COLD WAR TRADE STATUTES AFFECTING U.S. TRADE AND COMMERCIAL RELATIONS WITH RUSSIA AND OTHER SUCCESSOR STATES OF THE FORMER SOVIET UNION

HEARING
BEFORE THE
SUBCOMMITTEE ON TRADE
OF THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION
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(III)
COLD WAR TRADE STATUTES AFFECTING U.S.
TRADE AND COMMERCIAL RELATIONS WITH
RUSSIA AND OTHER SUCCESSOR STATES OF
THE FORMER SOVIET UNION

TUESDAY, JUNE 15, 1993

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

The subcommittee met, pursuant to call, at 9:32 a.m., in room
1100, Longworth House Office Building, Hon. Sam M. Gibbons
(chairman of the subcommittee) presiding.
[The press release announcing the hearing follows:]
FOR IMMEDIATE RELEASE
TUESDAY, JUNE 1, 1993

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A PUBLIC HEARING ON COLD WAR TRADE STATUTES AFFECTING U.S. TRADE AND COMMERCIAL RELATIONS WITH RUSSIA AND OTHER SUCCESSOR STATES OF THE FORMER SOVIET UNION

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee will hold a public hearing on Cold War trade statutes that affect the trade and commercial relationships between the United States and Russia and other successor states of the former Soviet Union. The hearing will be held on Tuesday, June 15, 1993, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 9:30 a.m.

In light of the new era of cooperation and partnership between the United States and Russia proclaimed by Presidents Clinton and Yeltsin at the Vancouver summit, and at the request of President Clinton, Speaker Thomas Foley (D., Wash.), on April 23, appointed Dan Rostenkowski (D., Ill.), Chairman of the Committee on Ways and Means, and Lee Hamilton (D., Ind.), Chairman of the Committee on Foreign Affairs, to cochair a Cold War Policy Review Panel. The purpose of this panel is to carry out an expeditious review of all U.S. statutes predicated on the Cold War relationship between the United States and the former Soviet Union. This high priority review, which will involve a number of committees of jurisdiction including the Committee on Ways and Means, should lead to recommendations for legislative action that would reflect the new commercial and political realities between the United States and the former Soviet Republics, especially Russia.

As part of this Cold War Policy Panel review, the Subcommittee will consider changes to the treatment of Russia and the other successor states under a number of statutory provisions in the trade area, including Title IV of the Trade Act of 1974, the so-called Jackson-Vanik amendment (which deals most notably with freedom-of-emigration matters). Currently, seven of the twelve former Soviet Republics--Russia, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, and Ukraine--have MFN status under the Title IV waiver procedures, i.e., on an annually renewable basis. The remaining five--Azerbaijan, Georgia, Tajikistan, Turkmenistan, and Uzbekistan--will most likely be granted MFN, also under the waiver procedures, once their bilateral trade agreements with the United States have gone into effect.

The Subcommittee would be interested in hearing testimony on Executive and legislative options for changing the status of the Soviet successor states, particularly Russia, under Title IV of the Trade Act of 1974. One such option is to find some or all of the successor states to be in full compliance with the freedom-of-emigration requirements in Title IV of the 1974 Trade Act, thereby eliminating the need for an annual waiver. When a nonmarket economy (NME) country is found to be "in full compliance," the President is required to submit a report to the Congress by June 30 and December 31 of each year that this country receives MFN treatment. These reports describe the nature of the country's emigration laws and policies. The country's MFN status may be revoked if a joint resolution disapproving the December 31 compliance report is enacted into law within 90 legislative days of the delivery of the report to Congress. A finding of full compliance for Russia and/or other successor states would not require legislative action, since the President is given authority to make such a finding under Title IV.

(MORE)
Other options for changing the treatment of Russia and the other successor states under Title IV are: (1) granting a multiple-year waiver; or (2) terminating the applicability of Title IV to these states and giving them permanent MFN status. Both these options would require legislation.

The Committee on Ways and Means recently approved a legislative provision lifting the prohibition in section 502 of the Trade Act of 1974 on the USSR, and by extension, its successor states, being designated as "beneficiary developing countries" under the Generalized System of Preferences program. This provision was included in H.R. 2264, the "Omnibus Budget Reconciliation Act of 1993," which passed the House on May 27.

Other Cold War statutes being reviewed by the Subcommittee include the following: (1) section 1106 of the Omnibus Trade and Competitiveness Act of 1988, which places restrictions on U.S. acceptance of GATT obligations with respect to state trading regimes that become contracting parties to the GATT; (2) section 731, et seq., of the Tariff Act of 1930, which provides for the imposition of special duties on goods sold in the United States below their fair market value (FMV) and in so doing, provides an alternate methodology for determining FMV when the goods in question are from an NME country; and (3) section 1906 of the Omnibus Trade and Competitiveness Act of 1988, which states a sense of Congress that the President should express to the USSR strong moral opposition to its slave labor policies, and should instruct the Secretary of the Treasury to enforce provisions, under section 307 of the 1930 Tariff Act, regarding the import of items produced by forced labor.

The purpose of this hearing is for the Subcommittee to hear from those who wish to express views on the ramifications of any changes in the Cold War statutes and provisions mentioned above, or on other existing trade law within the jurisdiction of the Committee on Ways and Means that affects U.S. trade and commercial relations with Russia and the other successor states.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Requests to be heard must be made by telephone to Harriett Lawler, Diane Kirkland, or Karen Ponzurick (telephone (202) 225-1721) by close of business Tuesday, June 8, 1993. The telephone request should be followed by a formal written request to Janice Waws, Chief Counsel and Staff Director, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee staff will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee office [(202) 225-3943].

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

Witnesses scheduled to present oral testimony are requested to briefly summarize their written statements. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittee are required to submit 150 copies of their prepared statement to the Subcommittee on Trade office, room 1136 Longworth House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to do so may result in the witness being denied the opportunity to testify in person.

(MORE)
WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any interested person or organization may file written comments for inclusion in the printed record of the hearing. Persons submitting written comments for the printed record should submit at least six (6) copies of their comments by the close of business Wednesday, June 30, 1993, to Janice Mays, Chief Counsel and Staff Director, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the printed record of the hearing wish to have their statements distributed to the press and the interested public, they may provide 100 additional copies for this purpose to the Subcommittee office, room 1136 Longworth House Office Building, before the hearing begins.

FORMATTING REQUIREMENTS:

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

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

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

3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.

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

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

* * * * * * *
Chairman GIBBONS. Good morning, ladies and gentlemen. This is the meeting of the Trade Subcommittee of the Ways and Means Committee. As all of you know, we are acting this morning at the request of the Speaker and of the President to examine the laws that were passed over a period of time dealing with the Communist nations as they existed in the 1950s, 1960s, 1970s, and through the 1980s.

A whole series of laws, some of which this committee has jurisdiction over, were passed in an attempt to deal with the threat at that time and the need for some of these laws has expired. President Clinton, in meeting with President Yeltsin, has come to the conclusion that we ought to sit down and examine such statutes, not only on this side of the ocean, but on the other side of the ocean also, and the Speaker has asked the chairman of our committee, Mr. Rostenkowski, and the chairman of the Foreign Affairs Committee, Mr. Hamilton, to cochair a task force to examine these laws.

We have before us today Mr. Gephardt. Mr. Gephardt has taken a deep interest in our relationship with the former Soviet Union and the Eastern bloc nations, has visited the Soviet Union and the former Soviet Union a number of times. We look forward to hearing you, Mr. Gephardt. So please proceed, unless Mr. Coyne, did you have a statement you would like to make?

Mr. COYNE. No.
Chairman GIBBONS. Thank you. Go right ahead.

STATEMENT OF HON. RICHARD A. GEPHARDT, HOUSE MAJORITY LEADER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. GEPHARDT. Thank you, Mr. Chairman. I am always obviously pleased to be before the committee on which I once served and particularly pleased to be in front of this subcommittee and you as chairman. I know how hard you have worked on trying to make our trade provisions benefit our country and the world trading system, and I am honored to be here today to have this chance to testify on this important legislation.

I cannot state strongly enough how important I think your review of cold war trade statutes is for our country's relationship with Russia, and for the other newly independent Republics of the former Soviet Union. President Clinton told me that when he met Boris Yeltsin last March in Vancouver, the first thing that President Yeltsin raised was his desire to have cold war restrictions removed from our books. And later in that same week, when the congressional delegation that I helped lead met with Yeltsin, again, the first thing on his agenda to us was repeal of cold war trade statutes. Both the President and our bipartisan delegation pledged to Yeltsin that we would expeditiously review these statutes, and while there are many pieces of cold war legislation still on the books that fall outside of the jurisdiction of the Ways and Means Committee, arguably the most important ones in Yeltsin's eyes reside in your jurisdiction.

Title IV of the 1974 Trade Act—commonly known as the Jackson-Vanik amendment—was a particular sore point with the Russian President. It is the first provision that he mentioned in our
meeting, and while I am sure that you are all well aware that seven of the former Soviet Republics—Russia, Armenia, Belarus, Kazakhstan, Kirgizstan, Moldova, and Ukraine—have most-favored-nation trade status under special title IV waiver procedures, I believe it is time to go a step further.

Not only do we need to look at granting MFN to the other five countries very soon, but I think it is also time to look closely at the entire freedom-of-emigration issue with an eye toward eliminating the Jackson-Vanik restriction on certain Republics altogether.

I know that there are political sensitivities in permanently exempting Russia, Ukraine, or any of the other Republics from Jackson-Vanik restrictions. I am aware that human rights organizations still have unresolved issues and are nervous about a bold repeal, but I am here to tell you that President Yeltsin personally committed to us to investigate any and all unresolved emigration cases that might obscure Russian's complete compliance with Jackson-Vanik. In my judgment, President Yeltsin has so completely staked his reputation on the success of political and economic reform that it is time for the United States to consider bold action of our own.

I hope the committee will seriously and expeditiously review the implications of terminating the applicability of title IV to the Republics of the former Soviet Union that are in compliance with freedom of emigration and human rights laws. If political obstacles make an outright repeal impractical at this time, I would hope that the committee would act at a minimum, would at a minimum move forward with multiyear waivers. Acting now in my view really matters.

Besides Jackson-Vanik, the handful of other statutes under your jurisdiction that were borne out of our cold war relationship dealing with GATT restrictions and prison labor laws also merit rapid review with an eye toward repeal.

Also I want to congratulate the committee on its recent approval of legislative provisions lifting the prohibition in section 502 of the Trade Act of 1974 on the former Soviet Union being designated as beneficiary developing countries under the generalized system of preferences program. This in and of itself was a big step forward.

In closing, I just want to emphasize again how important I believe it is now to send a powerful message to President Yeltsin, to the Russian people, as well as to the peoples of the other newly independent Republics that the United States can be and is responsive. We are getting a reputation over there of being too much talk and not enough action.

Today's hearings represent action for what I know to be a real important movement in the right direction. I want to commend the chairman and members of the committee, and I look forward to working with you, with Chairman Hamilton and other participants in the Speaker's bipartisan task force to undertake this very historic and important review of our legislation.

I thank the chairman and the committee for being here today.

Chairman GIBBONS. Thank you, Mr. Gephardt. I share your views.

I can understand where there may be some dissent in our country about the wisdom of repealing Jackson-Vanik, but it seems to
me that we could repeal it, and if it becomes necessary to
reinstitute it, we could reinstitute it; but I think it is important
that we give the signal to everyone that we are prepared to accept
the bona fides of the Russian’s offer and to move ahead to a new
era of cooperation.

I recognize that all the problems that Jackson-Vanik was aimed
at have not been solved, but time and circumstances have solved
a heck of a lot of them and if it is necessary to reinstitute them,
I think we could do that very rapidly. As you know, the interpreta-
tion of Jackson-Vanik has grown broader over time. The vote on
Jackson-Vanik now really has very little to do with emigration pol-
icy, but has to do with just about everybody’s political agenda.

In talking to Members, I have to constantly remind them that
Jackson-Vanik is not just an emigration matter, but not only do
other social issues and political issues get involved, but economic
issues get involved and everything else, and this 1-year short re-
newal period is just not workable.

Nobody can make plans or carry them out on a 1-year period and
nobody is willing to risk their treasure trying to anticipate what
the Congress may or may not do a few months from now on an
issue like this.

So I commend you for and support what you have said.

Mr. GEPHARDT. I thank the gentleman. Let me elaborate for just
a moment, if I can.

I think it is worthy to remember that this was put into law back
in a period when Mr. Brezhnev was the President and the head of-
fer of the Soviet Union. It was done as an attempt to put leverage
on the Soviet Union to begin letting citizens leave the Soviet Union
and to stop discriminating against people.

It served a very important purpose and I think it had some effect
in getting emigration policies to be changed.

The situation in Russia and many of these former Republics has
now totally changed from where it was in 1974, and even the
groups and organizations that were instrumental in getting Jack-
son-Vanik put on the books readily agree that the situation has
changed and everyone agrees as far as I know that these annual
waivers can be given.

I will be the first to say that if the Soviet Union or the former
Soviet Union or Russia or any Republic reverts if we were to take
this action, I will be the first one, along with you and others, to
suggest that we put Jackson-Vanik back on the books.

But right now it is very important to Mr. Yeltsin that we be able
to show him and them, the reformers who are fighting for their
lives in Russia, a sign that we support what they are trying to do.
They know that we don’t have a lot of money in order to support
these efforts.

We will be lucky to eke out a few million dollars frankly over the
next few months in order to support those efforts. Most of what we
have to do is to support democracy through getting our businesses
over there to do business in Russia, and frankly that is the best
thing we can do.

As many of them said when I was there, don’t give us a fish; teach
us how to fish. That is the kind of help they want. So trade
and private economic relationships with Russia is right now the
most important thing we can do and taking this law off the books would send the surest, clearest, most visible signal I can think of that we are trying our best to move our business over there, to increase trade with Russia, to build businesses in Russia, both Russian and American businesses, to show the reformers and the nonreformers that private enterprise and capitalism can work in that country.

I think it can, I think it will, and I think this move will be the best thing we could do to push it in the right direction.

Chairman GIBBONS. Thank you. Mr. Coyne? Mr. Crane?

Thank you very much. You have gotten us off to a good start here this morning, as always.

Mr. GEPHARDT. Thank you, very much.

Chairman GIBBONS. We are proud to claim you as an alumnus.

Mr. GEPHARDT. You bet.

Chairman GIBBONS. I don't see Mr. Hoyer. Is he here? We will take Mr. Hoyer when he comes in. Now, the National Conference on Soviet Jewry, Mr. Luks, the chairman, American Jewish Congress, Mr. Spirer, the chair, and the Union of Councils for Soviet Jews, Mr. Aronoff.

Mr. Luks, would you like to proceed first?

STATEMENT OF HAROLD PAUL LUKS, CHAIRMAN, JACKSON-VANIK TRADE COMMITTEE, NATIONAL CONFERENCE ON SOVIET JEWRY

Mr. Luks. Thank you very much, Mr. Chairman. I am Harold Luks. I am a member of the executive committee of the National Conference on Soviet Jewry and chairman of its international trade committee on these matters.

Mr. Chairman, I wanted to make two basic points. First, the national conference last year actively supported, and continues to support this year with its full resources, the economic assistance programs for the former Soviet Union. Second, at this time we believe that the Jackson-Vanik amendment should continue to apply to Russia and the other constituent states of the former Soviet Union.

The national conference represents 50 national organizations and over 300 community councils. Every State in the Union is represented in the conference.

We believe and have worked since the development of the Jackson-Vanik amendment for free emigration from the Soviet Union and now from the FSU. In 1973 and in 1974 to the present, the focus of our attention has been emigration, and we have opposed amendments to expand the scope of Jackson-Vanik to address other issues, all of which—or many of which—have had great merit.

Second, we have worked to ensure for those who remain, those Jews who decide to remain in Russia and the other FSU states, freedom to maintain their religious beliefs and cultures unfettered by state interference.

At this time, Mr. Chairman, and members of the committee, we do not favor the following courses of action: One, we certainly do not favor repeal of Jackson-Vanik. We think it should remain within the Trade Act of 1974.
Second, we do not support a requirement that there be some type of permanent waiver for the individual Republics of the former Soviet Union, and at this time we do not favor legislative action to remove Russia or other FSU states from the scope of Jackson-Vanik.

Now, let me explain why we have taken these positions. The Jackson-Vanik criteria, Mr. Chairman, are very specific. They address three issues, two of which we believe continue to apply today to the FSU. One, it speaks to the denial of the right of citizens to emigrate from their country. The second Jackson-Vanik criteria addresses the issue of the Government imposing, either by commission or omission, taxes and fees and levees that would prevent someone from leaving their country.

Today in Russia, and in most of the other Republics, the situation is as follows: Individuals are denied, and continue to be denied, the right to emigrate for reasons of state secrecy. Second, individuals are denied the right to leave because they have, "poor relatives somewhere in the FSU," and third, there continue to be more than 200 refuseniks, most of whom are in Russia. I just want to take this opportunity to mention that members of this committee on their trips to Moscow and the other great cities of the FSU have personally intervened on behalf of these individuals. We do not think it is appropriate for the committee, or for this 20-year history of Congress supporting the objectives of Jackson-Vanik, to eliminate or repeal the amendment until these people who have waited for so many years have been given the opportunity to leave and emigrate to Israel, the United States or to other countries that will accept them and where they seek to travel.

One of the ironies, Mr. Chairman, is that many of these individuals have been denied the right to emigrate for reasons of state secrecy. They have been denied that right to emigrate for so long, their situation is like an export control question. The technology or the information they possess is either obsolete, or the organizations in which they had worked are now involved in ventures with Western companies, or the technology or information they possess has been disclosed. In any event, they are denied the right to leave Russia or other countries.

I would like to make three other technical points. The Jackson-Vanik amendment, the way it was drafted and the way it sits on the books today, says that the President can make a determination that a country is not in compliance. Since 1989 we have actively supported and urged the administration to issue annual waivers for Russia and now for the other FSU Republics.

Second, the President has the option of issuing the waiver, which I have just mentioned, or, third, the President can say that a country is in compliance. Once the President makes that determination, he still has the authority if the situation should worsen to reimpose the Jackson-Vanik strictures and to deny most-favored-nation tariff treatment.

I am reminded that this Sunday in the New York Times book review there is a review called "The Evil Empire Continued." It reviews a book by the distinguished historian Walter Lacure and assesses the far right, the anti-Semitic fascist right in Russia and in other FSU Republics. Of course we don't see them today marching,
but we have received a report over the weekend that Pamiyat, one of the extreme right organizations in Russia, burst into the Choral synagogue, the main synagogue in downtown Moscow, and defaced the synagogue and caused some damage.

We believe that until President Yeltsin and other officials in the Republics have acted upon their word to allow these remaining people to emigrate that the annual waivers should continue to be in effect.

Finally, there are many who have argued that the Jackson-Vanik amendment somehow will prevent the continued economic development of Russia and the other Republics. Putting aside just for the sake of example the discussion of human rights in China, the continued applicability of Jackson-Vanik to the PRC, for issues other than emigration, has never prevented and does not prevent massive Western and Japanese investment in the PRC.

Jackson-Vanik doesn't prevent exports to Russia. With annual waivers it doesn't limit aid or credits, it doesn't restrict the flow of technology and it doesn't bar any American company from investing in Russia or any of the other Republics.

We look forward to the day, we believe, we hope, that the remaining emigration issues will be resolved. We look forward to the day, Mr. Chairman, and members of the committee, when the national conference can endorse and support a finding by the President of the United States that Russia is in compliance with Jackson-Vanik. We believe that the day can come, and will come, if we are willing to finish the job that so many Members of Congress have worked so long and so hard to accomplish.

Thank you, very much.

Chairman Gibbons. Thank you.

[The prepared statement follows:]
Mr. Chairman and Members of the Committee, I am Harold Paul Luks, a member of the Executive Committee of the National Conference on Soviet Jewry ("NCSJ"), and Chairman of its Committee on the Jackson-Vanik Amendment. The NCSJ Committee on the Jackson-Vanik Amendment examines trade relations with the former Soviet Union ("FSU"), and the NCSJ's objectives set forth below with respect to the Soviet Union continue to apply to Russia and the newly independent states of the FSU. I am accompanied by Mark Levin, the NCSJ's Executive Director. Our testimony has two themes with respect to Russia and the other independent states of the FSU: first, we actively support the FSU economic assistance legislation currently pending before Congress, and second, we want to emphasize the need to continue the application of the Jackson-Vanik Amendment to the FSU.

THE NATIONAL CONFERENCE ON SOVIET JEWRY

The NCSJ is comprised of 50 national organizations; every state is represented by more than 300 local community-based federations, community councils, and Soviet Jewry committees. The NCSJ represents the organized American Jewish community on issues affecting the Jewish minority in the FSU. For two decades, the NCSJ has mobilized public opinion to recognize human rights violations in the FSU, including the 1987 March on Washington. The NCSJ's objectives with respect to Russia and the newly independent states of the FSU are:

(1) freedom of emigration for all Jews in accordance with the Helsinki Accords and established principles of international law, and

(2) for those who wish to remain in Russia, freedom to maintain their own religious beliefs and culture, unfettered by interference from their respective governments.

Mr. Chairman, the NCSJ, and, with one exception, its constituent organizations:

(1) do not support a Presidential determination that Russia and other FSU states are in compliance with the terms of the Jackson-Vanik Amendment, and

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* Mr. Luks appears in his own capacity as Chairman of the Jackson-Vanik Trade Committee, National Conference on Soviet Jewry. He is an International Trade Specialist with Arnold & Porter, Washington, D.C. The views expressed herein reflect the views of the NCSJ and are not necessarily those of Arnold & Porter.
oppose any legislative measure to repeal the Amendment, to suspend the waiver requirement, or to remove any FSU state from its scope.

THE COLLAPSE OF THE SOVIET EMPIRE AND JEWISH EMIGRATION

Very few observers of Soviet politics foresaw that glasnost and perestroika would lead to the collapse of Soviet power and the restructuring of a polyglot empire into independent states seeking, with few exceptions, to build democratic institutions. Notwithstanding the activities of Jewish communities in the West for a modern exodus from the Soviet republics, few in the Jewish community were prepared for the emigration of 580,294 Jews since 1989.

Progress Toward Open Emigration Policies

Numerous Congressional resolutions and Presidential statements confirm that the Jackson-Vanik Amendment encouraged the Soviet Union and its successor states to liberalize emigration policy and, ultimately, to permit a mass emigration to Israel and other countries. During the past two and a half years, approximately 350,000 Jews have emigrated from the FSU. In March 1993, the Russian Exit and Entry Law went into effect. Many other newly independent states are currently in the process of implementing similar legislation.

NCSJ Response to Political Reform and Emigration Policy

In response to these positive changes, since 1989, the NCSJ Board of Governors has endorsed annual waivers of the Jackson-Vanik Amendment, provided that (1) the President affirms that the waivers will encourage emigration and (2) assurances have been received concerning a commitment of further progress in connection with emigration issues. This year, in light of current emigration policies, the NCSJ supported Jackson-Vanik waivers for each of the FSU successor states.

The Jackson-Vanik Amendment Continues To Encourage Liberal Emigration Policies in the FSU

The NCSJ will support annual waivers on the condition that progress continues in four priority areas:

(1) The continuation of a sustained level of emigration.

(2) Elimination of restrictions based upon "state secrets."

(3) Resolution of restrictions based upon "poor relatives."

(4) Elimination of restrictions that prevent the emigration of long-term refuseniks.

There continue to be numerous bureaucratic obstacles to emigration in states of the FSU. For example, the processing of visa applications by emigration (OVIR) offices is prolonged for no apparent reasons; potential emigres report having to pay huge sums of money, as measured in local economic terms, in bribes to obtain exit visas and transit documents; and more than 200 refuseniks, most of whom are in Russia, are still denied the right to emigrate due to "state secrecy" policies.

In addition to those obstacles mentioned above, new cases continue to arise. Many of those who are denied permission to emigrate on grounds of "state secrets" had worked for scientifically based agencies involving technology that is now
obsolete or involved in East-West commercial ventures. We have presented these refusenik lists to officials in the FSU and in Washington. It is unknown why any FSU government would deny long-term refuseniks, symbols of Soviet oppression, the right to emigrate. Yet they remain in Russia and certain other FSU states.

We look forward to working with the governments of the FSU, and coordinating with Congress and the Administration, to eliminate the remaining barriers to free emigration from Russia and elsewhere in the FSU, as soon as possible. Only when restrictions on Jewish emigration have been eliminated, would we favorably agree with a finding that Russia and other FSU states have implemented a policy of free emigration under the terms of the Amendment.

EMIGRATION POLICIES ARE NOT IN COMPLIANCE WITH JACKSON-VANIK

The Jackson-Vanik Amendment was crafted to focus on three emigration issues:

First, denial of the right or opportunity to emigrate.

Second, imposing more than a nominal fee on emigration, visas, or related documents "for any purpose or cause whatsoever...." (Emphasis added.)

Third, imposing more than a nominal fee as a consequence of applying for permission to emigrate.

Given current conditions, and in spite of the progress toward free emigration that was unimaginable three or four years ago, many of the newly independent FSU states, including Russia, are not in compliance with the above mentioned legal strictures of the Jackson-Vanik Amendment.

OVERVIEW OF DIFFICULTIES IN THE FSU

Each of the states of the FSU is beset by a multitude of political, economic, and social problems. Hope and potential instability define their collective existence, and deteriorating economic conditions, coupled with ethnic tension and violence, threatens existing progress and creates a dangerous atmosphere for minority populations, both religious and ethnic.

The organized American Jewish community believes that U.S. foreign policy must continue to emphasize human rights as a fundamental tenet in its bilateral relations with the FSU. The Jackson-Vanik Amendment is the most effective means of ensuring that the right of free emigration remains on the agenda of the political leadership emerging in the FSU.

JACKSON-VANIK DOES NOT IMPEDE ECONOMIC DEVELOPMENT IN THE FSU

During the three years in which the NCSJ has supported Jackson-Vanik waivers, the Amendment has not hindered the economic development of the FSU. The Amendment does not impose any limitation on exports from the United States to the FSU, nor does it prevent U.S. companies from investing in the FSU or establishing international joint ventures with enterprises in the newly created states. The waivers established the basis for granting Most Favored Nation tariff treatment and eliminating highly protective tariffs on U.S. imports from Russia and other FSU states. The waivers also established the basis for bilateral trade agreements with the FSU.
For the future strategic security of the United States, and for the cause of political and ethnic freedom in the FSU, the NCSJ believes it is necessary to provide tangible economic support to the FSU. The NCSJ devoted considerable resources to support enactment of the Freedom Support Act, and continues to support the current assistance package (and has so advised every member of Congress). In addition, the NCSJ is an active participant in a broad-based coalition of business, public interest, and ethnic organizations that seeks enactment of the assistance package for the FSU.

At this time, we do not believe that Russia and other FSU states are in compliance with the provisions of the Jackson-Vanik Amendment. We do, however, look forward to the day when a Presidential determination will be made that Russia and the other states of the FSU permit free emigration in both law and administrative practice.

This is an extremely crucial period for the future of the FSU; that is, whether they move forward toward democratic reform or collapse into authoritarian societies. In many respects, future trends depend upon U.S. involvement and initiatives. It is imperative that the United States continues to support democratic institutions, promote economic development, and foster human rights in Russia and the FSU. The Jackson-Vanik Amendment is consistent with each of these objectives. The safeguards provided for in the Amendment should remain in place until the FSU states have eliminated restrictions on emigration. If political conditions deteriorate in the FSU, severe restrictions could be imposed on those who seek to emigrate. In such circumstances, the President could use Jackson-Vanik as an important lever to demonstrate U.S. concern for the observance of human rights. In the absence of Jackson-Vanik, the options for U.S. foreign policy are less well defined.

Mr. Chairman, I have with me the volume of the Encyclopedia Judaica that reviews Jewish history in the Czarist and Soviet empires. It is a history illuminated by only a few bright lights of tolerance. Today, a new chapter to that long history is being written by the FSU governments. The introduction to this new chapter in Jewish history has barely been written. The Jackson-Vanik Amendment is a means of ensuring that the past history of Russian Jewry will not be its prologue.
Chairman Gibbons. Mr. Spirer.

STATEMENT OF JULIAN SPIRER, CHAIR, GOVERNING COUNCIL, AMERICAN JEWISH CONGRESS

Mr. Spirer. Yes, thank you very much Mr. Chairman and distinguished members of the subcommittee. I am Julian Spirer. I am chair of the governing council of the American Jewish Congress, and I want to thank you for your invitation to appear here this morning and to discuss our recommendations for a rescission of the Jackson-Vanik amendment, restrictions on U.S. trade with Russia.

The American Jewish Congress is a national membership organization which works for social and economic justice, religious freedom, and human rights in the United States and throughout the world. The American Jewish Congress has long been a leader in the struggle for freedom for Soviet Jewry.

We are pleased to appear this morning together with the National Conference on Soviet Jewry and the Union of Councils for Soviet Jews. We have been an active member of the national conference since its founding and we will agree, I am certain, with nearly everything that Mr. Luks has said and is likely to say through the balance of the morning.

We testify separately, however, to express our views on one salient question, whether the increasingly modest use which the United States could expect to make of the Jackson-Vanik amendment justifies its retention in light of strong arguments in favor of its repeal.

After close, and I must say very difficult analysis, we find that the merits of repealing Jackson-Vanik outweigh the limited benefits of leaving the statute on the books and granting a series of short-term waivers. Indeed, it is our belief that short-term waivers will frustrate the ultimate purpose of granting MFN status, which is to build lasting trade relationships between our two nations.

AJ Congress' work here at home is based on a simple powerful proposition that the vitality and security of the American Jewish community depend on the health of American democracy. We believe the same can be said for Jews and other minorities in the Soviet Union. Today the most important protection that could be afforded Jews and all minorities in Russia is to promote the stability of the Russian government and the preservation of democratic institutions and practices.

Minority rights are best assured, we feel, in a society with a stable political and economic system. In this era of limited resources, the U.S. Government can only do so much to boost the Russian economy. Encouraging private investment, therefore, must be a central part of America's plan to aid Russia.

But for the private sector to play its part, American companies must be assured that the business climate in which they will operate will not change overnight. That is why waiting Jackson-Vanik for a year or two may well be inadequate. American businesses will be inhibited from making investments in Russia as long as the status of the United States-Russian trade relationship remains an open question.
We believe that Jackson-Vanik operates as a hindrance to foreign investment in Russia, investment which represents a key element toward stability and democracy.

President Yeltsin has survived a crucial public referendum on his reform plans and he is now engaged in a historic process to negotiate a new Russian constitution that will guarantee human rights, a separation of powers, and a system of checks and balances.

We feel that rescinding Jackson-Vanik will give the reform process in Russia and specifically President Yeltsin a very public vote of confidence. As President Clinton said in April, “As long as there are reformers in the Russian Federation and the other states leading the journey toward democracy’s horizon, our strategy must be to support them; our place must be at their side.”

When Jackson-Vanik was enacted in 1974, the Soviet Union did not recognize the right to free emigration. A desire to emigrate in 1974 was considered evidence of treachery and applicants were fired from their jobs routinely and even jailed. No one credibly argues that that is true today.

Remaining Jews who have so far been unable to emigrate are being held back predominantly because they lack the necessary documents or family permission or because they worked in security sensitive areas. According to the State Department, only 48 refusenik cases remain unresolved. We have called and will continue to call on the Russian Government to resolve these remaining cases.

Under President Gorbachev, a committee composed of members of the security services, human rights groups, and the Jewish community, examined and favorably resolved many refusenik cases. A reconstituted committee under the Yeltsin government could be effective in dealing with the remaining disputes. Bilateral diplomacy, effective in so many similar cases around the world, can serve that purpose with regard to Russia as well.

In a 1974 letter, Senator Jackson laid out a standard for Congress to use as it evaluates Jackson-Vanik’s continued relevancy. Senator Jackson wrote that we would consider a benchmark of a minimum standard of initial compliance to be the issuance of 60,000 visas per annum. When we look at the figures for Jewish emigration, the main concern and the target of the Jackson-Vanik amendment, the former Soviet Union has well surpassed that benchmark in each of the past 3 years, and is well on its way to doing so in 1993.

In sum, Mr. Chairman, we believe that the risks of rescinding Jackson-Vanik are less significant than the likely benefits of rescission in improving the lives of Russian Jews and all Russians.

Thank you.

Chairman Gibbons. Thank you, Mr. Spirer.

[The prepared statement follows:]
Mr. Chairman, distinguished members of the Subcommittee on Trade. I am
Julian Spirer, Chair of the Governing Council of the American Jewish Congress. On
behalf of AJCongress, I want to thank you for your invitation to appear this morning
and discuss our recommendation for a rescission of the Jackson-Vanik amendment
restrictions on U.S. trade with Russia.

I. Introduction

The American Jewish Congress is a national membership organization which
works for social and economic justice, religious freedom, and human rights in the
United States and throughout the world. We are committed to the proposition that
government can be an active force for the enhancement of these values. AJCongress
has long been a leader in the struggle for freedom for Soviet Jewry. We are pleased
to appear this morning together with the National Conference on Soviet Jewry and the
Union of Councils for Soviet Jewry. We have been an active member of the National
Conference since its founding, and I am confident that we will agree with nearly
everything they will have to say on this most important topic.

We testify separately, however, to express our view on one specific question:
whether the increasingly modest use which the U.S. can expect to make of the
Jackson-Vanik Amendment justifies its retention in light of strong arguments in favor of
its repeal. After close analysis, we find that the merits of repealing Jackson-Vanik
outweigh the limited benefits of leaving the statute on the books and granting a series
of short-term waivers. Indeed, it is our belief that short-term waivers will frustrate the
ultimate purpose of granting MFN status, which is to build lasting trade relationships
between our two nations.

Mr. Chairman, since I believe there is broad agreement that Congress should, at
a minimum, urge the President to continue to grant Jackson-Vanik waivers to the
states of the former Soviet Union, and since I understand the time constraints
ruling the committee this morning, I will limit my remarks to the narrow question of the
advantages of repeal versus waivers. I will also not address the numerous other Cold
War era statutes the Committee is rightly considering today. I would note, however, as
you will see from our testimony, AJCongress believes that American interests urgently
demand free and open trade with Russia and the other states of the former Soviet
Union.)

II. Minorities Are Safest When the Economy is Sound

AJCongress' work here at home is based on a simple, powerful belief: that the
vitality and security of the American Jewish community depend on the health of
American democracy. We believe the same can be said for Jews and other minority
groups in Russia. Today the most important protection that can be afforded Jews
-- and all minorities -- in Russia is to promote the stability of the Russian government
and the preservation of democratic institutions and practices.

Minority rights are best assured in a society with a stable political and economic
system, where people are not frightened and disoriented by the lack of order and
therefore susceptible to anti-Semitic and other extremist propaganda. A full conversion
of the Russian economy and a stabilization of the political system require significant
III. Private Investment Requires a Stable Environment

In this era of limited resources, the U.S. government can only do so much to boost the Russian economy. Encouraging private investment, therefore, must be a central part of America’s plan to aid Russia. Granting Most-Favored Nation status to Russia and facilitating commercial agreements between Russian and American firms is a way to provide significant assistance to the Russian economy without substantial additional cost to the U.S. taxpayer. Ultimately, MFN status and the resulting private investment in Russia will build the Russian economy and lead to a reduction in Russia’s need for aid. But for the private sector to play its part, American companies must be assured that the business climate in which they will operate will not change overnight. That is why waiving Jackson-Vanik for a year or two may well be inadequate. American businesses cannot, and will not, make any significant investments in Russia if the status of the U.S.-Russian trade relationship remains an open question. We believe that Jackson-Vanik operates, regrettably, as a hindrance to foreign investment in Russia, investment which itself represents a key element in the move toward stability and democracy.

President Yeltsin has survived a crucial public referendum on his reform plans, and is now engaged in an historic process to negotiate a new Russian constitution that will guarantee human rights, a separation of powers, and a system of checks and balances between the branches of government. American involvement is crucial to sustaining these building blocks of democracy. Secretary of State Christopher, in a speech in March of this year, noted that “The pain of building a new system virtually from scratch is exacting a tremendous toll. The patience of the Russian people is wearing thin.” Secretary Christopher went on to say that:

If Russia falls into anarchy or lurches back to despotism, the price that we pay could be frightening. Nothing less is involved that the possibility of renewed nuclear threat, higher defense budgets, spreading instability, the loss of new markets, and a devastating setback for the worldwide democratic movement. This circumstance deserves the attention of each and every American.

This danger, we believe, is the most compelling argument in support of the admittedly dramatic step of rescinding Jackson-Vanik. It will give the reform process in Russia, and specifically President Yeltsin, a very public vote of confidence. Yeltsin needs concrete and immediate American support to press forward with his economic reforms and to prevent any backsliding. As President Clinton said in April, “As long as there are reformers in the Russian Federation and the other states leading the journey toward democracy’s horizon, our strategy must be to support them; our place must be at their side.”

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3 Ibid.

4 President Bill Clinton, Speech to the American Society of Newspaper Editors, Annapolis, Maryland, 1 April 1993.
IV. The U.S. Has Other “Sticks” To Resolve Remaining Emigration Issues

Russia has already taken important steps toward guaranteeing minority rights and freedom of emigration. New emigration laws passed by the Soviet government in May of 1991 were confirmed and implemented by the Russian government. Russia, like all the other states of the former Soviet Union, is a member of CSCE and committed to the Helsinki Final Act, which obligates all signatories to respect minority rights and to take specific steps to facilitate freedom of movement both within and between their borders. Human rights remains a high-level topic of discussion between our two governments. And we are now in the midst of a process which will provide more than $3 billion in aid to Russia over the next several years. Thus, the U.S. will have other means, more directly related to human rights, and less critical to economic progress in Russia than trading status, to encourage Russian compliance with freedom of emigration requirements.

V. The History of Jackson-Vanik Suggests Rescission Now

Jackson-Vanik was adopted because, in 1974, Soviet emigration policies were so restrictive, so beyond the pale of civilized nations, that Congress felt the USSR and other Communist nations deserved severe censure through the denial of trade privileges granted to most other nations around the world. But today, almost twenty years later, the gates are almost completely open, the Soviet Union is no more, and while with one hand we work to strengthen the economy of Russia, with the other we continue to deny her the nondiscriminatory trade status we provide nearly all the world’s nations.

The policy changes, mainly under Gorbachev, which Jackson-Vanik helped bring about were recognized by the amendment’s co-author, former Representative Charles Vanik, in 1989, when he called the altered climate in the USSR “Precisely the circumstances I had in mind when I drafted the amendment.”

Representative Vanik, and the American Jewish Congress, supported a waiver of Jackson-Vanik for the USSR in 1989. In 1991, we were joined by most other major American Jewish organizations, including the National Conference on Soviet Jewry, in urging a waiver.

When the Amendment was enacted in 1974, the Soviet Union did not recognize the right to free emigration. The Soviet government charged high fees for passports and exit visas and actively discriminated in awarding travel “privileges” according to the race or religion of the applicant. A desire to emigrate in 1974 was considered evidence of treachery, and applicants were fired from their jobs and even jailed. No one credibly argues that that is true today. The remaining Jews who have so far been unable to emigrate are being held back predominantly because they lack the necessary documents or family permission, or because they worked in security-sensitive areas. According to the State Department, only 48 “refusenik” cases remain unresolved.

We have called, and will continue to call, on the Russian government to resolve these remaining cases. But these cases are now, and can continue to be, resolved on a case-by-case basis. There is simply insufficient reason to continue to withhold the crucial economic tools denied by Jackson-Vanik because of these outstanding cases. As regards security cases, Senator Henry Jackson, in a letter to then-Secretary of State Henry Kissinger which became part of the Committee report language on the Amendment, wrote in 1974 that “we understand that the special regulations to be applied to persons who have had access to genuinely sensitive information will not constitute an unreasonable impediment to emigration.”

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Jackson-Vanik was intended as, and served as, a pressure tactic to compel a significant change in Soviet emigration policy. It was never intended to be used, as it only could be now, as a wedge to pry individual refuseniks out of the bureaucracy. Under Gorbachev, a committee composed of members of the security services, human rights groups, and the Jewish community examined and favorably resolved many refusenik cases. A reconstituted committee under the Yeltsin government could be effective in dealing with the remaining disputes. Bilateral diplomacy, effective in so many similar cases around the world, can serve that purpose with regard to Russia as well.

In his 1974 letter to Henry Kissinger, Senator Jackson laid out a standard for Congress to use as it evaluates Jackson-Vanik’s continued relevancy. Senator Jackson wrote that “We would consider a benchmark -- a minimum standard of initial compliance -- to be the issuance of visas at the rate of 60,000 per annum; and we understand that the President proposes to use the same benchmark.”

Looking only at the figures for Jewish emigration, the main concern and target of the Jackson-Vanik Amendment, the former Soviet Union has surpassed that benchmark in each of the past three years. In 1990, 186,815 Jews arrived in the U.S. or Israel from the former Soviet Union. Jewish emigration to the U.S. and Israel was 179,720 in 1991, 109,360 in 1992, and the figures for the first five months of 1993 already show a total of 40,586. In other words, since 1989, more than half a million Jews have arrived in the U.S. or in Israel from the former Soviet Union, and another two hundred thousand have used their Israeli entrance visas to leave the former Soviet Union for other destinations. So we are very pleased to note that, whether due directly to Jackson-Vanik or not, the original goal of the Amendment has clearly been fulfilled.

VI. Conclusion

President Clinton noted at his Vancouver summit with President Yeltsin:

The Russians are trying to undertake three fundamental changes at once -- moving from a communist to a market economy; moving from a tyrannical dictatorship to a democracy; and moving to an independent nation state away from having a great empire. And these are very difficult and unsettling times. But I think that the direction is clear. We just need to weigh in and do what we can to do what’s right.

In sum, Mr. Chairman, we believe that the risks of rescinding Jackson-Vanik are far less significant than the likely benefits of rescission, in improving the lives of Russian Jews and of all Russians.

This is a wonderful moment in history, Mr. Chairman. We have put the Cold War military conflict behind us. We must now consider ending the economic cold war. It is time to try other means to complete the resolution of any lingering human rights issues, and in the meantime to move forward, “weigh in and do what we can to do what’s right.”

Thank you, and I’d be happy to take your questions.

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Mark J. Pelavin, Washington Representative, and Tamara C. Wittes, Assistant to the Washington Representative, assisted in the preparation of this testimony.

Ibid.


President Bill Clinton, Remarks at Vancouver Summit, Mackenzie House, Vancouver, British Columbia, 3 April 1993.
STATEMENT OF GIDEON ARONOFF, ASSISTANT DIRECTOR FOR GOVERNMENT RELATIONS, UNION OF COUNCILS FOR SOVIET JEWS

Mr. ARONOFF. Thank you, Mr. Chairman, and members of the subcommittee. On behalf of our president, Pamela B. Cohen, I commend the subcommittee for scheduling this hearing which is both timely and profoundly important. With the collapse of the former Soviet Union and the United States' national interest in assisting these countries in their moves toward democracy and market economies, it is indeed time to review the so-called cold war legislative enactments for their current relevance and effectiveness.

The Union of Councils is an independent, grassroots human rights organization founded in 1970. We have 100,000 members in the United States with member councils in 34 American cities and human rights bureaus in Moscow, St. Petersburg, Kiev, and soon in Bishkek and Almati in central Asia.

Our special expertise comes from working inside the former Soviet Union for nearly a quarter of a century on human rights in general and on emigration in particular.

Mr. Chairman, the Union of Councils particularly appreciates the central principle underlying the Jackson-Vanik amendment, that the linkage to economic assistance in the region not be based solely on numbers of Jews crossing the borders to freedom, but on the guarantee of human rights and rule of law for all citizens in the Soviet Union and now the New Independent States (NIS).

During the Gorbachev era, some of our colleagues urged what we considered to be a premature waiver of the Jackson-Vanik amendment on the basis that Gorbachev needed encouragement. As history shows, hundreds of thousands of Soviet citizens, mostly Jews, were allowed to subsequently depart. In recognition of the dramatic liberalization of emigration practices in the region, we have not opposed the waiver of the Jackson-Vanik provisions and extension of MFN to the former Soviet Union. Barring a reversal in the emigration practices in any of these states, we continue not to oppose 1-year waivers.

The Union of Councils, however, cannot accept the proposal raised by President Yeltsin that Russia be exempted or graduated from all further compliance with the Jackson-Vanik amendment on the grounds that Russia is in full compliance. Neither Russia nor any of the other NIS governments is in full compliance because, one, despite dramatic improvements, there remains substantial numbers of refuseniks, as was stated earlier, the vast majority in Russia; two, the institutional apparatus for refusal remains fully in place; and three, none of the states has enacted an emigration law that is consistent with international standards.

For nearly a decade, the Union of Councils, through our partners and affiliates in the region, have produced an extensive list of secrecy and poor relative refuseniks, which is periodically reviewed and updated and that is routinely referenced by the State Department and congressional offices, including the Helsinki Commission.

In a region as vast as the former Soviet Union, there are undoubtedly refuseniks that do exist that have not made themselves
known to us. Nonetheless, our list provides the names of nearly 300 families who are currently denied their basic human right to emigrate. Many of these refusals are based on pretexts identical to those used by the OVIR and KGB during the Soviet era.

Mr. Chairman, we wish to submit for the record our list of 117 secrecy refusenik families updated in May of 1993 and hope to have an updated list of poor relative and arbitrary refuseniks prepared for the committee shortly.

In addition, the emigration law that Russia has begun to implement this year remains deeply flawed. Representatives of the Russian security services have informed our people in Russia that they do not believe that the new law will have any significant effect on secrecy refusals in Russia in the future.

For instance, we have been hearing reports that regulations have been prepared that permit teenage boys to be refused because of potential draft status 1 or 2 years in the future. You will remember that this is one of the abuses cited during the time of the passage of the Jackson-Vanik amendment.

There is no question that the Draconian antiemigration practice of the Soviet past has been dramatically liberalized. We must distinguish, however, between liberalization of oppressive practice and implementation of a democratic system. The liberalization has been rewarded through yearly grants of MFN status. This is testimony to the effectiveness of the Jackson-Vanik amendment.

Thus, we strongly oppose any initiative to repeal the Jackson-Vanik amendment or to exempt Russia from its purview. To do so would not only betray the remaining refuseniks who still look to the U.S. Government for support, but it would also signal that freedom, democracy, human rights, and rule of law are not as important to the United States as our rhetoric suggests.

We are, however, anxious to see economic recovery and market stability in Russia. Undermining our commitment to human rights and democracy, in this case by repealing the Jackson-Vanik amendment, we believe would not contribute to market reforms and economic growth, but would more likely inhibit it. Rather than simply preserve the status quo, we do propose steps that enhance human rights and economic development in Russia.

We propose that President Yeltsin release the current refuseniks by presidential decree. If by such action all or the vast majority of refuseniks in Russia were permitted to leave the country, and we observed systematic progress preventing future refusals, the Union of Councils would support further easing of Jackson-Vanik restrictions, for example, expanding the waiver from an annual to multiyear system.

While in some measure the Jackson-Vanik amendment is a product of the cold war, it still remains relevant and useful in this post-cold war era, because it is the paragon of our Nation's commitment to human rights. It rewards democratic behavior and punishes oppressive antidemocratic practice.
If promoting democracy is indeed a key American foreign policy objective, retention of this law is essential. Repeal or dilution would call into question the sincerity of our rhetoric regarding democracy and human rights.

We thank the subcommittee for this opportunity to present our views on this important matter.

Chairman GIBBONS. Fine.

[The prepared statement and attachment follow:]
Mr. Chairman and Members of the Subcommittee:

The Union of Councils is an independent, grass roots human rights organization, founded in 1970. We have 100,000 members in the United States and councils in 34 American cities. We commend the Subcommittee for scheduling this hearing, which is both timely and profoundly important. With the collapse of the Communist Empire in Eastern Europe and the former Soviet Union, and the United States' national interest in assisting these countries to move toward democracy, market economies and nuclear arms reductions, it is indeed time to review for current relevance and effectiveness the so-called "cold war" legislative enactments and policies.

Our special expertise comes from working inside the former Soviet Union for nearly a quarter of a century. We are both the "voice of the Refuseniks" in the United States, and advocates for human rights, democracy, and pluralism in the New Independent States. To accomplish these ends, we operate human rights bureaus in Moscow, St. Petersburg, Kiev and, soon to be opened, in the Central Asian cities of Bishkek and Almati.

While recognizing the leadership for change provided by President Clinton, who has called for an inter-agency review of these issues, the Union of Councils also recognizes that, in the past, much of the leadership for such policies has come, and properly so, from the Congress. Because we are a grass roots organization, we have always had a special affinity with the Congress, whose members have a long and proud history of joining with Soviet Jewry activists to appeal the cases of Refuseniks and Prisoners of Conscience. The Union of Councils for Soviet Jews is proud to have played an instrumental role in the creation of the Congressional Human Rights Caucus, and has had a collegial relationship with the extraordinarily able and committed membership and staff of the Congressional Helsinki Commission.

We recite this background, Mr. Chairman, to emphasize our long sense of appreciation and partnership with the Congress with respect to Jackson-Vanik, and to underline that the issues it raises today continue to have profound implications for the Congress' and America's continuing commitment not merely to the numbers of Soviet Jews crossing the border to a more secure future in Israel or the West. Indeed, Jackson-Vanik represents our nation's highest principles as the landmark legislation that links human rights performance with Most-Favored Nation trading benefits. Our commitment to democratic values, such as the freedom to leave one's country, have not diminished with the fall of Soviet communism.

As the committee well knows, the amendment bars non-market economy nations from receiving Most-Favored Nation (MFN) trade status unless the President finds that they are moving acceptably toward free emigration, in which case he can waive the amendment and grant MFN on an annual basis once a bi-lateral trade agreement is signed.

During the Gorbachev era, some of our colleagues urged what we considered to be a premature waiver on the grounds that Gorbachev needed encouragement and that the amendment was a "wasting asset" that would have no value if not waived. As history shows, hundreds of thousands of Soviet citizens, mostly Jews, were subsequently allowed to depart. In recognition of the dramatic liberalization of Soviet emigration practice that occurred at the turn of this decade, and of the passage of a new Soviet law on exit and entrance (that was to take effect in January 1993), President Bush granted a waiver of Jackson-Vanik to the USSR in 1991.
In 1992, this waiver was extended to all of the New Independent States. Currently, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia and Ukraine have signed trade agreements with the United States and have thus obtained MFN on a yearly basis. Our organization did not oppose the decision to grant the waiver to the Soviet Union in 1991 and to extend it in 1992. Unless one of these states should reverse its present emigration practice (as distinguished from policy) the Union of Councils does not oppose the President's continuing to grant the annual waiver.

However, the question has been raised, by President Yeltsin and by the State Department: should Russia be exempted (graduated) from all further compliance with the Jackson-Vanik Amendment, on the grounds that she is in "full compliance?" To this, the Union of Councils responds with a firm and unequivocal no. Without question, neither Russia nor any other New Independent State government is in full compliance because (i) despite dramatic improvements, there remain a substantial number of Refuseniks; (ii) the institution and apparatus for refusal remain fully in place; and (iii) none of the states has enacted a freedom of emigration law that complies with international standards of the Helsinki, Madrid and Vienna documents of the CSCE.

For nearly a decade, our organization, through the Refuseniks' OVIR (Office of Visas and Registration) Monitoring Committee, later subsumed under our Human Rights Bureau in Moscow, has produced extensive listings of secrecy, "poor relative," and arbitrary Refuseniks, a periodic document, scrupulously reviewed and updated, that has been routinely referenced by the Department of State and Congressional offices, including the Helsinki Commission. In a region as vast as the former Soviet Union, there are undoubtedly Refuseniks who have not made their status known to us. Nonetheless, our lists provide documented evidence of upwards of 300 families, comprising more than 1,000 individuals, who are currently denied permission to leave the New Independent States in violation of international standards and based on pretexts identical to OVIR and KGB policy during the Soviet era. The majority of these reside in the Russian Federation.

We will soon be able to provide the Committee with an up-to-date listing for "poor relatives," those who are quarantined because a member or former member of the applicant's family has refused to give permission for emigration, and where domestic relations laws are inadequate to resolve the matter. We do, Mr. Chairman, wish to submit for the record our list of Secrecy Refuseniks, updated to May 1993, which reflects that there are 117 secrecy Refusenik families, including 17 new Refuseniks.

In addition, the emigration law that Russia has been preparing to implement this year remains deeply flawed, and representatives of the Russian security services have informed us that the new regulations will have virtually no effect on the problem of secrecy/security refusals in Russia. For instance, we have been hearing reports that regulations have been prepared that permit teenage boys to be refused because of potential draft status one or two years in the future. This is one of the abuses cited at the time of passage of the Amendment.

There is no question that the draconian anti-emigration practice of the Soviet past has been drastically liberalized. We must distinguish, however, between the liberalization of oppressive practice, and the implementation of a truly democratic system. The liberalization should be rewarded and it has been rewarded -- Russia has, after all, received MFN status. The dramatic improvement in emigration, and the granting of MFN, are testament to the effectiveness of the Jackson-Vanik Amendment.

Thus, we strongly oppose any initiative to repeal the Jackson-Vanik Amendment or to exempt Russia from its purview. To do so would not only betray the remaining Refuseniks, who still look to our government for advocacy and support on their behalf. It would also signal that freedom, democracy, human rights and rule of law are not as important to the United States as our rhetoric would suggest; for what better way to undermine our commitment to those principles than to essentially declare that freedom of emigration and compliance with international human rights standards in emigration are no longer important to us?
We are anxious to see economic recovery and market stability in Russia. Some have suggested that the requirement of an annual review of Russian human rights performance with regard to emigration hinders the growth of Russian trade. In candor, we believe that inadequate progress in business, property, and contract law in Russia are of vastly greater consequence in this regard. Moreover, we believe that economic progress and democratic reform are symbiotic. As economic failure may undermine democracy, a failure to proceed with democratic reform will impede the implementation of a market economy. Undermining our commitment to human rights and democracy -- in this instance, by repealing or diluting the Jackson-Vanik Amendment -- would not contribute to market reform and economic growth in the New Independent States, more likely it would inhibit it.

We believe that it is premature to remove the leverage Jackson-Vanik provides. Yet, it is not in our interest to simply preserve the status quo. We too seek new ways to further encourage Russian democracy and market reform and stabilization. Moreover, we are anxious to overcome the political gridlock in Moscow that currently contributes to the lack of further progress in solving the existing Refusenik cases.

We agree that it is unrealistic to expect the existing Russian parliament to pass an emigration law consistent with international standards. However, there are steps that President Yeltsin can take without Parliament -- steps that seem to have been taken in some measure in Ukraine. He can, for example, release the current secrecy Refuseniks in Russia by presidential action, and he can issue instructions by way of a presidential decree that would allow for a more liberal interpretation of the current, albeit inadequate, statute. (Congressman Steny Hoyer, similarly, has spoken in the past of a "zero option.") If, by such action, all or the vast majority of Refuseniks in Russia were permitted to leave the country, and we observed systematic progress preventing future refusals, the Union of Councils would support further easing of the Jackson-Vanik restrictions -- a multi-year waiver instead of an annual one, but reserving to the President the continuing right to reach a finding that progress has been reversed, say, in the event of a radical change in government and its policies. Given the fragility of democratic institutions in the post-Soviet region, it is vital that the system remain in place to reward and encourage continuing progress.

While in some measure a product of the Cold War, the Jackson-Vanik legislation remains relevant and useful in this post-Cold War era. It is a paragon of our nation's commitment to human rights. It rewards democratic behavior and it punishes oppressive, anti-democratic practice. If promoting democracy is indeed a key American foreign policy objective, retention of this law is essential. Repeal or dilution would call into question the sincerity of our rhetoric regarding democracy and human rights.

We thank the subcommittee for this opportunity to present our views on this important matter.
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Chairman GIBBONS, I am going to do something a little unusual here if it meets with your agreement. I would ask you all to step back and let Mr. Hoyer testify and then we will come back to you. Is that agreeable? If you would like to, you can sit right behind him there and we will get to you just as rapidly as possible.

Mr. Hoyer, would you come forward?

STATEMENT OF HON. STENY H. HOYER, COCHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE, AND A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. HOYER. I thank the gentleman. I was glad to hear it was agreeable.

Chairman GIBBONS. Mr. Hoyer, you are the chairman of the Commission on Security and Cooperation in Europe from the American point of view and we would be glad to hear from you.

Mr. HOYER. Mr. Chairman and members of the committee, I very much appreciate your giving me this opportunity. I apologize for being a little late. As you know, Mr. Chairman, I was chairing the caucus.

Mr. Chairman, thank you for inviting me to testify before these very timely hearings on cold war statutes that affect trade and commerce between the United States and Russia, as well as the other successor states of the Soviet Union.

The commitment by President Clinton to reexamine these statutes signals, I think, a desire to consolidate our ties with democratic Russia, a desire which I very strongly support, as I know do most members of this committee, and to build a cooperative political and economic relationship between our countries. This worthy goal applies to the other former Soviet Republics as well.

While the end of the cold war has made obsolete those trade policies aimed at weakening our former adversary, the continuing relevance of those features intended to promote the observance of human rights is still worth debating. Frankly, Mr. Chairman, in the view of the Helsinki Commission, it is simply premature to consider exempting any of the states of the former Soviet Union from the applicability of title IV.

In our view, serious human rights abuses persist in a number of the states of the former Soviet Union, and the freedom of movement has not been completely achieved. Individual cases of persons denied permission to emigrate are every bit as important today as they were in 1975 when the Helsinki Final Act was signed.

As you know, all of the former Soviet Republics, including Russia, share the legacy of Communist misrule which engendered common problems, including, in many respects, contempt for the law, flaunting of human rights and persecution of the defenders of these rights and the ideas behind them. Despite, however, these shared afflictions, the former Soviet Republics were and are different in terms of historical experience, political culture, traditions and often values.

Consequently, they have reacted differently to the wave of democratization introduced under former President Gorbachev and the opportunities offered by independence. Though all have altered
their rhetoric, a number have come far along the road to democracy, while others have yet to take meaningful significant steps.

Any successful U.S. foreign policy must take into consideration the immense differences among these newly independent states.

And while the Helsinki Commission is aware that the letter of the law of Jackson-Vanik, as I understand, Mr. Chairman, you have observed, speaks to emigration, no true picture can emerge of a country's commitment to democracy without consideration of that country's overall human rights performance.

I believe we need to look no further than Romania, to which we granted MFN for 13 years based on emigration practices despite Ceausescu's appalling human rights record, to recognize the harm we inflict on our own human rights credibility by using the MFN lever too narrowly.

And I would suggest, Mr. Chairman, in fact, that we have had a broader perspective of Jackson-Vanik, notwithstanding the correct observation that it deals with emigration. Mr. Chairman, I appreciate the significant progress that has been made in many of the former Soviet Republics, and I also understand the difficulty of the transition they must undergo.

In some of the countries progress has been especially impressive, and I would like to mention them. Armenia has had one leader in power since 1990 despite persistent attacks by vocal opposition and has retained stability in a functioning multiparty system under very trying circumstances. The Kirgiz Republic, alone among its neighbors, enjoys a vigorous opposition press and opposition parties are registered and function freely. In Russia and Ukraine, respect for human rights and the process of democratization have made great strides with little or no recourse to violence. And there is no doubting, I think, of President Yeltsin's deeply held and courageous convictions as they relate to these objectives.

In Belarus and Moldova as well, important progress has been made toward respect for human rights, freedom of movement and freedom of religions, but in the Transcaucasia, unfortunately violence has been widespread with thousands of people killed in the conflicts between Armenians and Azerbaijanis over Nagorno-Karabakh, as well as ethnic violence in Georgia. And in much of central Asia, repressive Soviet style regimes remain in power.

Opposition parties and freedom of the press are not tolerated in Turkmenistan or Uzbekistan, and civil violence in Tajikistan has claimed tens of thousands of lives.

Moreover, Mr. Chairman, while all the countries of the former Soviet Union, as CSCE members, have pledged to respect the right of freedom of movement, both in legislation and practice, full compliance with CSCE freedom of movement commitments does not yet exist. There are still a few hundred cases of individuals, mostly in Russia, denied the right to leave. Many of these cases are denied on the often questionable grounds of state secrets.

Mr. Chairman, as I said, I recognize the significant progress that has been made in Russia, Ukraine, and various other countries in securing democratic reforms and respect for human rights. I know that the challenge they face is monumental, but I frankly believe that we do ourselves and the values the country represents a serious disservice to conclude that human rights concerns, which
mattered a great deal in the icy atmosphere of the cold war, can simply be overlooked today for economic or any other reasons.

I would, therefore, propose the following recommendations, Mr. Chairman, and members of the committee, which are shared by the chairman of the Helsinki Commission, Senator DeConcini. I might point out, Mr. Chairman, that we have not taken a vote. This does not, and I don't want to represent this as a consensus. It is agreed by Senator DeConcini and me, but I don't want to speak for the other members of the Commission.

In view of the commendable progress toward democratization in both Armenia and the Kirgiz Republic, I suggest granting multiple year waivers to these two states, contingent in both cases, of course, upon their continued perseverance toward democratic reform.

For Russia and the other former Soviet Republics, including the five new countries which lack MFN status at the present time, MFN should be extended on an annual renewable basis. If all refusenik cases are resolved and remaining emigration restrictions are eliminated, multiple-year waivers would certainly be in order.

Though I have included the five states currently outside the MFN process in my recommendation for the maintenance of an annual review, Mr. Chairman, I must immediately qualify this position by advising that in the view of the Helsinki Commission leadership, Uzbekistan, Turkmenistan and Tajikistan do not meet a standard deserving of MFN.

When the time comes for considering the extension of MFN to these three countries, if the human rights picture remains as it is today, we would recommend that MFN be denied. Again, I understand this entails a broader perspective than the letter of MFN, but I suggest to you it is consistent with essentially the debate and the practice of the past. While emigration is not a serious problem in any of these countries, their governments have not only failed to make progress toward democratization, they have deliberately stifled—and in the case of Uzbekistan, with particular savagery and contempt for international public opinion—the expression of opposition views and the development of political opposition. While we are not prepared at this time to recommend denying MFN to Georgia, we would strongly urge a very serious examination of Georgia's human rights performance be made before granting MFN to that country.

I say that even in the context of Mr. Shevardnadze's very sterling statements and record as part of the Gorbachev administration, and then leaving the Gorbachev administration because of his concern about these issues.

I do not question Mr. Shevardnadze's commitment, but the performance, Mr. Chairman, based upon our review in the Helsinki Commission raises deep concerns about Georgia.

Again, Mr. Chairman, I thank you and the members of this committee for the opportunity to appear before you this morning and I hope that my comments will be of some use to you, the committee and the members of your staff.

And, Mr. Chairman, we stand ready to respond to any inquiries that you or members of your committee or your staff might have
with respect to our records of performance in the countries under consideration.

Chairman GIBBONS. Mr. Hoyer, you have given a very fine statement and I commend you for your interest in this matter.

[The prepared statement follows:]
Mr. Chairman, thank you for inviting me to testify before these very timely hearings on Cold War statutes that affect trade and commerce between the United States and Russia, as well as the other successor states of the Soviet Union. My testimony this morning will focus on Title IV of the Trade Act of 1974, the so-called Jackson-Vanik amendment.

The commitment by President Clinton after the Vancouver Summit with Russian President Yeltsin to re-examine these statutes signals a desire to consolidate our ties with democratic Russia and to build a cooperative political and economic relationship between our countries that reflects the historic and positive changes that have occurred in Russia since the statutes were originally passed.

This worthy goal also applies to the other former republics. Having recently traveled with Majority Leader Gephardt to Russia and Ukraine, I had the opportunity to meet with President Yeltsin and President Kravchuk. Both of them stressed the importance of their relations with the United States. Their emphasis on the significance of relations with the United States is shared by most of the leaders of the newly independent states, and at the very least, all of them certainly desire closer economic ties.

But while the end of the Cold War has made obsolete those trade policies aimed at weakening our former adversary, the continuing relevance of those features intended to promote the observance of human rights is still worth debating. It is to this subject that I would now like to turn. Frankly, Mr. Chairman, in the view of the Helsinki Commission leadership, it is simply premature to consider exempting any of the states of the former Soviet Union from the applicability of Title IV. In our view, serious human rights abuses persist in a number of the states of the former Soviet Union, and the freedom of movement has not been completely achieved. Individual cases of persons denied permission to emigrate are every bit as important today as they were in 1975 when the Helsinki Final Act was signed.

As you know, the Helsinki Commission is mandated to monitor and promote the implementation of the Helsinki Final Act and subsequent CSCE documents in all signatory states. To this end, the Commission has been following very closely the human rights situation in the states of the former Soviet Union, each of which has signed the Final Act.

Our monitoring, which has included frequent trips to the region to meet with representatives of governments, opposition groups and national minorities, has yielded a mixed picture. All the former Soviet republics, including Russia, shared the misfortune of
suffering under Communist misrule, which engendered common problems: the state’s engulfment of society, contempt for the law, flouting of human rights, lack of respect for individual dignity, and a cynical attitude and occasionally barbarous behavior towards the defenders of these rights and the ideas behind them. Despite these shared afflictions, however, the former Soviet republics were and are different in terms of historical experience, political culture, traditions, and often, values. Though the governments of all the new states have expressed the intention of moving toward the establishment of market economies, the undoing of 70 years of state ownership has not been easy, and in most cases has only just begun. And in the political sphere, it is not surprising that they have reacted differently to the wave of democratization introduced under former President Gorbachev and the opportunities offered by independence. Though all have altered their rhetoric, some have made great strides on the road to democracy, while others have yet to take meaningful steps. Any successful U.S. foreign policy must take into consideration the immense differences among these newly independent states.

Mr. Chairman, while the Commission is aware that the letter of the law of Jackson-Vanik speaks to emigration, no true picture can emerge of a country’s commitment to democracy without consideration of that country’s overall human rights performance. I believe we need look no further than Romania, to which we granted MFN status for 13 years based on emigration practices despite Ceausescu’s appalling human rights record, to recognize the harm we inflict on our own human rights credibility by using the MFN lever too narrowly.

In much of Central Asia, where the newly independent states must begin the arduous path of decolonization after over a century of Russian and Soviet rule, repressive if renamed Soviet-style regimes, put in place by the old Moscow-dominated system, remain in power. The government of Uzbekistan tolerates no opposition, free press or free speech. Several Uzbek opposition activists have been beaten nearly to death by "unknown assailants" on the streets of the capital city, Tashkent. Reports of arbitrary arrests, detentions, interrogations and unlawful searches are numerous; there are several political prisoners. The only opposition party that was able to register has recently been shut down and its leader forced into exile. Most distressing is the fact that President Karimov appears to be not only indifferent to, but disdainful of, the opinion of other CSCE members. In Turkmenistan, the authorities have not permitted any opposition parties or press to develop, and President Niyazov has cultivated his own "cult of personality" to replace Soviet ideology as the legitimacy behind his rule.

The situation is better in Kazakhstan, where numerous opposition parties function openly, though most are still refused legal status. The Kyrgyz Republic is the "bright spot" in Central Asia, where democratic reforms have progressed the furthest. There is a vigorous opposition press in the Kyrgyz Republic, and opposition parties are registered and function freely. But in sharp contrast is Tajikistan, which represents the greatest tragedy in Central Asia, where supporters and opponents of the former communist (and now late) president clashed for months, resulting in casualties of 20-30,000. The current "government," whose
legitimacy itself remains in doubt, has unfortunately launched a campaign of vengeance against the opponents of the previous regime, thereby ensuring continued violence.

In Russia, by contrast, there has been little violence and democratization has made great strides. Boris Yeltsin is Russia's first democratically elected leader in a millennium of history, and his mandate has just recently been renewed by the April 25 referendum. Scores of political parties pursue political goals and propagate their views. Though President Yeltsin's opposition accuses him of dictatorial tendencies, the very frequency and volume of their accusations demonstrate their freedom to criticize and to take active part in the political process. President Yeltsin is even now engaged in creating for Russia a new constitution guaranteeing human rights.

Ukraine also has a democratically elected president, a strong opposition and basic freedoms. The Ukrainian government's liberal policies on national minorities and a citizenship law imposing no language or residency restrictions have helped to minimize ethnic tensions. Previously banned churches, such as the Ukrainian Catholic Church, are now functioning openly. There are no reports of imprisonment of individuals for their political or religious beliefs or the use of psychiatry for political purposes.

In Belarus, political reform has been more limited, partly due to the conservatism of the parliament, which last year rejected a referendum initiative for early elections. Still, Belarus has been quite stable. Respect for human rights, freedom of movement and freedom of religion have progressed and there are no known political prisoners. A law on national minorities has been adopted, and ethnic tensions have not been a serious problem.

In Moldova, the situation for minorities has improved markedly compared to the period immediately following independence. Religious freedom has been guaranteed by a March 1992 law, and Moldova's citizenship law is among the most liberal of the newly independent states. But while Moldova is moving steadily towards greater democratization and reform, there have been many reported human rights violations in the secessionist self-proclaimed "Dniester republic," which is populated mostly by Russians and Ukrainians, and which fought a brief war last summer against forces of the Moldovan government. Human rights violations in the so-called "Dniester republic" include reports of torture and physical abuse. Currently, six ethnic Moldovans are being tried by a kangaroo court on charges of terrorism.

In Transcaucasia, unfortunately, violence has been quite widespread. Thousands of people have been killed in the conflicts between Armenians and Azerbaijanis over Nagorno-Karabakh, between Georgians and Ossetians, between Georgians and Abkhaz, and between Georgians and Georgians. The most stable of the three Transcaucasian countries has been Armenia, where one leader has been in power since 1990, though under persistent attack by a vocal opposition. Armenia has retained its stability and a functioning multi-party system under very difficult circumstances, and, by the way, does not have any reported emigration problems.
By contrast, Georgia and Azerbaijan have both experienced coups, coup attempts and substantial instability. Right now, in fact, a rebellion is reportedly continuing in Azerbaijan, and the country's former Communist Party and KGB boss may be headed for a comeback. This unfortunate development bodes ill for Azerbaijan's prospects for democratization. In Georgia, supporters of ousted President Zviad Gamsakhurdia still risk arrest and beatings if they try to demonstrate or publicize their views.

In short, while democratization has made progress, especially in the more western regions of the former USSR, its foundations remain rather shaky. Almost all of these countries confront problems of stability and institutionalization of democratic reform. President Yeltsin now seems more secure than before the April 25 referendum, but powerful forces remain staunchly opposed to his programs in principle and in practice, especially on the local level. Russia and Ukraine are moving to overhaul the existing Soviet-based legal system, but neither yet has an independent judiciary. Although the press in Belarus is theoretically free, virtually all newspapers are subsidized by the government, effectively limiting their independence. As a result, the anti-government opposition, while not suppressed, has difficulties getting its message out. And little progress has been made in reforming Belarus' legal and constitutional systems.

With specific respect to freedom of movement, all countries of the NIS, as CSCE members, have pledged to respect the right of freedom of movement. People continue to emigrate from these countries in record numbers. Since the beginning of this decade, over one million people have left -- mostly Jews and Germans. The rate of those denied permission to emigrate, in virtually every newly independent state, has dropped dramatically. In short, freedom of movement has widened tremendously.

At the same time, it would be premature to assert that there are no remaining problems in this area. Both in legislation and practice, full compliance with CSCE freedom of movement commitments does not yet exist, and individuals continue to be denied the right to leave.

The Law on Entry and Exit, which was adopted by the USSR Supreme Soviet in May 1991, went into force in Russia, Ukraine and other newly independent states on January 1, 1993. While this law, which recognizes the right to emigrate and travel, was a considerable improvement over earlier Soviet laws governing emigration, it does have shortcomings. Some of the newly independent states, notably Ukraine and Russia, have issued resolutions or decrees regarding implementation of the Soviet emigration law designed to reduce remaining restrictions. To date, implementation has been slow. While in Russia and Ukraine, the requirement for exit visas has been abolished for holders of new passports, the process of obtaining new passports has been slow. Meanwhile, persons holding old passports are still subject to provisions of the old law.

It is my hope that emigration legislation and practices that conform with CSCE obligations will soon be enacted and implemented in Russia, Ukraine and the other newly
independent states, thereby institutionalizing free emigration.

As of now, however, despite the commitment of Russia and the other states to the CSCE provisions on freedom of movement, the institution of refusal still exists. According to the State Department, there are still cases of 48 persons in Russia and 5 in Ukraine that have been denied permission to emigrate more than once since 1991. According to the National Conference on Soviet Jewry and the Union of Councils for Soviet Jews, the number of refusenik cases are in the hundreds. Many of these individuals are denied because they allegedly possess state secrets or because their relatives refuse to sign financial waivers needed for the application to emigrate.

These residual restrictions continue to serve as a barrier towards free emigration and towards full compliance with Helsinki obligations. More importantly, they continue to affect the lives of real people. Vladimir Maizous of Moscow has been denied permission to leave Russia until 1996, on the grounds that he possesses "state secrets." Before his retirement in 1989, Mr. Maizous was employed by the Design Bureau "Salut," which was a part of the Soviet Aerospace Industry. Yet Salut's technology is now being sold to foreign countries.

Mark Orlovetsky of Kiev has been denied since 1990 on the pretext of "state secrets." This denial is based on work on a machine designed for use in aircraft, a machine that was intended for export. He has been told that his case will not be reopened until 1995. Mr. Orlovetsky is one of a small number of individuals still denied the right to leave the country, even though Ukraine in December 1992 passed a resolution regarding new passport application procedures that essentially eliminated the former Soviet requirement for exit visas for new passports.

In other cases, families with teenage boys are prevented from emigrating because their sons are required to stay in Russia, Belarus or Ukraine, where they are registered for military service. And courts in various NIS countries, citing lack of instructions and procedural regulations, refuse to hear the appeals of so-called "poor relative" cases -- cases of individuals denied affidavits required for emigration from parents or former spouses.

As in other NIS countries, old Soviet legislation governing emigration remains on the books in Moldova. A small number of individuals are prevented from emigrating, although most problem cases have been resolved.

I appreciate the progress that has been made in Russia, Ukraine and various other countries, and I also understand the difficulty of the transition they must undergo. Moreover, I know that President Yeltsin promised President Clinton in Vancouver that he would see to the resolution of Russia's refusenik cases. Still, considering the number of refuseniks still in Russia and other republics, as well as the continued unpredictability of their political democratization, I frankly do not see how we can even consider terminating the applicability of Title IV of the 1974 Trade Act to these countries, thus giving them permanent MFN status.
I would therefore propose the following recommendations, which are shared by the Chairman of the Helsinki Commission, Senator Dennis DeConcini. MFN should be extended to Russia and the other former Soviet republics, including the five new countries without such status now, on an annual renewable basis. If all refusenik cases are resolved and remaining emigration restrictions are eliminated, multiple year waivers would be in order. It seems obvious to me that no state which still has refuseniks can be deemed to be in full compliance, which would obviate the need for an annual waiver. I make two exceptions, however: In view of the commendable progress toward democratization in both Armenia and the Kyrgyz Republic, I suggest granting multiple year waivers to these two states, contingent in both cases, of course, upon their continued perseverance toward democratic reform.

Though I included the five states currently outside of the MFN process in my recommendation for the maintenance of an annual review, I must immediately qualify this position by advising that, in the view of the Helsinki Commission leadership, Uzbekistan, Turkmenistan and Tajikistan do not meet a standard deserving of MFN. When the time comes for consideration of MFN for these three countries, if the human rights picture remains as it is today, we would recommend that MFN be denied. While emigration is not the most serious problem in any of these countries, their governments have not only not made progress towards democratization, they have deliberately stifled -- and in the case of Uzbekistan, with particular savagery and contempt for international public opinion -- the expression of opposition views and the development of political opposition. As for Georgia, while I would not be prepared to recommend denial at this time, I strongly suggest that a very serious examination of Georgia's human rights performance be made before granting MFN to that country.

Again, Mr. Chairman, I thank you for the opportunity to appear before the Subcommittee this morning, and hope that my comments will be of use as you continue your deliberations on this important and timely issue.
Chairman GIBBONS. I know it takes a lot of dedication to go into an issue to the depth that you have. I would agree with you that Jackson-Vanik has been transformed from just an emigration matter to a much broader policy issue. What I am particularly trying to do is to differentiate so that we can help build from the inside the kind of infrastructure that these unfortunate countries will need in order to address the whole gamut of problems that we have with them.

I, like you, have visited those countries a number of times, perhaps not to the extent that you have, but there is a change, substantial change that has taken place in central and Eastern Europe, and I think we need to exploit that and keep it going in the right direction.

I worry that our inability to really do anything about the economics within the Soviet Union and our inability to really penetrate a society that has so many people and as much territory as the former Soviet Union has, could turn out to be one of the grand opportunities of history that we missed just because we weren't able to do it. I keep searching for new ways to find things that we can do that are meaningful for the Soviet people, but at the same time keep the necessary pressure up to make sure that there is the carrot-and-stick approach to solving the emigration problem.

Mr. HOYER. Mr. Chairman, I, of course, very much agree with the sentiments you just expressed. Both you and I and members of this committee have been strong supporters of the Freedom Support Act and are strong supporters today of economic assistance to Russia to stabilize it and to move it toward democratization.

As I said, I believe the leadership, certainly Mr. Yeltsin is deeply committed to that objective and I agree with you, it is a difficult balance to make. On the one hand, expressing as strongly as we can and demonstrating that strength of commitment to human rights principles and those principles adopted in the Helsinki Final Act, and in many other international documents, including those of the United Nations, and at the same time interfacing and having a positive intercourse with nations so that we encourage and assist them in moving toward democracy and free market economies.

It is a tough line to draw.

Chairman GIBBONS. Having dealt with my own Government for about 60 years and having dealt with the Russian Government off and on for some period of time, I recognize that one can make brave statements about principles and find that they get subverted at the administrative level before being carried out. I am sure that this is going on within the former Soviet Union and in Eastern Europe, too.

Let me ask you about the Commission on Security and Cooperation in Europe. Do you all have a working group that actually monitors what is going on within the former Soviet Union?

Mr. HOYER. Yes, we do, Mr. Chairman. We have approximately 18 staff members. We have multilingual capacity and we have on staff many people who have lived in the former Soviet Union, in Russia itself, who have gone to school there. We have in effect what we used to call our Soviet desk. We are kidding the State Department somewhat on that, but we have experts on the former Soviet Union, who travel there regularly and monitor performance,
publications and elections, interface extensively with nongovernmental organizations who travel there, meet with visiting parliamentarians as well as members of the Commission. Our staff extensively interfaces with members of the parliaments of CIS states, as well as advocacy groups within the CIS states.

So that I think it would be fair to say that we have a pretty extensive expertise on performance, particularly in the human rights area. As you know, Mr. Chairman, the Helsinki Final Act has three baskets which deal with security, economics and human rights. But because security was carried on by a lot of multilateral and bilateral negotiating teams since 1975, even to date, the commission has pretty much concentrated on human rights and democratization within the former Soviet Union and Eastern Europe, and I would say we have quite an expertise in this area.

Chairman Gibbons. Well, having visited quite a number of jails in the United States, I realize that whenever you visit incarcerated or unhappy people, you can get a very sad story from them about the conditions within their facilities. I realize how difficult it is to get down to the actual truth.

Let me ask you, let's look at just the refuseniks now. Is there any actual negotiation going on with an identified list of refuseniks between the Governments of the former Soviet Union and our country and perhaps Israel? Is there anything going on to try to resolve those on a one-on-one basis?

Mr. Hoyer. Yes, sir. The State Department has its own representational list and as a result of agreement and discussions between Secretary Shultz and the Congress our lists are much more similar than they used to be. We have 48 refuseniks, for instance, on our list at this time, Mr. Chairman.

I would have to ask staff if that is exactly the State Department list. Maybe somebody in the State Department is here. That is not large by historic standards, but those cases are well known, we believe, to the political leadership and the fact that they are not resolved—maybe because local bureaucratic mechanisms may have an animus there as it relates to the individual as opposed to a policy question. Nevertheless, these cases remain unresolved.

In addition, of course, the bureaucratic backlog is much greater than the 48. The 48 are named individuals that we have made representation to officials of the Russian Government, Mr. Kozyrev, and to President Yeltsin, about those that have yet to be resolved.

There continues to be state secrets, as I said, which even if you accept it in the short term the United States itself has proscriptions on the divulging of information and we have advisories on travel, but we don't prohibit somebody from emigrating from the United States on that basis. You can't imprison them in the United States because they may have at some time worked in a security area.

These state secrets are for the most part irrelevant after essentially 5 years except in the most sensitive areas; and second some of these cases go back further where the state secret continues to be applied as a reason for denying the right to emigrate.

It is a standard that is not adopted by any other of the Western international countries that are signatories to the Helsinki Final Act. So there are still specific cases.
Chairman GIBBONS. I notice in the testimony there apparently is still some restriction in the former Soviet Union countries for relatives that you are expected to support or in whom you have some interest. Do we know how large that group is, and is there anything being done to monitor that?

Mr. HOYER. There are about 100 poor relative cases that still exist. How does that relate to the 48 refuseniks? The 48 I referred to have been denied more than once. There are one-time refusals. They don't make the State Department list until refused a second time because any democracy can deny the first time around.

In some respects, we understand the poor relatives concept in that support obligations are a responsibility. But, as you know, in some of the famous cases we were talking about, in-laws were the object of an obligation to support and had a veto over whether a relative could emigrate.

They argue some legitimate issues with respect to family support issues, but when you get beyond the claims and go to the facts, it is very difficult to maintain the equity. We saw that in the Stolar case, Abe Stolar, that famous case from Chicago. Mr. Stolar went over there and when he tried to leave the mother of his sons, everybody got approval but his daughter-in-law's mother would not give approval so he wouldn't leave either. That was probably the classic case of where a so-called poor relative would refuse approval irrespective of the economic issues.

The court indicated it was not appropriate and it was overruled by the Office of Emigration in direct communication with the Soviets saying you are wrong. That hopefully is not going on today. There is hopefully an independent judiciary emerging to oversee, but that is not the case at this point.

Chairman GIBBONS. This is a speculative question and may be difficult to answer. Do you expect that in the foreseeable future that we will see the majority of Soviet states bring their human rights policies up to our standards, or are we going to be faced with this problem forever? Is it something that is changing?

Mr. HOYER. I think we have witnessed revolutionary changes in the last 4 years—longer than that, actually from 1985 when the Gorbachev era began; 1985, 1986, and 1987 were not eras of great reform—great rhetoric, but not great substantive reform. In the latter part of 1988 we had revolutionary change.

I am hopeful and expectant that if the international community keeps the pressure on and pressure in the sense not just economic and political, but in terms of moral suasion as well, which I think is the success of the Helsinki process—that never had muscle behind it other than moral suasion, discussion, and world opinion—I am expectant that many of the states from the former Soviet Union will in fact meet standards in most ways.

Do I think they will become the United States or some other democracy of Western Europe or Australia or others? Perhaps not in the next 3 to 4 years. They have got much history to overcome and much ground to cover. But I think they are moving in that direction. So I do not see this as a permanent dysfunctional relationship.

However, I will say, Mr. Chairman, which I think is important, that those who study this know that you cannot lump all the states
of the CIS or the former Soviet Union as being the same. They are decidedly not the same.

I would expect the most difficult longstanding problems will be in the central Asian states because they have the least experience with democracy and commitment to those principles, notwithstanding the fact they have now signed on as Helsinki signatories, which brings membership to 53 from its original 35. I think that will be the most difficult area. But the more European and therefore states historically more attuned and exposed to the traditional principles of the Helsinki Final Act, I think will be there and our hope is in the not-too-distant future.

Are we seeing some backsliding? We are. We are seeing egregious human rights violations for instance in the former Yugoslavia on all sides of that issue which the world community is having difficulty dealing with. But overall I think we are seeing substantial progress and will continue to see progress.

Mr. Chairman, I was in Russia prior to the recent referendum. The economic situation confronting that country is very bad and you would have expected an incumbent President to take it on the chin. Essentially what the Russians said was, “Yes, the economics are tough. Yes, we are not doing as well as we want, but we want to go forward and Yeltsin is going forward.”

Chairman Gibbons. That is what worries me. How long is this window of opportunity going to stay open for the kind of penetration of ideas and practices that we espouse. Our economic penetration of that area has been very marginal. I am shocked wherever I go over there and see how little U.S. penetration there is in that huge country.

Mr. Hoyer. I agree. You had Mr. Gephardt testify at 9:30 about the trip he led along with Mr. Michel, a bipartisan trip. We went to one of the Pittsburghs of Russia, one of the largest automobile factories in the world, I think they had 140,000 workers at one time.

We saw some young people from the United States, highly educated business people there, interfacing with a relatively young leadership in Russia and a real excitement about entrepreneurial spirit, about the setting up of a market system, selling stocks, interest in companies, privatization, a real enthusiasm and a real interface with these young people and the Russian leadership.

Yes, it is small and tentative and yes we need a greater effort. We were excited about the things that are going on. I know Mr. Gephardt was perhaps more expansive than I was in terms of moving quickly ahead.

On the one hand, I think we need to continue to strongly articulate enthusiasm for their progress and pass legislation, both economic and other, to help, but also to recognize—and I think frankly assist President Yeltsin and not just Russia, but the other Republics who are now independent states, give them the opportunity to say, “You know, we need to move forward for our own good.”

We are also getting pressure from some people that we need to have as our allies and friends and economic partners on the issues that they are committed to. I think it perhaps helps the domestic leadership of these countries to talk to some people who are imbued with the old ways of control and stifling debates and dissent.
Chairman GIBBONS. I see a window that will not permanently stay open.

Mr. HOYER. I agree with that.

Chairman GIBBONS. And I see a window that we should encourage. I believe that if we repealed all of the cold war legislation, and if the situation subsequently deteriorated, we could reinstitute it. I don't doubt that we would be able to reinstitute it.

So I am willing to take a chance. We can exploit this opportunity and make it a bigger opportunity, even if taking advantage of it is politically expensive. I realize we have a tough one here.

Mr. Coyne.

Mr. COYNE. No questions.

Chairman GIBBONS. Mr. Payne.

Mr. PAYNE. Thank you, Mr. Chairman.

Mr. Hoyer, thank you for testifying and thank you for the leadership you provide to the Helsinki Commission. You qualified your recommendations by saying that they weren't necessarily those of the Commission, but those of the leadership.

My question has to do with the member states, the CSCE and your opinion about how they view trade versus progress toward a positive resolution of human rights. In your opinion, the European Community as they approach this same issue, do they share your feelings and perhaps not the same recommendations, but philosophically the kind of recommendations that you have made to us today?

Mr. HOYER. I think there would be a difference of opinion within the CSCE states. First, you have increased by 60 or 70 percent the membership in CSCE once the three Baltic states joined in September of 1991, or shortly thereafter, and then the 12 former Republics from the Soviet Union, Albania, and the Yugoslav states.

So you have had a lot of new additions and they are new and don't have hard positions on a lot of these issues. They are much more interested in what is happening in their states. Among the initial signatory states comprising the so-called neutral and nonaligned bloc, and the Western bloc and the NATO bloc I would say there is pretty much a consensus that there needs to be significant rhetorical and philosophical pressure.

I would say that the United States, Canada, the Netherlands, maybe some other states, have been more aggressive in relating performance to actions on our part, in other words perhaps more demanding of performance as opposed to accepting articulation of principle without the performance to back it up. That is a polite way of saying I think generally speaking the United States has been tougher than some of our European allies in terms of demanding performance and relating that performance to our actions.

If you do right, we will do right. If you don't do right, we will respond accordingly. In light of the fact that none of us are talking about military action here, that is not even in the picture.

On the process, I agree with the chairman. We have a window of opportunity to create a positive relationship here which will be good for the entire world and every citizen of the United States as well as Russia and the other states. But on the other hand, I think that the lessons of history are that if we don't have expectations, they sure aren't going to be met.
Mr. PAYNE. Thank you very much.
Thank you, Mr. Chairman.
Chairman GIBBONS. Mr. Crane.
Mr. CRANE. Thank you, Mr. Chairman.
I was impressed with your testimony, Steny. You indicated that you had identified 48 refuseniks.
Mr. HOYER. Cases where they have been denied more than once. There are more cases than that.
Mr. CRANE. You indicated that Mr. Luk's organization and that of Mr. Aronoff claim there are hundreds involved. If there are hundreds, maybe Yeltsin doesn't have authority to address this unilaterally, does he?
Can he make a determination and say they are out of here if they want out?
Mr. HOYER. It is my belief that if Yeltsin wanted it done, he probably has the authority to get it done. That does not mean that I believe that every one of these cases falls into a category where a bureaucrat or some political figure wants to do what Yeltsin tells him to do. I think he could raise the heat level so that it wasn't worthwhile to continue to be intransigent on that matter.
The Barats case, a Baptist refusenik for over a decade, is a case in point. His wife was released to Canada 3 years ago, he just got out a year ago, a case we pounded away at. Ultimately it was done with no change in the law or a determination as to what he had or had not done. He was a private in the Army and had done something that they said he knew state secrets.
Mr. CRANE. Do they take the position that young boys born there have a military obligation and they cannot leave the country until they have fulfilled their military obligation?
Mr. HOYER. Yes. They have taken that position in the past. They have—of course that has been their historical position and they are still refusing people on that basis if they choose, but it is selective.
Mr. CRANE. I find that fascinating because I wrote my doctoral dissertation on a former Governor from Indiana in the middle of the last century who reversed the law of nations on the right of expatriation in the 1860s, with Bismarck first, a pretty tough adversary. All of the civilized nations of the world signed on to it. That was one of the big issues we had with Great Britain leading up to the War of 1812. But they all signed on to it except for Russia, and Russia never did sign on to it.
They are about 125 years behind the times on that one. I am wondering whether Yeltsin has an appropriate appreciation of how vitally significant these points are and how relatively inconsequential they are from his standpoint. Why doesn't he get it in gear and move with dispatch?
We are going to have testimony later from the business community. One of the things they are talking about is 1-year waivers. This procedure does not address the problem of encouraging investment with a stable environment over the long run. Business is going to be on tenterhooks every year because of the annual review. We are not going to accomplish what we want to in terms of economic development.
This is a limited window of opportunity and if there is not something dramatic done at this point, it could all go down the tubes.
We could be reflecting back a couple of years from now and say, "Gee, there was that opportunity and unfortunately the Russians didn't recognize the significance of these things from our perspective and it was relatively inconsequential what we were asking them to do and had they done it, it could have affected a major transformation there."

Do you know whether Yeltsin appreciates this?

Mr. HOYER. No. Every time I have met with Yeltsin, four or five times over the last 4 years, I know that at almost every meeting this was discussed and impressed upon him by major legislators from the Congress on both sides of the aisle. So he knows it is a bipartisan, broadly and deeply held belief.

I would say that the business community obviously is correct, and I understand their problem. One year doesn't get it for you because you have to have long-term planning. You can't plan on an economic investment package if 1 year from now the circumstances may change on you. This committee constantly has that dichotomy.

We read yesterday in the paper about the China lobby. The China lobby has become the business community. How do we balance that? It is a very tough thing to do. China is pursuing very egregious human rights policies on the one hand.

On the other hand, they are a billion people, an emerging economy which can offer great opportunities for our business people as well as the argument that business incursions into China can affect progress.

I know there has to be some of us who continue to pound away at this matter and not let it get lost because of the economics of the profits that may be involved to the detriment of the focus on human rights concerns.

Mr. CRANE. I know that is a delicate balance, but one of the things that has always struck me is when people are starving and freezing in winter, they don't really give a damn whether they have the vote and the more worrisome thing is that pretty soon they will look for the man on a white horse who holds out hope and promise. We went through that in the 1930s in Germany. I have more confidence in what is happening in China because those people understand business and they have that explosive economic development which I think is going to put pressures on the government to make political reforms along the lines we would like.

The worrisome thing to me about the former Soviet empire is without an economic foundation, and you don't get that without encouraging people to know that there are potentially promising business opportunities there, I think that potential does exist, and yet obviously they are way behind the times.

Mr. HOYER. I understand that, but I recall in 1987 I went to Moscow with Speaker Wright, also a bipartisan delegation. The dispute between Ligachev and Gorbachev was over economic reforms versus political reforms. Ligachev believed that you needed to reform economically because they were dead in the water and falling far behind.

Gorbachev, I don't think he was any great democrat with a small D, in any sense of the word, but he believed that you had to have a convergence of the political, individual, social and, cultural re-
forms along with economic reforms because one without the other would not work and I think that is essentially correct.

It is not unheard of in history to have obviously a dictatorship or a stifled populous that had for a time economic vitality, but I think at base our principle is for a free market economy to flourish, be successful and preclude starving people. To provide the broadest opportunities for people you also need to have parallel with that and integrated to it a free and open political, social, and cultural system.

Without it, the dynamism of a free market which makes successful choices—although we have our small arguments, I think all of us basically from philosophical, right to left, believe that the free market system of purchasers and sellers allows the most choices and is what makes for the best system for the people.

Mr. Crane. I just hope and pray that Yeltsin realizes what an opportunity exists right now. There is no sacrifice being called upon by him or the remainder of the Russian people, and that he takes some unilateral positive action that would enable us simultaneously to promote the kinds of development and growth that we would like to see in place over there.

Thank you for your testimony.

Chairman Gibbons. Mr. Neal.

Mr. Neal. A quick question. Yesterday Secretary of State Christopher in Vienna suggested that there ought to be one standard for human rights applied universally across the globe. I thought that made eminent good sense. Would you like to offer thoughts on that?

Mr. Hoyer. I think essentially that exists. I think the Universal Declaration of Human Rights essentially articulates that. I think the Helsinki Final Act, for now a large segment of the world’s population, if you include the former Soviet Union, articulates principles on which there is at least facially universal agreement: that is to say that the signatory states joining the CSCE had to sign on to the principles that were articulated in the Final Act. I agree with the Secretary and I think that is fast emerging.

I think one of the reasons it is fast emerging is because of their compelling nature. We refer to them as Western, but they are not solely Western ideals, but are primarily ideals which have been promoted by and promulgated by Western states in terms of the individual—that is the key, the dignity of the individual. The difference between us and other states like the Soviet Union were that the states effectively served the individual.

In other societies, the individual has been perceived to serve the state and therefore the relationship was skewed. We perceive the individual's rights and dignity to be paramount. I think that is becoming a more universal perception.

And I think that it is such a compelling idea that in conjunction with faster communication—which in my view brought down the Berlin Wall and the Iron Curtain—they now can penetrate even China.

Mr. Neal. Would you agree that President Carter deserves a good deal of credit for having articulated this notion across the globe as well?
Mr. HOYER. I have two people I have worked with who have raised the torch as high as possible in the last two decades—President Carter and Secretary Shultz. Both in their gut feel human rights. But I will tell you that both of them really engaged this issue viscerally.

I think President Carter is due a great deal of credit for saying that that was going to be a driving force as to how we dealt with other nations.

President Ford signed the Helsinki Pact to his great credit over opposition of conservatives in his own party who said you are recognizing de jure the de facto borders that exist and were taken by force by the Soviet Union and in effect the Soviet Union has won World War II. In fact the Soviet Union thought that as well.

Time proved that the compelling nature of the ideas articulated in the principles were such that ultimately they swept away the ideas of state control and subjugation of individuals. President Carter and Secretary Shultz, with whom I had an opportunity to deal very closely, both pursued this agenda very vigorously. The two of them were very committed.

Mr. NEAL. Thank you.

Mrs. KENNELLY. No questions, Mr. Chairman, but I do want to thank Mr. Hoyer for his wonderful leadership at the Helsinki Commission and the time and dedication he has given to it which is very obvious in his statement and his knowledge.

Chairman GIBBONS. Mrs. Johnson.

Mrs. JOHNSON. I appreciate your testimony and your work in this area over a long period of time. I would have to say though that I share the chairman's concerns very deeply. I have now traveled enough in both Russia—I don't want to exaggerate that, just a little in each, but as you travel to the Soviet Union and the Far East, you can't help but begin to ask yourself, are we right in insisting that political freedom develop at the same pace as economic freedom?

When you look at how we have pressed for democracy to precede the development of a market economy in Eastern European nations and in the Soviet Union and in fact the weakness of young democracies in dealing with the difficult issues that must be addressed to set up a market economy, and the extraordinary political challenge of leading people through the painful economic changes that have to occur as you move from a managed and highly structured economy to a freer economy, to a market economy, I worry that we have put the cart before the horse.

As you watch two parallel challenges in the Far East, where nations allowed economic freedom before they allowed political freedom, and indeed many don't yet allow political freedom; nonetheless, as you watch that evolution the development of individual economic freedom ultimately does force the development of more political freedom and a better human rights policy as you just alluded to in the case of the Soviet Union.

This struck me because the last time I was in the Far East the words that all the leaders kept saying is we must control change. We want to keep order as we change.

We don't want our society to tear itself up like Yugoslavia. So in some cases the ethnic reference was appropriate, in some cases it
wasn't. But in watching how the Asian nations have managed eco-
nomic change and thereafter political change for the most part, it
has been economic first and political following, and how Europe is
struggling with political first and economic thereafter.

I really am concerned that we are too narrowly culturally based
in our evaluation of this issue, and therefore in our determination
of what the relationship between these two complex areas of
change must be. So I think given the difficulty of leading in these
areas, especially one people leading another people through some-
thing that only a people can go through and come to terms with,
I think the danger of not recognizing change by not being willing
to say you are not in the same little box you used to be with us,
is far greater than not recognizing change. Because if you fail to
recognize change and therefore give the psychological support and
the recognition that that brings with it, and therefore foster
change, then you do fundamental damage to the cause, because if
they are not going to change, they are not going to change anyway,
and if they fail to change, we can come back in.

But if you want to maximize the opportunity for change at the
fundamental social, political and economic level we are talking
about, you are almost called upon to take the risk of
overrecognition of what is really remarkable political courage and
leadership.

So I was pleased that at the end of your testimony you do allow
the granting of annual waivers in rather broader context than the
facts as you describe them and as I believe you would merit.

Nonetheless I think to continually hold other people to our par-
ticular standards when so much has to be changed is probably un-
wise. There are examples of other approaches to change and suc-
cess being part of that change, not only economic but political, that
I think if anything we should err on the other side.

I share my thinking because I respect the leadership you have
provided. I think it has been extremely important.

I was in Moscow just after a Shultz visit had been involved in
some refusenik issues. You are right; he was on the ground run-
ning, very tough, very able, a very important fighter in this cause.
Nonetheless, right now with times different I hope we can be rath-
er bigger than our own past visions.

Mr. HOYER. May I respond because that has been articulated a
couple of times in terms of our standards implying the standards
of the United States. The Helsinki charge is to apply the standards
of the Helsinki Final Act to which all states of the former Soviet
Union are signatories. So they themselves have adopted these
standards.

One of the principles—you mentioned President Carter and Sec-
retary Shultz—was that we no longer isolate ourselves over expec-
tations of human rights, political and civil rights, social and cul-
tural rights—we no longer limit that simply as internal matters of
concern for countries. For good reason—because countries them-
seves have said and we have found that when you did that great
tragedies occurred within countries based upon temporary leader-
ships that might not adhere to principles of international human
rights or norms.
So what I think we need to do is when we sign on to documents, whether they be a United Nations Declaration of Human Rights, or other covenants, or to the Helsinki Final Act, that each signatory has an obligation to watch other signatories and have them watch us.

We are not perfect. As a matter of fact, the Commission looks at some of our practices, which are not perfect and we have raised those issues and will continue to do so. But I agree with you and I agree with the chairman and Mr. Crane and I am sure probably every member of this committee. We have a historic opportunity and we ought to seize it.

I am a strong supporter of economic assistance. I think one of the President's great successes in his short administration has been in dealing with Yeltsin forthrightly, courageously. Yeltsin could have lost and it would have been another big loss. He took a risk, appropriately so. I think we need to do that.

I support that. I want the Russians and the other states to know that we are prepared to fully engage them, but not with our standards, but standards they have signed on to. We have done so and we ought to mutually expect that of one another.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you. I commend you for your interest in this subject, and for your skill in handling it. We have a window of opportunity that is a great one and it would be tragic if in our lack of appropriate wisdom we didn't do the best we could with it.

Mr. HOYER. I agree with that, Mr. Chairman.

Chairman GIBBONS. We will work with you on this.

Mr. HOYER. Thank you, sir.

Chairman GIBBONS. I think it is best that we go vote and then come right back and take up the panel that so graciously stepped aside for you.

If the panel members would come forward, as soon as we get back, we will take up our examination of the panel.

[Brief recess.]

Chairman GIBBONS. First let me thank you gentlemen for being so gracious as to allow Mr. Hoyer to testify when he arrived. Let me explore this whole situation with you and see if we can figure out where to go.

Mr. Luks and Mr. Aronoff, I guess I ought to address you first. I respect your expertise in this area and your dedication in this area.

Could you tell me for each of your organizations what you think would have to happen before we could move away from the strict yearly tours of the Jackson-Vanik amendment? You must have thought about what we could do, what would we have to say is our bottom line in getting some movement in this area?

Mr. Luks. The first thing would be for the issue of refuseniks to be resolved and for those individuals who are being denied the opportunity to leave because of state secrets. The lists of refuseniks have been presented to Russian Government officials in Moscow and here at the embassy in Washington.

We also think that there are ways in which if there was a will to do so that the Russian Government could deal with the state secrets issue, as Mr. Hoyer mentioned, in a manner similar to that
in Britain or France or Germany or Japan or the United States so people would not be denied the internationally recognized right to leave this country.

The third thing would be for the Government to take some initiative and I don't think we are talking about climbing Mount Olympus, but to take some initiative to regularize the emigration process. There are reports of individuals having to pay substantial fees above and below the table to obtain exit visas and transit documents. So we think attention on the part of the Russian Government and other governments could go a long way toward helping to regularize the emigration process. So if we could deal with refuseniks and state secrets and help to regularize the emigration process then at that time the Jackson-Vanik amendment itself creates a perfectly reasonable and rational option for the President to make a finding that the Government of Russia is in compliance, that would eliminate another FSU state.

The President would then be removed from the requirement to issue annual waivers and there would remain the opportunity under the amendment should things worsen at some point to reimpose the requirement to obtain an annual waiver. That way the Russians can be given the commendation that they potentially could deserve and earn and there would still continue to be some protection for the Jewish and other minorities in the former Soviet Union.

We think that that is a balanced and careful approach and it is a logical follow-on to 20 years of efforts by the members of this committee.

Thank you.

Chairman Gibbons. Mr. Aronoff.

Mr. Aronoff. I would agree with that and simply try to divide the question into two parts. One question is what can be done now to recognize the dramatic changes that have occurred, and what more do we need to see to justify some sort of a change in the system? The second question would be what justifies the full repeal of Jackson-Vanik?

We believe that there should not be a repeal of the entire law, striking it from the books until the system is regularized and a law that is consistent with international standards has been devised. That is what our partners in Russia and in other countries have told us and that is what we see as a final step. Prior to that, I think that many of the steps that my colleague mentioned would be appropriate steps to demand of President Yeltsin or the leaders of any of the other countries prior to some form of multiyear waiver. This would hopefully deal with some of the economic concerns and some of the public relations issues that President Yeltsin has raised, and yet maintain the emphasis on human rights and the emphasis on the importance of this stick in the carrot-and-stick campaign.

Chairman Gibbons. Mr. Luks, does the National Conference agree that perhaps some multiyear rather than annual waiver may be appropriate, a multiyear review rather than an annual review?

As I understood Mr. Aronoff, he thinks that a multiyear review may be a showing of good faith. Do your people believe that?
Mr. Luks. The organization as a whole has not taken a position on this, but it has been reviewed in detail by our executive committee. We believe that there has been substantial progress and that there should be a way to recognize that progress within the context of Jackson-Vanik.

A footnote, Mr. Chairman. The word repeal of Jackson-Vanik has been used and I am sure will be used by others later in this hearing. Let me just say there is a major difference between repealing Jackson-Vanik and striking it from the books and I think it would be climbing Mount Olympus to put it back into law. And doing what Congress has done with respect to other countries, the Baltic countries and Hungary, of saying that individual countries are removed from the scope of Jackson-Vanik, in that sense it is not repeal, but removal from the coverage of the amendment and we see a logical progression.

First, the annual waivers were issued. There might be some form of multiyear waiver. Down the road there could be a finding, and we don’t know whether that is a long or short road, a finding of compliance. Then and only then after there is a pattern of solid recognition of the right to emigrate and the other concerns Mr. Hoyer so eloquently and intellectually addressed, then Congress and the President would have the option of saying that given the record that has developed at that point Jackson-Vanik and title IV would no longer apply to individual countries.

That is how we see the progression developing.

Chairman Gibbons. Are there individual countries now within that group of nations that you would feel comfortable if you say had a 3- or 4-year review rather than an annual review?

Mr. Aronoff. We would. I believe there are certain countries, and Congressman Hoyer identified two of the strongest in that area. There are certain countries such as Uzbekistan where we feel conditions are not appropriate for that type of a move. In terms of Russia, a country which we identify as being severely not in compliance, we think that it is worth considering a multiyear review as a way of encouraging the democratic tendencies in President Yeltsin and as a way of encouraging him to put as much pressure as he can on his parliament and his Government to regularize the process.

Mr. Luks. The national conference takes the position that given the fact that there has been such significant emigration from Russia, that a multiyear approach could be applied to Russia. I don’t believe that our organization would oppose that, but I want to emphasize it is part of a progression moving toward being ultimately found by the President to be in compliance with Jackson-Vanik and further down the road removed from its scope.

Mr. Sporer. We certainly agree that there should be a full review of all of the former states of the Soviet Union with respect to compliance with international emigration strictures. We have focused principally on the developments in Russia and would note that in Russia in fact, unlike many of the other Soviet states, there is now being implemented a new emigration law which became effective January 1, which is designed to meet many of these lingering problems.
In Russia, which has been the principal focus of our attention given the number of minorities who have been subject to immigration restrictions, the improvements have been revolutionary. Our position is that our response should be equally revolutionary.

Chairman Gibbons. Mr. Neal.

Mr. Neal. I have a question for Mr. Aronoff. I have been active in the refusenik issue for more than a decade, personally intervening on behalf of those seeking to reunite families. How do your estimates of the refuseniks balance with the State Department numbers?

Mr. Aronoff. I believe our numbers are slightly higher, although many of the discrepancies in numbers can be understood by identifying which specific category people are talking about. Are they referring merely to secrecy, or are they referring to secrecy, poor relatives, and arbitrary refuseniks.

The State Department, I believe, requires two refusals before you are placed on the State Department's list. We don't follow that particular rule. Our list comes from our Moscow bureau produced by activists there. It is constantly being updated. Certain people ask to be taken off the list; they feel that they can handle cases better by themselves.

The key issue may be that people are being added in every monthly report that we get in our Moscow bureau. This is a small number, but new cases are being added to the list of people who are being refused. So while there may be some differences, I feel that our number from across the NIS of approximately 300 is accurate.

Mr. Neal. The second part of that question is does your list include people who have been granted permission to leave but have not left?

Mr. Aronoff. There may be a couple of people who are in the process of switching or they may have been told they have permission and they don't necessarily have permission from the OVIR office. There is some overlap in that sense on our list. We attempt to keep the list strictly of people who are refused and have not been given any indication that they have permission.

Some have been told call us in 1995, and it will be OK. We see that as being totally unacceptable.

Mr. Neal. Just a brief comment from each of you on Secretary of State Christopher's position yesterday that there can be only one standard for human rights in the world.

Mr. Spirer. We are very sympathetic to that point of view. Of course there has to be a recognition of other kinds of exigencies in each of the different states. I also think in fact we have to orient the kinds of rewards that we give to the kinds of progress which we have seen made and where in fact, as in the case of Russia, there has been such a traumatic change we think that our response has to be equally traumatic.

The numbers of refuseniks, because there was confusion before about how many among the 48 may have fallen into the poor relative category.

Mr. Spirer. The number from the State Department, which was published in October based on August figures, was 16 of the 48 that were—people who were repeatedly denied permission to emi-
grate because of their inability to get the permission of their relatives. We felt that these individuals were needed for financial support.

Mr. LUKS. Mr. Neal, the issue of the numbers just strikes a very interesting cord because there has been some discussion that if Jackson-Vanik were repealed and taken off the books, that it could always be reimposed, and as I was listening to that discussion, I jotted down some notes and I said, well, I can see the debate on reimposing Jackson-Vanik at some point in the future, and someone would say, well, there are 500 refuseniks and someone would say, but Russia needs economic assistance, and then down the road someone would say, but there are now 1,000, and someone would say, but that particular newly independent state, really it is in dire straits and it needs economic assistance, then someone would say, well, we are back to 2,000.

And someone would say, but they still need economic assistance. So I just wanted to note, in light of this numbers issue, that to us I don't think it is a numbers issue at all. I think it is a policy issue, and I don't think, again to use that analogy, it is not Mr. Yeltsin putting on boots and ropes to climb Mt. Olympus to change the situation.

If there was a will to change it, it could be changed. I get the feeling it is like that famous line from the movie the "Ten Commandments" when the pharaoh would—not that I can link Mr. Yeltsin to the pharaoh, but the pharaoh would say to his aide, go do this. And then the aide would say, so let it be written, so let it be done, and I just have a feeling that if there were a commitment to solve the poor relatives issue, to solve the refuseniks issue, so let it be written, so let it be done, and then we wouldn't have a debate about the 1-year, 2-year, or 3-year waiver.

We could make some real decision, but whatever decisions are made on Jackson-Vanik, it is not a substitute for economic assistance. There is not a single empirical study that demonstrates that Jackson-Vanik has retarded or restricted American investment in Russia. It hasn't restricted that investment in China where there has been much greater uncertainty during the past 3 years.

The waivers for the Russia during the past 3 years have been issued fairly automatically with not a lot of debate under either a Republican or a Democratic President and we would suspect that that lack of debate would continue, providing there was continuing progress in Russia, and we hope and believe, in fact, pray, that progress will continue.

Mr. ARONOFF. Answering your question about Mr. Christopher, we see this as actually being the central point of the whole discussion of Jackson-Vanik. There should be one standard of human rights, and the United States should stand at the forefront of the battle for human rights. When we look at the issue of economic development and long-term, sustainable growth in Russia, we see the main problems as really coming from the lack of understanding of the concept of rule of law in Russia which applies in the political, human rights, and economic areas. By moving away from the strong rule of law commitment of Jackson-Vanik, we see it actually as having an inhibiting effect on the kind of economic development that we hope the aid of the Freedom Support Act will bring.
Mr. SPIRER. Could I just add one minor small point to the answer that I gave before? The issue for us is only partially economic. The issue is only partially encouraging American companies to invest in Russia with the assurance that MFN will always be available.

It is also politics equally, if not more importantly, and I would note that at the Vancouver Summit, the first issue which President Yeltsin raised at his press conference regarding problems that he saw with the American response to his reforms was, in fact, the maintenance and place of Jackson-Vanik, even with the waivers which had been granted.

Mr. NEAL. Thank you, Mr. Chairman.

Chairman GIBBONS. Thank all of you, and we will continue to work together on this.

Mr. LUKS. Thank you very much, Mr. Chairman, Mr. Neal, other members of the committee.

Chairman GIBBONS. Let's go now to the Concord Group and to the U.S. Russia Business Council and to Mr. Stewart.

Mr. Hoellen.

STATEMENT OF OREN L. BENTON, OWNER AND CHIEF EXECUTIVE OFFICER, CONCORD, DENVER, COLO., AS PRESENTED BY EARL E. HOELLEN, DIRECTOR OF BUSINESS OPERATIONS, CONCORD, AND CHAIRMAN AND CHIEF EXECUTIVE OFFICER, NUEXCO, DENVER, COLO.

Mr. HOELLEN. Mr. Chairman and distinguished members, I do appreciate the opportunity to be here today to testify before you on this very important subject.

My name is Earl Hoellen and I am director of business operations for Concord, a diversified international company based in Denver, Colo., and I am testifying here today on behalf of our owner and chairman, Oren Benton who could not be here today.

Essentially I would like to talk primarily about two points, and that is talk about that we look to try to review and revise laws that essentially penalize former Communist countries and that are deterring their progress toward democratization and the development of market economies, as well as to review and revise any laws that essentially don't promote or preserve jobs within this country, but, again, only hinder trade with other countries.

My company, Concord, is involved in a range of trade and investment activities with Russia and the newly independent states of the former Soviet Union. Concord has been responsible for introducing a number of Russian products into Western markets, including uranium, and is working to introduce a number of new Russian technologies into Western markets.

With the end of the cold war, peace and prosperity is going to depend upon the strength of our economic relations and we have been active in several projects to convert nuclear weapons facilities to civilian production. Significant funding for defense conversion products has come from the sale of products in Western markets.

As an example, our company has helped to convert a uranium enrichment facility previously used for the production of weapons in Siberia to the production of, for instance, isotopically separated zinc, which is used for radiation protection in our own reactors in this country, power reactors.
We have also recently shipped food processing equipment to a joint venture we established in Novosibirsk. This plant will be installed in a site again of a former nuclear weapons production facility and is part of an effort to convert this facility to commercial production. We hope to be able to put up 25 such plants amounting to an investment of $50 million over the next 2 to 3 years.

We are also in the final stages of chartering the American International Bank-Moscow to operate as a Western-styled bank. One of our partners in the bank is a facility which formerly produced control rods for nuclear reactors on Russian submarines. These projects have been supported by our involvement in the sale of nuclear fuel from the former Soviet Union.

Unfortunately, U.S. Government policies have slowed these conversion policies by embargoing the export and resale of Russian uranium. And I am referring to the antidumping cases involving uranium from the Russian federation and the other newly independent states.

Now, these cases were processed under provisions written to apply to Communist states, not emerging market economies. And in this regard, again, I would like to emphasize a couple of points. The first is that the U.S. antidumping law does not fairly provide for countries in transition to market economies; and, second, until it does, the Commerce Department should be encouraged to resolve the uranium antidumping cases in a manner that is consistent with you U.S. national interests, otherwise the uranium antidumping cases are endangering U.S. national interests in several ways.

First, and maybe most importantly, they are increasing the risks of proliferation by encouraging the newly independent states to sell their uranium to third countries. Second, they are impeding Russia’s economic and political transition. At a time when the United States is eager to provide hard currency to support market reform in Russia and other NIS countries, these agreements have the counterproductive effect of denying Russia the ability to earn up to $250 million per year in hard currency. Third, they are also increasing U.S. consumer costs.

And at the same time, the process has failed to protect domestic uranium production industry jobs which have declined since the cases were filed. Essentially 100 percent of our net U.S. demand is supplied by foreign imports, so really all we are doing is we are helping the countries of Canada, France, and Australia and doing nothing to protect our own jobs.

But the problem really is more far reaching than one individual case. The nonmarket economy provisions of the antidumping law need to be removed or fundamentally changed. These provisions really were an attempt to measure dumping from centrally planned, state-controlled economies and they are a vestige of the cold war.

The arbitrary and illogical results may have been excusable during the cold war, but not today. The centrally planned foundations of these economies also were thought to have internal pricing—or make internal pricing meaningless as a realistic measure of fair value in Communist countries.

But today, both of these conditions have ceased to exist. U.S. policy now favors expanding trade with these newly independent
states, and, in addition, the centrally planned economy of the Communist regime in the Soviet Union has disappeared. Prices are not meaningless as indicators of relative value of goods and services in the newly independent states.

For these reasons, we think that the current nonmarket economy provisions in the antidumping law are no longer justified. They should either be repealed or modified to measure as accurately as possible actual economic conditions in the countries being studied in an antidumping case. The normal rules for determining foreign market value, such as home market prices, third country prices or constructed value, are in fact suitable for this purpose in most cases.

By failing to address transitional economies, U.S. dumping law impedes our national goal of fostering the emergence of these market economies which can participate fairly in the world trading system and can be unfairly used to penalize such countries.

So I would urge, Mr. Chairman, that you consider developing new antidumping criteria to respond to the unique circumstances of emerging market economies, particularly those which are competitive in industries which affect relatively few or essentially no U.S. jobs.

And finally, I would urge that national security implications of restrictive trade policy toward transitional economies be carefully weighed, especially when the potential for nuclear and weapons proliferation may be at stake.

A new U.S. trade policy toward emerging market economies would protect U.S. producers without penalizing U.S. consumers, without increasing the risks of nuclear proliferation and without antagonizing the new democracies in central and Eastern Europe that we so strongly want to succeed.

And in conclusion, Mr. Chairman, I would also like to echo the words of Congressman Gephardt when he was talking about working with trade and not aid, because it is through commerce that we are truly going to build the lasting bridge toward peace with these former foes of ours and now our partners.

Thank you, Mr. Chairman and members.

Chairman GIBBONS. Thank you.

[The prepared statement follows:]
Testimony of Oren L. Benton
June 15, 1993

Good Morning. My name is Oren Benton. I am owner and Chief Executive Officer of CONCORD, a diversified international company based in Denver, Colorado. CONCORD is involved in a range of trade and investment activities with Russia and the Newly Independent States of the former Soviet Union. CONCORD has been responsible for introducing a number of Russian products into Western markets, including uranium, and is working to introduce a number of new Russian technologies into Western markets.

President Yeltsin has transformed Russia's political and economic landscape. Price controls have been lifted from many consumer products. The ruble trades at market-determined rates and auctions have transferred thousands of state-owned enterprises into private businesses. Russia is becoming a market economy.

With the end of the Cold War, peace and prosperity will depend on the strength of our economic relations. CONCORD has been active in several projects to convert nuclear weapons facilities to civilian production. Significant funding for defense conversion projects has come from the sale of products in Western markets.

For example, CONCORD helped to convert a uranium enrichment facility in Siberia to the production of isotopically separated zinc. This zinc is now sold to General Electric under a multi-year contract to lower radiation levels in commercial nuclear reactors.

CONCORD has recently shipped potato processing equipment to a joint venture which we established in Novosibersk. The plant will be installed on the site of a nuclear weapons production facility and is part of an effort to convert the facility to commercial production. The plan over the next two to three years is to invest in more than 25 such plants amounting to over $50 million.

We are in the final stages of chartering American International Bank-Moscow, to operate as a western-style bank. One of our partners in the bank is a facility which formerly produced control rods for nuclear reactors on Russian submarines. The bank will represent a substantial effort by this facility to shift into commercially oriented business. Other Western banking interests will be introduced into Russia by being part of this investment.

We are also working to develop low-cost housing in Russia and to introduce a standard hardy Western breed of cattle which presently thrive in Colorado mountain winter conditions similar to those in Moscow and even Siberia. The purpose is to demonstrate 90 to 95% calf crop achievement in lieu of the 65% presently achieved in most separate farms in Russia.

As part of our charitable activities, CONCORD sponsors an ongoing youth exchange program which annually brings Russian children to
Washington, DC and Colorado, and executive training seminars which teach market economics to Russian entrepreneurs.

These projects have been supported by CONCORD’s involvement in the sale of nuclear fuel from the former Soviet Union. Unfortunately, U.S. government policies have slowed these conversion projects by embargoing the export and resale of Russian uranium.

I refer to antidumping cases involving uranium from the Russian Federation and other Newly Independent States. These cases were processed under provisions written to apply to Communist states, not emerging market economies. They have now been "settled" through suspension agreements that have closed the U.S. market to NIS producers. The perverse results are costly to U.S. consumers, commercially damaging to U.S. companies like ours, terribly harmful to the struggling democracies we are trying to assist, contrary to U.S. national security interests and, above all, unhelpful to the small U.S. uranium production industry, most of which is foreign-owned, that the antidumping law is designed to help.

I would like to emphasize two points today. The first is that U.S. antidumping law does not fairly provide for countries in transition to market economies. Second, until it does, the Commerce Department should be encouraged to use the flexibility that current law does provide to resolve the uranium antidumping cases in a manner that is consistent with U.S. national interests and to encourage the transition to market economies.

In November 1991, U.S. uranium producers filed an antidumping petition against the Soviet Union. Six weeks later, the Soviet Union dissolved. The Commerce Department continued the investigation although the Soviet Union had ceased to exist. The preliminary findings of the investigation resulted in the imposition of prohibitive duties against several of the Newly Independent States.

The investigations were suspended under agreements negotiated between the Commerce Department and the producer countries in October 1992. These agreements were at best reluctant surrender documents designed to penalize the producer republics for their past Communist status. These suspension agreements have virtually closed the U.S. and other Western markets to imports of uranium from these countries. In so doing, they are endangering U.S. national interests in several ways.

First, they are increasing the risk of proliferation. Given the severe economic conditions and lack of adequate export controls for nuclear materials in the NIS, a closed U.S. market creates an incentive for Russia and other NIS to sell uranium to third countries, adding to the risk of nuclear proliferation. These restrictions are also complicating efforts of the United States and Russia to conclude agreements on the sale of highly enriched uranium form nuclear weapons to the United States.
Second, they are impeding Russia's economic and political transition. At a time when the United States is eager to provide hard currency to support market reform in Russia and other NIS countries, these agreements have the counterproductive effect of denying Russia the ability to earn up to a quarter of a billion dollars per year in hard currency by selling one of the few products they can produce competitively.

Third, they are increasing U.S. consumer costs. The suspension agreements will require U.S. utilities, and therefore U.S. consumers, to pay higher prices for fuel in commercial nuclear power plants.

At the same time, the suspension agreements have failed to protect domestic uranium production industry employment, which has declined since the cases were filed. Essentially 100% of our net US demand is supplied by foreign imports. Restrictions on Russian imports will be supplied by imports from other countries—Canada, Australia and France.

In addition to our trade and investment activities in the NIS, CONCORD owns Energy Fuels, historically the largest uranium mining company in the United States. Yet, we do not support the current restrictions on sales of NIS uranium because these sales are unrelated to the problems of the domestic industry. The U.S. uranium industry has been declared non-viable by the Department of Energy since 1984, six years before the Soviet Union entered the world uranium market.

We believe that a better U.S. policy would encourage, if not free trade, then an acceptable level of NIS uranium sales, particularly if these sales involved partnership with the U.S. uranium production industry. Under the current policy, the primary beneficiaries of restrictions on NIS supply are foreign companies which own U.S.-based uranium producers.

In the near term, the Department of Commerce has authority to address the uranium antidumping case without setting precedent which would undermine the antidumping law.

The problem is more far-reaching than one individual case, however. The non-market economy (NME) provisions of the antidumping law need to be removed or fundamentally changed. The reason that the NIS are facing prohibitive antidumping margins in uranium and other products (e.g., ferrosilicon) is because the NME provisions result in arbitrary and exaggerated dumping determinations.

The NME provisions were an attempt to measure dumping from centrally-planned, state-controlled economies, and they are a vestige of the Cold War. The arbitrary and illogical results may have been excusable when Cold War tensions rendered unimportant the improvement of trade and commerce with Communist countries. Further, the centrally-planned foundations of these economies was
thought to make internal pricing meaningless as a realistic measure of fair value in Communist countries.

Today, both of these conditions have ceased to exist. U.S. policy now favors expanding trade with the Newly Independent States. In addition, the centrally planned economy of the Communist regime in the Soviet Union has disappeared. Prices are not meaningless as indicators of relative value of goods and services in the NIS.

For these reasons, we think that the current NME provisions in the antidumping law are no longer justified. They should either be repealed or modified to measure as accurately as possible actual economic conditions in the countries being studied in an antidumping case. The normal rules for determining foreign market value (home market prices, third country prices, constructed value) are suitable for this purpose in most cases.

By failing to address transitional economies, U.S. dumping law impedes our national goal of fostering the emergence of market economies which can participate fairly in the world trading system and can be unfairly used to penalize such countries.

I urge you to consider developing new antidumping criteria to respond to the unique circumstances of emerging market economies, particularly those which are competitive in industries which affect relatively few or no U.S. jobs. Finally, I would urge that national security implications of restrictive trade policy toward transitional economies be carefully weighed, especially when the potential for nuclear and weapons proliferation may be at stake.

A new U.S. trade policy toward emerging market economies would protect U.S. producers without penalizing U.S. consumers, without increasing the risks of nuclear proliferation, and without antagonizing the new democracies in Central and Eastern Europe that we so strongly want to succeed.
Chairman Gibbons. Mr. Lawson.

STATEMENT OF EUGENE K. LAWSON, PRESIDENT, U.S.-RUSSIA BUSINESS COUNCIL

Mr. Lawson. Yes, thank you, Mr. Chairman, and I want to first associate myself with the previous testimony of Concord. I think it was very well done and we are in full agreement with all aspects of that testimony.

My name is Gene Lawson and I am the president and chief executive officer of the U.S.-Russia Business Council. I thank you, Mr. Chairman, for letting me testify about the need to review the U.S. cold war trade status and I would like to submit my written testimony for the record and present a short summary at this time, if I may.

Chairman Gibbons. All right.

Mr. Lawson. The U.S.-Russia Business Council is chaired by Ambassador Robert Strauss, and on the board are Don Kendall, Jack Murphy and people that you know. The council is a trade association whose member corporations represent a variety of sectors, from small- to medium- to large-sized companies and sectors ranging from manufacturing to services, et cetera. Our board of directors is comprised of the leaders of over 30 major U.S. corporations doing business in Russia today and our membership companies probably account for about 90 percent of the total volume of trade and investment, Mr. Chairman, that we are doing with Russia at the present time.

I speak on behalf of the member firms of the council. Our members strongly support the repeal of the Jackson-Vanik amendment because we feel this amendment poses a significant barrier to constructive trade relations with Russia. Mr. Chairman, more than U.S. Government aid and assistance, what Russia needs is business. Russia needs market access to the world's largest market.

Russia does not have very good access right now to the European Community. The European Community is heavily protectionist and the United States is not quite as protectionist. The European Community is not friendly to Russian exports and Russia needs us. We must look seriously at the damage that Jackson-Vanik is doing to the United States' ability to foster trade relations with Russia. Our approach to Russia needs to be modernized. There is nothing sacrosanct about the Jackson-Vanik amendment.

Repeal of Jackson-Vanik will not inhibit the ability of the President or the Congress to alter Russia's trade status. The bilateral trade, tax and investment treaties will remain subject to review and renewal as with Russia's most-favored-nation trade status.

If our Nation is serious about promoting democracy and free markets in Russia, as I think we are, and is trying to improve the competitive position of U.S. business, the time has come for the Jackson-Vanik amendment to be repealed, although the current practice of granting Russia 1-year waivers is an improvement over the earlier policy.

The waiver system hinders U.S. trade and investment. Business leaders in both the United States and Russia hesitate to make long-term trade and investment plans when the ax of the yearly waiver process hangs over their heads threatening not only Rus-
sia's MFN status, but also the availability of Exim Bank and Overseas Private Investment Corporation trade and investment credits.

The U.S. Government must support the words of encouragement it gives to Russia with deeds by rewarding Russia for its very significant liberalization of emigration. By finding Russia to be in compliance with the freedom of emigration requirements of the Trade Act of 1974, the need for the annual waiver should be eliminated.

The U.S.-Russia Business Council applauds the provisions of the Omnibus Budget Reconciliation Act of 1993 that lifts a prohibition preventing Russia from being designated a beneficiary developing country under the generalized system of preferences. Russia should not be excluded from participation in GSP any longer.

Like the Jackson-Vanik amendment, Russia's exclusion from the GSP is a cold war holdover. It harms the Russian economy and the U.S. economy.

In 1992, Russia shipped about $50 million in GSP eligible goods to the United States. If Russia became a beneficiary developing country, the United States would forgo tariff revenue from these imports. These Russian exports to the United States, however, would provide Russia with badly needed foreign exchange and after all, Mr. Chairman, as we all know, trade is a two-way set.

The Russians must be able to earn foreign exchange to pay off their debts and to purchase new U.S. exports.

Russia's participation in GSP will provide a much needed boost to U.S. competitiveness by removing tariff barriers to Russian imports. Under GSP, Russia could become an important supplier of raw materials to the United States, lowering input costs for U.S. manufacturers and improving their ability to compete.

In conclusion, Mr. Chairman, I would simply point out that other cold war statutes such as export controls and COCOM controls do not fall under the jurisdiction of this committee, but it is important to recognize that the additional burdens which these statutes place on U.S. business also harm the ability of the United States to compete and succeed in the global marketplace.

Thank you, Mr. Chairman.

Chairman Gibbons. Well, thank you, Mr. Lawson, and let me make it clear that full statements will be placed in the record for all witnesses today.

[The prepared statement follows:]
Mr. Chairman, I am Eugene K. Lawson, President of the U.S.-Russia Business Council. Thank you for inviting me to testify today about the need to review the United States' Cold War trade statutes. I would like to submit my written testimony for the record and present a summary at this time.

The U.S.-Russia Business Council is a trade association whose member corporations represent a variety of sectors, ranging from manufacturing to services and from agriculture to pharmaceuticals. I speak on behalf of the member companies of the Council. Our members strongly support the repeal of the Jackson-Vanik Amendment. The amendment poses a significant barrier to constructive trade relations with Russia.

Under the Jackson-Vanik Amendment, Russia's trade relations with the United States are linked to Russia's freedom of emigration policies. Although supporters of Jackson-Vanik rightly believe that human rights issues must be addressed, the Council's members do not believe that trade policy is an appropriate tool for voicing these concerns. The Jackson-Vanik Amendment undermines the competitiveness of U.S. businesses by prohibiting Russia from gaining favorable tariff treatment, and forbidding our companies from accessing Export-Import Bank financing and the crucial investment services provided by the Overseas Private Investment Corporation. U.S. exports and American jobs do not benefit.

We must look seriously at the damage Jackson-Vanik is doing to the United States' ability to foster trade relations with Russia. Our approach to Russia needs to be modernized. There is nothing sacrosanct about this amendment. Repeal of Jackson-Vanik will not inhibit the ability of the President or of Congress to alter Russia's trade status; the bilateral trade, tax, and investment treaties will remain subject to review and renewal, as will Russia's Most Favored Nation trade status. If our ration is serious about promoting democracy and free markets in Russia and improving the competitive position of U.S. business, the time has come for the Jackson-Vanik Amendment to be repealed. The new political and economic reality demands it.

Although the current practice of granting Russia one-year waivers is an improvement over the earlier policy, the waiver system too hinders U.S. trade and investment. Business people in both the United States and Russia hesitate to make long-range trade plans when the ax of the yearly waiver process hangs over their heads, threatening not only Russia's MFN status, but also the availability of Export-Import Bank and OPIC support. The U.S. government must support the words of encouragement it gives to Russia with deeds, by rewarding Russia for its significant liberalization of emigration. By finding Russia to be in full compliance with the freedom of emigration requirements of the Trade Act of 1974, the need for the annual waiver will be eliminated.

The U.S.-Russia Business Council applauds the provision of the Omnibus Budget Reconciliation Act of 1993 that lifts the prohibition (section 502, Trade Act of 1974) preventing Russia from being designated a "beneficiary developing country" under the
Generalized System of Preferences. Russia should not be excluded from participation in GSP any longer. Like the Jackson-Vanik Amendment, Russia's exclusion from GSP harms the U.S. economy and U.S. competitiveness.

In 1992, Russia shipped $46 million in GSP-eligible goods to the United States. If Russia became a beneficiary developing country, the United States would forgo tariff revenue from these imports. Russia's imports to the U.S., however, would provide Russia with badly-needed foreign exchange. Russia's increased trade would foster development and stimulate demand for U.S. products long after Russia graduated from GSP.

If the United States does not allow Russia to participate in GSP, Russia's exports will continue to grow. Of course, this growth will come at the expense of U.S. exporters. America's competitors offer similar trade programs that will benefit their exporters as well as Russia, while the customer base of American exporters shrinks.

Russia's participation in GSP will provide a further boost to U.S. competitiveness by removing tariff barriers to Russian imports. Under GSP, Russia could become an important supplier of raw materials to the United States, lowering input cost for U.S. manufacturers and improving their ability to compete.

Other Cold War statutes continue to stand in the way of strong trade relations between Russia and the United States. Although many of these statutes, such as U.S. unilateral export controls and COCOM controls, do not fall under the jurisdiction of this committee, it is important to recognize that the additional burdens which these additional statutes place on U.S. businesses harm the firms' capacity to compete and succeed in the global marketplace. More importantly, the continued existence of these Cold War statutes prevents the United States from utilizing every means possible to back Russia in its attempt to make the historic transformation from centralized state to free-market economy. The U.S. Congress, which has acted with such conviction in encouraging Russia in this quest, must continue to support Russia by eliminating the Cold War restrictions contained in Jackson-Vanik and section 502 of the Trade Act of 1974.
Mr. Stewart. Good morning, Mr. Chairman, and other members of the committee. It is a pleasure to be here. With permission, Mr. Chairman, I would like to be able to submit a revised statement. There are some errors in this one.

Chairman Gibbons. Certainly.

Mr. Stewart. Thank you.

Chairman Gibbons. We will keep the record open until the 30th of this month for all witnesses.

Mr. Stewart. Thank you. I would like to just summarize a few points on a few of the statutes under the trade laws that in my opinion are implicated by the changes that have occurred in the former Soviet Union.

As my statement indicates, not only do we have a lot of experience as a law firm in the handling of trade cases, but our firm has been actively involved in central and Eastern Europe and the former Soviet Union over the last 3 years and we are working actively with a number of companies and with a number of governments in the region to try to help in the process of movement toward a market economy.

There are some underlying pressure points that compound the difficulties of the job that you all are seeking to perform in terms of the review of the laws. On the one hand, removal of provisions, such as section 1106 of the 1988 act, would send a very positive signal to Russia and to the other Republics in terms of GATT access, an issue that is of great current interest to Russia, Ukraine and a number of the other Republics.

Similarly, modifications to the NME provisions of the dumping law or some alternative method for dealing in countries in transition would undoubtedly also send a strong and positive signal to these countries, but there are some certain underlying pressures which will complicate your ability to do that, and I believe rightly so complicate that ability to do that.

At the moment, in many of the Republics, the underlying factors of production, whether they be wages, whether they be raw material cost, whether they be the valuation of land or buildings or technology, are under any Western standard substantially skewed. That is a result of both the high inflation in country and the efforts of governments to deal with the complex set of issues.

So it is almost certain that if a dumping remedy is not meaningful with regard to these products for these countries, that there will be tremendous pressure from industries who find themselves competing with prices that do not bear any relationship to world market prices.

You have seen that in a wide range of products already here in the United States and the same problem is occurring in the European Community. There are two underlying causes. The first has to do with the collapse of the traditional markets for those products.

The Warsaw Pact economies generally have collapsed by very large percentages and the United States and Europe have an op-
portunity to help in the reestablishment of trade within that region, which would alleviate a lot of the pressure, particularly in capital-intensive industries or many mineral industries in terms of the pricing levels for export markets.

The second problem that is out there and that causes either there to be a need for something like a section 406, or a strong trade remedy in its absence, is the inability for a lot of these countries to properly price their product.

With the collapse of the state economies, usually the first thing to go was the state trading companies. The state trading companies effectively acted as the marketing arms of the state-run enterprises and so you have people who are looking at highly deflated wages, artificially set raw materials, and assuming they can make a profit by pricing at a price that is maybe one-third to one-half to one-sixth of world market prices.

If you don't deal with those underlying problems, what will happen is what has happened in the Ukraine, namely that you see doors closing. Options that exist maybe to revise the NME provision, however, revocation of the NME provisions and a strict resort to the antidumping law would result, in my opinion, in false comparisons and pressures for some alternative.

Section 406, on the other hand, by its terms is limited to Communist countries, a status which none of the Russian Republics at this time satisfy. Moreover, as they push for GATT access, 406 will not be available as it is not a GATT legal provision.

So my statement, Mr. Chairman, on all of those issues is, while there needs to continue to be strong trade laws for all countries, the United States has some very positive things that it can and should do to help the countries in the former Soviet Union be able to trade, trade within their former bloc, trade with the West, trade with the United States in a manner that is trade enhancing and not trade disruptive.

It is not the case that you can ship aluminum onto the world markets at one-third of the world market value and not expect there to be a reaction from domestic producers, whether it be in Europe, in Japan, in the United States or elsewhere. It is those difficulties that underlie the problems.

When you have gone through all of that, 1106 could be repealed. There are changes in the Uruguay round text which basically provides the United States the types of safeguards, the types of protections that 1106 is designed to do. Whether 1106 should be repealed is a political issue, but clearly from a trade policy point of view, it could be repealed.

On the dumping law, it would seem to me that having an alternative such as a 406 remedy for a transitional period would probably be a more effective mechanism for the former Soviet Union and the Republics, particularly if that was coupled with assistance, technical assistance from the United States, from U.S. companies, as well as funding to help these many continued state-owned enterprises do a better job of pricing their products at levels that are reflective of the true value.

Thank you, Mr. Chairman.

Chairman GIBBONS. Well, thank you.

[The prepared statement follows:]
A. Introduction

Mr. Chairman and members of the Subcommittee, my name is Terence P. Stewart, and I am the managing partner of the law firm of Stewart and Stewart. I appear before the Subcommittee today on my own behalf. By way of background, our firm has a long and rich experience in trade and customs matters, including nonmarket economy ("NME") cases brought under Title VII of the Tariff Act of 1930. In addition, during the last three years, our firm has been active in seeking ways to assist certain Eastern European countries in making the transition from a state-controlled economy to a market economy and have proposals pending to provide technical assistance on international trade matters to several countries in Eastern Europe and the C.I.S. The views reflected here today are my personal views and do not represent the views of existing or potential clients.

I am pleased to have the opportunity to address the Subcommittee as it conducts its review of United States "cold war" trade statutes which have affected and continue to affect the commercial relationship of the United States and the newly-independent states of the former Soviet Union. In light of the momentous political and economic changes that have taken place in the former Soviet Union over the last four years, and given the United States interest in seeing that the political and economic reforms which are being enacted in the Russian Federation and other successor states of the former Soviet Union succeed, the Subcommittee's review of "cold war" trade statutes is both important and timely.

The Subcommittee's agenda noted that it wished to address such "cold war" statutes as Title IV of the Trade Act of 1974 (in particular, procedures for granting MFN status and the so-called Jackson-Vanik amendment dealing with emigration matters); Section 502 of the 1974 Trade Act (concerning GSP status); Section 1106 of the Omnibus Trade and Competitiveness Act of 1988 (concerning acceptance of GATT accession by state-trading regimes); Section 773(c) of the Tariff Act of 1930, under which the antidumping statute is applied to NME countries; Section 1906 of the Omnibus Trade and Competitiveness Act of 1986 (concerning Soviet slave labor policies); and any other existing trade law affecting trade and commercial relations with Russia and other former Soviet states. My statement will confine its attention to, first, Section 1106, second, the NME antidumping statute and the countervailing duty statute, and lastly, address Section 406 of the Trade Act of 1974 dealing with market disruption caused by imports from Communist countries.
B. Section 1106 Of The Omnibus Trade And Competitiveness Act Of 1988

In the Omnibus Trade and Competitiveness Act of 1988, Congress enacted Section 1106 (19 U.S.C. § 2905), which requires that before any "major" foreign country accedes to the General Agreement on Tariffs and Trade (the "GATT"), the President shall determine whether "state trading enterprises" in that country account for a significant share of (a) the exports of that country, or, (b) a significant share of the goods in that country which compete with imports. In addition, the President must determine whether the state trading enterprises (a) unduly burden and restrict or adversely affect, United States foreign trade or the United States economy, or (b) they are "likely" to result in such a burden, restriction, or effect. If both of those determinations are affirmative, the President must reserve the right to withhold extension of the application of the GATT between the United States and that country. In such cases, the GATT shall not apply between the United States and that country until it enters into an agreement with the United States providing that the state trading enterprises of the country in question will make purchases which are not for the use of that country, and will make sales in international trade which are in accord with commercial considerations (such as price, quality, availability, marketability, and transportation). In addition, the foreign country must agree to afford U.S. businesses "adequate opportunity" to compete for the state trading enterprises' purchases or sales. Section 1106 also provides an alternative method by which application of the GATT may be extended to such a foreign country, viz., by the enactment of a bill submitted to the Congress by the President which is introduced by the majority leader of both the House and Senate, and considered under "fast track" procedures.

Section 1106 originated as a Senate amendment. The Senate Finance Committee Report addressed the rationale underlying the provision:

This provision reflects the seriousness with which the Committee views the practice, prohibited under Article XVII of the GATT, of a foreign government trading through state trading enterprises on the basis of other than commercial considerations. . . . The Committee notes that certain countries, particularly non-market-economy countries, that have applied or are considering applying for admission to membership in the GATT engage in state trading practices of the sort addressed in this provision. The Committee intends to give the United States leverage, through the possible withholding of agreement to their accession to the GATT, to gain commitments from them that they will bring these practices into line with international commitments.

S. Rep. No. 71, 100th Cong., 1st Sess. 44-45 (1987). In conference, the original Senate amendment, which applied to the state trading enterprises of any foreign country acceding to any existing multilateral trade agreement, was amended to apply only to "major" foreign countries acceding to the GATT.

By the terms of Section 1106, the provision was directed mainly against the Soviet Union and the People's Republic of China, two large economies whose accession to the GATT Congress suspected would expose the United States economy to potentially very large import volumes at prices that would not be constrained by ordinary market considerations. The provision reflects an apparent concern that existing GATT rights and obligations would make it difficult for the United States to attempt to negotiate solutions within the GATT accession process while preserving the right to not apply GATT rights to a country if the accession negotiations were not satisfactory to the United States and perceived difficulties with Article XVII of the GATT which might prevent the United States from safeguarding adequate market access opportunities in foreign countries with substantial state trading enterprises.

Since 1988, of course, the U.S.S.R. has been replaced by the Russian Federation and a number of independent republics, substantial progress has been made in liberalizing the trading regimes in many of the
new countries and, importantly, the Uruguay Round draft final act provides changes to both Articles XVII and XXXV.

For example, over the last two years, Russia in particular has been undergoing a process of economic and administrative decentralization. The state sector in Russia is shrinking -- Treasury Secretary Bentsen's comments on June 3rd indicate some '70,000 previously state-owned and operated enterprises are now part of the private sector' -- and even those enterprises that are not on the privatization schedule are increasingly forced to take into account the forces of the emerging market which increasingly determines prices, currency values, employment, and production.

Similarly, the Draft Final Act in the Uruguay Round (released December 20, 1991) contains proposed revisions to Articles XVII and XXXV of the GATT that at least in part address some of the concerns apparently contained in section 1106 of the 1988 Act. Article XVII would be supplemented by an "understanding" on its interpretation, that would improve transparency, define the types of enterprises that would have to be notified, provide the opportunity for cross-notification to deal with the problem on non-notification by governments, and establish a working party for review of the notifications and counternotifications. Article XXXV would be modified to make it clear that a party does not lose its right to elect not to apply the GATT to a new signatory by reason of engaging in negotiations to establish a GATT schedule of concessions.

Thus, at least with regard to the former U.S.S.R., the likely continued need for section 1106 can be questioned if the Uruguay Round concludes successfully. If the provision is not eliminated outright (or for the Russian Federation and other C.I.S. countries), Congress may wish to change the statutory language to permit annual review of the relevance of the provision to the Russian Federation or any other C.I.S. countries deemed to potentially satisfy the size ("major") criteria or to waive the provision for any country for which a Special Privatization and Restructuring Fund has been announced by the United States and/or other G-7 countries.

C. The Treatment of Non-Market-Economy Countries Under the Antidumping Law

The international trading system governed by the rules established by the General Agreement on Tariffs and Trade ("GATT") presupposes a free market trading context. Article VI of GATT proscribes dumping, by which the products of one country are introduced into the commerce of another country at less than the normal value of the products, if it causes or threatens material injury to a domestic industry. A determination of whether a product's price is less than fair value, however, is dependent on the existence of reliable, comparable prices in the two markets. Thus, as recognized in the GATT, the case of dumping from nonmarket-economy-countries ("NMEs") presents a special problem, as the pricing structures in such countries are not market-based and hence unreliable:

It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fix by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1 [of Art. VI], and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

GATT, Annex I, Article VI, paragraph 1, point 2.

Thus, in addressing the problem of dumped imports from NMEs, the international rules focus upon the inherent unreliability of NME prices.

In the United States, the response to the problem of dumped imports from NMEs has evolved over time. Initially, the United States
approach to LTFV imports from NMEs developed administratively.* After
the Second World War, as imports from the Soviet Union and other Eastern
European countries within the Soviet sphere of influence increased, the
United States was increasingly faced with the issue of how to treat
allegations of dumping from those countries. The first affirmative
determination of LTFV imports from a NME was made by the Treasury
(1960). In that case, Treasury used as the best evidence of fair value
in the NME the domestic or export prices of similar merchandise which was
produced in non-Communist market countries. Treasury continued to use
this approach in other cases thereafter. See, e.g., Jalousie-Louvre-
Sized Sheetglass from Czechoslovakia, 27 Fed. Reg. 8457 (1962); Portland
its regulations and adopted the practice it had developed of using
market-economy prices as the bases for the foreign market value ("FMV")
in an NME. See 19 C.F.R. § 153.5(b) (1973).

Congress first addressed the issue of LTFV imports from NMEs in
1974. In the Trade Act of 1974, Congress enacted a specific provision
dealing with "state-controlled economy dumping." See S. Rep. No. 1298,
7186, 7311. That provision adopted, in substance, "existing Treasury
regulations concerning standards for comparison to be employed in
investigations of merchandise imported from State-controlled-economy
countries." Id. Congress explained its concerns that NME prices were
unreliable as well as the methodology it was adopting for determining the
FMV in NMEs:

The Committee is concerned that the technical rules
contained in the Act are insufficient to counteract
dumping from State-controlled-economy countries where
the supply and demand forces do not operate to produce
prices, either in the home market or in third
countries, which can be relied upon for comparison
purposes. Accordingly, the amendments would confirm
the existing Treasury practice of comparing the
purchase price or exporters' sales price of the
merchandise in question with the foreign market value
of the merchandise on the basis of the normal costs,
expenses, and profits as reflected by either (1) the
prices (determined in accordance with sections 202 and
205(a) of the Act) at which such or similar
merchandise produced in a non-State-controlled-economy
country is sold either for consumption in the home
market or to other countries (including the United
States), or (2) on the basis of the constructed value
of such or similar merchandise in a non-State-
controlled-economy country (as determined under
section 206 of the Act). The amendment is intended to
permit comparison of the purchase price or exporters' sales price of the merchandise in question with the
prices of such or similar merchandise produced in the
United States in the absence of an adequate basis for
comparison using prices in other non-state-controlled-
economy countries.

Id. (emphasis added). Given Congress' rationale for this provision and
the earlier administrative development of the approach to NME dumping, it
is clear that the NME provision was a response to the fundamental problem
of unreliable NME prices recognized in the GATT. In this respect, the
NME provision should not be viewed solely as a product of the Cold War,
but as an effort to create an acceptable benchmark to value the

* For a discussion of the historical background of the NME provision,
see generally G. Horlick and S. Shuman, Nonmarket Economy Trade and
U.S. Antidumping/Countervailing Duty Laws, 18 The International

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underlying inputs or resulting needed prices where conditions in the producing country raise questions as to the validity of home market prices or costs. Thus, the underlying rationale for a deviation from a price-to-price comparison remains valid after the Cold War wherever market forces are not at work or are heavily distorted in the exporting country.

Following the 1974 Act, Treasury faced a new problem in the case of electric golf cars from Poland. In that case, Treasury first used Canadian market prices as the basis for FMV in Poland, but when, during continuing review of the dumping order, the Canadian producer ceased production, Treasury needed another market-economy country on which to base FMV. 40 Fed. Reg. 25,497 (1975); see also Electric Golf Cars from Poland, USITC Pub. 1069 at A-4 (June 1980). In the absence of an appropriate country producing similar merchandise, Treasury developed a new approach -- it constructed an FMV based on a comparable market-economy value (using Spain) of the Polish producers inputs, or factors of production. Treasury later adopted this approach (factors of production) In its regulations. 43 Fed. Reg. 35,262, 35,265 (1978), amending 19 C.F.R. § 153.7.

The new Treasury approach was controversial and was criticized as deviating from the implicit congressional judgment that the factors of production in an NME should not be used in determining a surrogate FMV. In fact, in the 1979 Trade Agreements Act, when Congress reenacted section 205(c) of the Antidumping Act of 1921 as section 773(c) of the Tariff Act, of 1930, the House Report noted:

Although this report contains the general caveat that this bill is intended to implement only those changes in domestic law which are considered necessary or appropriate to make U.S. law consistent with the international agreements and is not intended as a general expression of approval of current regulations or administrative practice, the Committee believes it is necessary to emphasize the specific application of that caveat to the current law on dumping from the non-market economy countries. The reenactment of current statutory provisions on this subject is not an expression of congressional approval or disapproval of the regulations promulgated by the Secretary of the Treasury on August 9, 1978 (43 Fed. Reg. 35,262).


In 1988, Congress again addressed the issue of NME dumping. A consistent theme throughout the evolution of U.S. antidumping law with respect to NMEs is the search for reliability and predictability in determining the FMV and in the application of the law. In 1988, Congress amended the NME provision because the goal of predictability had not been achieved.

In Section 1316 of the Omnibus Trade and Competitiveness Act of 1988, Congress replaced the three methods that had been available to Commerce for determining FMV (surrogate country prices; constructed value; factors of production) with a more-developed factors of production methodology. 19 U.S.C. § 1677b(c). Under the 1988 amendment, once Commerce determined that the merchandise in question was produced from an NME, Commerce was to determine the FMV based on the "value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses." 19 U.S.C. § 1677b(c)(1). The factors of production include labor, raw materials, energy, and capital costs, including depreciation. 19 U.S.C. § 1677b(c)(3). The statute directed Commerce to value the factors of production by using the prices or costs of the relevant factors of production in one or more market-economy countries which were at a level of economic development comparable to the NME and which were significant producers of the comparable merchandise. 19 U.S.C. § 1677b(c)(4).
As noted above, the legislative history to the 1988 Act indicates Congress' dissatisfaction that the NME provision did not meet the goal of predictability:

The current antidumping duty law and procedures as they apply to nonmarket economies do not work well. The Commerce Department is frequently unable to find surrogate producers willing to cooperate in investigations by providing data. Therefore, it has had to develop fail-back methodologies. The dumping margins for a non-market economy country will vary widely depending on which methodology or surrogate country is used. As a result, the nonmarket economy country typically is unable to predict whether or not a particular U.S. price will be considered a dumped price, and is unable to structure its activities accordingly. In addition, an American industry faced with low-priced competition from a nonmarket economy producer is unable to determine whether the antidumping duty law would provide a remedy. The Committee is changing the law to overcome this reliance on information that is extremely difficult to obtain, and to provide greater certainty and predictability in the administration of the antidumping duty law as it applies to nonmarket economy countries.


The NME statute defines a "nonmarket economy country" as "any foreign country that Commerce determines "does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise." 19 U.S.C. § 1677(18)(A). The relevant factors which Commerce must consider in making this determination are (1) whether and to what extent the foreign country's currency is convertible; (2) whether and to what extent wage rates in the foreign country are determined by free bargaining between labor and management; (3) whether and to what extent joint ventures or other investments are allowed in the foreign country; (4) whether and to what extent the government of the foreign country controls the allocation of resources and directs the price and output decisions of enterprises; and (6) other relevant factors. 19 U.S.C. § 1677(18)(B)(i)-(v).

The statute further provides that once Commerce has determined that a country is a "nonmarket economy country," that determination shall remain in effect until revoked by Commerce 19 U.S.C. § 1677(18)(C).

In recent antidumping cases brought under Section 773(c) of the Tariff Act of 1930, as amended, the Commerce Department has determined that the successor states to the former Soviet Union are NME countries, subject to a Section 773(c) antidumping analysis. See e.g., Ferrosilicon from the Russian Federation, 56 Fed. Reg. 29,192, 29,194 (Dep't Comm. 1993) (final LTVF determ.) ("In accordance with section 771(18)(C) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. This presumption covers the geographic area of the former U.S.S.R., each part of which retains the previous NME status of the former U.S.S.R. Therefore, the Russian Federation will continue to be treated as an NME until this presumption is overcome."); Ferrosilicon from Kazakhstan and Ukraine, 58 Fed. Reg. 13,050 (Dep't Comm. 1993) (final LTVF determ.); Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan, 57 Fed. Reg. 23,380 (Dep't Comm. 1992) (prelim. LTVF determ.) (final determinations were not reached due to suspension agreements).
Obviously, the successor states to the former U.S.S.R. are countries whose economies are in transition from being state-controlled to ones which are grounded more on free-market principles. These countries want "normal" GATT rules to apply to their trade. At the same time, the pace and extent of change differs from country to country. Moreover, certain distortions or erroneous market signals continue to exist in at least some of the factors of production and prices, suggesting that 1980s era additional price-proportionality provisos may not alleviate the market pressure in the United States where imports from one or more of the Republics is causing market disruption. The conflicting signals raise important questions as to how Congress should view existing antidumping and other remedies to satisfy the objective of reflecting actual market realities brought about by the economic changes in the former Soviet Union (and other Warsaw Pact countries).

Commerce has been attempting to address the case of countries in transition to market economies under its existing statutory authority and regulations. In a series of cases involving imports from the People's Republic of China, Commerce devised the so-called "bubbles of capitalism" test under which certain product or industry sectors in an NME could be treated as a market economy if 100% of the factors of production were market driven. If the test was met, Commerce would use the reported NME market values in its fair value calculations. This test later evolved into the so-called "mini-bubbles" test, under which Commerce would make the same evaluation for the individual factors of production. Most recently, Commerce has devised a new test altogether, known as the "Market Oriented Industry" or "MO" test. This latest test requires that there be almost no government involvement in the setting of prices and production levels in the industry investigated, that the industry be privately or collectively owned, and that market-determined prices be paid for all significant outputs.

Congress has long been dissatisfied with the NME provisions. The change in 1988, while addressing some of these concerns, did not provide the predictability that parties to trade litigation should be able to expect. Predictability could be improved by making a yearly declaration of countries that continue to be considered NME producers and what surrogate country would be resorted to for determining fair value. However, such changes do not really help resolve the underlying questions present for countries in transition: Should traditional price-to-price analysis be available for any country in transition? If not, when should the switch be made? If traditional price-to-price methodology is not appropriate for a country in transition, is the current NME methodology appropriate or should some third approach be considered? I believe that it is important for the Administration and Congress to evaluate the possible options on an expedited basis, so that legitimate domestic interests are safeguarded without unnecessarily impeding trade with Russia and the other republics.

As the Congress is aware, the dumping remedy deals with problems on a micro, after-the-fact basis. To speed economic reform and progress in the former Soviet Union, the United States and other western trading partners must help businesses in Russia, Ukraine and the other republics deal with the underlying causes of low-priced exports: (1) the collapse of production and demand in many countries in Central and Eastern Europe and the former Soviet Union; (2) incorrect market information on world market prices and the discounts needed for the products in fact available or for being a new supplier.

The first problem results in an overfocus on Western markets by many local businesses which exacerbates pricing pressures in the marketplace and may lead to substantial sales below even recognized costs. The quickest way for countries in the former Warsaw Pact to stabilize production and start expanding output levels is to reestablish trading relationships among themselves. Western companies have an important role to play both in terms of marketing and financing but also in terms of infrastructure, technology transfers and benchmarking to upgrade output to consumer needs. It is naive to expect Western markets to be able to absorb substantial portions of existing capacity in the former Soviet Union for commodity-type products without there being substantial market hemorrhaging. The result of a revitalized traditional
trade flow will be a reduction of the overcapacity of some industries in the successor states, thereby reducing the need to set unrealistic low price levels.

Second, the countries' efforts to deal with sharply lower production, higher unemployment and other problems has resulted in prices for certain key factors of production -- e.g., labor and raw materials -- that may bear no relationship to productivity levels, historical wages or world prices. Other factors of production (e.g., land and buildings) may be carried on the books at undervalued amounts or not at all. In such a situation, it has not been uncommon for companies to sell at prices which appear to fully cover "costs" but which appear unrealistic to Western markets. Western companies by serving as consultants or agents could significantly reduce the unnecessary underpricing that is occurring by reason of the "wrong" market signals currently being received by many companies. Similarly, the U.S. and other countries could provide periodic technical information on existing market prices for major export products as well as guarantees and other forms of assistance, such as aid directed at infrastructure improvements and technology. I would note that some countries are attempting to deal with the false market signals in domestic markets by setting floor prices for exports. For example, the Ukrainian government introduced a policy of "floor" prices on a large variety of products, from steel profiles to cow hides. Ukrainian exporting agents of such products are not given export licenses unless they pay to manufacturers at least the "floor" price minus quality discounts. Some other former Soviet republics are developing similar export regimes aimed at regaining control over the outflow of resources and encouraging the domestic production of value-added goods.

These various affirmative programs all have one objective: to increase trade while reducing trade disputes. Moreover, the quickest and most effective way of getting hard currency into Russia and the other republics is to see that their companies are paid fair prices for their products.

D. Countervailing Measures Against Non-Market Economies

The United States countervailing duty law is intended to offset any competitive advantage that a foreign government may confer on domestic exporters and manufacturers. Section 1671 addresses both export and domestic subsidies. Such subsidies occur in market and non-market economies. Under current U.S. law, however, subsidies in non-market economies are not actionable. Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986). While the courts have now resolved the question of actionability of subsidies for NMEs, treatment of subsidies given to companies in countries in transition will likely remain an important issue. To the extent the status of transition countries is limited to "market" or "NME", the approach should be predictable—as long as a country is not viewed as a market economy, no subsidy would be countervailed; however, if the country is viewed as a market economy for dumping purposes, the countervailing duty remedy would be available to counteract subsidies.

To the extent, transition economies get their own rules, it is less apparent what the rules will/should be. It is certainly the case that there are many businesses in the various republics that would not be able to continue to function without substantial government infusions of funds or coverage of debts, wages, etc. Yet, at the same time, it is apparent that while the privatization process moves forward, there will be tremendous pressures on governments in Russia and the other republics to provide subsidies to certain facilities to keep people employed. U.S. companies that find themselves being harmed by increasing imports from one or more of the republics understandably view themselves as needing a traditional remedy. The solution to the subsidy issue would not appear to be premised on finding transition economies exempt from the countervailing duty law but rather to flow from helping the countries reestablish traditional markets and price competitively, but not disruptively. I would note that in the proposed revised GATT subsidies code from the Uruguay Round, signatories to the code that are "in the process of transformation from a centrally-planned into a market, fre-
enterprise economy, may apply programmes and measures necessary for such a transformation" for a limited period without facing certain GATT actions. Proposed Text of Subsidies Code (Dunkel draft) at Art. 29. This language would not except subsidies from countervailing duty actions.

E. Market Disruption by Imports from Communist Countries

In the Trade Act of 1974, the Congress enacted Section 406 to address the problem of market disruption caused by imports from Communist countries. 19 U.S.C. § 2436. Under this provision, upon an industry petition, or a request from the President or U.S. Trade Representative, or by resolution of the House Ways and Means Committee or the Senate Finance Committee, the International Trade Commission ("ITC") is directed to investigate whether imports of an article produced in a Communist country is causing market disruption to the domestic industry producing that article. The provision states that market disruption exists whenever imports of an article like or directly competitive with a domestically-produced article are increasing rapidly, either absolutely or relatively, such that they are a significant cause of material injury or threat thereof to the domestic industry. Section 406 further provides that imports shall be considered as "increasing rapidly" if a significant increase (either actual or relative to domestic production) has occurred in a recent period. In making its determination, the ITC must consider, among other factors, (1) the volume of imports, (2) the effect of the imports on prices in the United States of the like or directly-competitive article, (3) the impact of the imports on the domestic producers, and (4) any evidence of disruptive pricing practices or efforts to unfairly manage trade patterns.

If the ITC determines that a domestic industry's market has been disrupted by imports from a Communist country, it must also determine the amount of duty, or other import restriction, which is necessary to prevent or remedy the market disruption. The ITC then forwards its findings and recommendations to the President, who shall thereafter decide what relief, if any, shall be granted.

By its very terms, the applicability of Section 406 should have diminished. Section 406 is directed solely against imports from Communist countries, which it defines as "any country dominated or controlled by communism." 19 U.S.C. § 2436(e)(1). The legislative intent of Section 406 notes that it was to provide an "effective remedy" against deliberate market disruptions by imports from communist countries. See S. Rep. No. 1298, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 7186, 7342. As the Russian Federation and other republics would not appear to qualify as any longer "dominated or controlled by communism", the provision should be inapplicable on exports from the former Soviet Union.

However, in a recent case involving Potash from the Russian Federation, Ukraine and Belarus, the United States apparently encouraged the domestic industry to file an action under section 406 instead of the antidumping law because of the greater flexibility in the law. See Journal of Commerce, May 12, 1993, art 1A ("U.S. Turns To Obscure Trade Law To Handle Russia Complaints"). Whatever the validity of the U.S. action in Potash, it is clear that there may be a role during at least the early transition efforts for countries to have disputes handled under a mechanism like section 406. Hence section 406 could be an attractive option for some domestic industries. If section 406 is to be continued, the statutory language should be modified to reflect its new purpose.

Potential GATT problems exist (relevant only for countries which are contracting parties — at the moment does not include Russia, Ukraine or any other republic). Whether there should be a role for section 406 over the next few years is an issue that should be promptly explored by the Administration and the Congress.

F. Conclusion

Many of the Cold War trade statutes would appear to have served their purpose (and hence should be repealed) or may be in need of reworking if they are to address continuing legitimate interests of U.S.
Industry, workers and other groups. There is little doubt that the complex and difficult transitions away from centrally-planned economies to market economies require an examination of not only trade remedies in the United States, but also (and more importantly) ways to alleviate the need to use such remedies. The U.S. government and the U.S. business community can and must do more to get the economies of the republics functioning in terms of trade within the old Warsaw Pact and to establish more realistic price and value relationships on exports to western markets.
Chairman GIBBONS. I want to commend all of you for trying to do as much as you can in the private and public sectors to take advantage of what I consider to be a window of opportunity out there.

I, in my visits to the former Soviet Union, have become very discouraged. The problem in the former Soviet Republics is so great and our ability to help them remedy those problems is so limited because of our laws, because of our attitudes, and because of our own economy. I get very discouraged about the prospects for the success of the revolution in the former Soviet Union.

I haven't looked at the newly emerging economies law that you are talking about and the dumping law. We will take a look at that. Maybe there is something we can do in those provisions to make them more effective.

Mr. Crane.

Mr. CRANE. I have no questions.

Chairman GIBBONS. All right. Well, unless there are some observations from those of you who went first and didn't get a chance to hear the other people—do you have anything, Mr. Hoellen, you would like to add?

Mr. HOELLEN. Nothing further, Mr. Chairman, other than again, as we talked about, we try to get more certainty. As Mr. Lawson said, certainty is important in terms of trying to establish trade, and I do believe that that is the way. I think, to pick up on what Congresswoman Johnson had to say, is that we do need to spur on our economic reformation of these countries and establish trade, which I think is going to give way toward a lasting democratization of these countries and true human freedoms as well.

Chairman GIBBONS. Yes, sir, I agree. Well, we look forward to hearing from the administration as soon as it is prepared to come forward on this and we will work with all of you to see what can be done.

I think the spirit of America is that we want to be cooperative, we want to be helpful; but we want to be cautious in making sure that the former Soviet Union doesn't lapse back into its old attitudes. We will try to work that out.

We will keep the record open until the end of this month and for any corrections or additions there may be, and with that, this concludes our hearing for today.

[Whereupon, at 12 p.m., the hearing was adjourned.]

[Submissions for the record follow:]
INTRODUCTION

The Ad Hoc Committee of Domestic Nitrogen Producers ("Ad Hoc Committee") represents eight domestic nitrogen fertilizer producers with production in eleven states including Arkansas, Georgia, Idaho, Iowa, Ohio, Louisiana, Mississippi, Nebraska, Oklahoma, Tennessee, and Wyoming. Collectively, we account for approximately 45 percent of U.S. ammonia fertilizer capacity and about 60 percent of U.S. urea fertilizer capacity.

This statement is submitted in connection with the Subcommittee’s review of "U.S. Statutes predicated on the Cold War relationship between the United States and the former Soviet Union." The Subcommittee has indicated its intent to review the non-market economy sections of the U.S. antidumping law. We are writing to express our view that the non-market economy provisions of the U.S. antidumping law are not "Cold War Statutes" or "vestiges of the Cold War." The antidumping duty law is not politically based. It is invoked when any trading partner of the United States engages in the internationally recognized unfair trade practice, dumping. As is discussed below, the non-market economy provisions of the antidumping law are simply an effective methodological means by which the U.S. Department of Commerce ("the Department") and Congress have attempted to reconcile the economic differences between market and non-market economies, when applying the market-based antidumping law to imports of non-market economy produced merchandise. Even though there are significant political and economic changes taking place in the territory of the former Soviet Union, the non-market economy provisions of the antidumping law -- because they are economic and not political in nature -- may still be used as an effective tool for ensuring that the successor states of the former Soviet Union participate in the United States market in a responsible manner that will not unfairly injure U.S. industries.

THE NON-MARKET ECONOMY PROVISIONS OF THE U.S. ANTIDUMPING LAW ARE NOT COLD WAR STATUTES

The non-market economy provisions of the U.S. antidumping duty law ("antidumping law") did not arise as a result of "the Cold War relationship between the United States and the Former Soviet Union." In fact, the opposite can be said. The non-market economy provisions arose as a result of the gradual economic thaw of the Cold War which preceded the extraordinary events of 1991.

In the 1970’s, as political tensions declined, the Soviet Union, the People’s Republic of China, and other non-market economies began developing increasingly significant levels of trade with the United States. Along with the privilege of this

increasing participation in U.S. markets, however, came the obligation to conduct trade in a responsible manner and not to engage in unfair trade practices such as dumping. If and when these non-market economy countries "dumped" their goods in the United States, i.e., sold them at unfairly low and injurious prices, just like any other country, without regard to political systems, they became subject to the U.S. antidumping law. However, because the basic principles of the antidumping law assume the exporting company to be market oriented, the U.S. had to develop a fair and reasonable method of applying the antidumping law to merchandise from non-market economies.

As the Committee is aware, "dumping" is generally defined as selling merchandise in the United States at less-than-fair value and thereby causing (or threatening) injury to the competing U.S. industry. Sales are at less-than-fair value if the price at which the merchandise is sold for export to the United States is below the price for which it is sold in the producer's "home market." Under certain conditions, the U.S. price is compared with a cost of production-based "constructed value."

However, from the perspective of the market-oriented antidumping law, non-market economy prices and costs are distorted and cannot form a suitable "benchmark" to determine whether U.S. export prices are fair. In a market economy country, prices and costs are "the result of the competitive forces of supply and demand. In a non-market economy, however, prices, costs, and the allocation of resources have traditionally been determined by a central economic plan which has little or nothing to do with market forces. Consequently, using non-market economy distorted costs or prices in the market-oriented antidumping duty calculations would provide a meaningless result because the underlying economic principles are incompatible.

To arrive at a meaningful result, the U.S. government, over the past two decades, has developed several different methods of applying the antidumping law to merchandise from non-market economy countries. The goal of these methods has been to develop a surrogate market-based price for the non-market economy goods, so that when the price of the non-market economy goods is used to calculate dumping margins, if any exist, the result will not be distorted as a result of the difference in economic systems. The method which the Department currently uses to develop a market-price for non-market economy merchandise is called the "factors of production" method. This methodology was added to the statute in 1988 as the preferred means of analyzing non-market economy dumping.

Pursuant to the factors of production method, the Department collects the actual factors of production ("factors") used in the non-market economy, such as the number of labor hours, quantities of direct materials used, etc. . . . to produce the merchandise under investigation. The Department then selects market-based values for these factors from a surrogate market economy country which the Department has determined to be economically comparable to the non-market economy country. By combining these two data sets, the Department constructs a market-based value of what the non-market economy merchandise would have cost to produce if the non-market economy producer were producing in a market environment.

Thus, the non-market economy provisions of the U.S. antidumping law were developed to enable the U.S. government to apply the market-based antidumping law to merchandise from a non-market economy country. They were not developed to reflect the Cold War tensions between the United States and the Soviet Union. Therefore, they are not "Cold War Statutes". In fact, despite

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2/ 19 U.S.C. §1673
all of the economic and political changes taking place in the
territory of the former Soviet Union, the economic underpinnings
of the non-market economy provisions remain valid.

The antidumping law is not a punitive statute. It merely
provides U.S. industries with a remedy for unfair trade
practices. As such, the law does not affect foreign merchandise
which is traded responsibly and fairly in the U.S. markets.
However, if any country or foreign producer or reseller --
market-oriented or otherwise -- dumps its merchandise in the U.S.
market, it is subject to the U.S. antidumping law. As discussed
below, the non-market economy provisions of the antidumping law
are an effective method by which the United States can continue
to ensure that Russia and the other successor states of the
former Soviet Union participate in the U.S. market in a
responsible manner as they reform their economies toward market-
based systems.

THE NON-MARKET ECONOMY PROVISIONS OF THE U.S. ANTIDUMPING STATUTE
PROVIDE A FAIR METHOD OF ENSURING THAT RUSSIA AND THE OTHER
SUCCESSOR STATES OF THE FORMER SOVIET UNION PARTICIPATE IN THE
U.S. MARKET IN A RESPONSIBLE MANNER

Congress added the factors of production methodology to the
antidumping statute in the Omnibus Trade and Competitiveness Act
of 1988, after a comprehensive reevaluation of the treatment of
non-market economies under the U.S. antidumping laws. Prior
to the factors of production methodology, the Department
substituted for the "home market" value, the price of the same or
similar merchandise produced in a economically comparable market
economy country.

This method was determined to be less desirable than the
factors of production methodology because it produced a price
that had no connection to the actual production process
experienced in the non-market economy country. For example, a
non-market economy producer may have had such an inefficient
production process that it consumed three times the quantity of
raw material that the proposed surrogate market economy producer
used to produce the same widget. If the Department used the
surrogate's price for the widget, that price did not account for
the inefficiencies of the non-market economy production. On the
other hand, if the non-market economy producer were more
efficient than the surrogate producer, the non-market economy
producer was effectively penalized for the surrogate producer’s
inefficiencies.

Congress selected the factors of production methodology
because it reflects that actual production experience of the non-
market economy producer and values it using values from a market
economy chosen based on its economic comparability to the non-
market economy country. The factors of production methodology
limits the amount of surrogate data relied upon, resulting in
fairer determinations more reflective of the non-market economy
producer's experience than the other suggested methodologies. In
fact, prior to the 1988 Act the factors of production methodology
had been successfully used in the antidumping investigation of
urea from the Soviet Union, Romania, and East Germany which
resulted from a petition filed by the Ad Hoc Committee.

3/ This addition to the statute was a codification of the
administrative practice that the Department had developed to deal
with antidumping duty investigations of merchandise from non-
market economy countries.

4/ Urea From The Union of Soviet Socialist Republics, 52 Fed.
Reg. 19557 (May 26, 1987); Urea from the Socialist Republic of
Romania, 52 Fed. Reg. 19553 (May 26, 1987); Urea from the German
The Department has been able to effectively apply the antidumping law through the non-market economy provision to merchandise from Russia and the other successor countries of the former Soviet Union, the People's Republic of China, and Eastern Europe, while at the same time remaining sensitive to the ongoing economic reform which is taking place in these countries. The current non-market economy provisions are flexible enough to enable the Department to adjust for the economic reforms taking place in these countries. To accommodate economic reform, the Department has refined and is continuing to refine its non-market economy methodology, as discussed below.

First, if the non-market producer purchases an input from a market economy country and pays for it in hard currency, the Department will use that price instead of a surrogate price described above. The actual price is not a non-market economy distorted price and can, therefore, be used in the dumping calculations. Second, the Department permits entities within a non-market economy to receive their own dumping rate separate from that assigned to all other producers, if they can demonstrate that, in law and in fact, that they are a separate entity operating independently of the central government. Third, the Department will use the actual costs of the non-market economy producer, if the members of that industry in the non-market economy can prove that the industry is sufficiently market-oriented to enable the use of the non-market economy producer's actual prices. Finally, the non-market economy provisions provide that a non-market economy country may be reclassified as a market economy country. If these countries continue to reform and become true market economy countries, they will be able to shed their non-market economy status.

The current flexibility of the non-market economy provisions has enabled the Department to effectively apply the U.S. antidumping law to transitioning non-market economy countries. The Department has done so to the extent possible without unfairly hindering reforms. We encourage these reforms and also encourage continuing and expanding trade with these countries. The economic transformation of these countries, however, must not come at the expense of U.S. industries. The non-market economy provisions of the U.S. antidumping statute must remain in place as long as there remain among our trading partners non-market economies or economies in transition. This is necessary to ensure that meaningful analyses can be undertaken by the Commerce Department in an antidumping case.

**EXPERIENCE OF THE AD HOC COMMITTEE WITH UNFAIR TRADE LAWS**

In 1979, the Ad Hoc Committee attempted to address unfair trade from non-market economy countries by using another provision of U.S. trade law -- a provision of U.S. law which was specifically designed to address market disruption caused by exports from non-market economy countries. The U.S. nitrogen fertilizer industry sought relief under Section 406 of the Trade Act of 1974 (19 U.S.C. § 2436) from unfairly traded imports of ammonia from the U.S.S.R. Despite the overwhelming evidence of

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5/ In an antidumping duty investigation of Oscillating Fans from the People’s Republic of China, 58 Fed. Reg. 30026 (May 25, 1993) the Department found no dumping. The Chinese manufactures purchased most of their fan inputs from market economy countries. The Department used these acquisition prices for the market economy sourced inputs and used surrogate valuation for the non-market economy sourced inputs.
the impact of the Soviet ammonia exports on the U.S. industry, and although the International Trade Commission reported to President Carter that Soviet ammonia exports were causing market disruption, the President exercised the discretion provided to him under the statute and denied relief to the industry. The decision of the President to deny relief was based on political considerations, as was his later decision to seek relief against ammonia exports in retaliation for the Soviet invasion of Afghanistan. The section 406 non-market economy provision, which is unquestionably a "Cold War" statute designed to permit political considerations to be a prominent part of the determination of whether to grant relief from disruptive trade, was not an effective tool for the domestic nitrogen fertilizer industry to address unfair actions by our non-market economy trading partners.

The Ad Hoc Committee’s experience with the antidumping duty law, however, was in direct contrast to earlier attempts by the Committee to seek relief under U.S. trade laws. The antidumping laws, which are more non-political by design, subject non-market economy exporters to the same standards and procedures -- including procedural safeguards -- that are applied to all of our trading partners. The application of a special non-market economy methodology is merely a result of the need to adjust the market-economy based analysis to the non-market economy situation.

The Ad Hoc Committee of Domestic Nitrogen Producers was one of the first U.S. industries to prosecute an antidumping action in which the Department of Commerce analyzed whether merchandise exported from a non-market economy country had been fairly traded by applying the "factors of production" methodology. In 1986, the Ad Hoc Committee filed an antidumping action against urea from the U.S.S.R., Romania and East Germany seeking relief from a virtual flood of low-priced imports of this commodity product. In a very short period of time, these Eastern Bloc exports had captured about a quarter of the U.S. market and driven U.S. urea prices below the cost of production of an extremely mature and efficient U.S. industry.

In its antidumping investigation, the Department of Commerce sought from the Soviet Union, Romania and East Germany information concerning the actual production of urea in those countries, including detailed information with respect to the amount of labor and various inputs used in their urea production. Just as in a market economy antidumping case, to the extent that adequate information was provided in response to the Department’s questionnaires, the Department traveled to the non-market countries and verified the reported data. All verified information was actually used in the Department’s calculation of whether the non-market economy urea had been traded unfairly. Much of the debate in the case surrounded the appropriate costs to be used in valuing the inputs actually used in the non-market economy countries. For example, there was significant debate concerning what market-based unit cost to assign to the amount of natural gas actually used in the production of urea in the non-market economy countries. This methodology thus took account of the actual production efficiencies of the non-market economy producers. Moreover, ultimately, with respect to the valuation of the factors, as to major components, there was even some agreement among the parties.

The factors of production analysis thus served to eliminate many of the uncertainties that had been present in the previously preferred "simple surrogate" analysis, whereby Commerce would attempt to simply substitute the price or costs of a market economy country that was comparably developed to the non-market economy country. The experience of the Ad Hoc Committee was a very positive one. Although not every issue in the cases was decided in our favor, ultimately
antidumping orders were issued and the process was viewed as an objective and reasonably predictable one. No appeal was taken from the Commerce Department's decision or that of the International Trade Commission concerning injury to the U.S. industry. Urea exports from Russia, Romania and East Germany became subject to antidumping duty orders because, after careful and fair analysis -- as is the case under the antidumping laws with any market economy exporter -- it was determined that the urea had been unfairly traded by substantial margins and had caused injury to the domestic urea industry.

CONCLUSION

The Ad Hoc Committee of Domestic Nitrogen Producers applauds the Subcommittee's efforts to review Cold War trade statutes in an effort to normalize trade with the former Soviet Republics as quickly as is possible and prudent. The non-market economy provisions of the antidumping laws, however, are unequivocally not Cold War provisions, but are economically based. Moreover, they are flexible provisions which allow the Commerce Department to adjust and apply the law to recognize economies in transition. The changes made to the non-market economy provisions of the antidumping law in 1988 were made after careful consideration of alternatives and with an eye toward achieving as fair and predictable an antidumping analysis as possible. The Ad Hoc Committee believes that this goal has been substantially achieved and that the application and evolution of the non-market economy antidumping provisions by the Department of Commerce evidence its soundness. The non-market economy provisions of the antidumping laws are not Cold War provisions and should not be examined by the Subcommittee in that context.
STATEMENT BY
AMT - THE ASSOCIATION FOR MANUFACTURING TECHNOLOGY
BEFORE THE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
JUNE 30, 1993

I. INTRODUCTION

AMT - The Association For Manufacturing Technology - is a trade association whose membership includes approximately 350 manufacturing technology firms with locations throughout the United States. America's manufacturing technology industry builds and provides to a wide range of industries the tools of manufacturing technology including cutting, grinding, forming and assembly machines, as well as inspection and measuring machines, and automated manufacturing systems. The majority of AMT's members are small businesses.

AMT appreciates the opportunity to address this subcommittee on the importance of open trade relations between the United States and Russia and other successor states of the former Soviet Union to the U.S. machine tool industry. We support permanent extension of normal trade status (MFN) to these countries.

II. THE STATUS OF THE U.S. MACHINE TOOL INDUSTRY

America's machine tool industry builds and provides to a wide range of industries the tools of manufacturing technology including cutting, grinding and forming machines, universal measuring machines, and automated manufacturing systems. Although our industry is relatively small by some standards, it accounts for a very basic and strategic segment of the nation's industrial capacity. Not only does our industry build the machines essential to our military readiness and our ability to respond quickly and effectively in the event of a national emergency, but it also builds the product which underlies virtually every other commercial product. Machine tools are the very essence of the industrial manufacturing process.

III. THE RUSSIAN EXPORT MARKET

United States machine tool manufacturers recognize that exporting is essential to global competitiveness. Russia and the successor states of the former Soviet Union have the potential to become major export markets not only for our industry, but for many other American industries as well. Industries, such as aerospace, automobile, and oil and gas, have already invested substantial resources in this region. Others, such as the machine tool industry, have been slower to tap the former Soviet Union export market. Exhibits A and B show that U.S. machine tool exports declined in 1992 and are projected to further decline in 1993. However, the aerospace and automobile industries are the top end users of machine tools. If those industries are investing in the former Soviet Union, they will need machine tools to support their efforts. A show of confidence by the United States by permanently extending MFN to the former Soviet Union would help convince U.S. manufacturers that they should explore these export opportunities in Eastern Europe.

The former Soviet Union is the fourth largest consumer of machine tools in the world. Exhibit C shows that, in 1991 (the latest year for which data is available), the former Soviet Union's machine tool consumption totalled $3.4 billion. Uncertainty over annual renewal of normal trade relations is putting U.S. machine tool builders at a competitive disadvantage in gaining a greater share of that market. Every year, the uncertainty of future trade relations damages our reputation as a reliable supplier. Faced with this on-again, off-again trade policy, Russia and the other successor states will continue to seek other suppliers who can be
counted on to be available in the future. In manufacturing
technologies, Germany, Italy, and Korea are already players in the
market. U.S. investment is almost zero.

IV. THE KAMA RIVER PROJECT

The Kama River project is an example of how U.S. trade
policy has hampered U.S.-competitiveness. In the mid-1970's, the
Soviet Union began building Kama River, the largest multi-plant
industrial complex dedicated to the production of trucks and diesel
engines in the world. At that time, because U.S. machine tool
technology was superior to that of our foreign competitors, the
Soviet Union looked to us for the machine tools to equip the engine
plant. The Kama River Purchasing Commission was established and
sent to the United States to place orders. Eximbank provided
substantial export financing. As a result, the United States
received a lion's share of the machine tool orders for the plant.
The cost of replacing those machine tools today would be $1.5 - $2
billion. The only other major player at that time was Germany.

In the late 1979, construction began on a second plant
which would provide spare parts and service to the engines
manufactured at the first plant. Over $1.5 billion was spent on
machine tools in the second Kama River plant. However, because of
the imposition in January 1980 of strict, unilateral U.S. export
controls on all spare parts going to Kamaz, and beginning in July
1980, on all shipments of any kind to Kama River, U.S. builders were
not even considered for these orders.

We now have another chance at Kama River. A fire in April
virtually destroyed the diesel engine facility at the main Kama
River plant and, with the fire, went $1.5 - $2 billion worth of U.S.
machine tools. The plant will require $2.5 - $3 billion to rebuild
and re-equip. American companies must act quickly if they are to
help provide replacement machines to the plant. Permanent extension
of MFN would help give the American builders the confidence they
need to bid on the contracts and the Russian government the
assurance it needs that these companies will be there in the future.

In addition, governmental assistance in the form of export
financing and/or tied-aid is necessary. U.S. machine tool
manufacturers wishing to explore export opportunities in the former
Soviet Union and elsewhere must absorb the cost, while their
European competitors receive direct and/or indirect financial
assistance. Eximbank financing for Kama River machine tool
replacement is unavailable under current Eximbank rules. Germany is
standing at the ready to provide government export credits and other
assistance to their machine tool industry for use at Kamaz. We must
do the same or forfeit our a share of this promising market.

V. CONCLUSION

Although the United States' erratic trade policy of the
past has considerably damaged our reputation in the former Soviet
Union, American manufacturers could get a much needed boost by the
federal government's permanent extension of normal trade relations
with Russia and the other successor states. We also need
governmental assistance in export financing and/or tied-aid to level
the playing field among our competitors.

Permanent extension of MFN to the former Soviet Union,
would show American companies that our government sees worthwhile
opportunities for U.S. businesses in the region, its would show our
competitors that we are serious about gaining a foothold in a market
which has the potential to become a major player in the global
marketplace, and it would show the people of the Eastern Europe that
we support their long struggle toward freedom and a market economy.
EXHIBIT A

U.S. Machine Tool Exports
to Former Soviet Union

$Millions

*Annualized Based on Jan-Mar 93 data
U.S. Machine Tool Exports to Former Soviet Union As a Percent of Total U.S. Machine Tool Exports

* Annualized Based on Jan-Mar 93 data.
EXHIBIT C

Machine Tool Consumption by the Soviet Union

1987 - 1991

Billions

Source: American Machinist
COMMENTS OF CARUS CORPORATION
ON COLD WAR TRADE STATUTES AFFECTING
U.S. TRADE AND COMMERCIAL RELATIONS
WITH RUSSIA AND OTHER SUCCESSOR STATES
OF THE FORMER SOVIET UNION

This statement is submitted on behalf of Carus Corporation ("Carus") of Peru, Illinois. Carus is the only American producer of potassium permanganate, a chemical used for water treatment and in other applications.

Carus supports efforts to regularize trade and commercial relations with the successor states of the former Soviet Union and other Communist countries. However, Carus urges Congress to exercise great caution in revising the special methodology for determining foreign market value ("FMV") in antidumping proceedings involving products from nonmarket economy ("NME") countries. If this special methodology is eliminated before NME countries become true market economies, many U.S. companies will suffer. Carus believes that the best means of encouraging NME countries to embrace market economy principles is to close potential loopholes in the current NME provisions and to prevent circumvention of the existing law.

Carus Corporation

Carus is a diversified company which produces textbooks, magazines and chemicals. Carus employs over 340 persons.

The primary product of Carus' chemical division is potassium permanganate ("PP"), a chemical used in dripping and waste water treatment and in other applications. Carus is the sole remaining U.S. manufacturer of PP. Over the years, Carus has continually modernized its production facility and is now the world's most efficient producer of PP. The company is also the worldwide leader in pioneering new applications for the product.

As explained below, Carus' experience with the NME provisions of the dumping law has involved the PRC rather than the countries of the former Soviet Union. Carus believes, however, that the PRC context offers important lessons regarding the operation of the NME provisions generally. In addition, Congress should bear in mind that changes to the NME provisions as they apply to the former USSR may well affect other NMEs, particularly the PRC.

Antidumping Proceedings

Over the past decade, Carus has brought a series of antidumping cases against unfairly priced imports of PP from the People's Republic of China (the "PRC"). In response to these dumping cases, the U.S. Government currently has in place antidumping duties on potassium permanganate imports from the PRC. These antidumping duties are essential if Carus is to continue as a U.S. producer of potassium permanganate. Without an effective antidumping duty on PRC-origin PP, PRC product could be sold in the United States at below even Carus' production costs, despite the fact that the primary inputs for the production of PP are world-traded chemical commodities.

The unfair pricing of PRC-origin PP is a direct result of the PRC's nonmarket economy. Despite periodic attempts at reform, the PRC remains an NME, particularly in the traditionally state-dominated chemical sector. Because the PRC is a nonmarket economy, the PRC producers and their resellers can sell PRC-origin PP at virtually any price unrestrained by real costs, world commodity prices for chemical inputs and other market forces.

In ongoing administrative reviews of the PRC antidumping order, certain Hong Kong resellers of Chinese PP are attempting to avoid the special NME methodology for determining FMV. These resellers have contended that, under the criteria set forth in section
773(f) of the Tariff Act of 1930 (19 U.S.C. §1677b(f)), Hong Kong is the country of exportation for the PRC-origin PP that they sell through Hong Kong. They further contend that, because Hong Kong is not an NME, the special NME methodology for determining FMV does not apply.

Carus believes that this attempted use of section 773(f) of the dumping law is highly inappropriate. It would, in effect, base the FMV for PRC-origin goods on the meaningless and ridiculously low nonmarket price charged by the PRC producer to the reseller. Congress should amend the dumping law to make it clear that intermediate country sales under section 773(f) cannot be used to "launder" sales of NME-origin products by bringing them out from under the special methodology for determining FMV in NME cases. H.R. 2528, recently introduced by Representative Ralph Regula, contains a provision which would prevent such third-country circumvention of the NME rules.

Application to the Former Soviet Union

In considering proposals to revise the NME provisions of the dumping law as they apply to the former Soviet Union, Congress should proceed with great caution. "Good feelings" between the United States and the countries of the former USSR may be a sufficient basis to revise some provisions of the trade law. However, such feelings alone do not justify the elimination of the special NME provisions of the dumping law. Rather, changes in the NME provisions as they apply to the countries of the former USSR must be based on the conclusion reached only after rigorous economic analysis -- that these countries have, in fact, become market economies. Eliminating the special NME rules without detailed economic analysis would place U.S. companies who must compete with NME producers at a severe disadvantage. In addition, overly-hasty elimination of the NME provisions would eliminate an important incentive for NME countries to move toward a market economy.

Until the countries of the former USSR can demonstrate that they have become true market economies, the current "market-oriented industry" test should continue to be applied to these countries. See Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts From the People's Republic of China, 57 Fed. Reg. 15052 (Apr. 24, 1992). Under this test, industries located in nonmarket economies are presumed to be subject to the NME provisions, unless they demonstrate through convincing evidence that they operate in an environment of market-based costs and prices, despite their location within an NME.

Carus' experience also demonstrates the vital importance of ensuring that third countries cannot be employed to circumvent the NME provisions of the dumping law. It is entirely possible that not all of the twelve former Soviet Republics will become market economies at the same time. If some former republics become market economies before the others, the remaining nonmarket economies may attempt to avoid the NME provisions of the dumping law by selling through the new market economy countries -- countries with which they have longstanding historic and economic ties. Congress must assure that section 773(f) and other provisions of the dumping law do not permit such circumvention of the NME rules through the use of third countries. Otherwise, all of the former Soviet Republics could avoid the NME provisions of the dumping law as soon as any one of them became a market economy.

Carus appreciates this opportunity to provide its views and looks forward to working with the Committee on this important issue.

For information contact:
Edward F. Gertin, Jr.
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005
(202) 842-8102
My name is Mark Allen Cohen. I am an attorney practicing in Washington, DC. I am also of counsel to the law firm of Bierce & Kenerson in New York. The principle focus of my practice is on trade and investment issues involving "economies in transition," especially Central and Eastern Europe. I am submitting these comments on my own behalf.

I would like to thank members of the Subcommittee on Trade for their interest in seeing economic and political reform in Central and Eastern Europe. I am a direct beneficiary of these efforts. Next year, I will be a visiting Professor at the Universities of Maribor and Ljubljana in the Republic of Slovenia under the Support for Eastern European Democracy program. I will be lecturing in Slovenia on topics very similar to those facing this subcommittee.

It has long been obvious that appropriate trade legislation needs to be drafted to ease the wrenching transitions facing "economies in transition." I urge the Subcommittee, however, not merely to focus on the successor states of the former Soviet Union. Any new legislation should have a much wider impact than the CIS. The smaller countries that have bravely followed their own paths should not be neglected, whether or not they were dominated by central planners or previously seen as part of an international communist conspiracy. The Subcommittee is presented with an important opportunity of rationalizing trade legislation to promote and reward economic and social reforms for all countries.

The basic premise of much of the "Cold War" legislation mentioned for this hearing announcement -- of unfriendly countries uniting to unfairly export to the United States in violation of GATT and other international trade rules -- has been destroyed by the collapse of Communism and Soviet era trading arrangements, such as Comecon. We are no longer faced with a monolithic communist threat. According to the recent reports of the International Trade Commission the actual volume of trade from most of these countries is very small. See U.S. International Trade Commission, Trade Between the United States and China, the Former Soviet Union, Central and Eastern Europe, the Baltic Nations, and Other Selected Countries (quarterly reports). The number of unfair trade cases that have been filed since the collapse of Communism have also been limited. Id.

The difficulties of economic adjustment have been further compounded by the decline of traditional markets in Central and Eastern Europe including, most recently, the embargo against Serbia and Montenegro. The sanctions imposed against Serbia and Montenegro have had a further effect of making Western European markets less accessible. In Bulgaria, for example, there have been dramatic increases in transportation costs for exports as less expensive means of road and sea transport have been embargoed.

I would like to suggest a number of concrete steps to reform trade legislation and to assist in their path of Western economic

1Slovenia and Croatia, for example, when they were constituent republics of Yugoslavia, were market-oriented, and not dominated by international communism or central planning. In fact, Yugoslavia was a model for the introduction of market forces for other economies in transition.
integration.  

SECTION 406. With the disintegration of the Communist monolith, I urge the subcommittee to reevaluate the continuing utility of Section 406 of the 1974 Trade Act. 19 U.S.C. Sec. 2436. While Section 406 has been rarely used, it remains a threat to countries that are undergoing market reform and expect to increase their economic integration with the West. Moreover, the remedies afforded by Section 406 are generally addressed by Section 201 and other trade laws.

EXPORT CONTROL LAWS. Our export control laws also reflect a concern that former communist countries will not play by international rules. In recent years, the Bureau of Export Administration has loosened many of the export control restrictions to Hungary, Poland and Czechoslovakia. Further efforts need to be undertaken for other Central and Eastern European Countries. We may wish to consider a fast-track review process for certain exports destined for Central and Eastern Europe analogous to our expedited licensing procedures for CoCom member countries. Distribution licenses should also be encouraged. These steps will help foster both U.S. goodwill and increased U.S. exports.

TITLE VII ACTIONS. The law has changed somewhat since 1988, but the basic unpredictability of the antidumping law and countervailing duty ("CVD") law for economies in transition remains the same. With rare exceptions, the antidumping law as applied to so-called "non-market economy countries" ("NME's") is punitive in nature. U.S. companies filing Title VII and other petitions generally prefer to argue that a country is an NME because of these punitive implications. The higher margins may also tend to convince the International Trade Commission that there is a greater injurious effect or threat of injury.

One advantage of being classified an NME is that the CVD law may not apply. Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986). Ultimately, however, when an economy in transition more fully moves to a market orientation it will lose its status as an NME for purposes of our antidumping laws. At the same time, it will become subject to our CVD laws. The CVD laws would typically apply without benefit of an "injury test" because the country has not signed the Subsidies Code or entered into a bilateral arrangement with the United States. There is therefore a vast potential for companies to be subject to a CVD action. 19 U.S.C. Sec. 1303. Such actions may be filed on behalf of completely healthy and competitive American industry that only seeks to thwart competition at a critical time of a country's market reform efforts. The action is quick, inexpensive and potentially devastating.

Under our current system of laws, it may be advantageous for a country to remain an NME than to be in transition where it can be attacked by healthy U.S. industries under the CVD law. Our trade laws, however, should provide concrete advantages for a country moving to a market structure.

One positive step for the Subcommittee to consider would be for Congress to make the test of what constitutes an NME more predictable and logical. Some of these tests were reflected in the 1988 Omnibus Trade And Competitiveness Act. Congress nonetheless might direct that Commerce consider any enterprise that has recently been privatized, or enterprises situated in special free trade zones to be considered as products of a market economy.

although the remainder of the country may not have been sufficiently reformed to merit this treatment.

Congress might also direct that the International Trade Commission consider the effects of privatization and market reform in making injury or threat of injury determinations in Title VII actions. I believe that currently these macroeconomic factors are largely ignored.

Congress might also wish to consider legislation restricting the rights of competitive or profitable industries to file CVD cases against economies in transition. Alternatively, Congress might require that companies seeking to file CVD cases against economies in transition be required to prove injury until such country has either joined the subsidies code or has stabilized its economy to a point where it should sign the subsidies code. With such a structure, an economy in transition may not be caught by surprise in a CVD case.

GENERALIZED SYSTEM OF PREFERENCES. U.S. trade legislation also makes it difficult for companies in GSP-beneficiary countries to process goods from other GSP-beneficiary countries for reexport to the United States without risking loss of their own GSP benefits. Under current rules a product from one GSP eligible country, such as Bulgaria that is processed in another country, such as Slovenia, may not be eligible for GSP treatment even though all of the materials and labor originated from GSP beneficiary countries. Unless the countries are part of a free trade area or customs union, the Customs Service will only consider the value of one GSP country in calculating whether the product is eligible for GSP benefits. 19 U.S.C. Sec. 2462(a)(3).

The United States needs to encourage the kind of regional integration that will enable Central and Eastern European countries to engage in trade transactions with the United States. One means of doing this is by permitting an exporter to cumulate the value from different GSP-eligible countries in calculating GSP eligibility. These efforts are critical for countries such as Bulgaria that are striving to overcome dependencies on markets in the former Soviet Union and Eastern Europe and other countries. It is also important to other countries such as Slovenia that are already exporting to the West but are looking for new forms of regional integration as well as enhanced trade with the United States.

OTHER INITIATIVES - TRADE OMBUDSMAN. The United States also needs to think of more creative ways of integrating these economies in transition with our own. Bureaucratic delays and our frequently cumbersome political process have hindered development of trade relations, permitting third countries such as Germany to play a more active role. The creation of a Central and Eastern European trade ombudsman to advocate the positions of these countries within the Administration might help ease some of the tariff and non-tariff barriers that confront exporters.

From personal experience, I believe a trade ombudsman can be critical to the success of our new trading partners. For example, it took Slovenia -- a country with an excellent human rights and trading record -- approximately six months after U.S. recognition to obtain prospective GSP benefits again. Most of Slovenia's trading partners including the European Community, Norway, Finland, Sweden, Canada, Austria and Taiwan had granted GSP benefits immediately with recognition. Many had provided retroactive reinstatement. At the same time, Slovenia had been denied the ability to export textiles, meat and other regulated products because of U.S. government inflexibility over permitting Slovenia to succeed to former Yugoslav trading arrangements. As a small country with limited resources, Slovenia faced significant problems which had an inhibitory effect on the development of trade relations.
OTHER INITIATIVES - FREE TRADE AGREEMENTS. One of the more exciting ideas regarding trade with Central and Eastern Europe was a concept suggested by former Secretary of State Eagleburger for free trade areas with many of these nations. This idea would help place the United States into the center stage with many Central and Eastern European countries.

CONCLUSION

I believe the United States should take a lead in drafting these and other flexible solutions in our trade statutes to dealing with economies. It is extremely unfair, for example, to encourage these economies to invite foreign investment, encourage exports and imports, provide technical and other assistance and then inequitably shut our doors to their products. We should instead use trade as a means of constructive reform.

Thank you for this opportunity.

Mark Allen Cohen
1627 Eye St. NW
Suite 850
Washington, DC 20006
Tel: 202-686-4321
Fax: 202-686-1899
Eddy Potash, Inc., Horizon Resources Corporation, Mississippi Chemical Corporation, and New Mexico Potash Corporation (together, the "U.S. producers") welcome this opportunity to present their view to the Trade Subcommittee of the Committee on Ways and Means that there is a continuing need for special laws addressing trade between the United States and non-market economy countries in transition to market economies, such as those countries formed out of the former Soviet Union. Our four companies account for the majority of potassium chloride, also known as potash, produced in the United States. Rapidly increasing imports of low-priced potash imported from Russia, Belarus, and Ukraine over the past two years have seriously injured the U.S. producers, resulting in, among other things, substantial layoffs of employees. Consequently, we have an important, if unfortunate, experience to bring to the Committee's attention by way of explaining the special circumstances that require maintenance of effective trade laws addressing unfair competition and market disruption caused by imports from these countries.

Background

Potash is principally used as fertilizer, and thus is essential to the productivity of U.S. agriculture. Most potash produced in the United States is mined around Carlsbad, New Mexico. The industry supports thousands of workers directly and indirectly in that region.

Carlsbad producers supply significant amounts of potash to the U.S. farming community, particularly in the Midwest and Southwest. Traditionally, they also have exported up to one-third of their production, mostly to Latin America. Canadian producers supply by far the largest amount of U.S. consumption, however. Severe dumping by Canadian producers almost succeeded in destroying the U.S. industry before the U.S. industry filed an antidumping petition in 1987. After a preliminary determination in that investigation found high overall margins of dumping, the U.S. Department of Commerce and the Canadian producers entered into an agreement suspending the investigation in conjunction with commitments by the Canadian producers to limit (although not necessarily eliminate) the amount of their dumping. That agreement remains in effect. It has permitted the U.S. companies to survive. Indeed, one closed mine reopened, and another emerged from bankruptcy, following the agreement.

Imports from Russia, Belarus and Ukraine

The Commonwealth of Independent States is the world's leading producer of potash, having a capacity dwarfing that of the United States. In fact, potash production by the former Soviet Union in 1991 amounted to approximately 33% of total world potash production. That production is concentrated in Russia, Belarus, and Ukraine.
The CIS also ranks as the second largest global exporter of potash, after Canada. However, due to geographic factors and high transportation costs, the CIS producers historically have not been major suppliers to the U.S. market.

That situation has changed dramatically, however. U.S. imports of CIS potash increased from 24,000 short tons in 1990 to 361,000 short tons in 1992 -- over 1,400%. Those imports grew especially rapidly in the second half of 1992, during a time when U.S. consumption was declining markedly due to weather and other conditions and the traditional Eastern European markets for CIS exports collapsed. Also, the European Community imposed antidumping measures beginning in April 1992 on potash imports from the same three CIS countries, reflecting a surge of dumped sales into that market. The EC directive doubtless diverted CIS sales to the United States. U.S. potash producers believe that CIS imports likely will increase another 40% in 1993 over 1992, to exceed 500,000 short tons.

In 1992 CIS imports entered primarily through New Orleans and were sold along the Mississippi River system, competing directly with U.S. product. The CIS imports were priced substantially below prevailing market levels, and as potash is essentially a commodity product, prices dropped accordingly. In turn, this caused substantial lost sales and significantly lower returns on the sales that were made by the U.S. potash producers. Horizon was forced to halt production at its mine for two and one-half months during the fall and winter of 1992-1993 in order to work off growing inventories resulting from the lost sales and sales opportunities at profitable levels. Although Horizon later restarted operations, on April 23, 1993, Horizon shut its mining operations indefinitely, laying off most of its work force. Similarly responding to the loss of sales and the unprofitable price levels in the market, other companies also have reduced their operations and work forces.

These events are directly traceable to the surge of low-priced imports from Russia, Belarus, and Ukraine in an already weak market. Moreover, the difficulties caused by the CIS imports were compounded by the loss of the U.S. producers' traditional export markets in Latin America, for exactly the same reason: low-priced CIS exports displaced U.S. exports in several Latin American countries. We believe our injury may be experienced by many other U.S. industries, as the traditional CIS markets collapse and pressures increase to maintain employment and to generate hard currency. Already, the U.S. uranium and ferrosilicon industries have sought the protection of the antidumping laws with respect to CIS imports. The dumping margins found by the Commerce Department in those cases -- in excess of 100% -- show the lack of market-based influences on exports by CIS producers.

The Adequacy of Existing Trade Laws as a Remedy

Based on available information, the U.S. producers believe that the CIS producers are selling their product in the United States at substantially less than fair value. It is highly likely that CIS sales are driven by such imperatives as the need to generate hard currency and to maintain employment, rather than with any regard for prevailing market conditions. It is noteworthy that in 1992, among various suppliers to the U.S. market, only CIS producers appeared to have increased their market share. Sales data indicate that Canadian, German, and other suppliers adjusted their production and sales to reflect the weak market conditions.

These facts point to invocation of the dumping law once again as a means to restore fair pricing in the marketplace. Antidumping proceedings, however, are very costly, and pose a particularly heavy burden on small, struggling companies such as ours. In addition, the U.S. producers do not wish to foreclose access to the U.S. market to the CIS producers, as in effect happened in the recent uranium and ferrosilicon antidumping investigations. Rather, we recognize that the national interest strongly favors encouraging the evolution of a capitalist system and strong, democratic political institutions in the CIS countries. Thus,
we preliminarily have sought to use other trade laws as an alternative means of resolving the import problem.

**Title IV of the 1974 Trade Act**

Title IV of the 1974 Trade Act contains several provisions specially governing trade with the former Soviet Union and other non-market economy ("NME") countries. Congress then recognized the potential for trade liberalization to lead to injurious import surges from such countries, where production and sales decisions often are made without regard to market-based costs and other market factors. Title IV thus established several preconditions for trade agreements with such countries, pursuant to which most favored nation treatment would be extended to them. In addition to the "Jackson-Vanik Amendment," Title IV included a requirement that such trade agreements contain safeguard provisions, including a mechanism for consultations to address injurious import surges. Further, the 1974 Act provided means for U.S. industries to seek government redress for dumping and market disruption associated with NME imports.

Specifically, Section 405 of the 1974 Act requires, among other things, safeguard arrangements in NME commercial agreements "(A) providing for prompt consultation whenever either actual or prospective imports cause or threaten to cause, or significantly contribute to, market disruption and (B) authorizing the imposition of such import restrictions as may be appropriate to prevent such market disruption." Pursuant to Section 405, the United States extended most favored nation treatment to Russia, Belarus, and Ukraine under commercial agreements that entered into force in 1992 and 1993. Each of those agreements contains identical safeguard arrangements based on the language of Section 405.

Section 406(d) of the 1974 Act authorizes the President to impose tariffs, quotas, or similar relief upon a finding by the International Trade Commission, following an investigation, that imports from a "Communist" country are causing market disruption. Section 406(d) separately permits U.S. industries to petition the President to initiate consultations under the safeguard provisions of commercial agreements negotiated pursuant to Section 405. The President is required to do so, if he determines that there are reasonable grounds to believe that market disruption exists with respect to imports of an article from the NME country subject to the agreement. On April 23, 1993, the U.S. potash industry petitioned President Clinton to initiate consultations with Russia, Belarus, and Ukraine concerning potassium chloride imports from those countries, as provided in the bilateral commercial agreements and Sections 405 and 406(d).

**The Continuing Need for Sections 405 and 406**

The reasons Congress enacted these special market disruption provisions of Title IV are as valid today as they were in 1974. Indeed, the provisions are now more important than ever, given the rapid changes occurring in the countries that comprise the former Soviet Union. Particularly during their transition to market economies, those countries will have strong incentives to export articles, particularly natural resource products, in whatever quantities they can produce, in order to generate hard currency and to maintain employment. At the same time, whatever discipline might have been imposed by centralized export planning will disappear. It may be years before enterprises in those countries understand, much less begin to implement, production and pricing strategies that reflect market principles or market-driven costs.

During this time of economic and political upheaval, it is essential that mechanisms remain in place to provide U.S. industries a means to seek relief from the market disruption caused by such imports. In many cases, these problems perhaps can and will be resolved on a government-to-government basis, without the imposition of direct, import-restricting actions.
Section 406(d) and the safeguard provisions in the commercial agreements required by Section 403 establish the foundation for such nonconfrontational resolution of disputes. They should be preserved. Premature repeal of Section 405 would eliminate the sound, minimum negotiating objectives there set forth as a basis for commercial agreements not yet executed with other former Soviet and NME states. And repeal of Section 406(d) would deprive U.S. industries of the ability to seek action under trade agreement provisions intended to protect them. Furthermore, Section 406(c), as well as the NME provisions of the antidumping law, must remain in place to permit U.S. industries a more direct means of addressing unfair and injurious import surges.

Conclusion

The U.S. potash industry supports the efforts of the U.S. Government to assist the former Soviet Union in its transition to a democratic, capitalist system. We also believe it is worthwhile to review the numerous laws and policies enacted over the past five decades that, in part, govern U.S. political and commercial relations with those countries. Nevertheless, it is premature to repeal those laws that provide an essential means to address trade problems arising from the upheaval that is occurring in those countries. Such laws as Sections 405 and 406 of the 1974 Act were dictated as much by commercial as political considerations: the recognition that trade with enterprises organized in NME countries is often driven by political and social concerns, not marketplace realities. That rationale for the special NME trade laws will remain valid for many years to come.
STATEMENT OF
MORTEN FISKER PETERSEN and WILLIAM B. BIERCE

My name is Morten Fisker Petersen. I am Managing Director of Fisker Associates, Incorporated of North America ("Fisker"), an international management services and consulting group incorporated in New Jersey with offices in Washington, D.C., Princeton, New Jersey, New York City, Vienna, Austria and Copenhagen, Denmark. With me is William B. Bierce, an attorney who is Counselor to our Board of Directors.

OUR FOCUS. The principal focus of Fisker's business practice is to service American companies in the former Eastern European countries and to team with new enterprises in such countries in the internationalization of their own businesses. This activity is greatly affected by your decisions on trade and investment issues.

We offer business advisory services to emerging companies and financial institutions in the newly emerging economies. As our focus, we concentrate on the educational, commercial and financial aspects of effectuating the most rapid possible transition of such institutions to the realities of market economics. In short, we support this transition and help overcome decades and generations of "non-market economy" ("NME") decision-making.

This process is not an easy one. It involves not only the privatisation of formerly inefficient state-owned enterprises from the era of a "command-type" economy and the retooling of factories. It also involves the very critical human resource elements in training new entrepreneurs and retraining former Communist managers and workers in meeting the demands of a market economy.

We are keenly aware of the negative impact of existing U.S. legislation which serves as just one more barrier to the success of this transition process. As with the outstretched hand of help which the United States gave to Germany and Japan after World War II, the United States needs to consider its long-term economic, political and military interests and give substantive support to the transition from NME to market economies. A failure to do so could result in lost opportunities to create a new world order based on the rule of law, economic stability and pluralistic democracies.

We believe that the public policy of the United States would be better served by modifying U.S. trade legislation so that it gives this transition a fair chance. Timing is a key element. Newly democratic governments can not survive if the economic suffering of their constituencies become insufferable.

It is our pleasure to testify on the subject of changes in U.S. "Cold War" trade legislation affecting newly emerging market economies which were once governed by NME regulations. We thank the members of this subcommittee for their inviting us to submit our comments on the subject.

In promoting economic interactions with Central and Eastern Europe, Fisker has made a number of observations on process of transition from a NME environment to a free market. This transition process could be
encouraged, we believe, by a number of measures which we would like to present for your consideration.

**GENERAL AGREEMENT ON TARIFFS AND TRADE.** The successful achievement of the long-stalled GATT Uruguay Round would have a significant role in replacing some of the retaliatory legislation and regulations now applicable in the United States. The new international enforcement mechanism under the Final Act, as proposed by GATT Secretary General Arthur Dunkel in December 1991, would lead to greater compliance with GATT rules promoting transparency and multilateral most-favored-nation status in international trade and investment laws of GATT members.

Many former NME's (including Russia in early June 1993) have applied for membership in GATT. Such membership should be encouraged, particularly in view of the special benefits set forth in the Uruguay Round Final Act bearing upon in trade-related investment, trade-related intellectual property and trade in services, as well as the enforcement mechanism. Looking at the texts of such Final Act (when coupled with the general trade principles of GATT before the Uruguay Round), one sees the development of a body of fair trade principles which would, if adopted by former NME's, demonstrate commitment to free market economic principles.

**OTHER INITIATIVES** - Education and Training in Free Markets and Entrepreneurship; Loans to Small Business. The United States has an historic opportunity, through educational initiatives, to support the efforts of foreign governments to adopt and support new market economies. For generations in some countries, market experience was centralized in the foreign trade organizations, trade ministries and central banks of NME's.

Politically, the benefits of market opportunities may be lost upon a large segment of the population if such understanding is not broadened through continuing educational initiatives for entrepreneurs. Should economic power become highly re-concentrated in the former ruling elite, local populations may become disillusioned with capitalism and market economies and turn towards more nationalistic rulers. Failure of new-found capitalism could pose new political and military threats to American interests.

Economically, the engine of the free market may be lost upon enterprise managers familiar only with the command-type of economy of the classic NME. A lack of local market-oriented management is a significant barrier to free trade and foreign investment.

Education in appropriate market conduct is the key to achievement of the benefits of free markets and new democratic structures. The United States should implement on a permanent basis the financial support given by President Clinton at the Vancouver Summit to small business in former NME's. President Clinton contemplated loans to small to medium Russian businesses.

In addition to broadening this program to all former NME's, Congress should institutionalize financial support for executive training or consulting programs in free market economics and in business administration as a variety of institutions in former NME's. Such aid could be used to promote American service providers, both private and public, in such fields.
We realize that this subject may be outside the scope of this Committee’s current inquiry. However, we believe it is an essential element in any analysis of the policies being considered by this Committee.

CONCLUSION. In reviewing what American legislation may be appropriately repealed, the United States should take into consideration the advances in trade regulatory law which we may expect to obtain from the GATT Uruguay Round.

In addition, regardless of the repeal or enactment of any new trade legislation, the transition economies of Central and Eastern Europe are in need of practical assistance in developing market-oriented business-like thinking by local managers. The United States should support a permanent training ground to overcome generations of "central planning" mindset and promote, within the former NME’s, meaningful and fair competition (both in their home markets and internationally).
Dear Mr. Chairman:

Let me begin by commending you and the members of this subcommittee for taking up the issue of Jackson-Vanik and other Cold War trade restrictions which still exist between the United States and the newly independent states of the former Soviet Union. This issue is as important -- if not more important -- as the other issues facing U.S. relations with the newly independent states, namely, aid, technical assistance and dismantlement of nuclear weapons.

For the last three years, Mr. Chairman, the International Center has led the effort to remove obsolete Cold War barriers which continue to restrict trade between the United States and the newly independent states of the former Soviet Union. With the help of William Root, who served twenty years at the Department of State working on this issue as well as export controls, the International Center has worked with members of this Congress as well as former members to bring attention to this issue and to encourage change.

One of the most significant actions the United States can take to support democratic and free market reform in the newly independent states is to encourage trade between our nations. Trade as well as international cooperation will be the foundation of our relations with these emerging democracies. Long after we have ceased providing these countries with aid, we will still be trading with them.

Trade, Mr. Chairman, is what Russia and the other newly independent states vitally need, even more than aid. Trade will encourage investment by American corporations. American business can provide emerging entrepreneurs in these countries with badly needed training and technical assistance. American corporations can help convert inefficient state owned enterprises into successful private companies. Exports to the United States and the rest of the world will provide hard currency to help stabilize local currencies. And trade will encourage free market economies in these new countries better than any technical assistance or aid program could.

Trade will not only help the newly independent states, but will also promote U.S. exports in these countries and open major markets to U.S. business. The United States has much to offer these emerging democracies -- telecommunications; computers; high technology; wheat, grain and soybean products; transportation equipment; equipment for fossil fuel and natural resources production and much more -- if only we will remove the barriers.
Mr. Chairman, we support a complete repeal of the Jackson-Vanik Amendment. The Jackson-Vanik Amendment was written almost twenty years ago -- at the height of the Cold War -- to restrict trade with Communist countries and to encourage human rights and emigration. We believe Jackson-Vanik has accomplished these goals. While we acknowledge that there may still be citizens in the newly independent states of the former Soviet Union and elsewhere around the world who are denied the right to emigrate, we believe the benefits of repealing Jackson-Vanik far outweigh the costs.

Repealing Jackson-Vanik would send a clear signal of support to the newly independent states in their efforts of reform. One of the first issues President Boris Yeltsin raised at the Vancouver Summit with President Bill Clinton was the issue of trade restrictions. At a time of budget cuts and focus on the U.S. deficit, this is one request we can fulfill at no cost to the United States -- indeed, with benefits to the United States.

Repealing Jackson-Vanik would be an acknowledgement by the United States that the Cold War is, in fact, over. I think most Americans would agree that with the dramatic changes in Eastern Europe, the territory of the former Soviet Union and elsewhere around the world, the Cold War is over and democracy has prevailed. Yet Cold War trade barriers continue to hamper U.S. business around the world.

Finally, repealing Jackson-Vanik would be a sign of support to the American business community, which has shared the burden of trade sanctions with the American people.

Mr. Chairman, there are other Cold War restrictions in addition to Jackson-Vanik that should be repealed. These include restrictions on Export-Import (Exim) Bank and Overseas Private Investment Corporation (OPIC) programs, the Johnson Debt Default Act, and various export controls enforced by both the United States and COCOM on non-strategic technology and equipment which could assist the newly independent states in their transition to free market economies.

These restrictions penalize only U.S. business. The same technology and equipment are being supplied to the newly independent states by Japan, France and Germany.

Mr. Chairman, we commend you and the Trade Subcommittee for your work on this issue, including the removal of prohibitions on the newly independent states to be designated "beneficiary developing countries" under the Generalized System of Preferences. We also commend Representative Sam Gejdenson for his tireless efforts to reform U.S. export controls and Majority Leader Richard Gephardt for his leadership on this issue.

We hope that together you will move swiftly to remove these obsolete trade barriers. Thank you.

This testimony was prepared by Tracey A. Ryan, Project Coordinator for the Commission on U.S.-Russian Relations at the International Center.
Mr. Chairman and members of the Subcommittee:

My name is Vladimir P. Lukin. I am Ambassador of the Russian Federation to the United States of America. On behalf of the Russian Federation, I would like to use this opportunity to submit a statement reflecting concern of the Russian Federation with regard to Cold War statutory restrictions on trade and commercial relations which are still applicable to Russia.

As the subcommittee reviewing all U.S. statutes predicated on the Cold War relationship between the United States and the former Soviet Union, we urge you to take action that would lead to an early repeal of pre-existing political restraints on bilateral commerce. We consider it as the most important prerequisite in the normalization of our trade relations.

Given the new relationship of partnership and cooperation between Russia and the United States we see it as a vital necessity to get rid of the last vestiges of the Cold War and to establish a normal legal and commercial environment that reflect this reality.

Integration of Russia into the world economy which is of paramount importance for continued movement in Russia toward a strong market economy is impossible without eliminating existing, unnecessary impediments to trade.

Russia seeks to establish enduring trade relationship with the United States which will be beneficial and will stimulate the economies of both Russia and the United States. The current level of mutual trade is insufficient and does not correspond to the size of our economies. The removal of U.S. restrictions will promote and encourage trade and will have a positive impact on the ability of Russia to revive its economy. In the not so long run increased trade, rather than aid, that of crucial importance now, is a more effective and cost-efficient method of promoting sustained economic development.

The U.S.-Russian relationship needs a more stable and predictable trade and investment climate which will be advantageous both for U.S. companies looking to do business in Russia and for Russian producers exploring the U.S. market. Such goal requires not only the repeal of remaining Cold War statutory restrictions but also new broader initiatives with respect to those trade laws that have hindered the expansion of U.S.-Russian trade and commercial relations.
REMAINING STATUTORY RESTRICTIONS ON TRADE
AND COMMERCIAL RELATIONS

Jackson-Vanik Amendment Restrictions on Russia.

Despite of the conclusion of the Russian-American Trade Agreement, which entered into force June 17, 1992, and mutual commitments undertaken by the Russian Federation and the United States to provide most favored nation (MFN) status, Russia does not enjoy such status on a permanent basis. Temporary waiver of Jackson-Vanik Amendment (Title IV of the 1974 Trade Act) with regard to Russia introduces an element of instability in our trade relations and makes MFN provisions of the Trade Agreement practically void. This situation does not contribute to the establishment of long term trade contacts between the companies and businesses of our two countries.

The U.S. could made a significant contribution to the ongoing democratic process in Russia by deciding to permanently exempt Russia from this Amendment, which in our country is considered to be a symbol of the Cold War period. The adoption of new Russian emigration legislation eliminates the need for an annual waiver of Jackson-Vanik Amendment with regard to Russia.

Russia is on the list of Ineligible Countries Under the Generalized System of Preferences Program.

We fully support legislative initiative (HR 2264), recently approved by the House of Representatives, lifting the prohibition in Section 502 of the 1974 Trade Act on the former USSR and its successor as a "beneficiary country" under the Generalized System of Preferences program (GSP). We hope that this legislative initiative will be finally approved by the Senate and signed by the President of the United States.

The eligibility of Russia for special tariff treatment under the GSP Program will send a strong signal of support for efforts towards free market economic reforms and will promote economic growth and development through expanded trade. Russia has made concrete steps towards integration into the world economic community. Our country is now a member of the IMF and World Bank and has applied for GATT membership, which meet the conditions of the GSP Program. Russian participation in the GATT is also important in view of the low level of Russian imports into the US market. Furthermore the eligibility for GSP treatment will provide the United States business community with predictability in trade policies and relations, allow United States exporters to take advantage of the quickly growing Russian market and further stimulate United States exports through foreign exchange earnings from trade with Russia.

Classification of Russia as a "Communist" Country for the purposes of Trade Law.

The treatment of Russia for the purposes of certain US trade laws as a successor to the former USSR and the automatic transfer of "communist" status to Russia fails to take into account the fundamental political and economic changes that have already occurred in Russia and the progress made by the Russian people in creating a real democratic society, one that is based on the law. One of the most vivid examples of such unfair and anachronistic provision in trade law is Section 406 of the 1974 Trade Act regarding market disruption by communist countries. Russia is still considered as a communist country for the purposes of this section. From the practical point of view application of this provision would result in strict discriminatory and punitive duties and quotas on Russian import. The need to modify "communist" provisions is obvious. In the long term, the potential revenues from such modification in bilateral trade will greatly exceed any humanitarian or technical assistance to the Russian Federation, provide favorable and equitable treatment of Russian products.
Export Control restrictions

Further reduction of U.S. export controls with regard to Russia will improve opportunities for U.S. exporters and will encourage American companies willing to do business in Russia.

While some progress has been made in the last year, more still needs to be done, especially in such important sectors as telecommunications and computers. Emphasis should be made in shifting COCOM's focus from East-West to North-South. Russia is willing to participate in controlling sensitive exports and recently adopted a law on export control which will guarantee that the exports of sensitive technology will be used only for civilian purposes. International realities demand removal of unnecessary and outdated obstacles to trade and investment.

Conclusion

The dissolution of the former Soviet Union and the emergence of New independent States has brought historic political and economic changes in the world. Russia and the other states of the former Soviet Union are experiencing great challenges in reforming their economies, establishing new equal relationships between themselves and with the outside world. The Russian Government has launched a comprehensive program to introduce key elements of the market economy, which among other things include stabilization of fiscal and monetary conditions, privatization of state property, the opening of the domestic economy to the outside world and the development of market-oriented laws and institutions. For the first time in world history we are confronted with the tremendous task of transformation of the political, economic and social life of our country. The successful transition of Russia to a market economy in many ways depends on the assistance and support of the world community especially during the transition period. The U.S. Administration has expressed recently an interest in developing innovative policies that will not hinder Russian economic development at this critical stage. To become a market economy Russia should stimulate economic growth through the expansion of its export sector. Due to the isolation of the former Soviet Union from the world economy Russia's access to the world markets is very limited. To correct this situation it is necessary to define new approaches to trade with the countries in transition. A new legal infrastructure must be developed to insure the fair and orderly introduction of Russian goods into the world market.

Currently Russia is especially vulnerable to U.S. trade laws because of its statutory classification, which often results in the imposition of large tariffs on imports and precludes Russian producers from competing in the U.S. market. These laws have resulted in serious barriers to the import into the U.S. of Russian urea, uranium, ferrosilicon and other products. Additional imports, such as potash are currently being challenged.

During this most painful transitional period, Russia is seeking to obtain relief from the U.S. trade laws, developed during the Cold War era, to achieve more favorable and equitable treatment of Russian imports, including modified regulatory procedures governing the licensing of products and services in the United States. We also ask you to consider the possibility of adopting special rules in antidumping cases for economies such as Russia that are in transition from non-market to market status.

Russian Federation is willing to become a solid and reliable trade partner and would welcome any initiative which would be beneficial for trade and commercial relations with the United States. In particular we recommend on consultative process between our two governments wherever possible, to resolve trade disputes, rather than expensive, antagonist and time consuming litigation. Normalization of our trade relations will promote investments in Russia and will open up Russian market for American equipment and technology and will contribute to the development of American economy.
Testimony of James B. Knoll, chief operating officer and president of Specialty Equipment Companies submitted June 30, 1993, to the Committee on Ways and Means of the U.S. House of Representatives to be entered into the record of the Ways and Means trade subcommittee hearing of June 2, 1993. This testimony is being delivered in response to an invitation by the subcommittee to express views regarding U.S. Cold War trade statutes and what changes might be made in these statutes to make them more responsive to current commercial relationships between the United States and Russia.

I am writing in response to the invitation by the subcommittee on trade of the U.S. House Ways and Means Committee to comment on U.S. Cold War trading statutes and their current impact on commercial relations between the United States and the Russian Federation.

As the chief operating officer of a group of American manufacturing companies that have sold more than $5 million worth of equipment into Russia and The Ukraine in recent years, I had wanted to testify in person at the June 15 hearing you conducted on the issues in question. Unfortunately, the press of my business responsibilities prevented me from traveling to Washington. Hence, I am submitting this written testimony.

Specialty Equipment Companies, which includes Taylor Company, currently employs nearly 2,000 people in four states -- Illinois, Nevada, North Carolina, and Pennsylvania. Our companies are primarily engaged in the production of food processing equipment, and the bulk of our sales into the former Soviet Union involved ice cream making machines produced by Taylor Company Division in Rockton, Illinois, and coffee brewing equipment produced by Bloomfield Company Division in Chicago, Illinois.

In October, 1990 -- before the attempted ouster of Soviet President Mikhail Gorbachev, before the unraveling of the Soviet Union and before the creation of the Russian Federation under the leadership of Boris Yeltsin -- Taylor and Bloomfield delivered more than $5 million worth of equipment, the bulk of it for making ice cream, to various Soviet state enterprises. When we discovered shortly thereafter that the payments due us were being delayed, we terminated most of what we had hoped would be ongoing commercial relationships within the Soviet Union; the exception being a joint venture that is not dependent on the government there. The level of activity of the joint venture is, however, somewhat restricted because Specialty Equipment Companies has refused to provide further funding until money owed by the Russian Federation is paid in full.

The lack of payment by the Soviet Union and, later, by the Russian Federation -- which has acknowledged to us its responsibility for the debt -- last year contributed, together with other
factors, to bankruptcy proceedings that obliged Specialty Equipment Companies to a reorganization from which it has now emerged.

Still, the legacy of the $5 million owed by the Russian Federation remains with us. It intrudes on our efforts to finance our company properly and to conduct our operations effectively. Absent the $5 million owed by the Russian Federation, Specialty Equipment Companies' ability to invest in new productive capacity obviously is restricted. We believe we should be paid for the products we delivered and we think far too much time has now passed without any reimbursement whatsoever from the Russian Federation.

Since the government of Russia has assumed responsibility for the money owed Specialty Equipment Companies -- notably its Taylor and Bloomfield company divisions -- we believe it is appropriate to consider with our government the ways in which the Russian Federation can be forcefully encouraged to pay its debt.

President Clinton has made clear his commitment to see that domestic concerns inform America's foreign policies. In my view, the case of Taylor Company and Bloomfield Company the money they are owed by the Russian Federation is a classic opportunity for applying the commitment President Clinton has made to the American people. Indeed, it is our understanding that as many as 130 U.S. companies may share our present predicament with tens of millions of dollars owed by the Russian Federation.

Two avenues of action are open.

The United States can impose conditions on aid and loans extended to the Russian Federation obliging it to repay the money it owes companies such as ours. For the most part, the assistance packages being put together for the Russian Federation oblige it to spend in this country a significant portion of the money that is being made available. As a consequence, it seems reasonable to demand that debts owed American companies be paid first with particular attention directed toward those companies that have maintained ongoing business arrangements within the Russian Federation. After all, a company like Specialty Equipment that appreciates the marketing potential of the Russian Federation would like to increase its presence there and in fact would, if its debt could be cleared.

The United States also can impose conditions on the Most Favored Nation trading status Russia now enjoys with the United States. Making MFN for Russia contingent upon the resolution of its debts to American companies would seem a ready-made device for expediting resolution of these problems. Inasmuch as the Trade subcommittee of the House Ways and Means committee has oversight responsibility for Russia's MFN privileges, we would like to meet with the subcommittee and/or its staff to discover ways in which conditions might be imposed on Russia's MFN privileges.

In the interest of providing the Trade subcommittee with a complete understanding of Specialty Equipment Companies' involvement in the former Soviet Union, I would offer the narrative that follows.
The Taylor Company began supplying equipment for manufacturing ice cream in the former Soviet Union -- Estonia and Lithuania to be precise -- in 1988. Initial sales were arranged with TORGMAH Import Company of the Soviet Union by Restital, an Italian company that had been conducting business in the Soviet Union since 1945. In 1989, a sales arrangement was agreed upon with Preeti Sahgal who had established a company called Aventura International Inc. In 1990, as a consequence of a visit by several Soviet trade officials at a trade show in Chicago, an order in excess of $4.2 million was placed with Taylor Company (with another $800,000 directed toward Bloomfield company) by Konrad S. Terech, then minister of internal trade for the Soviet Union.

In May, 1990, we traveled to Moscow to complete arrangements with TORGMAH, an instrument of the Soviet state, for the delivery of the Taylor products ordered by Terech in Chicago. Discussions involving Preeti Sahgal of Aventura, Dani Rendeli of Taylor Freezer International, and Igor Makarov and Igor Stepanov of TORGMAH finally resulted in a contract -- No. 589/1860353/03339-21 -- being signed on July 18, 1990. During the contract signing procedure, Taylor was asked to postpone payment for eight months. We agreed because nothing in our experience with the Soviets up to that point in time had given us any reason to believe they would not pay. Indeed, our previous experience was that contracts would not even be signed by the Soviets unless funds already were earmarked for paying what was required by a contract. At the same time, TORGMAH was agreeing to add an interest payment covering the period of payment delay to which we were agreeing.

It has now been nearly three years in which Taylor has yet to see the money it is owed. While we have been in contact with the U.S. Embassy in Moscow and with executives at Torgmash (the address is: Messrs. TORGMAH, VVO Technopromimport, Ovchinnikovskaya nab. 18/1, Moskva 113324) on a regular basis, the most satisfaction that we have obtained has been assurances from TORGMAH that we will be paid by the Russian Federation. Unfortunately, no one has been willing to say when such a payment might occur.

As I suggested early in this testimony, Taylor is not alone in its plight. Unfortunately, however, though we have been told that the U.S. Commerce Department has list of some 130 U.S. companies in a similar position, we have been unable to discover what companies are on this list or how much in total is owed these companies by the Russian Federation. What has been telegraphed to us by government officials is that the money owed to commercial banks in the West by the Russian Federation is at least $70 billion and that another $9 billion is owed worldwide to "suppliers" such as Taylor.

The dimensions of these debts and their proportionality obviously provide the macro economists with arguments for not tending to the concerns of U.S. "suppliers" as a top priority. I would argue, however, that if the actual amount owed American companies by the Russian Federation were known, it might make sense to see that it is paid off, perhaps as part of the aid and loan packages now be constructed.

Through the experience of my company and on behalf of its 2,000 employees, I can attest to the fact that the Russian Federation's non-payment of the money it owes us has caused...
a hardship that continues. Solving this hardship would be to the benefit of the American
economy and conceivably could open the way for my companies to re-enter the Russian
Federation with a renewed commitment to investing there. In fact, if the problem of Russia
not paying for goods received is not resolved, it is certain that the sort of investment in the
Soviet Union that is being advocated for companies in this and other countries simply will
not materialize, insuring continued global economic instability.

It is in the spirit of this argument that I tell Specialty Equipment Companies' story and seek
your assistance in crafting a solution to my companies' problems.
The U.S. Chamber of Commerce Federation of 215,000 businesses, 1,000 state and local chambers of commerce, 1,200 trade and professional associations, and 65 American Chambers of Commerce abroad is pleased to submit these written comments on the issue of Cold War trade statutes affecting U.S. trade and commercial relations with Russia and the other successor states of the former Soviet Union. Ninety-six percent of the Chamber Federation’s members are small businesses, representing a broad spectrum of the business community.

Many of our large, multinational members have operated in the former Soviet Union for many years, while an increasing number of our small and medium-sized companies are looking to the countries of the former Soviet Union (hereinafter referred to as the Newly Independent States, or NIS) as potential markets for their goods and services. Our members look forward to the development of a strong bilateral economic relationship between the United States and the nations of the NIS.

Since 1989, the Chamber Federation has advocated the normalization of trade relations between the United States and the NIS, including at that time a waiver of the Jackson-Vanik amendment to the Trade Act of 1974 to extend most-favored-nation (MFN) tariff status. In the past four years, we have continued to urge Congress to take the necessary steps toward this normalized business environment. Due in large part to positive actions taken by Congress and both the Bush and Clinton Administrations, we are pleased to submit comments to Congress urging changes in a much-shortedened list of Cold War restrictions, as many of the old laws have been amended or repealed to the benefit of American business.

Generalized System of Preferences

The Chamber Federation supports the recent action of the Ways and Means Committee to lift the Generalized System of Preferences (GSP) program’s exclusion in Section 502 of the Trade Act of 1974 on the USSR, and by extension, its successor states, and designating the Newly Independent States as “beneficiary developing countries” under the GSP program. Such benefits should be accompanied by intensified efforts toward trade and investment liberalization in the NIS. The combination of increasing NIS exports under the GSP program and improved U.S. access to those markets will provide important long-range benefits to businesses in the U.S. and the NIS.

The Jackson-Vanik Amendment

On the list of possible elimination of Cold War restrictions and of keen interest to the American business community is the status of the NIS under the provisions of Title IV of the Trade Act of 1974, the so-called Jackson-Vanik amendment. The Chamber Federation has long held that self-imposed unilateral economic sanctions for political purposes are contrary to U.S. competitive
interests, as such sanctions almost invariably undermine our own position, rather than that of our competitors and adversaries.

Russia's emigration law was put into effect in January 1993. While it is neither perfect, nor totally implemented due to bureaucratic resistance, it does allow for free exit and entry. Under this system, the semi-annual reports to Congress on the status of emigration laws and policies, with the Congressional authority to revoke most-favored-nation (MFN) if there is disagreement with such policies, should provide the necessary safeguards against non-compliance for the immediate future.

Therefore, with respect to the NIS, we recommend that presidential authority be used on a case-by-case basis with the successor states by finding them to be in full compliance with the freedom-of-emigration requirements on Title IV of the Trade Act of 1974 and therefore eliminate the need for an annual waiver.

This action should be followed as soon as possible by legislation that terminates applicability of Title IV to these countries and grants them permanent MFN status. This process has been used successfully with several of the countries of Eastern Europe (notably the Czech Republic and Hungary).

The need to have in place a stated process and timetable is important to U.S. business and its future trading relations with the successor states of the former Soviet Union. The current annual waiver procedure creates an uncertain environment for long-term business objectives because the amendment affects not only MFN status but also limits the ability of the Export-Import Bank of the United States to provide credits and credit guarantees, as it is also covered by the Jackson-Vanik amendment.

State Trading Enterprises (Section 1106 of the Omnibus Trade and Competitiveness Act of 1988)

In this section, it is stated that the President, before any major foreign country accedes to the Generalized Agreement on Tariffs and Trade (GATT), is charged with making a determination on the status of trade of that country done by state trading enterprises and what impact the imports to the U.S. of these state enterprises (those which are not governed by market principles) would have on U.S. business.

With respect to Russia, that country has formally requested full membership in the GATT and a working party of GATT members has been appointed to examine Russia’s request and the United States expects to play an active role in the ongoing negotiations on the membership. Over the past two years, Russia has taken several important steps to bring the economy closer to a free-market system by liberalizing the trade regime and domestic prices, providing a framework for restructuring and privatizing large enterprises, and a foreign investment regime in which foreign companies can operate freely.

Accession to the GATT is no minor matter. Before any country can assume the privileges and obligations of GATT membership, it must as a matter of principle commit to, among other things, non-discriminatory trade, forego non-tariff barriers, and support dispute resolution processes. Such principles should apply no less to Russia than to any other present or aspiring GATT signatory. Therefore, while the Chamber Federation applauds Russian progress made to date, it urges the U.S. Congress and the Administration to couple support for Russia's GATT membership request with assurances that additional market reforms and commitments to the above principles will be forthcoming. The U.S. should also consider expediting approval of extending the application of GATT between the United States and Russia in conformance with Section 1106 of the Omnibus Trade and Competitiveness Act of 1988.
Summary

The ability of the United States to assist these countries in their historic endeavor to transform their economies is in great part dependent on removing the barriers to U.S. trade and investment that will provide a normalized business environment.

In addition, we must provide assistance to these countries in the form of technical help in basic market economics, so that the changes we require from them in order to amend our laws can be understood in the larger context of global commerce. In order for American firms to compete globally and provide more jobs for the American worker, they must have the legislative and regulatory framework to do so. In the past few years, the U.S. Congress has proven that you support this premise for Russia and the NIS; we ask that you complete the job you have begun in a fair and timely manner.