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I. Introduction

The focus of this symposium is to outline and discuss the important changes the Omnibus Trade and Competitiveness Act of 1988 has made to U.S. trade law and trade policy. This article sets the stage, or perhaps the context, for the more focused articles to follow. Consequently, in this article I would like to paint in broad strokes my view of the Act, and where U.S. trade policy goes from here. After that, I would like to outline how the Act affects U.S. exports of high technology products and the global transfer of technology.

This latter topic is of particular interest to me, because as Undersecretary of Commerce for Export Administration, I am responsible for formulating U.S. policy on the export of goods and technology that have both a civilian and a military utility.

II. The Trade Act and Trade Policy

First, let me discuss the Act and the changes it has brought. I see the Omnibus Trade and Competitiveness Act of 1988 (the Act) as a fundamental departure from the direction U.S. trade policy has taken since the enactment of the Trade Act of 1974. For the first time, U.S. trade law requires those responsible for the formulation of U.S. trade policy to focus their attention, and the full weight of the U.S. government, on those unfair trading practices that hurt the American economy the most.

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The Act says very clearly that the U.S. Government should not spend its time pursuing irritating but easy trade cases. The purpose of U.S. trade law is to bring the maximum benefit to the American economy with the limited amount of resources available to the U.S. government. It is almost a cost-benefit analysis applied to trade policy. This new approach is most evident in the amendments to Section 301 of the Trade Act of 1974, and in the emphasis on protecting U.S. intellectual property rights.

For those of you not entirely conversant in the alphabet soup of trade law—or perhaps I should really say numerical soup, because of Sections 301, 201, 337, and 232 among others—section 301 of the Trade Act of 1974 is the principal legal mechanism for addressing the unfair trading practices of our trading partners. It is the mechanism by which the U.S., in the person of the United States Trade Representative (USTR), brings a complaint against another country's unfair trading practice before the international forum of the General Agreement on Tariffs and Trade (GATT).

The amendments to Section 301—which have been characterized as the "Super 301" provisions—require the USTR to identify those countries that engage in the most egregious pattern of trade distorting practices. The USTR estimates the adverse effects those practices have on the U.S., and then the USTR reports this estimate to Congress.

This list of countries and unfair trading practices then provides the focus for investigations initiated by the USTR. The U.S. might retaliate if these investigations reveal that it is necessary. It should be emphasized that the possibility of retaliation is not the important element here. Rather, the idea is that by focusing attention on the "big ticket" items, the USTR can get the biggest bang for its buck.

The other advantage of this approach is that it identifies very clearly the "bad actors" in trade for Congress. Our trading partners have learned very well that it is far better to negotiate with the USTR than suffer the risks of a hostile Congress. This possibility should give the USTR considerable negotiating leverage.

I do not believe that it is protectionist to force our trading partners to open their domestic markets to American products. To the contrary, opening the markets of other developed countries would expand world trade and everyone would benefit. For too long, our trading partners have profited from America's open

borders, while hiding behind their own trade barriers. It is high time for countries like Japan to become full-fledged members of the world trading community.

The Act also authorizes the USTR to retaliate against unfair trade practices. Previously, that authority resided solely with the President. Of course, the USTR would still be subject to the supervision of the President, but this new authority should enhance the negotiating position of our trade representative. Certainly, any country engaging in unfair trading practices would be more inclined to negotiate in good faith if they knew that the U.S. negotiator could and would retaliate quickly.

The other important change in the 1988 Act is that, again for the first time, U.S. intellectual property is identified as a unique national resource worthy of special protection. This particular attention concerning intellectual property rights arises from two types of unfair trading practices.

First, the failure of other countries, particularly certain east Asian countries, to protect U.S. intellectual property has resulted in a flood of counterfeit fashions—jewelry, luggage, books, and computer software—just to name a few. If it is easy to copy, it's available in counterfeit.

The other type of unfair practice is the denial of fair market access to owners of U.S. intellectual property. One example of this is the limitations imposed by the government of India on the importation of motion pictures. India limits the number of films that can be imported each year as a protection for its own domestic industry. In addition, it limits the amount of royalties that can be repatriated back to the U.S., and it limits the ways that distributors can use nonrepatriated earnings. Finally, it requires foreign motion picture distributors to make multiple-year interest free loans to selected organizations in India. One doesn't need to go any farther than the movie schedules of one's local newspaper to know that U.S. producers dominate the commercial motion picture market. Therefore, limitations on the import of motion pictures in India, or any other country, have a very direct effect on the U.S. economy.

The Act's approach to the protection of intellectual property rights is very similar to its approach to other unfair trading practices in "Super 301." The USTR is required to identify those countries engaging in the most egregious practices that deny protection or fair market access to intellectual property owners. The USTR is directed to concentrate its efforts on re-

moving those unfair trade barriers and, if necessary, retaliate. Again, the important element is not the retaliation, but rather the focusing of our attention on the practices and policies that hurt us most. It has often been said and written that America is losing its ability to compete in too many industries. In some cases this may very well be true, but we have never lost our ability to innovate and to be imaginative and creative. Without adequate intellectual property protection, we might lose that too.

As I said at the outset, I think "Super 301" and the focus on intellectual property rights are important, fundamental changes in our international trade policy. However, the 1988 Act also contains a number of other significant changes to U.S. trade law. For example, the Act changes the way the U.S. Government helps industries that have been hurt by import competition. This type of assistance is provided under section 201 of the Trade Act of 1974. Under the new provisions in the 1988 Act, industry is encouraged to use the breathing room provided by import relief to restructure itself so it is better able to meet competition from abroad. This should make our domestic industries stronger and more competitive. In addition, American workers will benefit substantially from the changes in the Trade Adjustment Assistant Program. This program helps workers who have lost their jobs due to import competition find new jobs. The changes in the Act emphasize retraining as the best way to ensure that workers whose skills have become obsolete due to changes in technology continue to be productive members of society. Finally, the Act makes some very constructive changes to our anti-dumping and countervailing duty laws. These laws protect American producers from unfair foreign competition. The Act closes a number of loopholes that previously allowed foreign producers to circumvent our laws by shipping their dumped or subsidized products through third countries.

III. The Trade Act and Export Controls

I would like to now turn to the changes made by the Act which affect the way my agency, The Bureau of Export Administration of the Department of Commerce, regulates the export of goods and technology that have both a civilian and a military use. Before I get to the Act itself, I would like to outline the national security context for export controls. I want to discuss the national security context for export controls, because some people seem to have decided that since we have entered the era

of the smiling Bear from the Ural, COCOM is irrelevant. The Bear may be smiling; however, we must never lose sight of the fact that the Bear has very sharp teeth. Indeed, they are nuclear teeth, and the Bear's mouth is still open and pointed west. The recent announcements of General Secretary Gorbachev regarding troop reductions are certainly welcome. However, we must wait for his actions before we relax our export controls. Until we see some concrete manifestations of the General Secretary's good will, we must be vigilant in maintaining our technological superiority, because that technological edge is the key to our national security.

The U.S. regulates the export of so-called "dual-use" commodities to preserve our national security. We view our technological superiority as a key to our national security. Since the end of World War II, the U.S. and NATO's response to the numerical superiority of the forces of the Warsaw PACT has been to rely on smaller numbers of highly sophisticated weapons systems. So far, those weapons have served us very well. In the few examples of head-to-head confrontation between Soviet and Western weapons systems, Western technology has been the clear winner. In the 1982 air engagement between Israel and Syria over the Bekka Valley, Israeli F-15's and F-16's scored an impressive eighty one to one victory over Syrian MIG-21's and MIG-23's. Certainly, credit must be given to the Israeli pilots and their ground crews. However, the sheer magnitude of the numbers indicates a clear victory for Western weapons and their command and control systems.

For nearly twenty years, the U.S. has coordinated the control of dual-use commodities with its NATO allies and with Japan in an organization called the Coordinating Committee for Multilateral Export Controls (COCOM). COCOM is an extraordinary international organization. Although there is no formal treaty defining the obligations of the member countries, COCOM's decisions directly affect the sovereignty of each of its members. COCOM has this effect because it operates on the basis of the consensus of its members. That means that if a single member objects to the export of a particular item by another member, the export must be denied. Similarly, each and every member must agree on the level of technology to be controlled. This consensus requirement often makes COCOM meetings very interesting exercises in diplomacy.

Let me now return to the Act itself, because the Act makes some very fundamental changes in the way the Commerce Department regulates dual-use exports. First and foremost, the Act significantly liberalizes trade with our COCOM allies and with other free world countries. For example, the Act eliminates controls on the export of very sophisticated technology to our COCOM allies. This action is based on the assumption that the export control systems of other COCOM member should be as good as our own. While I might dispute the assumption in certain limited instances, I do support the general direction. In addition, the Act eliminates all controls to other free world countries, but at a much lower level of technology. All told, the changes in the Act should reduce the number of license applications that we receive by twenty-five percent, which amounts to approximately 25,000 license applications.

One other very important reform is in the area of re-export controls. In the past, the United States has reserved the right to control the re-export of previously exported U.S. goods and technology to third countries. The U.S. also reserved the same rights for products produced abroad that included U.S. parts and components. Some of our COCOM allies reacted rather strongly to what they saw as an unnecessary, extraterritorial extension of U.S. law. More troubling was the fact that a number of European manufacturers were systematically designing U.S. parts out of their products. The Act recognizes this problem and eliminates U.S. re-export controls for all re-exports to COCOM destinations. Again, the assumption is that COCOM allies' export control systems are adequate.

In addition, the Act also eliminates controls on foreign products that contain less than twenty-five percent U.S. parts and components. I have spoken with a number of American manufacturers, and they have assured me that the parts and components provision should eliminate most re-export controls of foreign produced goods.

The other important area of reform is in the liberalization of trade with the People's Republic of China. The Act authorizes the Commerce Department to issue a license to cover bulk shipments of a variety of goods to China. Previously, we had been limited to a single license covering a single shipment. This change will significantly reduce the administrative burden of doing business with China. I find this very exciting, because China is clearly the largest potential market for the U.S. in the world

today. If I were to make a single recommendation for the future of U.S. trade policy, it would be to expand trading opportunities with China in both directions. A sound mutual trading relationship with the Chinese should be one of our highest priorities.

IV. Conclusion

In conclusion, I would like to say that despite the predictions of doom that accompanied the passage of the Omnibus Trade and Competitiveness Act of 1988, I think that on balance it makes a positive contribution to U.S. trade policy and to a fair and open international trading system.