments apply to E-commerce, just as they do to trade in goods and services;
- commit to refrain from taking measures as a matter of domestic policy that would inhibit growth of E-commerce and, when domestic regulatory action is necessary, adopt only those measures which are the "least trade distortive"; and
- initiate a process to establish a new "Trade Framework for the Information Economy" to integrate the disciplines of the WTO throughout E-commerce.

It is important to emphasize that these are commitments in principle, not legally binding obligations. These commitments encompass an approach for embracing E-commerce based upon limited government intervention which we believe has worked enormously well for the United States and will do the same for others.

Imbalanced Tariff Deals

I might also add a special point of concern which I believe affects all U.S. telecommunications equipment manufacturers. We face an unbalanced situation in the world. Our market for telecommunications equipment is wide open, while foreign markets for our equipment remain highly restricted.

The only barriers we have left are relatively small tariffs. The rest of the world, however, has tariffs plus non-tariff regimes which discriminate against our trade. Some of these non-tariff measures are, frankly, WTO consistent because there is a huge loophole in the system. This loophole allows public telephone and telegraph en-

tities, which are owned or controlled by their governments, to discriminate against imports with impunity.

Since the United States has no government-owned public telephone and telegraph administrations, we simply have no means to engage in such WTO legal discrimination. The carriers that buy telecommunications equipment in the United States are privately-owned entities that purchase purely on the basis of commercial considerations—price, quality and delivery—not on the basis of national origin.

This inherent discrimination in the world trading system against American manufactured telecommunications equipment is problematic. In light of it, any decision on the part of the United States to eliminate U.S. tariffs on telecommunications equipment must be matched by a commitment on the part of other countries to eliminate both tariff and non-tariff barriers. Otherwise, any tariff deal is unbalanced and tantamount to unilateral disarmament.

III. CONCLUSION

The built-in agenda for the next round is an important one. There may also be other WTO issues on which the United States can and should seek progress at Seattle and in the talks that follow. However, to achieve a result that will enhance U.S. trade objectives and the welfare of America's working men and women, it is essential that the United States defeat any and all efforts to weaken the existing fair trade rules of the WTO. In practice, this means that those rules should not be reopened at all.

LICIT looks forward to working with this Subcommittee, with the Congress as a whole, and with the Administration to ensure that the promise of the upcoming multilateral talks is not squandered through a useless and unwise debate over anti-dumping rules.

Mr. TAUZIN. Thank you, Mr. Regan.

And, finally, Mr. Brant Free, Senior Vice President of International External Affairs of The Chubb Corporation here in Washington, DC.

STATEMENT OF BRANT W. FREE

Mr. FREE. Thank you, Mr. Chairman.

Like my good friend Tim, and he is always chiding me for being from the services sector and not from manufacturing, I am wearing two hats this afternoon also.

Chubb is a high-tech insurance company which operates in 35 countries around the world but has business in 110. Aside from selling insurance and other financial services products, we view ourselves as a bridge for U.S. exporters to get their products around the world into markets in which they have to be insured, and the same for investments. We can help companies get into markets, small and medium-sized companies who just don't have the skill and knowledge about the environment that they are going into.

I am actually here more importantly representing the Coalition of Service Industries. The chairman of Chubb is the chairman of the Coalition, and the more than 60 member firms and trade associations of the Coalition cover all of the sectors—subsectors of services that Joe Papovich outlined this morning.

Mr. TAUZIN. Give us some examples of the companies involved?

Mr. FREE. Aetna, America on-line, Bank of America, Boeing, Dow Jones, EDS, Goldman Sachs, IBM, the Investment Company Institute, MasterCard, Visa, American Express, Ford Financial Services Group. We have got the American Consulting Engineers Council, the American Council of Life Insurance.

Mr. TAUZIN. You are speaking for all of them? I should have put you first.

Mr. FREE. We don't speak for them on all subjects, but luckily in the services sector we have had a common voice with some variations by sector.

We have made a lot of progress, as you pointed out this morning, at getting success for services, but when Tim and I first met each other and I was a trade negotiator in the U.S. Government, they called services the new issue, and it is now 20 years old.

We did have a good success, frankly, in getting a services agreement in the Uruguay Round and subsequent agreements on financial services. And the companies that are members of the Coalition were strong supporters of those agreements, but in all reality they broke no new ground. Yes, they created a framework for dealing with services liberalization down the road, but in fact most countries of the world only made offers that reflected the level of liberalization they already achieved or even committed themselves to, less than the level of liberalization that they achieved. So the negotiations ended up being an exercise in how you write down your commitments, not give and take, we will do this if you do that. So liberalization generally was not achieved except in very limited circumstances; and, more ironically, the liberalization is really in investment in the establishment side of the equation, not the cross-border sale or export of services.

When I first started out many years ago working on this issue, we first raised the question, could services be in GATT? We were told, no, services are not goods. There is no room for services in GATT. They are very different.

We got past that obstacle, and we were talking about trade in services, including establishment questions. And the reaction of the trade policy people was, but GATT doesn't deal with investment, it only deals with trade and cross-border. But in the final deals we really dealt with the establishment issues, not the cross-border issues.

Financial services which is the sector I represent. Within the Coalition there is a separate financial services group. In building support for international agreements, we have developed a financial leaders group which includes the CEOs of financial firms from Europe, North America, from Latin America and Asia. But when we raised financial services after crossing all of these other barriers, we were told financial services were so different they couldn't be in the GATT either, but ultimately succeeded.

Why am I going through that? To bring you to where we are today and to really cut to the quick.

Yes, in this next generation agenda, now that we have legitimacy for services as a negotiating area, we really do want to see real market access and liberalization provisions. We want to see some real negotiations where, as a result, you get market opening you didn't have before.

E-commerce. E-commerce has an extraordinarily important impact on virtually every service sector, just like it does every business in the United States, and we are working on those issues. But the particular cut for us beyond taxation, jurisdiction, definition, becomes the question of what do you do with regulated industries. And I will in a minute tell you or talk a little bit about pro-com-

petitive regulatory reform, which is where we want to move to next. In fact, let me move there now.

The Internet, from an e-commerce perspective, if you are an insurance company operating in the United States and you run a web page, it can be accessed by anyone anywhere in the world. What if someone wants to buy one of your policies but they are residing in France? It would be an illegal transaction for us to sell an insurance policy to a French individual because there is no international agreement about where the point of sale takes place and who has jurisdiction over that.

From a practical point of view, we have had one example, and it was in the securities area. The Securities Industry Association asked the British Financial Services Authority how they would view advertisements on the Internet aimed at the U.S. audience but could be accessed by the United Kingdom residents. And they were told that, under U.K. provisions, whether it was intended for a U.K. audience or not, by virtue of its availability on the Internet that the securities industry must conform to U.K. standards of advertising, marketing and whatever simply because someone could access a U.S.-focused advertisement through the Internet.

That just begins to show you the problems that we face.

And again, as I point out, they are particularly in financial services but in other areas of services, since there were so few deals on allowing cross-border trade, this brings this matter very much to a head.

And that takes me to the real focus that I have here today, which is pro-competitive regulatory reform. We talked a bit about the telecom reference paper, but it has become clear to us in financial services, and I won't speak specifically for the insurance industry, that unless the next round begins to deal with regulatory barriers to your operations in a foreign market, that market access in itself can be completely meaningless.

The best example is the U.S.-Japan insurance agreement. You are aware of it. It has been in existence for 5 years, and it has been a bone of contention. I should say that the Japanese are moving to deregulate in the way that we want to see them go. But what I want to point out here is to define what we mean by pro-competitive regulatory reform.

We are not suggesting that regulators should not regulate financial markets. What we are saying is that they ought to focus on the solvency of their institutions, certainly on the consumer issues about adequate information and consent.

But in the case of Japan, and this is prevalent throughout many parts of the world, in the Japanese system you could not issue, Chubb Japan, a new insurance policy unless it was turned over to the local trade association for approval; and the local trade association then recommends to the Japanese government whether a policy can be issued with new provisions, something new for the Internet, something new for a power plant, something new for the software sector.

Well, of course they have got all of your commercial information. They design their own policies. The Japanese government approves your new policy when all of your competitors can issue it. They fur-

ther control price so you have neither the ability to innovate on product or price.

So this is what we mean by pro-competitive regulatory reform. You heard Joe Papovich say this morning that they are going to include regulation in the three points of the services program that the U.S. is pushing in Seattle. He referred to transparent and fair regulation. We don't have a definition of what fair is. And most of our discussions with our own regulators and through USTR and through the Treasury Department have indicated a real reluctance to want to support this effort, much as they did not want to originally support financial services in the GATT agreement.

We find this very shortsighted because, in most cases, the U.S. market has a very good record in this area. We would have little to give up and much to gain if we could introduce our new products and price them to market abroad. So for us in the Coalition of Service Industries and in the financial services sector, this pro-competitive regulatory reform is an issue whose time has come.

Joe mentioned this morning that he spent 3 days at the World Services Congress. This is the first time that such a Congress has ever been held. It was in Atlanta. My company happened to be the host, and the Coalition of Service Industries was the major sponsoring group. Seven hundred business, government and academic leaders gathered from around the world to talk about the next round and to set an agenda for the ministerial.

Part of that agenda that came out over and over again, whether it was airlines and other parts of transportation, air courier, financial services or professional services, was we need to get regulatory reform on the GATT agenda—or the WTO agenda. That doesn't mean the WTO should become the regulator, but it means, just as we have in product standards, health standards for goods, there ought to be some negotiated boundaries around which regulators of the various service sectors can operate. Their regulations should be appropriate to the purposes for which they are intended and should not be for protectionist purposes.

We are going to need Congress's help. Again, I have been around long enough to know that we would never have had services in GATT if it was not for Congress. We would never have had financial services in the WTO had it not been for Congress. And it is critical for us now that we get the Congress interested in this area of regulatory reform in foreign markets so when we negotiate market access we can then develop and introduce new products at market-based or flexible pricing.

Thank you.

[The prepared statement of Brant W. Free follows:]

PREPARED STATEMENT OF BRANT W. FREE, SENIOR VICE PRESIDENT INTERNATIONAL EXTERNAL AFFAIRS, THE CHUBB CORPORATION AND THE COALITION OF SERVICE INDUSTRIES

It is a pleasure to appear today to testify on behalf of The Chubb Corporation and the Coalition of Service Industries (CSI) on WTO 2000: The Next Round. I look forward to the opportunity to speak, in particular, about the private sector's objectives for services at the Seattle WTO ministerial meeting, and the Services 2000 negotiations scheduled to begin this coming January.

First, I would like to tell you about Chubb and why we are so interested in these issues. The Chubb Corporation is a global specialty property and casualty insurance company with offices in 32 countries. Last year, over 25 percent of our premium dol-

lars came from our operations located outside the United States. Over the next few years we expect this to increase to one-third. It is critical to our future growth that Chubb is able to enter foreign markets and compete on a level playing field with domestic insurers as well as other international competitors and the WTO negotiations are an essential part of assuring that we have this opportunity.

My Chairman, Dean O'Hare, is also the Chairman of the Coalition of Service Industries. CSI was established in 1982 to create greater public awareness of the major role services companies and their workers play in our national economy; promote the expansion of business opportunities abroad for US service companies; advocate an increased focus on liberalization of trade in services in international trade negotiations; and encourage US leadership in obtaining a fair and competitive global marketplace.

CSI members include an array of US service industries including the financial, telecommunications, professional, travel, transportation and air cargo, and information technology sectors. Included in the broader coalition of sectors with which we work are energy services, entertainment, retail distribution, and education.

CSI has been active in multilateral trade negotiations since before the Uruguay Round and has played an aggressive advocacy role in writing the General Agreement on Trade in Services and obtaining successful WTO negotiations in telecommunications and financial services.

Services 2000 Negotiations

We are equally committed to a comprehensive, highly ambitious new multilateral services negotiation starting in 2000. We believe that these negotiations will further expand our global markets, enabling our sector to increase its 77 percent share of US employment, its 79 percent share of GDP, and its trade surplus of about \$80 billion (about 30 percent of US exports). Because foreigners have a high propensity to consume US services, we believe that negotiations that reduce barriers across a wide range of highly protected foreign services markets could materially stimulate US trade. The US is very competitive in virtually every category of services trade, examples of which are given in the appendix to this statement.

It has recently been suggested that US services exports could offset the structural goods deficit as a result of successful multilateral negotiations. Catherine L. Mann, in a study for the Institute for International Economics¹ wrote:

"... as income in a foreign country grows, its imports of US services tend to rise disproportionately. Successful broad-based negotiations on trade in services will likely increase US exports of services even further, with a positive effect on the trade deficit. The long-term trajectory of the US external balances could be altered significantly by the combination of successful service-sector negotiations and broad-based liberalization and deregulation at home and especially abroad. These together would unleash higher productivity and faster growth at home and abroad, which would narrow the US current account deficit."

In recent testimony before the Senate Finance Committee, Dr. Mann cited estimates that comprehensive liberalization of services could raise global GDP by 4 to 6 percentage points, and raise the long-run global growth rate from 3.2 to 5 percent.²

My point is that the United States has a powerful national economic security interest in making the coming services negotiations a major success. But, so does the rest of the world economy.

The Seattle Ministerial

Because we need highly successful new services trade negotiations, we need a successful Seattle WTO Ministerial Meeting. What defines success? For the service sector a successful Ministerial must:

- give a very strong mandate to the start of comprehensive services negotiations in 2000
- provide that this 3 year negotiation be focussed mainly on services, agriculture, and industrial products so that there is a real chance that negotiators can focus on services trade and complete an ambitious agenda of liberalization in areas where the likelihood of liberalization exists.
- recognize that electronic commerce is an important new technique for trading, not a new sector in and of itself; extend the existing moratorium on duties on electronic transmissions, call on countries to refrain from adopting measures that

¹ Catherine L. Mann, "Is the U.S. Trade Deficit Sustainable?" Institute for International Economics, 1999, p. 9.

² Gary Clyde Hufbauer and Tony Warren, "The Globalization of Services, What Has Happened?" Institute for International Economics, 1999

would unnecessarily restrict electronic commerce, provide that electronic delivery of services falls within the scope of the GATS, and that there be no discrimination among foreign and domestic providers in their access to electronic networks.

- provide that the entire new "round" be completed by December 31, 2002, in order to force closure on the existing agenda, reap what gains can be garnered, and begin again with a fresh agenda that could include items like investment.

CSI has been very actively engaged in the preparations for the Seattle Ministerial. We are organizing a day of activities during the week of the Ministerial to demonstrate the importance of the service sector to the 21st Century, knowledge based, "third wave" economy. At our major "World Services Congress" in Atlanta, which began this past Sunday and just wrapped up yesterday, over 800 people from services companies and organizations around the world developed a series of recommendations to support and guide the Ministerial and the negotiations to follow. Also at Atlanta we formed a Global Services Network to link organizations and individuals in all parts of the world and to provide a support system for the services negotiations.

Ambitious US Goals for Services 2000

CSI believes strongly that the US should enter the new negotiations with a bold agenda, calling for sweeping commitments to liberalization across all service sectors.

We would like our negotiators to propose broad commitments to liberalization in areas such as the right to establish a business presence in foreign markets (commercial presence), the right to own all or a majority share of that business, and the right to be treated as a local business (national treatment).

If we are to succeed, our negotiating methods will need to be bold and innovative. We support the efforts of US services negotiators, joined by their colleagues in the Quad and a group of other countries with strong interests in services trade, to find new approaches to services trade liberalization. These are designed to supplement the usual "request-offer" approach, save time, and bring better results.

These new approaches could include commitments applying "horizontally" across all service sectors, the negotiation of transparency and other pro-competitive regulatory commitments, and the negotiation of model schedules for each sector under negotiation. Countries would have the right, as they do now, to list exceptions to the model schedules and pro-competitive regulatory commitments. Once the models had been adopted, countries could engage each other in negotiations to improve the scope and depth of other countries' commitments.

Mobility of Business Personnel

One of the areas requiring fresh, bold thinking here and abroad, includes the provisions used by countries, including the US, for the temporary entry of foreign managerial and technical personnel. Increasingly large, highly competitive US companies such as consulting, accounting, legal, architectural, and engineering firms need to transfer personnel at short notice to service the needs of their clients throughout the world. Delivering services via transfer of natural persons is known in GATS parlance as "mode 4" of supply. The WTO has been unable to make any progress on achieving liberalization of this form of supply of services. Because it is of increasing importance to US firms, and to some other countries, it should be an important element of the coming negotiations.

The Need for "Pro-Competitive" Regulatory Reform

Foreign companies entering new markets often face formidable barriers in the form of arbitrary and non-transparent regulations and regulatory institutions. Such regulations too often deny foreign companies the opportunity to compete on an equal basis with domestic firms. They can effectively negate the benefits of trade liberalization commitments.

Pro-competitive regulatory reforms mean abandoning forms of regulation by which governments limit the introduction of new products, restrict use of market-based pricing, and constrain competition in other ways that go beyond legitimate regulatory goals. This issue is particularly important to my company because our real competitive advantage has been in the development of new and innovative products to meet the needs of customers in a wide range of specialty areas. If regulatory regimes in a foreign country restrict our ability to quickly develop and offer such products in their market, our opportunity to compete with local insurers is limited.

Transparency of regulatory processes is an important element of pro-competitive reform. This means adopting many of the procedures embodied in our more open system of government, such as the publication of existing and proposed regulations, and the right to comment and to be heard in administrative proceedings. It also means applying higher principles of how companies operate, such as regulations en-

sureing solvency, promoting transparency in intra-company transactions and financial reporting, and improving the reliability of financial data that would allow customers and investors to make better informed judgments.

The Need for Integrated US International Economic and Tax Policies

At the same time that we pursue an aggressive trade strategy, we must be sure that our domestic policies do not inhibit the global competitiveness of our own companies. A case in point is the active financing exception to Subpart F that expires at the end of the year.

Extension of these rules permitting US-based financial services companies to reinvest earnings overseas without first being taxed by the US will be an important step in the right direction as we better coordinate our trade and tax policies to foster the ability of our companies to compete in foreign markets.

The WTO and Services

The reduction of barriers to trade in goods began many decades ago with the 1934 reciprocal trade agreements program of the Roosevelt era. The reduction of barriers to trade in services is in its infancy. The Uruguay Round wrote the "constitution" or legal framework for liberalization of trade in service: the GATS. But countries' actual commitments to liberalization were disappointing. The actual work of liberalization was advanced in the successful 1997 Basic Telecommunications and Financial Services negotiations. The next negotiation, services 2000, is the first real opportunity to bring to bear the lessons we have learned about the complex process of negotiating freer trade in services and to broaden binding commitments across all sectors and deepen commitments within product categories and sub categories.

As I said at the outset, the United States has a particularly big stake in a successful multilateral negotiation. We are already highly competitive in services. We can secure and enhance this comparative advantage by removing restrictions to our exports, and at the same time make a bigger and bigger dent in our structural trade deficit.

The Seattle Ministerial is a preamble to the main event, the negotiation itself. But it is essential that the Seattle Declaration give a strong impetus to an ambitious, achievable negotiation in services.

APPENDIX I

Examples illustrating the stake of US service industries in expanded global markets.

- Travel and tourism contributed over \$25 billion to the services trade surplus in 1997. This is the largest sectoral contribution to the overall services surplus. In addition, travel and tourism are estimated to support over seven million direct jobs and generate roughly \$71 billion in tax revenues for federal, state and local governments.

- Business, professional and technical services is a largely unrecognized powerhouse in American trade. In 1997, we exported more than \$21 billion in these services and we had a \$16 billion trade surplus. These data do not include the earnings from foreign investments and foreign affiliates, which are very substantial. Trade in business, professional and technical services—such as accounting, legal, engineering, architectural and consulting services—is especially important because it frequently paves the way for trade and investment in other service and manufacturing sectors.

- Telecommunications services are an integral component of operations of all businesses, and are essential in promoting domestic and global growth. Telecommunications services provide the necessary infrastructure for the development and continued expansion of the information society and electronic commerce. An estimated \$725 billion in revenue was generated in 1997, and projections for the next five years indicate that traded telecommunications services will increase at about 20 percent annually for outbound calls from the US to foreign markets.

- The information technology industry is also dependent on trade and trade expansion. The WTO estimates that over the next five years, sales over the Internet will double each year.

- The US asset management industry is the largest in the world. It is estimated that by 2002, 51% of total asset management revenue of \$160 billion will come from abroad, not the US. Today, US-domiciled investment managers manage 14% of the total of non-US retirement plan assets and 5% of non-US mutual fund assets.

- US law firms, when billing foreign clients, produce services exports. Overall US legal services exports approach \$1.0 billion.

- Foreign students coming to American schools, net after scholarship and local assistance, spent \$8.3 billion in the US, which is a US services export. We have a surplus in trade in education services of \$7.0 billion.
- Although few doctors imagine themselves as US exporters, medical services rendered in the US to foreign citizens produced an export surplus of \$0.5 billion.
- Air cargo transport accounts for well over a third of the value of the world trade in merchandise. However, restrictions on market access (including cabotage), ownership and control, the right of establishment, capacity, frequencies, intermodal operations in connection with air services, wet leasing, customs, groundhandling, the environment in particular local airport access times, all limit the ability of cargo carriers to plan their operations purely on the basis of commercial and operational considerations. A WTO framework could provide cargo carriers with clear rules addressing these problems and resulting in enhanced delivery options to the benefit of businesses, shippers and consumers worldwide.
- Energy services have received little attention in trade negotiations to date. But drastic changes in the international and domestic business climate for this industry—which in the US accounts for 1.4 million jobs and about 7% of US GDP—have shown the need for global trading rules, which can provide new, common understandings on such key matters as monopoly power, anti-competitive practices and discrimination against new market entrants, including of course US companies. Thus the energy services industry looks to the coming round as a critically important opportunity to map out a blueprint for market access and free competition in energy service.

Mr. TAUZIN. Thank you, Mr. Free.

Mr. Free, you mentioned the Japan insurance agreement, and you mentioned France. I raised the question of Malaysia in the opening statement. What is the condition there?

Mr. FREE. Nothing has changed in Malaysia.

Mr. TAUZIN. So we have not seen a lot of progress?

Mr. FREE. There has been no progress.

Mr. TAUZIN. In that regard, the panel focused on the need for openness and transparency and fairness in the equations of global free trade.

First let me mention that we have H.Res. 298 before Congress and it now has 297 cosponsors. It is still in the Ways and Means Committee, I think, but it literally calls upon the administration not to reopen negotiations in antidumping and countervailing. And interestingly, as of March, 1999, 90 products from 59 countries are under antidumping and countervailing duty orders. Mr. Regan pointed out that ends in 5 years.

Mr. REGAN. You essentially have to go back and reprove your case.

Mr. TAUZIN. So you have to deal with that every 5 years.

Mr. REGAN. Your crawfishermen have to deal with that again in 3 years.

Mr. TAUZIN. They have 3 years left.

In regard to that, we are hearing you can't have free trade as long as you have different labor standards, environmental standards, regulatory standards, tax standards, or licensing standards. You can go through a whole category of nontariff differences among nations who might be all parties to the same organizations and same treaties and yet end up with some very large inequalities in terms of the way that goods and services are produced and treated in a global economy.

Which of those, in your opinion are honest, legitimate differences and which are not? Obviously, if one country has more natural resources than the other, it has an advantage in global trade. If one country has a greater information base in the information age, it

is going to have an advantage. We will have that advantage, I think. What are the fair and what are the unfair advantages? Should we go into this round in Seattle arguing that some are fair and some are not fair, and which are they?

Mr. REGAN. I will try to go after that.

I used to be a trade negotiator. I spent 12 years at USTR, and back when I started in the 1970's it was easier because we had a lot of high tariff barriers and we knew pretty much what the problem was. And we have succeeded. The WTO is a great success story because we have succeeded in eliminating those visible tariffs. And with globalization our economies are becoming more and more intertwined. As they have become more and more intertwined, the fabric of domestic regulation becomes a barrier in itself.

How a telephone company is regulated in France affects telephone companies that operate in the United States under a wholly different set of rules. And the same holds for French cases. When I was doing this back in the 1970's, we didn't worry about how folks regulated service sectors. It wasn't an issue.

Mr. TAUZIN. Today it is.

Mr. REGAN. Now it is. We have to look at the negotiations as a process, not necessarily an end. We are not going to let the best become the enemy of the good. We are going to continue to try to do good. And, by doing that, we are going to identify those areas of biggest conflict and we are going to try to resolve them over time, and that is what we are going to try to do with this round.

I believe this is going to be the ninth round since 1947, and so it is important to realize that we are trying to identify those areas of greatest conflict and begin to work on those.

Now, what is fair and what is not fair. It is sort of like your debates in telecommunications, you know, what is one man's competition is another man's threat.

What is fair and isn't fair really depends, in my view, on the adoption of standards of behavior that we are going to agree with internationally as standards which are acceptable for civil behavior, and we have them in the United States. We have competition laws in the United States. And our competition laws I think tend to be more well-defined, clearer for everyone to understand and to seek relief under and become an interesting model for the rest of the world to work off it.

Mr. TAUZIN. Do we have to go to motive? Do we have to examine whether or not a regulation for example, is there as a protectionist regulation or whether it is there to serve as a legitimate answer to consumers' concerns about the security of a financial market, the safety of an insurance product, or the importance of an environmental issue? How do you discover, in these negotiations, whether a regulation is a legitimate domestic interest concern that countries ought to be able to possess and exercise for the good of their citizens as opposed to a regulation truly designed to create protectionism and/or serve as a barrier to entry?

Mr. FREE. There is a building body of expertise around the world as to what you need to regulate: securities, banking, insurance, whatever.

Within the broad range of all of the options, there are things that you can conclude such as there used to be applied something called

the economic needs test. This was the basis for prudential regulation, particularly in Asia. It was based on the assumption that the government would decide what the public needed and so they would have a very strong control over the introduction of products or the entrance of new markets.

It also found the Japanese approach, which was that financial stability was guaranteed by size. So whereas we have 5,600 insurance companies in the United States, you would find two dozen in Japan. We all know that some of the largest of the Japanese insurance companies are the ones that have failed or are failing. So size alone does not guarantee solvency or stability. The Japanese approach again on product introduction was it destabilized the market to have competition. Well, even they have recognized that now.

So you can put boundaries through discussion of experts and others about what is, quote, legitimate regulation and what is not legitimate regulation. And, having said that, you can even make some recognition for the need for a developing economy to have more control over the regulatory system during transition periods and far more developed economy.

Joe Papovich, in talking about this, used the term "capacity building" is going to be one of the focuses of the Ministerial and the WTO agenda, and that is often meant in terms of helping countries understand what the WTO means and how they can comply with their requirements.

In regulatory reform, there is another side to it. We as an industry around the world have spent lots of money and provide lots of advice and certainly recognize that the regulators in Indonesia or Korea or even Japan are not up to the level of our regulators in terms of an open, competitive marketplace.

What we are looking at is, if we want in this next round to get commitments from countries not quite able to completely open their market and change their regulatory structure, they ought to get help from the World Bank and the IMF. In fact, they are getting some help from these institutions and some others. You could link it and say, if you are willing to take on this commitment in the WTO, put it in your schedule, as we call it, sign on. That will be recognized by these two other institutions that often do nothing with the WTO to get credit for the funds that they need to raise their level of supervision so they can safely and soundly do the things that need to be done.

I think that is an area that Congress ought to talk a bit more about when we talk about this next round.

And we use the term capacity building because when we had the Asian financial crisis, at a meeting in Atlanta and others that I have attended around the world assessing the cause of the crisis, we determined it was not liberalization that caused it. It was, in many cases, inadequate regulatory structures in place. And the IMF and World Bank went in and provided funds to help countries and asked commitments from them. But when we as an industry said put those commitments in the financial services agreement, the WTO said these are two separate things. This is World Bank IMF, and this is the WTO.

Let's find a way to link it together positively to give countries a reason to sign on. Most countries realize they have to move toward

liberalization. Services are an infrastructure. When people look at the U.S. economy from around the world, they keep saying to us, how do you get all of these new businesses? And it is simply because we have a services infrastructure that helps to incubate new businesses, whether it is financial, whether it is consulting, whether it is finding you an office space and telling you how to furnish it or do your business abroad or whatever. So countries are beginning to realize this, and we ought to be able to give them some help in doing it.

Mr. TAUZIN. Mr. Mohammad blamed everybody in a speech to the World Bank following the Asian crisis. He blamed George Soros. He blamed the Jewish conspiracy. He blamed the international electronic herd for abandoning his country and savaging his markets and depressing his currency.

Thomas Friedman, in a book of his, imagined a speech Secretary Rubin might have given. Friedman was in the audience that day, and he imagined a speech that Rubin might have given, and it is an interesting couple of pages. Have any of you read it?

Mr. REGAN. Yes.

Mr. TAUZIN. I recommend it to you.

Mr. Free, he basically makes these points: Quit trying to blame somebody. The electronic herd is going to desert you when you build buildings so you have the tallest building in the world but it is half occupied, when you self-speculate in currencies and when you yourself have not liberalized the way you should have or failed to maintain regulated services the way that you should have. And he concludes by saying that I don't even keep a phone on my desk anymore because there is nobody to call to blame anymore.

I live in fear of the electronic herd just like you because they could savage the American currency and the economy tomorrow if we unbalanced our budget, if we made some stupid economic or fiscal decisions in this country.

Mr. FREE. You asked about Malaysian insurance. There is a connection to what you are saying now.

I actually had discussions with the prime minister and with his finance minister on insurance in particular, where they are extraordinarily restrictive, trying to force selldown of local companies, keeping the market highly restrictive. They have created a high-tech economy that needs high-tech risk management. High-tech risk management requires technical capacity and financial capacity if you are going to insure it.

They have a huge outflow on what we call reinsurance. Reinsurance plays a natural place in the economic picture, but theirs is highly distorted because they have pushed offshore the expertise and the capital that they need to accomplish their own economic objectives. And yet we cannot get them to move off the dime on this issue even though they would be the ones to whom the benefit would redound.

Mr. TAUZIN. I invite you all to help me. Let's take hedge funds. Obviously, there is some interest in Washington about hedge funds all of a sudden. Are they properly regulated? Do they need to be regulated? Do they require some reporting, some minimal disclosures?

So we have an issue that may develop here in Washington in reference to hedge funds. Hedge funds are important all over the world, and they are part and parcel of George Soros' operations. Where and when is it proper for us to see a problem and to exercise some domestic jurisdiction over that problem in a world of electronic commerce and international financial transactions and investments where the decisions we make may operate to settle somebody's concerns here in America, but also affect people outside of this country in a community defined by electronic commerce and global financial investment. How does that play? Give me some thoughts on it?

You are on, Mr. Brickell.

Mr. BRICKELL. Are you asking us whether hedge funds should be regulated or not in this country? Or are you asking whether we should make the pace of our reduction in trade barriers here contingent on the policies that other countries adopt for themselves?

Mr. TAUZIN. I use hedge funds as an example because it is an area that we are not regulating yet. We may be faced at the SEC or Congress to begin a regulatory policy. I am not taking a position, and I don't know if there is a problem yet. But I am beginning to hear the rumbles about engaging that issue at some point.

When is it appropriate for nations to regulate in electronic commerce and international trade where hedge funds become important financial packages? When is it appropriate for us to regulate one way and some other country legitimately regulate differently? It is part and parcel of this whole question of what are the appropriate regulatory structures that each country imposes that are truly legitimate, not barriers and nontariff barriers to trade.

Mr. BRICKELL. Two quick comments about it.

First of all, I work for a regulated financial institution. J.P. Morgan is regulated. Hedge funds are not regulated and, to some extent, they compete with us for funds to manage.

As a regulated financial institution, let me say I am glad that they are not regulated. I think they perform a useful social function, and it is useful internationally. They bring more market discipline to bear on the economic policies of countries that are making economic mistakes and on the countries that are introducing successful policies.

For every Southeast Asian country that laments the fact that the electronic herd has deserted it because its policies are not attractive, there is an Italy where improvements in policy have resulted in attractive investment opportunities which bring the hedge funds in as investors. That makes stock prices rally, it brings interest rates down, and it lets Italian workers borrow money to buy homes at lower rates than they could before.

We don't hear enough about the good results that come from that kind of market discipline, but it helps the man on the street who has some other force exerting useful pressure on his government to adopt desirable economic policy. So that is what I say about hedge funds.

Now, is it good to have folks in government deciding which policies of other countries are useful regulations and which ones are hidden barriers to trade? I guess it is all right to have our folks thinking about that and pushing hard to reduce the trade barriers

of other countries as much as they can. But we have got to remember that our own trade barriers, our own tariffs and quotas hurt us. And if we make our reduction in those trade barriers, our own trade barriers, contingent upon changes in other countries, we are going to in all likelihood slow the pace of improvement in our economy. So I would say——

Mr. TAUZIN. You say lead by example?

Mr. BRICKELL. Lead by example, and it will help us most of all.

Mr. TAUZIN. So resist the temptation to unnecessarily regulate if to do so would be an invitation to other countries not only to not take their barriers down but perhaps even enlarge them. Is that your advice?

Mr. BRICKELL. Let me add one thing. Don't use the engine of trade policy or try to have the engine of trade policy haul every other international and social issue over the mountain. Let's get that trade policy improvement as fast as we can.

Mr. TAUZIN. Mr. Regan.

Mr. REGAN. I would like to get back to your core question, which is what is legitimate.

Mr. TAUZIN. Yes.

Mr. REGAN. That is the question. And what is legitimate in Japan and what is legitimate here is very, very, very different.

What we need to do is we need to have an ability here to be able to bring out where those differences begin to cause friction in creating an inability for us to be able to do commerce with those countries and try to resolve those problems. And, over time, ultimately what is going to happen if the process continues to work as it has over the past 30 years, we will begin to identify standards for behavior which are common.

For example, in telecommunications, the referenced document takes the experience of the United States with competition, with interconnection, with deregulation, and extends that to the world with the adoption of four basic principles. Now that didn't seem like much at the time, but it has begun to move people in the direction toward adopting a model which, frankly, has worked very well. The rest of the world looks at us, gee whiz, how did you do it?

We have come up with a model that others are beginning to follow, but it is not going to happen overnight. It is going to be gradual. And in this round we will take the next step. We will take those four principles and we will begin to flesh them out a little bit as to actually how they would apply in situations when, for example, an ISP wants to gain connection to a telephone switch to provide service to a consumer.

We will say, in our view, that it is an enhanced service. It doesn't carry access fees, et cetera. And hopefully the rest of the world will follow our example, as they have with the basic question of whether long distance networks ought to be able to gain nondiscriminatory interconnections to local telephone systems. That is common around the world today. It wasn't 15 years ago.

I guess the answer to your question is there is always going to be a difference as to what is legitimate. We need to identify those differences and then establish common standards for behavior and then improve those standards over time, realizing that there will always be friction.

Mr. TAUZIN. Mr. Regan, you were the most upfront in acknowledging the incredible nontrade barrier that value-added taxes, border-adjustable taxes are now playing on the GATT.

Mr. REGAN. Sure.

Mr. TAUZIN. I want to thank you for that. You helped make the point that I was trying to make.

Do you other two have a disagreement with that? Services obviously have been treated differently, as you pointed out, Mr. Free, for a long time, and it is still evolving as an issue in trade. But let me see if I can make the point a different way.

We went until 1913 in this country without income taxes except for a brief period during the war of aggression against the southern States when Lincoln imposed a small income tax that he later repealed when the war was over.

When this country in 1913 adopted an income tax, we were a country that depended on tariffs, custom duties—the Coast Guard was our tax collector for most of our years. Tariffs or customs duties were the principal source of income, together with some excise taxes on domestic products. We went from a country that depended on external taxes to one that had a mixed dependency on internal and external taxes, income taxes and tariffs.

And now we are entering a new phase where the country is almost totally dependent on internal taxes because we are dropping our tariffs income, our tariff barriers to trade but also tariff income simultaneously.

The concern expressed earlier is that we are becoming a Nation dependent strictly on internal taxes, and those internal taxes are not boundary related, they have nothing to do with whether the goods are imported or exported, they are taxed on all production in America, there are taxes on the workers and taxes on the businesses which are paid again by the consumers as part of the cost of the products. As we enter this new global economy and the country no longer is dependent on tariff income, we are now faced with a situation where every competitor, whether it is in a real book or an electronic book service, will have a natural advantage over us if they have a border-adjustable tax.

And if it is electronic books, insurance products, or financial services that are heavily taxed in America, on an income tax system that adds to the cost of those products overseas, or whether it is a piece of Corning glass that is made here and faces a value-added tax when it arrives at a country of destination, we are going to continue to have inequities that are going to drive manufacturing offshore.

I ask a simple question in a lot of debates that we have on that issue. Why would someone want to locate in America and sell products in America that are going to carry this heavy load of income tax structure on its back when you can manufacture offshore and ship them into America value-added, tax free? And particularly if you can get cheaper labor and more liberal environmental regulations or litigation rules that lower the cost even further. Aren't we building a trap for ourselves if we continue down this path? Mr. Regan?

Mr. REGAN. First of all, I think that the trade deficit sort of speaks to the issue that you just pointed out. The fact of the matter

is that trade deficits are supposed to move with changes in exchange rates, but ours has been around for 30 years, 3 decades. One of the reasons that it has been around for 3 decades are because of structural imbalances like you just described.

I can attest to the fact that for us today, you know, it is the barrier that we face everywhere in the world, and it inhibits our ability to be able to compete in a very significant way.

Mr. TAUZIN. Mr. Free.

Mr. FREE. I will have to give you, Mr. Chairman, a more personal view. Logically what you are saying is right; and as we begin to use electronic commerce, it is going to come right to the head. Insurance is an example. Products and services, software—software can be called a product if it is delivered in a box. My son is in an Internet startup firm. His firm delivers its software without ever putting it in a package. It is considered a service. What is going to happen to it when it is sent outside of the United States?

Mr. TAUZIN. Cisco Systems now does 87 percent of their business over the Internet. They deliver their products and services over the Internet.

Mr. FREE. Like Tim, I had a fairly long government career before I went into the private sector. And one of my first jobs was to work with the Treasury Department in drafting the domestic international sales provisions of the Tax Code which was an attempt to deal with this anomaly in the GATT where we can't rebate our taxes, but sales taxes, direct taxes can be rebated. Of course, ultimately, DISK was found to—and that would have cut—if you used it right, it would cut your taxes on your export products by 25 percent.

So then we ended up with this convoluted thing called FISK. In 1 year I put on 115 seminars around the United States in every place you can imagine trying to explain to lawyers and accountants, much less businessmen, how we can offset this difference in our tax systems. At that point, I was in the Commerce Department. We even looked at using the value added tax. Richard Linholm at Oregon State University did a study on what the impact would be.

So, again, speaking personally and based on my own previous experience and having gone through DISK and FISK, our system is out of whack with the rest of the world. Europe did not go to a VAT for protectionist reasons. It was part of developing the European Economic Community. Before it was even thought of as being a union, there was a decision to go the sales tax route. That is the cleanest way to do it. And, as you say, you add the Internet in here and increasing cross-border transactions and services if we get more liberalization, and we are going to have the same problem because we will be paying our domestic taxes and our VAT as those services are delivered.

You will see in my paper that we have our own problem with subpart F. That is well described. It is in the extenders bill that hits financial companies particularly badly. But I agree with you.

Mr. TAUZIN. Here are the numbers that came out of the Harvard School of Economics. If you want to read an interesting paper, it is by the Dean of the Law School.

Mr. REGAN. Law school or economics?

Mr. TAUZIN. Economics.

The paper is contained in a book entitled *Rising Tides* by Jerry Jasinowski, the President of the National Association of Manufacturers. He has a chapter on consumer taxes by the Dean at Harvard Economics School.

Here are the numbers. He predicts if we got rid of the income tax and went to a border adjustable consumption tax, like a retail sales tax, just automatically border adjustable, no taxes on products going out, taxes on products purchased from overseas and consumed here, his numbers are that we would reduce the cost of production 25 percent for all products and services in this country on average; that exports would jump up 29 percent sustained every year; and that there would be an investment shift of 80 percent back to America, as opposed to investments leaving the country.

An 80 percent shift back to this country. Those are enormous numbers. It doesn't take an economist to look at those and understand that you would wipe out the trade deficit. We would probably have trade surpluses, and we could continue politically on the path of free trade because we would be restoring jobs back to the labor markets here in America, and we would be halting the tide of manufacturing export, that is manufacturing companies reinvesting elsewhere. That is worth thinking about.

Mr. REGAN. There is nothing that anybody is talking about in the Uruguay Round that could have these kinds of effects.

Mr. TAUZIN. There is nothing in these trade negotiations that we could get in the form of concessions that could have these kinds of numbers.

And I guess what I am asking all of you to do, as I asked Joe to do this morning, is to focus on it and think about it in the councils and in the alliances that you represent and of which you are a part. Because if we don't soon have a recognition in this country that we are out of kilter with the rest of the world we are penalizing every worker and business in the country as we go to more and more extensive globalized trade. If we don't focus enough on it in the near-term future, it will get away from us and be too difficult to turn it back.

Mr. FREE. We used to go through exercises in export disincentives, and taxation was always up there, always up there.

Mr. REGAN. Let me suggest a way that this might be brought to the fore.

One possibility would be for the Congress to—the Congress does have the constitutional authority to regulate international trade. It does not lie with the President, as you well know.

One possibility would be for the Congress to—or for you to introduce a bill, and certainly Corning would be glad to help you, which gives the U.S. negotiators direction to deal with this balance in the context of these negotiations, and the failure to do so would result in some sort of an automatic procedure which would put Congress on the road toward dealing with it domestically.

And I know there are lots of debates about this issue. Over the years I have followed them closely. I know that it is a sticky one, but that kind of leverage, that kind of a notification for the rest of the world of how serious the Congress feels about this would raise this issue to the top of the agenda.

Mr. TAUZIN. Let me not leave before we touch on one other final thing.

You touched on it all in your discussions, and I want to try to maybe amplify it a bit, because it is a domestic problem as well as an international one. And the way in which you and those who help influence some of these trade negotiations are going to settle it may give us some guidance as to how we settle it domestically, because they are begging for settlement real soon.

And that is, in e-commerce, what are the rules about what laws apply when a doctor in Louisiana treats a patient in the Gulf of Mexico on a rig that happens to be in Texas waters? Has he violated the laws in Texas against practicing without a license in Texas?

It is a domestic version of what you have pointed to in terms of insurance problems. Because you can't sell an insurance product to a French citizen, for example. Where is the point of sale? What laws govern at what point in electronic commerce that occurs around the globe? Not just taxes, but what regulatory and licensing laws apply and what effect then do those decisions have on the fairness and freeness of trade?

Perhaps you can touch on that a bit for me, because we are going to have to deal with that in the next several years thinking and talking about that in terms of contract law, and if we can't get Uniform Commercial Code agreements on that, how do they apply?

Another good example, you know, a doctor in Louisiana on the Internet assists in an operation in California, and it goes badly, what medical malpractice law applies? Louisiana has a limit on damages. California may not. Do the limits protect the doctor in Louisiana? I don't know. Nobody knows.

And in international law we are going to pump into this problem. It is part of WTO and GATT arrangements. They are going to apply in terms of financial services, they are going to apply in terms of fiberoptic sales and liability laws, insurance laws.

I don't know that our negotiators are yet focused on all of those adequately, and can you give me some insight as to whether you are helping to focus them or are they keen on these notions? Do they need to be settled at some point and how fast are they going to be inhibitors to electronic commerce on a global scale?

Mr. REGAN. Well, I appreciate your concern about this, because it concerns us in a very fundamental way. The extent to which actions are taken which inhibit the use of the net, that will have all kinds of effects, worries us. But let me take a stab at your question.

I think the message is getting through. I think, unfortunately, Joe—it is not in his portfolio, so it was hard for Joe to answer your questions. But the folks in the high-tech community have pressed hard to establish a clear agenda for e-commerce. We are members of at least three groups that have made a message clear, and the message has been as follows:

No. 1, the moratorium that you currently have that was agreed to back in March, 1998, needs to be extended at least through this round so we can begin to sort this out.

No. 2—and these are not legal commitments, they are agreements in principle.

No. 2, the ministers need to agree that, to the extent they feel compelled to take regulatory action that will effect e-commerce, that they need to agree that those actions will be limited to those which do not have trade distorting effects.

No. 3, we need to set up a process in which we can start to sort out all these issues, and we call this the International Framework for Electronic Commerce, and that framework would involve an effort to begin to identify each one of these issues and sort out how we are going to address them up front.

Mr. TAUZIN. Anybody doing that now?

Mr. REGAN. No one is doing it now. They are supposed to agree at the Seattle Ministerial to establishing this framework.

Mr. TAUZIN. Okay.

Mr. FREE. The issues are the same for us, and we are in the same organizations that are pushing this framework. My guess is it won't move quickly enough to deal with the real problems that will come up. Those issues will have to be resolved in different ways in different places, in our court system here to some extent and in the court systems of other countries and maybe by negotiation.

The example that you gave of the doctor, think again of the MRI data that is sent real time to India to be analyzed by an Indian doctor who might have ended up in a U.S. institution but now India has a high-tech sector. They are not just manipulating this digital data, they are making a medical judgment about what it means and sending that back real time to a U.S. doctor. If something goes wrong, who is responsible? Who do you sue and where? Certainly we will sue in the U.S., but where is this Indian doctor or his institution going to fit in?

On insurance or financial services, it is all of the questions. Where does the transaction take place? What law will have jurisdiction over it? You can go on and on. I don't see our supervisory authorities moving quickly enough.

And at this World Services Congress actually someone from Australia pointed out that there are two trends. One is called globalization. She introduced the idea of internationalization. By that she meant our own regulators don't think beyond their own regulated territory. Yes, they worry about foreign financial institutions' activities that affect their operations domestically, but they don't think in terms of what you have to do to create an international framework to deal with regulatory issues that need to be dealt with.

One of the reasons we have almost no cross-border agreements in the NAFTA on services, and particularly financial services, the U.S. didn't want it, Mexico didn't want it, is do you want somebody in Louisiana buying a policy from a Mexican insurance company that we have no idea if it is solvent or not?

So you have to agree on a certain body of standards. At some level it remains local, but there is mutual recognition, and that is what Europe has done with its single integrated market and financial services. You get a license in France, you need just one license to operate anywhere in the European Union, but it is based on the concept that everyone in the Union has a certain minimal level of regulatory supervision that is mutually recognized.

There are a lot of other areas and regulations that they have not agreed on yet. That is what you are going to end up needing, at least in our area, to have a regulatory framework.

Mr. TAUZIN. And we will all have our olive trees. We have our Buy America programs, too. We always bump into those.

Mr. BRICKELL. We appreciate your holding this hearing and looking after the work of the administration as they go into this round. We are optimistic that there will be good results, and we thank you for it.

Mr. FREE. Again in the services area and financial services area in particular, the role of the Congress in helping us achieve our objectives has been critical. We look forward to working with you. As was pointed out earlier, Seattle is just the first step. And if we get this done in 3 years, I think we will all be pleased. But we will need help along the way.

Mr. TAUZIN. Thank you very much. The hearing stands adjourned.

[Whereupon, at 4:25 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF ERIC KOENIG, SENIOR FEDERAL GOVERNMENT AFFAIRS
MANAGER AND SENIOR CORPORATE ATTORNEY, MICROSOFT CORPORATION

Thank you, Mr. Chairman, for giving me the opportunity, on behalf of Microsoft Corporation and the member companies of the Business Software Alliance (BSA), to present our views on the opportunities the upcoming World Trade Organization Ministerial and New Round of WTO negotiations present for expanding electronic commerce.

The World Trade Organization (WTO) will convene this Ministerial in late November, in Seattle, bringing together Trade Ministers from around the world. As an official co-chair of the Seattle Host Committee of the WTO Ministerial, along with Boeing Corporation, Microsoft is excited about the opportunity to contribute to the work of the WTO and the Seattle Round of negotiations. Microsoft and the member companies of the BSA believe that the upcoming Ministerial provides important opportunities to help ensure that electronic commerce continues to contribute to dynamic markets and worldwide economic growth.

Since 1988, the BSA has been the voice of the world's leading software developers before governments and with consumers in the international marketplace. Our members represent the fastest growing industry in the world. BSA educates computer users on software copyrights; advocates public policy that fosters innovation and expands trade opportunities; and fights software piracy. BSA worldwide members include Adobe Systems Incorporated, Apple Computer Corporation, Attachmate Corporation, Autodesk, Inc., Bentley Systems, Inc., Corel Corporation, Lotus Development Corp., Macromedia Inc., Microsoft Corp., Network Associates Inc., Novell, Inc., Symantec Corporation and Visio Corporation. Additional members of BSA's Policy Council include Apple Computer, Inc., Compaq Computer Corporation, IBM, Intel Corporation, Intuit Inc., and Sybase. BSA can be found on the worldwide web at www.bsa.org and www.nopiracy.com. Mr. Chairman, for the record, I would like to submit a report released by the BSA CEOs on e-commerce. (See attached).

The software industry depends on trade. More than 50 percent of the revenues of BSA member companies, and of Microsoft, are generated by overseas sales. With the establishment of on-line electronic commerce, we expect that even more of these sales will be to foreign customers. We are very grateful that you and your colleagues are holding this hearing to highlight the tremendous potential that exists to expand trade through electronic commerce, especially as the rules for electronic commerce become more liberalized and harmonized.

It is critical that countries around the globe work together now to develop a workable framework for e-commerce. A framework that promotes e-commerce holds great benefit for businesses and consumers. Consumers benefit from e-commerce in many different ways—most obviously, broader choice and easier access to goods and services. According to a recent survey of Chief Financial Officers, the proportion of US companies that sell products over the Internet will jump from 24 percent in 1998

to 56 percent by 2000. Consumer choice expands every time a new retailer goes online—provided regulatory or other barriers do not inhibit trade.

Likewise, e-commerce is creating tremendous opportunities for businesses. Worldwide revenue from electronic commerce is expected to increase as much as \$500 billion by 2002, accounting for 9.4 percent of total sales revenue worldwide. Revenue from e-commerce in Europe was in the range of one billion dollars in 1997, and is expected to grow to as much as \$88 billion by 2001. These estimates may turn out to be conservative. Forrester Research has suggested that business-to-business electronic commerce alone could reach \$1.3 trillion by 2003.

The software industry has been a consistent advocate of international trade liberalization. The Uruguay Round results have made a meaningful and lasting contribution to our ability to compete in the international marketplace. For example, when the Uruguay Round of negotiations was launched in 1986, most countries did not provide explicit legal protection for computer programs under their national laws. Piracy of software was rampant. The Trade-Related Intellectual Property Rights (TRIPs) Agreement, however, has brought about significant improvements. Today, most countries provide substantial and meaningful legal protection of software.

Although today we are better able, unlike in the 1980s, to bring legal action against those who steal our products, the rise of Internet piracy is an ominous and potentially industry crippling phenomenon that must be addressed on a national and international basis. Despite an improved legal environment, piracy rates worldwide remain astronomically high. Mr. Chairman, worldwide the software piracy rate is 38% costing close to \$11 billion. The rate in the US is 26%; Western Europe: 36%; Eastern Europe: 76%; Asia-Pacific: 49%; Latin America: 62% and the Middle East and Africa: 63%. Since the US software industry is principally headquartered in the United States, this means lost US jobs and tax revenues. It also has a serious impact on the world economy and countries attempting to take advantage of the high tech revolution.

With the growth of the Internet, we see an unfortunate and substantial growth in electronic commerce piracy. Multilateral agreements that provide strong and effective protection online are critical to the continued expansion of e-commerce and the health of the software industry.

As we look forward, three aspects of international policy stand out as having substantial implications for the software and computer industry. I would like to say a few words first about the TRIPs agreement and tariff liberalization.

As I stated earlier, the establishment of the TRIPs Agreement was a watershed event in the development of the global software industry. TRIPs provides us with a solid framework upon which to build, promote, and defend copyrighted works against theft, including computer software. Of course, there are areas where TRIPs could be strengthened and improved, particularly with regard to the Agreement's obligations on enforcement of rights, and perhaps also in the area of domain names.

We would certainly welcome such improvements, but we do not advocate specific negotiations at this time. We recognize that the TRIPs Agreement will be subject to review in 2002 and we urge all WTO members to press ahead with full implementation of TRIPs. Moreover, in the context of the 2002 TRIPs review, WTO Members may need to consider new provisions that will better adapt TRIPs to the digital environment.

Perhaps the most significant recent international development in the area of intellectual property is the conclusion of the World Intellectual Property Organization's (WIPO) Copyright Treaty and Performances and Phonograms Treaty. Your Subcommittee passed the Digital Millennium Copyright Act last year, implementing these Treaties here in the U.S. These Treaties make substantial improvements in the legal rights afforded to software developers, especially in terms of improving their ability to attack on-line piracy. The United States implemented the Treaties last year through the enactment of the Digital Millennium Copyright Act, and the European Union has declared that, at the appropriate time, the results of the WIPO Treaties should be incorporated in TRIPs. We support this and believe that WTO Ministers should declare that national implementation of these Treaties is an urgent matter, with a substantial trade promoting impact.

Turning now to broader electronic commerce issues, we believe that the most promising international commercial development since the conclusion of the Uruguay Round has been the emergence of network-based (Internet) trade. Today, BSA member companies sell software and other products on-line. These transactions benefit both consumers and software developers because they are faster and cheaper than traditional, over-the-counter retail sales. We expect these sales to more than double annually for the foreseeable future.

Thus, we believe that a key priority for trade negotiations should be to ensure that impediments to e-commerce are not put in place, and that existing impedi-

ments are reduced or eliminated. We recognize that this goal may not be amenable to a single set of undertakings. Because the Internet continues to evolve as a business, the trade aspects of the Internet are not now fully apparent.

But we do believe that Ministers can make a good start.

An excellent first step was taken in May 20, 1998, when the WTO's Ministers agreed that WTO "...Members will continue their current practice of not imposing customs duties on electronic transmissions." This commitment is not now permanent, and it applies only to electronic transmissions. We would support making permanent this commitment, as well as clarifying that it applies regardless of the form of transmission (wired or wireless) and that it applies both to the transmission and to its contents.

In addition, the work over the past year by the TRIPs, GATS and GATT Councils on e-commerce constitutes an excellent foundation for the work program that should follow. It is our understanding that each Council has determined that the current WTO obligations apply to transactions conducted over networks. They have also concluded that certain areas of these Agreements need to be updated to more accurately reflect the nature of e-commerce. We agree with their conclusions that e-commerce constitutes an evolutionary step in trade regimes and does not require wholesale changes to existing obligations. Recognizing, however, that a single e-commerce transaction may implicate rules applicable to services, goods and intellectual property, we believe that a horizontal approach in the future work program of the WTO may be best—that is, work in each of the Councils at the direction of the General Council, while giving the General Council the discretion to establish additional work programs on issues which affect trade in goods, services and intellectual property.

Forbearance of government action is the watchword for Seattle. We believe that the WTO Ministerial provides an opportunity that must not be missed to set the right parameters for future WTO work. Key among these, we believe, is a commitment by Ministers to refrain from enacting measures that could have an actual or potential trade distortive effect on e-commerce. Such a commitment would underscore that the goal of the future work program is to seize and ensure the possibilities of e-commerce by keeping it barrier-free. Recognizing that, in some rare instances, domestic imperatives may necessitate the enactment of measures that could have a negative effect on e-commerce, Ministers should further declare that they would seek to adopt only those measures that have the least trade restrictive effect.

There is one area where we believe that improvement would go a long way to increasing the WTO's effectiveness and international standing. WTO could dramatically increase public trust by becoming more open, more transparent. WTO should seek to find ways to allow greater public scrutiny and to permit non-governmental organizations to express better their views in WTO dispute resolution and other processes. Such changes would help WTO reach its goals of trade liberalization worldwide.

Finally, there is one aspect of the current WTO debate that is troublesome for the software industry. We are concerned that much of the discussion in Geneva has focused on whether e-commerce should be classified as simply a service, or whether it implicates goods as well as TRIPs obligations under the WTO. It is our view, as noted above, that e-commerce is much more than just a set of services.

If e-commerce is treated as just a service, it could have serious implications for the software industry. Such an approach would have immediate and negative implications for software companies as well as other industries. Ninety-four percent of the world's exports in software is US sourced—reclassifying software as a service could alter the tax regime for these products and dramatically impact the sales of one of the US's most competitive exports. Currently, it is our understanding that the European Union takes the position that a computer program fixed on a disk ordered on-line and delivered in physical form (e.g., by postal service) is subject to WTO obligations as a "good" under the GATT. By sharp contrast, it is also our understanding that they believe that the very same software program ordered on-line and delivered on-line, should be classified as an "electronic delivery" subject only to the GATS obligations on trade in services.

The trade implications of such a view are potentially very serious. Software as such, other than repair and maintenance of software, does not seem to be explicitly covered under software services and is not now subject to GATS. Thus, the reclassification of software from a good to a service could deny software basic market access and national treatment benefits. Perhaps more importantly, in most countries, subject to a 1984 WTO/GATT understanding, duty on software is now assessed on the basis of the carrier medium (e.g., the value of the diskette), and not the value of its content (the intellectual property contained in the medium). The issue of reclassification could open the door to applying duties on the value of the software itself, rather than its physical medium. The consequences for traded software would be

horrendous, as they would make the value of the product subject to a duty, in stark contrast to the situation in many (if not most) countries today. In addition, such reclassification would deprive trade in software of its current unqualified MFN and national treatment benefits.

In essence, we believe that to treat e-commerce as merely a service would be to ignore the true nature of this form of trade. In addition, it could have a serious and immediate negative impact on the sale of computer programs by means of the Internet.

Mr. Chairman, the WTO Seattle Ministerial and the subsequent New Round of negotiations offer not only the US and European economies, but indeed the global economy, tremendous opportunities as we head into the new millennium. The unparalleled growth of electronic commerce means economic possibilities that we could not even imagine just a few years ago. Your Subcommittee and the Committee on Commerce have an extremely important role to play in seizing these opportunities and making them a reality. The Business Software Alliance stands ready to assist you in this critical endeavor.

We thank you again for this important hearing and for the opportunity to present our views.