a high price to preserve their defense industries and keep jobs at home.

In my own State of Connecticut, Norden, a corporation which produces advanced electronic systems for military vehicles, was forced to move some of its production to Canada in order to qualify for the Canadian export loan program essential to Norden's winning a contract for an export sale. Seventy-two Norden workers in Connecticut lost their jobs, good, skilled jobs, as a result. And they are not alone; defense industry workers in Rhode Island, Colorado and elsewhere have had their jobs exported for similar reasons.

In the current tight budgetary environment, we cannot afford a new subsidy for the defense industry, but neither can we afford to export highly-skilled, good-paying jobs abroad in order to keep our defense industries alive. This draft legislation fits within those constraints. In many ways, it could serve as a model for the 104th Congress. It is not foreign aid and does not require appropriated funds, yet it leverages the credit of the United States to help a sector of America's manufacturing and high-technology industry compete in the world market. This program is entirely self-financing; exporters and buyers together would provide money to cover the exposure fees and administrative costs associated with each loan. Furthermore, this program could not be used by poor countries to purchase arms they can ill afford; it would only be available to NATO allies, Central European countries moving toward democracy and members of the organization for Asia Pacific Economic Cooperation. Although limited in scope and requiring financial contributions from participating corporations, this program would be significant for U.S. defense manufacturers. A similar program operated by the State of California since 1985 has produced a steadily growing business in exports of defense equipment to Germany, the Netherlands, Spain, Canada, Australia and New Zealand at a consistent 1-percent default rate. By supporting economic competitiveness at very modest cost to the U.S. Treasury, this program could be a model for the 104th Congress.

Although I am persuaded that this program will make a significant contribution to U.S. defense manufacturers' competitiveness, I would like to see proof. That is why we have included in the legislation the requirement for a report from the administration on the program's impact after 2 years. It if does not prove to be constructive contribution to the viability of the defense industry that I expect it to be, it should be ended. However, I expect the administration will report that this program has made a big difference in keeping these industries in production and keeping good jobs at home. I invite my colleagues to join us in working for adoption of this legislation.●

URUGUAY ROUND AGREEMENTS ACT

● Mr. ROCKEFELLER. Mr. President, following the approval of the Uruguay Round implementing legislation, statements have been placed in the CONGRESSIONAL RECORD providing individual interpretations of the antidumping and countervailing duty provisions contained in title II of that Act. As one who was also deeply involved in the development and passage of that legislation, I, of course, respect the right to make those statements, but I would like to offer some further clarification.

Initially, it is important to emphasize that it is the statutory language that Congress enacted which must guide the implementation and interpretation of this legislation by the International Trade Commission, the Department of Commerce and their reviewing courts. To the extent that the statutory language is considered ambiguous, it is the Statement of Administrative Action, as well as the Senate and House committee reports—not the statements of individual Senators—which provide the primary sources of interpretation of H.R. 5110.

Given the representations that have been made, I also believe that it is important to provide the following clarification with respect to specific aspects of the antidumping and countervailing duty provisions contained in the Uruguay Round Agreements Act H.R. 5110.

International Trade Commission's determination of injury and threat. Several statements have addressed the Commission's implementation of H.R. 5110: Captive Production. I am the author of the Senate provision dealing with situations in which a captive production consideration should be used. Section 222 of H.R. 5110 was adopted to make clear to the Commission that, in certain captive production situations, it should consider primarily the data relating to competition in the merchant market, rather than data for the industry as a whole. Despite this language and clearly expressed legislative intent, it has been suggested that the Commission should continue to base its conclusions on an analysis of the industry as a whole, rather than of the merchant market. This suggestion is clearly contrary to the explicit language of section 222, as well as the intent expressed in the Statement of Administrative Action and the House and Senate committee reports.

Statements have also been made indicating that the Commission should apply the same criteria used in evaluating the domestic like product to evaluate whether it is appropriate to focus on noncaptive imports. These statements are also inconsistent with the plain language of section 222, which contains no restriction or direction as to how the Commission should analyze imports, whether captive or not. While there may be circumstances under which captive imports should be analyzed in a similar manner as captive domestic production, this should only be done after the Commission determines that captive imports do not compete with the relevant domestic like product—as was made explicitly clear in the implementing legislation that I authored.

Negligible Imports. It also has been suggested that the Commission must terminate an investigation unless import levels are found to be very close to the statutory negligibility threshold at the time of the preliminary determination and above that threshold at the time of the final determination. This suggestion is contrary to the unambiguous statutory language, which provides that the Commission may treat such imports as non-negligible in the threat context whenever it determines that there is a potential for such imports to increase to non-negligible levels. Thus, the Commission is under no obligation, and indeed would be acting contrary to the statute, to automatically terminate an investigation merely because imports are below the statutory negligibility threshold at the time of either the preliminary or final investigations. This is particularly true given that, as the Commission's practice and section 222 recognize, the filing of a petition may itself have a dampening effect on import levels. As a result, it is expected that the Commission will consider the negligibility provision carefully and that it will only find imports to be negligible in the context of threat where there is no potential for an imminent increase in imports.

ANTICIRCUMVENTION

Statements have been made suggesting that section 230 of H.R. 5110 should be interpreted to limit Commerce's ability to apply the anticircumvention provisions and that, before Commerce enlarges the scope of an order, the Commission may be required to make an additional injury finding regarding that enlarged scope.

These statements, however, are contrary to the statute and the Statement of Administrative Action. As explained in the Statement of Administrative Action, this amendment was adopted because the former statute failed to provide a full or adequate remedy for the circumvention occurring in the marketplace. As a result, section 230 clearly provides Commerce with broad discretion in its application of the anticircumvention provisions, so that it can address the different types of circumvention encountered. Further, neither the statute nor the Statement of Administration Action require the Commission to issue a new injury determination before Commerce enlarges the scope of an order, although the two agencies will engage in consultations before Commerce makes its final determination.

SUNSET REVIEWS

Several statements have been made with respect to different aspects of Commerce's and the Commission's application of the new sunset provisions,

particularly with respect to short supply, the extension of orders and duty absorption.

Short Supply. Both the House Committee on Ways and Means and the Senate Committee on Finance affirmatively rejected so-called short supply proposals during consideration of the Uruguay Round implementing legislation. Statements have been made, however, suggesting that the Commission and Commerce should use their authority under the sunset provisions to revoke orders where merchandise is not available from domestic sources. Further, it has been suggested that the Commission should find no adverse impact from imports where petitioning companies are not producing a competing product.

The newly adopted sunset provisions require both Commerce and the Commission to consider a multitude of factors in determining whether orders will be revoked. Consequently, it is expected that the Commission will continue to consider all aspects of this issue in reaching a final determination. Given that the lack of current domestic production may oftentimes be a symptom of the injury sought to be remedied, that factor in particular does not alone warrant revocation, even with respect to the product for which there is a lack of production. Finally, the Commission is expected to continue to consider all domestic production in its analysis, not just the production of the petitioning companies alone.

Extension of Orders. It also has been suggested that the sunset review provisions create a presumption against the extension of orders. This is, however, inconsistent with both the statute and the Statement of Administrative Action, which create no such presumption. Nor, as some statements have suggested, is the substantial evidence standard appropriate for all sunset reviews; where responses have not been filed or are inadequate, Commerce's and the Commission's final determinations are, by the express terms of the implementing legislation, reviewable under the arbitrary and capricious standard, and not the substantial evidence standard.

Duty Absorption. Pursuant to section 221 of the Uruguay Round legislation, Commerce and the Commission are authorized to consider the issue of duty absorption in the course of their sunset reviews. Some statements have suggested incorrectly, however, that (1) Commerce may not quantify the level of duty absorption or initiate a duty absorption investigation without evidence that duty absorption is occurring, and (2) the Commission must give less weight to duty absorption findings based on best information available.

None of these issues are addressed by the statute. While Commerce is not expressly required to quantify the level of duty absorption, it obviously retains the authority to do so and it is expected that Commerce will quantify duty absorption where circumstances so warrant. Given the difficulty in obtaining information on duty absorption, the Statement of Administrative Action makes it clear that Commerce must initiate a duty absorption review whenever it is requested to do so; thus, there is no additional evidentiary hurdle prior to initiation. Finally, the Commission is required to consider the issue of duty absorption whenever Commerce has made a duty absorption finding. It is within the Commission's discretion, however, to determine the weight to be given to this issue, including the significance of a respondent's failure to cooperate with Commerce's investigation and Commerce's use of best information available. There is simply no basis for the suggestion that less weight be given to Commerce's findings when they are based on best information available. In fact, such a requirement would create a significant incentive for foreign companies not to cooperate with Commerce so that best information available would be used and the Commission would give less weight to the issue of duty absorption. Clearly this is not what Congress or the statute intended.

CALCULATION OF ANTIDUMPING DUTIES

Several statements have also been made regarding specific aspects of Commerce's calculation of antidumping duties, as addressed below.

Fair comparison/normal value adjustments. Pursuant to Section 224 of the implementing legislation, Commerce is required to make a fair comparison between export price and normal value. Statements have been made, however, suggesting that this provision generally requires Commerce to adjust normal value and export price (or constructed export price) for the same costs and expenses and to make either a level of trade adjustment or a constructed export price offset adjustment to normal value whenever constructed export price is used.

This is not, however, what the statute or Statement of Administrative Action requires. Although expenses may be nominally the same in both markets, the actual circumstances surrounding the relationship between such expenses and claimed adjustments often differ. As a result, Commerce clearly has the authority to treat expenses differently in the U.S. and foreign markets. In fact, Commerce is expected to continue its practice of closely assessing all potential adjustments on a case-by-case basis and not mechanically making adjustments without an analysis of the circumstances involved.

Moreover, there is no requirement for Commerce to make a level of trade or offset adjustment in every case. Indeed, the express language of the statute and Statement of Administrative Action indicate that there are circumstances where neither adjustment is appropriate or permissible. For example, Commerce may only make a level of trade adjustment where there are different levels of trade and where that difference is shown to affect price comparability. Commerce's analysis of these issues must be based on the actual circumstances involved.

Constructed export price profit deduction. Section 223 of H.R. 5110 provides for the deduction of profit from constructed export price. It, however, has been incorrectly suggested that this provision only authorizes Commerce to base its calculation on data for the subject merchandise in the U.S. and foreign markets.

While the statute and Statement of Administrative Action indicate that the use of data specific to the costs of the subject merchandise is appropriate, they also allow for the use of alternative methodologies when full cost of production information is not on the record. In particular, it is expected that, if the necessary profit data for the subject merchandise is unavailable, Commerce will use the next broader category of merchandise to calculate this deduction.

Startup costs. Section 224 of the implementing legislation governs Commerce's treatment of start-up operations. In considering the circumstances surrounding start-up operations, Commerce should apply this provision strictly to prevent foreign producers from using it as a loophole to evade the application of antidumping duties in the early stages of a product's life-cycle. In particular, Commerce should carefully review the claimed duration of start-up periods so that they are not improperly expanded.

Export price and constructed export price definitions. Renaming ''purchase price'' to ''export price'' and ''exporter's sales price'' to ''constructed export price'' should not affect the ''criteria'' used to categorize U.S. sales as one or the other. The Statement of Administrative Action indicates that ''no change is intended in the circumstances'' under which a sale would be characterized as one or the other. Commerce continues to retain the authority to alter or augment the particular factors that it considers in making its determinations.

Reimbursement of antidumping duties. In the antidumping duty context, Commerce will increase the amount of antidumping duties when it finds that the exporter has reimbursed the importer for payment of such duties. Although there has been no change in the law, statements have been made suggesting that Commerce is expected not to treat reimbursed countervailing duties the same way that it treats reimbursed antidumping duties.

There is no such expectation. The Senate report language, written with the acquiescence of the administration, states that Commerce should promulgate a regulation to make an adjustment to U.S. price in antidumping cases for the amount of any countervailing duty which is reimbursed by the exporter to the importer. Since

this reimbursement represents a reduction in price to the importer, the regulation suggested by the Senate report language is clearly an appropriate and equitable way to address the reimbursement of countervailing duties.●

HOUSE CONCURRENT RESOLUTION 58—PROVIDING FOR ADJOURNMENT OF THE TWO HOUSES OF CONGRESS

Mr. THOMPSON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 58, the adjournment resolution, just received from the House; that the concurrent resolution be considered and agreed to; and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the concurrent resolution (H. Con. Res. 58) was agreed to, as follows:

Resolved by the House of Representatives (the Senate concurring),

That when the House adjourns on the legislative day of Friday, April 7, 1995, it stand adjourned until 12:30 p.m. on Monday, May 1, 1995, or until noon on the second day after Members are notified to reassemble pursuant to section 3 of this concurrent resolution, whichever occurs first; and that when the Senate adjourns or recesses at the close of business on Thursday, April 6, 1995, Friday, April 7, 1995, Saturday, April 8, 1995, Sunday, April 9, 1995, or Monday, April 10, 1995, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this concurrent resolution, it stand recessed or adjourned until noon on Monday, April 24, 1995, or such time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after members are notified to reassemble pursuant to section 3 of the concurrent resolution, whichever occurs first.

DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE ACT

Mr. THOMPSON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 49, H.R. 1345.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1345) to eliminate budget deficits and management inefficiencies in the government of the District of Columbia through the establishment of the District of Columbia Financial Responsibility and Management Assistance Authority, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 593

(Purpose: To amend the bill in several respects)

Mr. THOMPSON. Mr. President, I send an amendment to the desk on behalf of Senators COHEN, ROTH, and JEFFORDS, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. THOMPSON], for Mr. COHEN, for himself, Mr. ROTH, and Mr. JEFFORDS proposes an amendment numbered 593.

Mr. THOMPSON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 7, line 2, strike ''or''.

On page 7, line 6, strike the period at the end and insert a semicolon.

On page 7, between lines 6 and 7, insert the following:

(3) to amend, supersede, or alter the provisions of title 11 of the District of Columbia Code, or sections 431 through 434, 445, and 602(a)(4) of the District of Columbia Self-Government and Governmental Reorganization Act (pertaining the organization, powers, and jurisdiction of the District of Columbia courts); or

(4) to authorize the application of section 103(e) or 303(b)(3) of this Act (relating to issuance of subpoenas) to judicial officers or employees of the District of Columbia courts.

On page 10 of the House engrossed bill, strike lines 7 through 9 and insert the following new paragraph:

''(4) maintains a primary residence in the District of Columbia or has a primary place of business in the District of Columbia.''.

On page 12 of the House engrossed bill, strike lines 17 through 24 and insert the following:

(c) INAPPLICABILITY OF CERTAIN EMPLOYMENT AND PROCUREMENT LAWS.

(1) CIVIL SERVICE LAWS.—The Executive Director and staff of the Authority may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(2) DISTRICT EMPLOYMENT AND PROCUREMENT LAWS.—The Executive Director and staff of the Authority may be appointed and paid without regard to the provisions of the District of Columbia Code governing appointments and salaries. The provisions of the District of Columbia Code governing procurement shall not apply to the Authority.

Mr. COHEN. Mr. President, the District of Columbia's financial situation is in a state of crisis. The District government does not have sufficient funds to pay its bills which threatens the continued delivery of services to the residents of the District of Columbia and the many Americans that work in or visit our nation's capital.

I am pleased that we were able to reach agreement earlier today with the House on a package of amendments that we believe will improve the House-passed bill and enable the Senate to pass this important legislation before the Congress adjourns for the April recess.

The bill establishes the District of Columbia Financial Responsibility and Management Assistance Authority to aid the city in achieving financial stability while still preserving Home Rule. The concept of a financial control board is not new. A number of U.S. cities facing fiscal crisis have established similar boards.

The new Authority will work with the Mayor and the Council toward resolving the city's financial and management problems. The Authority will have the power to act, following consultation with congress, on recommendations it believes are necessary to ensure the financial stability and operational efficiency of the District.

I want to commend Congressman DAVIS and D.C. Delegate NORTON, the Chair and Ranking Minority Member of the House D.C. Subcommittee, and Congressman WALSH and Congressman DIXON, Chair and Ranking Minority Member of the House D.C. Appropriations Subcommittee, who have worked hard to craft a bill which received strong bipartisan support in the House. The financial recovery of the nation's capital is important to all Americans and I urge my colleagues in the Senate to move expeditiously to pass this important legislation .

Mr. ROTH. Mr. President, the financial crisis which requires the dramatic action we are taking today began sometime ago. I am not certain anyone can pick a particular date it began, but certainly it has been at least a decade since the signs of fiscal distress have been showing. Of all of the economic indicators, perhaps the most alarming is the continued loss of taxpayers. The District has lost nearly 50,000 people since 1985.

Five years ago, the Commission on Budget and Financial Priorities of the District of Columbia, known as the Rivlin Commission, warned that,

The District of Columbia confronts an immediate fiscal crisis. The budget deficit for this fiscal year will be at least $90 million and will rise to at least $200 million in 1991 and $700 million in 1996 if actions are not taken quickly to reduce spending or raise revenue or both.

Congress responded to that warning and immediately passed a $100 million supplemental appropriation for the District in early 1991. Congress went on to increase the Federal payment and authorized the District to borrow $330 million to stabilize the local budget. Federal funds to the District increased nearly 30 percent between 1991 and this fiscal year. In all, the District has received a cash infusion of over $1 billion since 1991.

Revenues were increased but spending was not reduced. Between 1985 and 1994, general fund tax revenues increased by 61 percent. But expenditures increased by 87 percent. Now the trickle of red ink has turned into a raging river. Unfortunately, and despite our efforts, the Rivlin warning is about to come true.

Along with the fiscal crisis, the District appears to be locked in a perpetual management crisis as well. The city has been buffeted from one scandal to the next turmoil. The city's infrastructure is decaying. Crime, taxes, and schools continue to drive families out of the District.