

Comments are due no later than noon on October 18, 1996. Comments must be in English and provided in twenty copies to: Byron Sigel, Room 322, USTR, 600 17th Street, NW, Washington, DC 20506.

Comments will be placed in a file open to public inspection, except confidential business information. Parties requesting that confidential business information they submit be exempt from disclosure must mark the confidential business information in the same manner as described in 15 CFR § 2006.15(b), i.e., it must be clearly marked "BUSINESS CONFIDENTIAL" in contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the file that is open to public inspection.

Appendix—List of Previously Raised Issues Specific Deregulation Proposals

- A. Agriculture
 - 1. Phytosanitary Quarantine Restrictions
 - 2. Food Additives/Product Standards
 - 3. Feedgrains
 - 4. Racehorses
 - 5. Wood Products
- B. Automotive and Motorcycles
 - 1. Automotive
 - 2. Motorcycles
- C. Construction
 - 1. "Common Specifications" (*Kyotsu Shiyosho*)
 - 2. Standards
 - 3. Product Testing
 - 4. Product Approval/Certification Organs
 - 5. Better Living Mark
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 - 8. Licensing
 - 9. Study Committees
 - 10. Multi-story and Multi-family Residential Units
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 - 12. Procurement Procedures for Construction-related Contracts
- D. Distribution-related
 - 1. Import Processing
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 - 3. Distribution and Wholesaling
 - 4. Retail Distribution
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 - 6. Premiums and Sales Promotions
- E. Energy Production and Delivery
 - 1. Electrical Equipment
 - 2. Electric Power Generation, Transmission and Distribution
 - 3. Petroleum and Related Products,

- and Natural Gas
- F. Insurance and Financial Services
 - 1. Insurance
 - 2. Financial Services
- G. Investment
 - 1. Access to Land and Facilities
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- H. Legal Services
- I. Medical/Pharmaceuticals
 - 1. Reimbursement Approval Process
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 - 8. Combination of Medical Device Kit
 - 9. Transfer of Import Approval/Import License
 - 10. Business Office Issues
 - 11. Pharmaceuticals Included in Disposable Medical Device Kits
 - 12. Product Dimensions in Applications for Approval
 - 13. Soft Contact Lens Disinfection Method
- J. Redemption Game Machines
- K. Telecommunications
 - 1. Market Entry/Rate Regulation
 - 2. Interconnection
 - 3. Transparency
 - 4. Cable TV
- L. Transportation
 - 1. Freight Transportation
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Administrative Reform Proposals

- A. Information Disclosure and Retention
- B. Advisory Committees and Study Groups
- C. Industry Associations
- D. Administrative Regulations and Procedures
- E. Review of Administrative Actions

Competition Policy Proposals

- A. Strengthen the Structure and Organization of the JFTC
- B. Enhance the JFTC's Investigatory and Enforcement Powers
- C. Prevent Anticompetitive Practices by trade Associations
- D. Strengthen Coordination Between the JFTC and Other Ministries on Proposed Administrative Guidance
- E. Eliminate Antimonopoly Exemptions
- F. Increase Efforts to Eliminate Dango
- G. Eliminate International Contract Notification Requirements
- H. Include Private Remedies Against Antimonopoly Violators

Byron Sigel,

Director for Japanese Affairs.

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Report on Trade Expansion Priorities Pursuant to Executive Order 12901 ("Super 301")

AGENCY: Office of United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Acting United States Trade Representative (USTR) has submitted the report on United States trade expansion priorities published herein to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the United States House of Representatives pursuant to the provisions (commonly referred to as "Super 301") set forth in Executive Order 12901 of March 3, 1994, as extended by Executive Order No. 12973 of September 27, 1995.

DATE: The report was submitted on October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Irving Williamson, Chairman, Section 301 Committee, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508, (202) 395-3432.

SUPPLEMENTARY INFORMATION: The text of the USTR report is as follows:

Identification of Trade Expansion Priorities Pursuant to Executive Order 12901; October 1, 1996

This report is submitted pursuant to Executive Order No. 12901 of March 3, 1994, as extended by Executive Order No. 12973 of September 27, 1995. Under the Executive Order the United States Trade Representative (USTR) is required, by September 30, 1996, to "review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent." The Executive Order permits the USTR to include, if appropriate, "a description of foreign country practices that may in the future warrant identification as priority foreign country practices." The USTR may also include "a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination."

Trade Expansion Priorities

President Clinton's top trade expansion priority continues to be ensuring economic prosperity for the American people by expanding U.S. exports of goods and services. The President is committed to achieving this goal by negotiating agreements that afford access to foreign markets, ensuring that U.S. trading partners comply with their trade agreement obligations, ensuring that U.S. trade laws are vigorously enforced, and that we continue to expand international trade rules to cover sectors of greatest interest to U.S. exporters.

Priority Foreign Country Practices

President Clinton's commitment to the enforcement of trade agreements and U.S. trade laws has been clear from the beginning of his Administration. Through vigorous application of U.S. trade laws and active enforcement of U.S. rights under the new dispute settlement procedures of the WTO, the Administration has effectively opened foreign markets to U.S. goods and services. The President also has successfully used the incentive of access to the U.S. market to encourage improvements in workers' rights and reform of intellectual property laws and practices in other countries. The more than 40 enforcement actions already taken are outlined in the attachment to this report.

Under President Clinton's direction, the Office of the USTR has negotiated close to 200 trade agreements—including the World Trade Organization (WTO) agreements, and many other market-opening agreements that expand opportunities for U.S. companies and workers. These agreements, combined with aggressive export promotion and enforcement of U.S. trade laws, have helped increase U.S. exports of goods and services substantially. In the first seven months of 1996, U.S. exports of goods and services were running at an annual rate of \$845 billion, some 37 percent higher than in 1992.

For purposes of this report, the Administration has decided not to identify any priority foreign country practices. The most significant foreign trade barriers are already being addressed through Administration's ongoing strategy of actively monitoring and enforcing trade agreements, strategically applying U.S. trade laws, and invoking WTO dispute settlement. Enforcement action is ongoing, not just in response to an annual review. Since 1993, the Administration has enforced its agreements by deploying all available trade enforcement tools at its disposal.

The USTR has used the leverage of Section 301 of the Trade Act of 1974 and the "Super 301" annual review eleven times to resolve significant problems in foreign markets; used Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 to gain compliance with telecommunications trade agreements with three major trading partners; addressed discrimination in foreign government procurement practices in five cases under Title VII of the Omnibus Trade and Competitiveness Act of 1988; and invoked the dispute settlement procedures of the WTO to protect the interests of U.S. producers and manufacturers in 20 cases, including the three new WTO disputes initiated as a result of this annual review. The Administration has also used the "Special 301" provisions in U.S. trade law to improve intellectual property protection in more than fifteen major markets, and has used the benefits of the Generalized System of Preferences program to encourage several developing countries that benefit from that program to improve intellectual property protection or to afford all workers internally recognized worker rights. In addition, the Administration is constantly using the leverage of U.S. trade laws to secure market opening agreements and to eliminate specific trade barriers, without having to formally invoke the provisions of those laws.

New Section 301 and WTO Enforcement Actions

As a result of the 1996 annual review, the Administration is initiating the following new actions:

- **Indonesia's national auto policy:** Indonesia has recently expanded a domestic auto policy that offers tax and tariff incentives to increase the local ownership of automotive companies in Indonesia and the local content of the automobiles they manufacture. Indonesia's national car policy grants tax and tariff benefits to "national car" automobile manufacturers based on the percentage of domestic content in their vehicles. This policy adversely affects U.S. exports of autos and auto parts to Indonesia. Therefore, the USTR will request consultations under WTO dispute settlement procedures in the context of an investigation under Section 301 of the Trade Act of 1974. Further steps under WTO dispute settlement procedures will depend on the outcome of the consultations on these measures.

- **Brazil's auto program:** Brazil offers auto manufacturers reduced duties on imports of assembled cars and other

benefits if they export sufficient quantities of parts and vehicles and promise to meet local content targets in their Brazilian plants. The program adversely affects U.S. exports of auto parts in Brazil. In August 1996 the USTR invoked WTO dispute settlement procedures and held consultations with Brazil on these measures. As a result, Brazil has agreed to enter into intensive talks with the United States, with the goal of removing the discriminatory impact of its practices on U.S. exports. The USTR will initiate a Section 301 investigation of these measures, and further steps under WTO dispute settlement procedures will depend on the outcome of the talks with Brazil.

- **Australia's export subsidies:** Australia provides significant export subsidies despite its obligations under the WTO Agreement on Subsidies and Countervailing Measures. In response to a section 301 petition, the USTR will invoke WTO settlement procedures in the context of an investigation under Section 301 to challenge Australian export subsidies that adversely affect U.S. manufacturers of leather for automobile upholstery.

- **Argentina's import duties:** Argentina maintains specific import duties on textiles, apparel and footwear that exceed the 35% ad valorem tariff rate to which Argentina committed under the WTO agreements. Argentina also maintains other WTO-inconsistent import barriers. Therefore, the USTR will invoke WTO dispute settlement procedures in the context of an investigation under Section 301.

Strategic Enforcement and Automotive Trade

A top priority of the Clinton Administration has been monitoring implementation of the WTO agreements to ensure that the members of the WTO are living up to their Uruguay Round commitments and complying with the WTO rules. In the course of these monitoring efforts, the United States has focused in particular on foreign practices that could pose serious problems to the international trading system if they proliferate in many markets. Therefore, the Clinton Administration has adopted a strategic enforcement strategy—aimed not only at challenging existing barriers but also at preventing the future adoption of similar barriers around the world. Successful challenges to such measures will establish beneficial precedents not only for the United States but for all WTO members.

Application of the Administration's strategic enforcement strategy is particularly appropriate in the

automotive sector, where trade-related investment measures effect U.S. exports in many countries. Manufacturing of autos and auto parts is a key industry for the United States and access to foreign markets is important for its future growth. The U.S. auto industry has made enormous strides in competitiveness and productivity. As a result of USTR's monitoring of compliance with WTO agreements, the USTR has identified practices that are inhibiting U.S. exports of autos and auto parts and the creation of the jobs associated with those exports. In many cases such practices appear to be consistent with WTO rules, including those under the WTO Agreement on Trade-Related Investment Measures (TRIMs).

In addition to initiating the actions in the auto sector mentioned above, the Administration is pursuing the following other practices affecting the auto sector:

- **Bilateral agreement with Japan:** In 1995, the United States and Japan negotiated an agreement on market access for foreign automobiles, which addresses the full range of market access barriers regarding sales of autos and auto parts in Japan and to Japanese companies outside Japan. In September 1996, the U.S. and Japan held the first follow-up meeting under the agreement. Results under the agreement in its first year have been very good. Sales of U.S.-made Big Three vehicles in Japan were up more than 40 percent in the first half of 1996, and Japanese purchases of U.S. auto parts are rising steadily. However, full implementation of the agreement remains critical. Among other issues, the United States is concerned about an apparent slackening in the pace of new dealership relationships between the Big Three and Japanese auto dealers, as well as deregulation with respect to the auto parts replacement market in Japan. The United States and Japan will meet regularly during the year to assess progress under the agreement on the basis of quantitative and qualitative factors.

- **Bilateral agreement with Korea:** The United States concluded a bilateral trade agreement with Korea in 1995 to open the auto market for U.S. automakers. The agreement reduced discriminatory taxes that disadvantage the types of autos U.S. manufacturers produce, eliminated and streamlined auto standards that act as barriers to market access, permitted U.S. advertisers equal access to television time, and allowed foreign majority ownership of auto retail financing entities. Since that agreement was concluded, domestic producers have

identified other measures that continue to impede market access. Market penetration by foreign automobiles still remains at less than one percent. In addition, the protected Korean market has provided a sanctuary for Korean manufacturers, allowing them to charge higher prices to their domestic consumers so that they can pursue an aggressive export strategy abroad. USTR is conducting a thorough review of U.S. access to Korea's auto market, including whether additional bilateral commitments are necessary to further open the Korean market, and whether existing barriers violate Korea's obligations under the WTO agreements. USTR officials will raise these issues with Korean officials in Seoul in mid-October.

- **China's Automotive Industry Policy:** China imposes local content requirements, import restrictions and export performance requirements and other trade distorting measures in its autos sector that are inconsistent with WTO rules. The United States is addressing these measures bilaterally and in the context of negotiations on the accession of China to the WTO, to ensure that such measures are not maintained. The WTO working party on China's accession request meets again in Geneva at the end of October.

- **Auto TRIMs monitoring:** USTR will carefully monitor and consider action with respect to practices in other major auto markets such as (a) India, where import licensing, domestic content and export performance requirements affect market access; (b) Argentina, where local content requirements have been increased since Argentina notified the WTO of its auto regime pursuant to the TRIMs agreement; and (c) Malaysia, which maintains a national auto program which must be phased out in accordance with the TRIMs Agreement. The next meeting of the WTO Committee on Trade-Related Investment Measures will be held in Geneva on October 10.

Other Bilateral Priorities That May Warrant Identification as Priority Foreign Country Practices in the Future

- **Japan Market Access for Insurance:** The Administration is continuing negotiations with Japan concerning its implementation of the insurance agreement reached between the United States and Japan in 1994. The core of the dispute centers on the linkage between deregulation of Japan's primary life and non-life insurance markets and the entry of Japanese insurance firms into the so-called "third sector," a segment of the market consisting of such products as personal accident and

cancer insurance, which are the areas of greatest strength for foreign firms. The agreement provides that "radical change in the business environment" in the third sector will be avoided until significant deregulation of the primary sectors, and a "reasonable period" for medium to small and foreign insurance providers to compete in the primary sectors. On September 30, 1996, the U.S. and Japan reached an interim agreement regarding the conditions under which the new subsidiaries of the major Japanese life and non-life companies may offer products in the third sector upon the start-up of their business on October 1, 1996. These conditions will restrict entry by the subsidiaries into the third sector until the two governments reach, before the end of the year, an overall agreement on "avoiding radical change" in the third sector and substantial deregulation of the primary sectors. In addition to temporary restrictions in the third sector, the interim agreement provides some important initial primary sector deregulation. However, significantly more primary sector deregulation will be necessary as part of an overall resolution of this issue, consistent with the 1994 agreement.

- **Japan telecommunications:** In October 1994, the United States and Japan entered into a bilateral agreement to increase access and sales of foreign telecommunications products and services in the Japanese government procurement market. In May 1996, Japan's National Police Agency (NPA) selected two Japanese companies to develop the specifications for a new telecommunications system. When a foreign company challenged this decision under Japan's government procurement bid protest mechanism, the Japanese Government cited the "order and safety" exception of the WTO Government Procurement Agreement as the basis for denying any review of this issue. The United States Government has serious concerns about the use of the order and safety exception in this case, and serious concerns about the procedures and manner in which the Japanese Government has conducted this procurement. The two governments held consultations on this issue on September 17, 1996, but made no progress toward resolving the issue. Accordingly, the United States is consulting with industry representatives on appropriate next steps. USTR officials will meet with Japanese officials at the end of October on implementation of the bilateral telecommunications agreement.

- **Japan Market Access for Paper and Paper Products:** In the April 1992 U.S.-

Japan paper agreement, Japan agreed to take GATT-consistent measures to increase substantially market access in Japan for foreign paper and paperboard products. Nevertheless, a number of structural barriers continue to impede the U.S. paper industry's ability to export into the nearly \$40 billion Japanese paper market, which is the world's second largest. The market is restricted by a variety of systemic impediments, including: (1) Exclusionary business practices, (2) the complex and essentially closed Japanese paper distributions systems, (3) interlocking relationships between Japanese producers, distributors, merchants, converters, and corporate end-users, (4) non-transparency in corporate purchasing practices, and (5) inadequate enforcement of the Japanese Anti-Monopoly Act (AMA). The United States is continuing to press Japan to fully implement the agreement and address the outstanding barriers. Further consultations will take place in the near future.

- **China Market Access for Agricultural Products:** China continues to apply phytosanitary standards to U.S. exports of citrus fruit and wheat, particularly wheat from the Pacific Northwest, that are not based on scientific principles and which act as a virtual ban on these exports. Under the 1992 U.S.-China Market Access Memorandum of Understanding, China committed to remove by October 1993 any non-science-based phytosanitary standards on a number of agricultural items, including citrus and wheat. China is a major potential market for U.S. citrus and wheat producers. Despite further commitments on the part of China and repeated efforts by the United States to negotiate a resolution of these issues, China has yet to remove these non-science-based restrictions. The United States and China have accelerated discussions at senior levels of both governments, with the next round of talks to be held in late October. These issues are also being addressed in the context of WTO accession negotiations.

- **Korea telecommunications:** In July 1996, the USTR identified Korea as a "Priority Foreign Country" under Section 1374 of the 1988 Omnibus Trade and Competitiveness Act for failure to address market access barriers to U.S. telecommunications products and services. The United States seeks to address a range of Korean practices and obtain commitments by the Korean government to refrain from interfering in private sector procurement, to provide nondiscriminatory access and regulatory transparency in the

telecommunications services sector, and to protect intellectual property rights. The United States seek to conclude a bilateral understanding to resolve these outstanding issues but, absent an agreement, will pursue vigorously all options available under U.S. trade law. The Administration has made clear its intention not to use the full year provided under the statute for these negotiations. The next round of consultations will be held in late October.

- **Germany—electrical equipment.** In April 1996, the Administration identified Germany under Title VII of the 1988 Omnibus Trade and Competitiveness Act for its failure to comply with market access procurement requirements in the heavy electrical equipment sector. The imposition of trade sanctions provided under Title VII was delayed until September 30, 1996, because consultations suggested a resolution was possible given additional time. On September 25, the German Cabinet approved going forward with legislative reform of the procurement remedies system. The Economics Ministry has also agreed to undertake certain monitoring and outreach actions prior to enactment of the legislation. Accordingly, the USTR has decided to continue the suspension of sanctions while it monitors closely Germany's progress toward making the necessary reforms, and monitors upcoming procurements involving U.S. bidders. The USTR will review the situation on December 1, 1996. If there has been insufficient progress and problems facing U.S. firms persist, USTR will impose sanctions.

- **Ecolabeling Directive:** The EU Ecolabeling Directive sets forth a scheme whereby EU member states will grant voluntary environmental labels based on criteria approved by the European Commission for products in specific sectors. While the United States supports the concept of ecolabeling and appreciates the EU's attempts to address problems regarding ecolabeling criteria, the United States continues to be concerned that the EU process for developing criteria for certain paper and textile products has not been sufficiently transparent. The EU has committed to improve meaningful participation by non-EU interests, but there is still room for improvement. The United States has urged that the EU ecolabeling program provide meaningful and accurate information to consumers on the environmental impacts of products, and that ecolabeling criteria not be based on a single approach to environmental protection without giving adequate attention to other

potentially comparable approaches. Bilateral discussions with the EU under the auspices of the New Transatlantic Agenda will be held on October 28-29 and will focus on the shared environmental objectives of ecolabeling programs.

- **EU design—restrictive standards:** Use of design standards rather than performance-based standards increasingly creates an impediment to U.S. exports to the EU. The United States has raised its concern with such standards both bilaterally and in the WTO. In particular, the USTR has objected to European standards which, by prescribing non-safety-related design characteristics for gas appliance connectors, preclude the use of U.S.-made connectors in Europe. Progress in obtaining product approvals and/or changes to these standards in certain EU member states may be negated by the recent decision of a European regional standards body to establish a technical committee to develop a European-wide standard for gas connectors. U.S. firms have also expressed concern that the EU may adopt a design-restrictive standard for asphalt shingles that would effectively preclude U.S. exports. To prevent the adoption of further standards-related trade barriers, the United States is continuing bilateral discussions with member state and Commission officials, with the next meetings scheduled for mid-October.

- **Saudi Arabia International Conformity Certification Program (ICCP):** Saudi Arabia has implemented mandatory certification requirements that affect a wide range of U.S. exports to Saudi Arabia. The certification program fails to meet fundamental obligations, such as transparency and nondiscrimination, that the Saudi government would have to meet as a member of the WTO. The United States has raised its concerns with the certification program, both bilaterally and in the context of Saudi Arabia negotiations to accede to the WTO. Bilateral consultations with Saudi officials were held on September 30 and will resume in Geneva in early November.

Multilateral Priorities

Trade in Services. The General Agreement on Trade in Services (GATS) is the first legally enforceable multilateral agreement covering trade and investment in the services sector. Market access concessions agreed under the GATS provide assurances of open markets and nondiscriminatory treatment for U.S. services exporters. Effective U.S. participation in further negotiations on opening services

markets under the GATS is a high priority.

- **Telecommunications Market Access Negotiations:** The WTO Agreement provides for continuing market access negotiations in the basic telecommunications services sector. These negotiations cover local, long-distance, and international basic telecommunications services. In these negotiations, the United States has sought to ensure that U.S. firms may provide basic telecommunications services in foreign markets both through facilities-based competition—including the right to build, own, and operate domestic and international network facilities—and through resale of services on existing networks. The United States has also sought to ensure that U.S. companies can compete in foreign markets on reasonable and nondiscriminatory rates, terms, and conditions. The United States has offered to open its telecom market if other nations would open their markets. Unfortunately, the United States did not obtain a critical mass of high quality offers from its trading partners by April 30, 1996, which was the original deadline for these talks. Rather than accept a bad deal—or walk away from the good offers tabled by some countries—the United States won support for an extension of the telecom talks to February 15, 1997. The additional time will allow other nations to significantly improve their market-opening offers, a precondition to any eventual agreement.

- **Financial Services Market Access Negotiations:** Financial services are at the heart of the world's economy, facilitating all commerce and making possible the creation, allocation and preservation of capital which is fundamental to economic activity. A country that isolates its financial sector cannot be a full participant in, or beneficiary of, the global economy. The United States has a competitive, world-class financial services industry. For these reasons the Administration has placed the highest priority on a meaningful conclusion of the financial services negotiations that are to take place in 1997 in the WTO. The United States seeks an agreement that provides, on a nondiscriminatory basis, substantially full market access to, and national treatment in, the world's major financial markets, including those in Asia and Latin America, and seeks guarantees that rights now enjoyed by U.S. financial services providers in foreign markets will continue.

Trade Restrictions Imposed for Balance of Payments Purposes. The Uruguay Round produced stronger

GATT disciplines on the invocation and maintenance of trade restrictions (quotas or tariff surcharges) imposed for balance of payments (BOP) reasons. The United States has worked in the WTO Balance of Payments Committee to ensure that BOP measures are imposed and maintained only in response to legitimate balance of payments problems, not as a method to protect specific industries or sectors. As a result, 8 of the 13 countries that maintained BOP measures at the end of the Round will have eliminated all such measures by the end of 1996. Further, in 1995 Brazil was denied BOP cover for import quotas designed to protect its auto industry. At forthcoming meetings of the BOP Committee in October and November 1996 and during 1997, the United States will seek to ensure that the remaining BOP measures are eliminated where legitimate balance of payments problems do not exist.

WTO Dispute Settlement Proceedings

During the past year the United States has accelerated its use of the dispute settlement provisions of the World Trade Organization (WTO) to address significant foreign trade barriers. Since the WTO began operation 21 months ago, the United States has decided to invoke the new WTO dispute settlement procedures in 20 cases to enforce the WTO agreements—14 in 1996 alone—including the three new WTO disputes to be initiated as a result of the 1996 Super 301 annual review. This vigorous use of WTO enforcement provisions far exceeds that of any other country. By comparison, Canada and the European Communities have invoked WTO dispute settlement procedures in 8 and 7 disputes respectively.

The WTO dispute settlement procedures have already yielded positive results: The United States won the first case that it took to the WTO, involving Japan's taxes on liquor imports; USTR has signed a settlement agreement in one case, involving EU imports of grains; in one case the defending party has already changed its practice as a result of a U.S. complaint (Portugal's term of protection for patents); and we are close to settlement on at least two others, involving Japan's protection for sound recordings, and Turkey's discriminatory box office tax on foreign films.

Early WTO successes

- **Japan—liquor taxes.** The United States won the first case it referred to a WTO dispute settlement panel when the panel found that Japan's liquor tax law violates WTO rules by favoring the domestic liquor shochu.

- **Japan—sound recordings.** After the United States invoked WTO dispute settlement procedures against Japan for denying protection to millions of dollars' worth of U.S. sound recordings made between 1946 and 1971, Japan agreed to change its law, and consultations are continuing on Japan's plans for implementing such a change.

- **EU—grain imports.** The United States invoked WTO dispute settlement procedures to enforce the EU's WTO obligation to limit the duties it applies to imports of grains so that a duty does not result in a duty-paid import price in excess of a specified level. Before a panel was established, a settlement was reached in conjunction with the U.S.–EU settlement on EU enlargement. The United States remains concerned about the EU's implementation of this settlement agreement, and will continue to monitor it closely.

- **Turkey—film tax.** Turkey has taxed box office receipts from foreign films at a higher rate than receipts from domestic films. In WTO consultations, Turkey agreed to eliminate the tax discrimination.

- **Portugal—patent protection.** After the United States used WTO dispute settlement procedures to challenge Portugal's patent law, which failed to provide the required minimum 20 years of patent protection, Portugal changed its system to implement its obligations under the WTO TRIPs agreement.

Ongoing Disputes

In addition to the three new dispute settlement proceedings already cited in this report, the United States is also addressing the following barriers in the WTO:

- **Brazil—auto imports.** The United States and Brazil held consultations under WTO dispute settlement procedures in August to address Brazil's auto regime that adversely affects exports of U.S. autos and auto parts. Brazil has agreed to enter into intensive talks to address U.S. concerns.

- **Pakistan—patent protection.** Pakistan has failed to comply with its WTO obligation to establish a "mailbox" mechanism through which persons may file patent applications for pharmaceutical or agricultural chemical products and receive exclusive marketing rights for such products under some circumstances. The United States has referred the matter to a WTO dispute settlement panel to enforce this obligation.

- **India—patent protection.** India has failed to implement its WTO obligation to establish a "mailbox" mechanism through which persons may file patent applications for pharmaceutical or

agricultural chemical products and receive exclusive marketing rights for such products under some circumstances. At WTO consultations requested by the United States, India agreed that it is legally obligated to establish mailbox and exclusive marketing rights systems, but it has not yet taken the required action.

- Japan—photographic film and paper. The United States has invoked WTO dispute settlement procedures and requested a panel to address various laws, regulations and requirements of the Government of Japan affecting the distribution, offering for sale and internal sale of imported consumer photographic film and paper. The measures include a number of laws, regulations and administrative actions, originating in Japan's strategy of liberalization countermeasures in this sector, and inhibiting sales of imported film and paper. Japan's photographic film and paper market is valued at about \$2.8 billion per year.

- Japan—distribution services. The United States has invoked WTO dispute settlement procedures regarding measures affecting market access for distribution services, applied by the Government of Japan pursuant to or in connection with Japan's Large Scale Retail Stores Law and other laws, and will refer the matter to a panel if it is not resolved through further consultations. These measures affect market access in Japan for a variety of U.S. products, including film.

- Hungary—agricultural export subsidies. The United States, joined by Argentina, Australia, Canada, New Zealand and Thailand, is consulting with Hungary under WTO dispute settlement procedures concerning Hungary's lack of compliance with its scheduled commitments on agricultural export subsidies.

- Canada—magazine imports. The United States has asked a WTO dispute settlement panel to find that Canada's import ban and special excise tax on foreign magazines with content targeted at Canada, and Canada's postal rates discriminating against foreign magazines, are inconsistent with Canada's WTO obligations.

- EU—meat imports. The United States has asked a WTO panel to find that the EU's restrictions on imports of meat from animals treated with growth hormones are inconsistent with its WTO obligations.

- Australia—salmon imports. The United States has invoked WTO dispute settlement procedures concerning Australia's ban on imports of untreated fresh, chilled or frozen salmon. The ban is allegedly imposed for phytosanitary

reasons, even though a draft risk assessment found in 1995 that imports of eviscerated fish are not a basis for concern about the transmission of fish diseases to Australia's fish stocks. The Australian government is in the process of reconsidering the scientific basis for the restrictions.

- EU—banana imports. The United States, Guatemala, Honduras, Mexico and Ecuador have asked a WTO panel to find that the EU's practices relating to the importation, sale and distribution of bananas are inconsistent with its WTO obligations. The practices adversely affect the services exports of U.S. banana marketing companies.

- Korea—shelf-life requirements. Following WTO consultations concerning Korea's food regulations, which contained arbitrary shelf-life restrictions that inhibited or precluded U.S. exports of many agricultural products, Korea agreed to convert to a manufacturer-determined shelf-life system for most beef, pork, poultry and other foods. Korea also agreed to remove other barriers to U.S. meat exports. Korea is the third largest market for U.S. agricultural exports. The United States has recently informed Korea of problems that have arisen in implementing the shelf-life agreement and is consulting on those matters. The United States will refer these issues to a WTO dispute settlement panel if these problems are not expeditiously addressed.

- Korea—import clearance. After consultations under WTO procedures concerning Korea's unjustifiably long and burdensome import clearance process for agricultural products, Korea revised its inspection procedures for fresh fruit and vegetables, and stated its intention to reform its food inspection and sanitation system. Since Korea's actions did not resolve the import clearance problems, the United States held further consultations with Korea and is now awaiting detailed information requested in September from Korean officials on specific reforms to its import clearance procedures. The United States will refer the matter to a WTO panel if Korea does not implement the needed changes.

NAFTA Dispute Settlement Proceedings

The United States continues to make use of the dispute settlement provisions of the North American Free Trade Agreement (NAFTA) to address the following significant foreign trade barriers:

- Canada—dairy and poultry tariffs. Following the Uruguay Round, Canada raised its tariffs on several agricultural products. It applies those higher tariffs

to U.S. exports of dairy, poultry, eggs, barley and margarine. The United States has asked a NAFTA panel to find that Canada's application of these tariffs on imports from the United States is inconsistent with the NAFTA prohibition against the imposition of new or increased tariffs or the imposition of tariffs in excess of Canada's NAFTA tariff schedule.

- Mexico/Small Package Delivery. Mexico has denied a U.S. firm the ability to operate large trucks in its small package delivery service even though Mexican firms engaged in the same business can do so, despite Mexico's obligation under the NAFTA to accord U.S. firms national treatment in this service sector. Consultations with Mexico under NAFTA procedures are continuing.

Attachment—Trade Enforcement: An Active Record

Section 301 and Super 301

Section 301 of the Trade Act of 1974 is the principal U.S. statute for addressing foreign unfair practices affecting U.S. exports of goods or services. Section 301 may be used to enforce U.S. rights under international trade agreements and may also be used to respond to unreasonable, unjustifiable or discriminatory foreign government practices that burden or restrict U.S. commerce. Under Section 301 the USTR may take action against such practices, including withdrawing trade agreement concessions and imposing duties, fees or restrictions on imports. In addition, as part of the "Super 301" process, the U.S. Trade Representative annually reviews U.S. trade expansion priorities and identifies those priority foreign country practices the elimination of which is likely to have the most significant potential to increase U.S. exports.

The Administration has actively used the leverage of Section 301 and Super 301 to eliminate foreign unfair trade practices and open foreign markets to American goods and services. Indeed, even the threat of imposition of retaliatory measures under Section 301 has, in many instances, resulted in improved market access for American exporters. For example:

- China—intellectual property protection. Employing the leverage of possible trade sanctions, the USTR used Section 301 to reach agreement in February 1995 with China on enforcement of its intellectual property protection laws, and in June 1996 to secure effective enforcement of that agreement.

- Canada—Country Music Television. As a result of a Section 301 investigation of Canadian government practices regarding the authorization for distribution via cable of U.S.-owned programming services, U.S. and Canadian firms reached a settlement in March 1996 that will restore market access.

- EU—banana imports. As the result of a Section 301 petition filed with USTR by Chiquita Brands International, Inc., and the Hawaii Banana Industry Association, the United States reached agreement with Colombia and Costa Rica in January 1996 regarding their actions affecting exports of bananas to the European Union (EU). The United States has also invoked WTO dispute settlement procedures, joined by Ecuador, Guatemala, Honduras and Mexico, to challenge the EU's import practices, which discriminate against U.S. banana distribution services.

- EU—enlargement. As a result of the enlargement of the EU to include Austria, Finland and Sweden among its member states, U.S. exports of semiconductors and certain other products were subject to higher tariffs. With Section 301 retaliation and WTO dispute settlement rules as leverage, USTR negotiated an agreement with the EU in November 1995 to lower the EU's tariffs on semiconductors and hundreds of other products. The tariff reductions will result in an estimated \$4 billion in savings for U.S. companies over the next ten years.

- Korea—auto imports. In conjunction with its annual "Super 301" review, the United States negotiated an agreement with Korea in September 1995 to increase access to the Korean market for U.S. passenger vehicles. The agreement reduced by 15 percent the overall tax burden on autos with larger engines, liberalized many Korean standards and certification procedures lifted some restrictions on advertising and retail financing, and provided the Korean Government's assurances that it would no longer promote an anti-import bias among consumers.

- Korea—steel exports. In July 1995, in response to a Section 301 petition from the Committee on Pipe and Tube Imports, the United States reached agreement with Korea on a mechanism to discuss Korea's economic trends and data on steel sheet and pipe and tube products, and Korea agreed to notify the United States in advance of Korean government measures that control steel production, pricing or exports.

- Korea—meat imports. In response to a Section 301 petition filed by the National Pork Producers Council, the

American Meat Institute, and the National Cattlemen's Association, the United States negotiated an agreement with Korea in July 1995 on measures to eliminate non-science-based shelf-life requirements and thereby open the Korean market to U.S. meat and other food products. The agreement requires Korea to notify the WTO as it implements each stage of the agreement.

- Japan—auto and auto parts imports. In May 1995 the United States proposing using Section 301 to increase tariffs on luxury cars from Japan, after determining that Japanese policies discriminate against imports of U.S. autos and auto parts. The two governments subsequently reached a results-oriented agreement on measure Japan will take in this sector, including deregulation. The agreement has led to positive results as shown by increased purchases of auto parts by Japanese transplants, deregulation of the Japanese aftermarket for replacements parts, and an increased number of Japanese dealerships displaying foreign cars.

- Canada—beer imports. After the United States imposed retaliatory duties on Canadian beer pursuant to Section 301, the United States and Canada in August 1993 settled a longstanding dispute over access for U.S. beer to the Canadian market.

- Japan—wood product imports. After the United States noted in the 1994 and 1995 Super 301 reports that Japan was not fully implementing the U.S.-Japan bilateral agreement on market access for wood products, cooperation on this issue improved significantly. In an exchange of letters in July 1996, Japan confirmed that it has taken important additional steps toward implementation of the agreement. Japan has also made deregulation of the housing sector and improved market access for building materials a high national priority.

- Taiwan—medical device imports. In conjunction with its annual Super 301 review, the United States obtained a commitment from authorities on Taiwan to address concerns raised by the United States regarding discrimination against U.S. exports of medical devices by requiring cost data from foreign manufacturers not required from domestic firms and by establishing, through non-transparent procedures, arbitrary price controls that favor domestic producers.

"Special 301"—Intellectual Property Protection

Under the "Special 301" provisions in U.S. trade law, USTR has at least once a year identified countries that deny adequate and effective protection to foreign intellectual property rights or

deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the most onerous or egregious practices and whose practices have the greatest adverse impact on the relevant U.S. products have been designated as "priority foreign countries" and were subject to Section 301 investigations. Other countries with particular problems of protection or enforcement of intellectual property rights have been placed on a "watch list" or "priority watch list" and are monitored closely for progress. Major progress has been made as a result of using Special 301:

- China—intellectual property protection. As noted above, the USTR reached agreement in February 1995 with China on enforcement of its intellectual property protection laws, and in June 1996 to secure effective enforcement of that agreement.

- Brazil. In April 1996, Brazil enacted a new, long-awaited industrial property law, providing patent protection and greater market access for products relying on such protection. This new legislation is a direct result of earlier commitments made by Brazil in February 1994 to settle a Section 301 investigation.

- Taiwan. The Special 301 provisions of U.S. trade law have been used continuously since 1992 to obtain steady progress by authorities on Taiwan in improving the legislative framework available to protect intellectual property rights and the enforcement of those rights in the Taiwan judicial system. In 1994 Taiwan made significant strides in passing intellectual property rights legislation. In April 1996, Taiwan issued an 18-point action plan for enhanced protection, which covered all major remaining areas of concern.

- Thailand. After the United States identified Thailand as a "priority foreign country" under the Special 301 provisions of U.S. trade law in 1993, Thailand made steady progress in its protection of intellectual property, including increased enforcement efforts and the enactment of a new copyright law in 1994. In addition, action on a new law establishing intellectual property law courts is nearly complete, and Thailand is in the process of drafting a new patent law.

- The Philippines. As a result of the Special 301 process, the Philippines signed an agreement in April 1993 that made commitments to improve protection of copyrights, patent and trademarks, and to improve enforcement. Since that time, the Philippines has intensified its enforcement efforts, and enactment of

new legislation bringing the country's intellectual property laws in compliance with the WTO agreement on intellectual property should be completed soon.

- Bulgaria. The United States reached an agreement committing Bulgaria to join major international intellectual property conventions and to put in place effective procedures to protect intellectual property rights.

- Singapore. Singapore agreed to provide a level of patent protection consistent with WTO obligations by December, 1995.

- India. India agreed to take steps to protect copyright works.

- Japan. The United States and Japan concluded two bilateral agreements to provide more effective patent protection for U.S. inventors.

- Ecuador. USTR concluded a comprehensive bilateral agreement obligating Ecuador to provide equivalent levels of intellectual property protection and enforcement to that required of NAFTA parties.

- Trinidad and Tobago. USTR concluded a comprehensive bilateral agreement obligating Trinidad and Tobago to provide equivalent levels of intellectual property protection and enforcement to that required of NAFTA parties.

- Jamaica. USTR concluded a comprehensive bilateral agreement obligating Jamaica to provide equivalent levels of intellectual property protection and enforcement to that required of NAFTA parties.

- Estonia. USTR concluded a Trade and Intellectual Property Rights Agreement that is now awaiting approval by the Estonian legislature.

- Latvia. USTR concluded an Agreement on Trade and Intellectual Property Rights Protection.

- Lithuania. USTR concluded a Trade and Intellectual Property Rights Agreement now awaiting approval by the Lithuanian legislature.

Telecommunications Trade (Section 1377)

Under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 the USTR has reviewed annually the operation and effectiveness of U.S. telecommunications trade agreements, and taken action where non-compliance was found.

- Korea. The Administration has used the annual Section 1377 review continuously to address persistent barriers to access by U.S. telecommunications equipment and service suppliers to the Korean market. In 1993, 1995 and 1996 the United States and Korea concluded understandings on a range of issues

pertaining to market access for equipment, procurement practices, standards, and intellectual property protection. Under the 1996 review the Administration initiated talks with Korea regarding compliance with existing agreements as well as areas not previously covered, including services and non-interference by the government in private sector procurement.

- Japan. During the 1996 Section 1377 review, the United States and Japan resolved issues relating to procurement by Nippon Telegraph and Telephone (NTT) and NTT's Personal Handy Phone subsidiary, thus providing access to the Japanese market for U.S. suppliers. Previously, Section 1377 was used to enforce the 1989 Third Party Radio and Cellular Telephone Agreement with Japan. The 1994 review had identified a violation of the cellular portion of that agreement, which was resolved when Japan signed a new agreement in March 1994, providing comparable market access to U.S. cellular telephone systems.

Foreign Government Procurement (Title VII)

Under Title VII of the Omnibus Trade and Competitiveness Act of 1988, USTR has annually reviewed compliance by foreign governments with the Government Procurement Code, and identified countries that were discriminating in government procurement against United States goods and services.

- Japan—telecommunications and medical technology. Following identification of Japan under Title VII, in October 1994 the United States and Japan reached agreement on government procurement of telecommunications products and services and medical technology products and services. The United States continues to monitor Japan's compliance with both agreements and to assess tangible progress in Japanese procurement practices in these two sectors.

- Japan—construction. USTR identified Japan under Title VII in April 1993 for discriminatory practices in its public sector construction market. Japan averted sanctions scheduled to go into effect as of January 20, 1994, by announcing a plan to reform its public sector construction market, including measures to expand transparent and non-discriminatory procedures and adopt an open and competitive bidding system. Japan also agreed to monitor foreign access and engage in annual consultations. Since the signing of the most recent U.S.-Japan Public Works Agreement in 1994, U.S. firms have experienced little overall improvement

in accessing the Japanese public works market. Consequently, in April 1996, Japan was placed on the Title VII watchlist due to continued concern over the implementation of both the 1994 Public Works Agreement and the 1991 Major Projects Arrangements.

- EU—telecommunications. Title VII trade sanctions were imposed for the first time by the Clinton Administration, against the EU for its discriminatory government procurement practices in the telecommunications sector.

- EU—electrical equipment.

Following U.S. announcement of its intention to impose sanctions, the United States and the EU reached a historic agreement in May 1993 on access to EU government procurement of heavy electrical equipment, opening a \$20 billion market to U.S. companies. The agreement was expanded in April 1994 to cover the electrical utility sector and subcentral government entities, doubling to \$100 billion the bidding opportunities available to U.S. and EU firms under the GATT Government Procurement Code.

WTO Dispute Settlement—Early Successes

The WTO dispute settlement mechanism is proving to be a very effective tool to open markets for U.S. exporters. The United States insisted on tough new dispute settlement rules because we bring—and win—a significant number of cases before dispute settlement panels. And we settle a lot of disputes by initiating the dispute settlement process. Indeed, enforceability of the dispute settlement rules has made settlement of disputes a much more frequent, speedy and useful outcome. Before, the WTO, the global trading rules did less to benefit American workers. The process is already working to our benefit:

- Japan—liquor taxes. In July 1996 the United States won the first case it referred to a WTO dispute settlement panel when the panel found that Japan's liquor tax law violates WTO rules by favoring the domestic liquor shochu. Japan is the United States' second largest export market for whisky.

- Japan—sound recordings. After the United States invoked WTO dispute settlement procedures against Japan for denying protection to millions of dollars' worth of U.S. sound recordings made between 1946 and 1971, Japan agreed to change its law, and consultations are continuing on Japan's plans for implementing such a change.

- EU—grain imports. The United States invoked WTO dispute settlement procedures to enforce the EU's WTO obligation to limit the duties it applies

to imports of grains so that a duty does not result in a duty-paid import price in excess of a specified level. Before a panel was established, a settlement was reached in conjunction with the U.S.-EU settlement on EU enlargement. The United States remains concerned about the EU's implementation of this settlement agreement, and will continue to monitor it closely.

- Turkey—film tax. Turkey has taxed box office receipts from foreign films at a higher rate than receipts from domestic films. In WTO consultations, Turkey agreed to eliminate the tax discrimination.

- Portugal—patent protection. After the United States used WTO dispute settlement procedures to challenge Portugal's patent law, which failed to provide the required minimum 20 years of patent protection, Portugal changed its system to implement its obligations under the WTO TRIPs agreement.

Using Access to the U.S. Market to Encourage Improvements in Worker Rights and Intellectual Property Rights Protection

Congress has provided, and in 1996 renewed, the Generalized System of Preferences (GSP) program of duty-free access for some imports from developing countries. The Clinton Administration has used the GSP program to integrate developing countries into the international trading system in a manner commensurate with their development. The Administration has encouraged GSP beneficiary countries to eliminate or reduce significant barriers to trade in goods, services, and investment; to afford all workers internationally recognized worker rights; and to provide adequate and effective means for foreign nationals to secure, exercise, and enforce intellectual property rights.

- Pakistan. In March 1996 the Administration announced its intention to partially suspend Pakistan's GSP benefits as a result of child labor and bonded labor problems in Pakistan.

- Thailand. The Administration restored GSP benefits to Thailand in 1995 only after Thailand made significant improvements in intellectual property protection.

- Maldives. The Administration suspended GSP benefits for the Maldives in July 1995, for failure to provide worker rights.

- El Salvador, Dominican Republic and Honduras. The Administration used GSP country practice reviews to obtain improvements in worker rights.

- Guatemala and Thailand are being monitored for further progress on worker rights improvements.

- Poland and El Salvador. The Administration concluded in October 1996 reviews after progress on intellectual property rights was achieved.

Irving Williamson,

Chairman, Section 301 Committee.

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WTO Dispute Settlement Proceeding Concerning Certain Japanese Measures Affecting Imported Consumer Photographic Film and Paper

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that a dispute settlement panel convened under the Agreement Establishing the World Trade Organization (WTO) at the request of the United States will examine Japanese government measures affecting the distribution and sale of imported consumer photographic film and paper. USTR also invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 1, 1996 in order to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sybia Harrison, Staff Assistant, Room 222, Attn: Film and Paper Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Joanna McIntosh, Associate General Counsel, Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street, N.W. Washington, DC 20508, (202) 395-7203.

SUPPLEMENTARY INFORMATION: At the United States' request, a WTO dispute settlement panel will examine whether certain Japanese government measures affecting the distribution and sale of imported consumer photographic film and paper are consistent with the Government of Japan's obligations under the General Agreement on Tariffs and Trade 1994 (GATT).

The panel is expected to meet as necessary at the WTO headquarters in Geneva, Switzerland to examine the dispute. Under normal circumstances, the panel would be expected to issue a report detailing its findings and recommendations in six to nine months.

Major Issues Raised by the United States and Legal Basis of Complaint

The United States has requested that a WTO panel examine whether the Government of Japan has implemented and maintains laws, regulations, requirements and measures (collectively "measures") affecting the distribution, offering for sale, and internal sale of imported consumer photographic film and paper, including: liberalization countermeasures; distribution measures, such as, but not limited to, the cabinet decision, administrative guidance, and other measures listed in the Appendix; the Law Pertaining to the Adjustment of Business Activities of the Retail Industry for Large Scale Retail Stores, No. 109 of 1973 (Daiten Ho); Special Measures for the Adjustment of Retail Business; No. 155 of 1959 (Shocho Ho); the Law Against Unjustifiable Premiums and Misleading Representations, No. 134 of 1962; measures regarding dispatched employees pursuant to the Law Concerning the Prohibition of Private Monopoly and Maintenance of Fair Trade, No. 54 of 1947; the Law Concerning Enterprise Reform for Specified Industries, No. 61 of 1995; the Ministry of International Trade and Industry Establishment Law, No. 275 of 1952; and related measures.

The United States considers that such measures nullify or impair benefits accruing to it, within the meaning of Article XXIII: (1)(a), as a result of the failure of the Government of Japan to carry out its obligations under Articles III and X of the General Agreement on Tariffs and Trade 1994 (GATT). More specifically, Japanese government measures:

- Were implemented and maintained so as to afford protection to domestic production of consumer photographic film and paper within the meaning of GATT Article III:1;

- Conflict with GATT Article III:4 by affecting the conditions of competition for the distribution, offering for sale, and internal sale of consumer photographic film and paper in a manner that accords less favorable treatment to imported film and paper than to comparable products of national origin; and

- Conflict with GATT Articles X:1 and X:3 because the measures lack