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Comments of the Joint Industry Group (JIG) in Response to the Solicitation of Public Comment Regarding U.S. Preparations for the World Trade Organization's Fourth Ministerial Meeting

This communication constitutes the response of the Joint Industry Group ("JIG") to the invitation for public comments issued by the Trade Policy Staff Committee (66 Fed. Reg. 18,142 April 5, 2001) in relation to priorities for the United States in the preparations leading to the Fourth Ministerial Conference of the World Trade Organization ("WTO"). The JIG may provide further comments as the preparations for the Fourth Ministerial Conference progress.

JIG is a coalition of more than 160 companies, trade associations, professionals and businesses actively involved in international trade. We both examine and reflect the concerns of the business community relative to current and proposed international trade-related policies, actions, legislation, and regulations. We undertake to improve policies and procedures through dialogue with government agencies and the Congress. The Joint Industry Group represents over \$350 billion in trade.

The JIG commends the Member governments of the World Trade Organization for the significant progress they made in the Uruguay Round in addressing barriers to trade in goods. WTO Members have made great strides in the universal application of disciplines on valuation practices through the multilateral Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade ("GATT") 1994; the extension of GATT rules to trade in textiles and apparel through the Agreement on Textiles and Clothing; and the introduction of new disciplines in the Agreement on Rules of Origin and the Agreement on Pre-Shipment Inspection. ***The JIG urges the U.S. Government to continue to assign its highest trade policy priority to the implementation of these rules by our trading partners, and to pursue their enforcement vigorously, including through the use of WTO dispute settlement proceedings.*** The global business community can ill-afford a shift in focus and resources away from the full exploitation of the gains so hard-fought and won in the Uruguay Round.

The fourth session of the Ministerial Conference represents a singular opportunity for WTO Members to take stock of the gains emerging from the Uruguay Round and to build on those gains through further negotiating efforts. The focal point of the Uruguay Round was the extension of the GATT's workable, enforceable rules to the "new" areas of trade in services and the protection of intellectual property rights. ***The JIG recommends that, if the fourth session of the Ministerial Conference leads to the initiation of a new global trade round, WTO Members should set as their principal negotiating objectives the reduction of unnecessary costs related***

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to customs formalities, the enhancement of transparency and the facilitation of commerce in the "old" area of trade in goods. Trade in goods will continue to form the bedrock of international commerce in much of the world for many years to come. Enhancing disciplines on government regulation at the border will greatly assist developing and developed countries alike to reap the benefits of global trade rules.

The following comments expand upon these two basic themes in connection with the subject headings enumerated by the Committee in its solicitation of public comment. The Committee will recall that the JIG has provided comments previously in response to similar requests by the Committee with respect to preparations for the Third WTO Ministerial Conference (63 Fed. Reg. 44,500 August 19, 1998) and with respect to multilateral negotiations on government procurement issues (63 Fed. Reg. 68,327 December 10, 1998). The following comments reflect many of the unachieved objectives that were set forth in the JIG's earlier submissions.

(3) Existing Agreements and Work Programs

Under this heading, the Committee has requested comments regarding U.S. priorities under the Agreements (other than the Agreement on Agriculture and the General Agreement on Trade in Services) concluded in the Uruguay Round. The Committee has requested, in particular, comments on improvements, if any, that might be sought through expansion of individual work programs, or through negotiations in any of these areas, or further progress with respect to implementation of these Agreements.

GATT 1994 Articles VIII and X – The JIG considers Article X to be the foundation of all GATT rules on trade in goods, requiring that Member governments ensure transparency and due process in customs procedures. Without the strict adherence to these fundamental principles, none of the other disciplines on government regulation of trade in goods would be meaningful. GATT Article VIII:1(c) recognizes the need to minimize the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.

The JIG believes that compliance with, and enforcement of, Article X obligations by our trading partners has not been sufficient to meet the needs of the global marketplace. Although the provisions of GATT Article X have been in force for more than 50 years, the broad language of Article X appears to have made it difficult for WTO Members (and GATT 1947 contracting parties before them) to enforce violations and seek meaningful changes in country practices. Moreover, WTO Members have not acted on the need to simplify customs formalities and documentation requirements as expressed in Article VIII:1(c).

Accordingly, the JIG applauds the efforts of the United States (as reported in USTR's 2000 Annual Report at page 94) to seek consensus among Members to put at the core of future work on trade facilitation the articulation of GATT 1994 Articles VIII and X. Indeed, as the JIG recommended in its 1998 comments to the Committee, the U.S. Government should pursue the negotiation in the WTO of a formal understanding on the interpretation and implementation of GATT 1994 Articles VIII and X. The understanding could be a specialized Annex 1A

agreement, such as the existing agreement on customs valuation, or it could be similar in nature to the understandings developed during the Uruguay Round that became part of the GATT 1994.

The objective in negotiating an understanding on these GATT articles would be to create concrete, practical disciplines that would be enforceable under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes. In this regard, the JIG recommends that WTO Members develop rules on data collection, timely release of goods, transparency of the customs clearance process, and administrative appellate procedures.

As they consider the manner in which GATT Articles VIII and X should be interpreted, WTO Members might use as models existing WTO provisions on customs procedures, including Articles 2(h) and 3(f) of the Agreement on Rules of Origin and Article 13 of the Agreement on Implementation of Article VII of GATT 1994. Articles 2(h) and 3(f) of the Agreement on Rules of Origin permit interested persons to obtain "assessments" of origin from Member governments within a fixed period of time, before or after goods are shipped. The obligation to grant such assessments could be extended to other areas of customs regulation (e.g., tariff classification and valuation). Similarly, Members should consider the extension of Article 13 of the Agreement on Implementation of Article VII of GATT 1994 to permit the timely release of goods from the custody of customs authorities pending the completion of formalities regarding questions other than the valuation of goods.

Agreement on Textiles and Clothing – The JIG believes that the Agreement on Textiles and Clothing ("ATC") has not been implemented fully and fairly in all regions of the world. The JIG believes that, rather than a further elaboration of the rules applicable to this sector, a careful review of implementation of the existing rules would enable WTO Members to address outstanding compliance issues effectively, particularly in light of reports in three disputes critical of U.S. implementation

Customs Valuation – Many developing country Members of the WTO that had invoked the five-year transitional provisions of Article 20 of the Agreement on Implementation of Article VII have been unable to meet the implementation deadline. The JIG notes that some Members have been granted extensions pursuant to paragraph 2 of Article 20 of the Agreement. It is in the interest of all WTO Members to ensure the faithful compliance with the Agreement as soon as possible. Accordingly, the JIG recommends that, consistent with paragraph 3 of Article 20 of the Agreement, WTO Members assign sufficient technical resources to assist developing country Members to meet their obligations without delay after the expiration of the transitional period.

Rules of Origin – The JIG considers the harmonization work program on non-preferential rules of origin under the Agreement on Rules of Origin to be one of the most important pieces of unfinished business from the Uruguay Round. In the course of the work program, Members must ensure that the harmonized rules of origin are based on objective standards that promote transparency, uniformity, predictability, and simplicity of application. These rules should be based on objective standards that reflect the substantial transformation of goods. The rules should be based upon the change in tariff classification approach to the greatest extent possible.

Non-preferential rules of origin should be applied in an impartial, transparent and consistent manner. Finally, these rules should not create additional documentation or data retention requirements – that is, any new rules should be based on existing commercial data or documents kept by traders in the "normal" course of business.

The JIG notes that the WTO General Council took a decision in Special Session in December 2000 to seek the completion of the harmonization work program on non-preferential rules of origin by the end of 2001 – four years after the deadline established in the Uruguay Round agreement. The continuing failure to complete the harmonization work program is no longer simply regrettable – the uncertainty that the delay has engendered among customs officials and traders threatens to undermine the benefits of market access commitments previously negotiated. The JIG urges the United States to take the lead in pushing the work program to a rapid and successful conclusion.

Plurilateral Agreement on Government Procurement - Public sector procurement of goods imported from abroad constitutes a significant portion of international commerce in many parts of the world. As government procurement of goods is generally excluded from coverage under the international disciplines of the GATT 1994, the Agreement on Government Procurement (GPA) -- and its precursor, the Tokyo Round Government Procurement Code -- constitute the primary source of internationally agreed rules on the conduct of government procurement. Yet to date only twenty-six states and separate customs territories are parties to the GPA (Iceland will become the twenty-seventh party upon ratification). The JIG applauds the policy of the United States to urge that each state or separate customs territory that seeks accession to the WTO accedes as well to the GPA.

In the context of a new trade round launched at the Fourth Ministerial Conference or in stand-alone negotiations, the United States should seek to elevate the status of the GPA from a plurilateral agreement to a full-fledged multilateral agreement to which all WTO Members -- new and old -- will be bound as a matter of course. In the meantime, the United States should seek to expand the number of parties to the plurilateral Agreement and pursue the negotiation of a multilateral agreement on transparency in government procurement. In particular, the United States should pursue the following specific objectives:

1. The text of the GPA should be re-organized or simplified to make the Agreement more understandable to officials responsible for its implementation, while maintaining its effectiveness in ensuring open and competitive procurement procedures. The simplification of the text should make it more attractive to new entrants, particularly to developing country Members and acceding states and separate customs territories.
2. The Agreement should be updated to accommodate electronic communications and other emerging technologies used in modern procurement systems.
3. The use of electronic communications and other emerging technologies would allow for greater flexibility in the minimum time periods for submission of bids established under the Agreement, while ensuring that all international bidders have adequate time to participate.

4. The United States should seek to expand GPA parties' market access commitments to cover additional goods and additional central and sub-central government entities.

(6) Singapore Work Program Issues

The Committee seeks comments with respect to next steps on issues added to the WTO's agenda at the 1996 and 1998 Ministerial Meetings in Singapore and Geneva, respectively.

Trade Facilitation – The JIG strongly supports the work that has been conducted in the WTO on trade facilitation, and urges WTO Members to continue such efforts in the future.

In particular, WTO Members must (a) analyze the impact of customs-related barriers to trade on WTO commitments; and (b) promote and coordinate the development and implementation of initiatives to simplify trade procedures, including those under the auspices of the World Customs Organization and the G-7 countries. In this regard, the U.S. Government should ensure that symposia with private sector representatives continue to be held in Geneva periodically to facilitate the dialogue of the private sector with governmental officials.

The simplification and standardization of customs procedures should be an immediate focus of attention for Ministers in the fourth session of the Ministerial Conference. It must be clear, however, that any WTO work program on trade facilitation must have as its ultimate objective the creation of binding, enforceable rules. The rules-based approach to trade problems is the hallmark of the WTO (and the GATT before it), and distinguishes it from other international institutions in which important work on trade facilitation is ongoing. The WTO must take into account and build upon the work of these other institutions. But it is only through the creation and oversight of enforceable rules affecting customs operations that the WTO can make a meaningful contribution in this area -- for traders, for governments, and for consumers. In this light, the JIG has already noted above the need to examine GATT Articles VIII and X with a view to the development of a new understanding on the interpretation and implementation of those provisions.

Transparency in Government Procurement - The JIG notes the progress made by the Working Group on Transparency on Government Procurement in advance of the Third Ministerial Conference, and that Members have agreed to identify the elements of a possible agreement, but have not yet agreed to move to conclude such an agreement. The JIG fully supports the efforts of the United States to reach consensus during the Fourth Ministerial Conference to conclude negotiations expeditiously thereafter.

Electronic Commerce - Consistent with the Declaration issued at the May 1998 Ministerial Conference, the Committee has solicited comments with respect to the commitment by WTO Members not to impose customs duties on electronic commerce and agreements to establish a work program for further consideration of the relationship between trade and electronic commerce.

The JIG believes that the Internet and similar electronic venues represent significant new markets for trade in goods. Accordingly, the JIG strongly supports the initiative taken by the U.S. Government to obtain commitments from WTO Member governments now to eliminate customs duties on electronic goods over the Internet.