learned as an undergraduate that no one had ever heard of—''megalopolis''—and he talked about Richmond to Boston and what would have to be done to accommodate the needs of this area of the country. He is the guy who came up with the notion of ACDA. He has been the single most consistent, persistent spearheader of the notion of bringing about the diminution of the number of nuclear weapons that exist in this world. He is the man who has been devoted to the notions and concepts embodied in the United Nations. He is a man who has been the leader in education and learning, a man who comes from considerable standing in terms of his own personal wealth and education but has bent down to make sure that people of competence, regardless of their economic status, would be able to achieve the same intellectual competence, capability, and background as he has achieved.

This is a wonderful man, I say to my friends. You all know it. But not many have passed this way who have his personal characteristics and capabilities, and I doubt whether very many will come this way again. I will truly miss his presence in the Senate.

I yield the floor and thank my colleagues.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I appreciate the remarks of the distinguished Senator from Delaware. He was unable to come to a meeting of the Foreign Relations Committee this morning at which we spent 1½ hours paying tribute to this wonderful man, and I agree with everything that Senator BIDEN has said about Senator PELL.

At the meeting this morning, a resolution of commendation for Senator PELL was adopted by standing ovation, and I ask unanimous consent that this resolution be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION OF COMMENDATION FOR SERVICES RENDERED BY THE HON. CLAIBORNE DEB. PELL

Whereas Senator CLAIBORNE DEB. PELL has been a member of the Committee on Foreign Relations since January 8, 1965; served as Ranking Minority Member from January 5, 1981 until January 6, 1987; served as Chairman from January 6, 1987 until January 3, 1995; and served again as Ranking Minority Member from January 4, 1995 until the present;

Whereas by serving as Chairman of the Foreign Relations Committee, Senator Pell became the second Rhode Islander, following The Honorable Theodore F. Green, to serve the State of Rhode Island as Chairman of this distinguished Committee;

Whereas as a Member and Chairman of the Committee Senator Pell has always been courteous, extending to all Members true respect for their views, and leaving an indelible mark on the Committee as a true gentleman of diplomacy;

Whereas in the discharge of his duties as chairman, Senator Pell has at every opportunity encouraged the development and furtherance of a bipartisan foreign policy;

Whereas Senator Pell, having served on the International Secretariat of the San Francisco Conference which drew up the Charter of the United Nations, has always worked to find international solutions to global problems in such areas as the environment, the oceans, climate control, human rights, the plight of refugees, and the rights of oppressed minorities throughout the world;

Whereas Senator Pell has steadfastly argued for greater contact and dialogue between all nations so as to reduce tensions, resolve differences, and promote the development of democracy, advocating negotiations and diplomacy as an alternative to armed conflict and military action;

Whereas Senator Pell has been instrumental in the initiation of arms control accords such as the Environmental Modification Treaty and the Seabed Arms Control Treaty, in the successful Senate consideration of numerous arms control treaties with such goals as the limitation, reduction and elimination of various classes of nuclear weapons, in the passage of legislation to restrain the proliferation of weapons of mass destruction, and in the inception, fostering and strengthening of the Arms Control and Disarmament Agency;

Whereas Senator Pell, through his energy and vision, has contributed immeasurably to the development of United States leadership in world affairs and the establishment of better relations among nations;

Whereas Senator Pell has announced his intention to retire from the Senate in January 1997; and

Whereas Senator Pell's leadership and wisdom will be sorely missed by his colleagues on the Committee and his many friends in the Senate: Now, therefore, be it

Resolved, That the Committee on Foreign Relations expresses its warm and deep affection for Senator Claiborne Pell, its profound appreciation for his devotion to duty and its sincere gratitude for the outstanding service which he has rendered to the Committee, the Senate, the United States of America, and to the entire world through his great ability, initiative, and statesmanship.

EXECUTIVE SESSION

INTERNATIONAL NATURAL RUBBER AGREEMENT, 1995

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to the consideration of Executive Calendar No. 23, which the clerk will report.

The legislative clerk read as follows:

Treaty Document 104–27, the International Natural Rubber Agreement of 1995.

Resolved (two thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of The International Natural Rubber Agreement, 1995, done at Geneva on February 17, 1995, subject to the following declaration:

It is the sense of the Senate that ''no reservations'' provisions as contained in Article 68 have the effect of inhibiting the Senate from exercising its constitutional duty to give advice and consent to a treaty, and the Senate's approval of this treaty should not be construed as a precedent for acquiescence to future treaties containing such a provision.

The PRESIDING OFFICER. Under the previous order, the pending business is the resolution of ratification. The previous order provides that the proposed declaration to the resolution is agreed to. Debate on the resolution is limited to 1 hour, of which 30 minutes is under the control of Senator PELL and Senator HELMS, 30 minutes under the control of Senator BROWN.

Who yields time?

Mr. HELMS. Would the Senator like to go first?

Mr. PELL. The Senator should.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. I thank the Chair.

Mr. President, please advise me when I have used 10 minutes.

Mr. President, one of the most important responsibilities of the Senate Committee on Foreign Relations, and specified as such under the Senate rules, is to consider measures that ''foster commercial intercourse with foreign nations and safeguard American business interests abroad.''

Throughout the 104th Congress, I have placed a high priority on measures that promote American commercial interests in the United States and overseas. During this Congress the Foreign Relations Committee has reported six bilateral tax treaties providing for reduced withholding tax liabilities and protection against the double taxation of American goods and services.

During this Congress, the Foreign Relations Committee also reported nine bilateral investment treaties, or BIT's, as they are known around the world. BIT's between the United States and other countries can have an enormous impact in opening doors for American business in less developed markets. To date, the Senate has overwhelmingly approved all of the bilateral tax and investment treaties reported from our committee during the 104th Congress.

Today, the Senate is considering yet another treaty that expands opportunities for U.S. business and protects American jobs. This treaty, the International Natural Rubber Agreement (INRA) is designed to stabilize product and prices of natural rubber. This agreement has been in effect for 16 years and has proved a useful tool for maintaining a relatively stable supply of natural rubber at a fairly consistent price. The pending treaty would extend the agreement for an additional 4 years.

This commodity agreement essentially reauthorizes a buffer stock that stabilizes the price of natural rubber. The buffer stock is designed to buy and sell rubber in order to keep the price within 15 percent of a reference price established annually based on the market. The stock is financed by direct cash contributions from its members, who are both producers and consumers of natural rubber. Absent the development of a mature futures market for natural rubber, the agreement ensures predictable supplies of natural rubber priced at annual market rates.

Virtually all Americans, whether aware of it or not, depend on rubber products every day of the week. Any American who drives a car, or rides a bus, or takes a taxi to work relies on rubber products. Many Americans may not be aware that we are completely dependent upon foreign countries for our supply of natural rubber. In fact, synthetic rubber products still require some natural rubber.

Here is the point. Seventy-five percent of all natural rubber is grown in only three countries—Malaysia, Thailand, and Indonesia. About 80 percent of natural rubber is grown by small farmers, and it requires seven years for new rubber trees to reach full production level. Thus, a drastic reduction in rubber prices could force small farmers to convert their crops to more profitable commodities such as palm oil. Since natural rubber takes seven years to mature, valuable time could be lost before the market was once again provided with a reliable supply.

In terms of jobs, the president of the Rubber Manufacturing Association testified before the Senate Foreign Relations Committee that the livelihood of more than 100,000 employees, and the thousands of suppliers to the rubber industry and its customers, depends on available supplies of natural rubber and the continued production of finished products. By keeping the cost of tires—and other rubber products that we all depend upon—relatively stable, U.S. consumers benefit directly from the agreement.

Ensuring that small farmers will continue to grow rubber is therefore essential to ensuring an adequate supply level for the United States. One of the main reasons the United States signed the original agreement, it is known in short form as INRA—with broad bipartisan support—and its renewal in 1987, was to encourage producers to invest in planting new trees and to continue to harvest rubber to meet the projected increases in worldwide demands. Since the original INRA, production of natural rubber has doubled to keep pace with a similar rise in consumption of rubber products.

Senate ratification of this treaty is essential to ensuring market stability as the United States and other consuming countries transition to a system that relies on private sector institutions to manage market risk. In a letter to me, dated January 22, 1996, the State Department said it ''shared industry's and labor's concern that a precipitous end to the accord would be disruptive.'' As we know all too well in Washington, private institutions do not replace public institutions overnight—much as we might like to see it be otherwise. INRA III will bridge the period of transition and decrease the potential for disruption of the natural rubber supply during the four year period in which the treaty will be in force.

Membership in INRA has proved to be profitable to the U.S. Treasury. The original International Natural Rubber Agreement [INRA] was funded by the United States in 1980 with a contribution of $53 million. Since that time, the U.S. contribution has increased through profit and interest by $25 million and now stands at $78 million. Given this record it is evident that the U.S. Treasury will benefit directly from its membership in the International Natural Rubber Organization [INRO] in more ways than ensuring an adequate supply of natural rubber. When the U.S. contribution to the INRO is returned to the Treasury in four years, we can expect the U.S. share of INRO to have grown beyond its current level of $78 million.

Commitment to INRA III will be funded without additional appropriations from the United States. According to the Office of Management and Budget, in a letter to me dated August 8, 1996, ''because rolling over U.S. government resources currently in the INRO Buffer Stock Account will not require any legislation, ratification of INRA 1995 will not be subject to pay-as-you-go budgetary procedures, and will simply change the timing of the return of these assets to the U.S. Treasury.''

According to the Office of Management and Budget, the proposed rollover of resources in the Buffer Stock Account from INRA 1987 to INRA 1995 is based upon the provisions of INRA 1987, and the 1988 precedent of the Senate rolling over funds from INRA 1979 to INRA 1987. Some annual appropriations are necessary; specifically, the U.S. share of the administrative costs of INRO are estimated to be $300,000 per year.

Finally, Mr. President, the administration, U.S. industry, and this Senator, agree that it is time to move toward a system which relies on private sector institutions to manage market risk. I agree with Senator BROWN on that point. But, consequently, in correspondence with the Secretary of State and during a hearing of the Senate Foreign Relations Committee on June 20, 1996, I stated that industry must begin such a transition. So, this will be the last International Natural Rubber Agreement. However, industry needs sufficient time to create a mechanism and prepare for a smooth transition to such a system. Given the unique production challenges of natural rubber, ratification of INRA III will provide an adequate transition period.

Mr. President, I ask unanimous consent that correspondence to me emphasizing the importance of this agreement be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, August 8, 1996.

Hon. JESSE HELMS,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you are aware, the Administration strongly supports U.S. participation in the International Natural Rubber Agreement (''INRA'') 1995 and has asked the Senate to give this treaty prompt consideration and its advice and consent to ratification. This letter is in response to a request from the staff of your committee for our views on the budgetary implications of U.S. participation. In summary, because rolling over U.S. government resources currently in the International Natural Rubber Organization (INRO) Buffer Stock Account will not require any legislation, ratification of INRA 1995 will not be subject to pay-as-you-go budgetary procedures, and will simply change the timing of the return of these assets to the U.S. Treasury.

The Administration proposes to roll over the current U.S. share in the Buffer Stock Account, which totals approximately $78.5 million, from INRA 1987 to INRA 1995 without a new appropriation. (This includes $7.5 million in the Buffer Stock Account and $71 million held in the Surplus Funds Account, which is part of the Buffer Stock Account managed by Rothschild Asset Management Ltd., Singapore.) We believe this amount will be sufficient to cover all likely U.S. government obligations during the life of INRA 1995.

The proposed roll-over of resources in the Buffer Stock Account from INRA 1987 to INRA 1995 is based upon the provisions of INRA 1987, and the 1988 precedent of the Senate rolling over funds from INRA 1979 to INRA 1987. Consistent with the 1988 precedent, such a roll-over does not require any authorizing or appropriation legislation, only treaty ratification and U.S. government consent. Thus, a roll-over of resources in the Buffer Stock Account is not subject to pay-as-you-go procedures established by the Balanced Budget and Emergency Deficit Control Act of 1985.

The U.S. share of the administrative costs of running the International Natural Rubber Organization are estimated to be approximately $300,000 per year. These costs will require annual appropriations, and the State Department's proposed budget for FY 1997 includes money for this purpose in the Contributions to International Organizations account.

The Administration expects that at the end of the four-year duration of INRA 1995, the objectives of INRA will be achievable through the operation of free market mechanisms. Therefore, INRA 1995 is intended to be the last such agreement in which the United States participates, and the U.S. share of the Buffer Stock Account (including buffer stock trading profits and interest) will return to the U.S. Treasury as miscellaneous offsetting receipts at that point. The transfer of U.S. government assets from INRA 1987 to INRA 1995 will not affect the U.S. claim on those assets, but will only change the timing of their return to the Treasury.

Again, the Administration strongly supports U.S. participation in INRA 1995 and awaits consideration of the treaty by the full Senate. We appreciate the support that you have given to this proposal and your expeditious action on it.

Please let me know if you would like any additional information.

Sincerely,

JACOB J. LEW,
Acting Director.

RUBBER MANUFACTURERS ASSOCIATION,
Washington, DC, September 13, 1996.

Hon. JESSE HELMS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: Withn the next week or so, the third iteration of the International Natural Rubber Agreement will be brought to the floor of the Senate for ratification.

Supported by both industry and labor, INRA III is, in essence, a routine extension of an Agreement (INRA I) which has been in effect since 1979. INRA II, essentially a continuation of the first, was submitted to the Senate by the Reagan Administration and approved unanimously by a vote of 97–0. To the extent INRA III differs from its predecessors, it does so in a positive way, by making its economic provisions even more market-oriented, and more automatic than discretionary.

INRA, unlike other commodity agreements, has worked successfully for more than 16 years.

On behalf of the rubber manufacturing industry, I ask for your support of this important Agreement.

Sincerely,

THOMAS E. COLE,
President.

UNITED STEELWORKERS OF AMERICA,
RUBBER/PLASTICS INDUSTRY CONFERENCE,
Akron, OH, September 11, 1996.

Hon. JESSE HELMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: On behalf of the 97,000 members of the Rubber/Plastics Industry Conference of the United Steelworkers of America, I urge you to support ratification of the International Natural Rubber Agreement (INRA III) when it comes to the Senate floor in the near future.

For the last 16 years, INRA has successfully met its primary objective of assuring an adequate supply of natural rubber for the world. In fact, since INRA began, global natural rubber production has increased 50 percent. This is especially important for the U.S. as the world's largest consumer of natural rubber.

Assured supplies of natural rubber are particularly critical to the tire and rubber products industry and our union members. To put it simply, you cannot manufacture such products for our varied civilian and military transportation needs—or provide jobs in this vital industry—without natural rubber. Contrary to a common misconception, there is no substitute for this critical industrial input. If future supplies of natural rubber are inadequate, there can be no question that job disruptions and losses among our members would result.

Also, consumers would be severely impacted. Every one cent increase in the price of natural rubber costs the U.S. tire industry $22 million on an annualized basis. Thus, consumers could face tremendous price increases for tires and other rubber products, and could very well face shortages.

In the final analysis, the United States is one of the only countries among the 28 nations covered by the treaty that has not yet ratified it. We must do so by the end of this year or the agreement that has served the world so well for almost two decades will die. The Senate has previously recognized the importance of INRA as reflected in the 97–0 vote in favor of ratification when INRA was last renewed in 1988. I urge your support on this matter of critical importance to our union, its members and families—and the consumers who purchase the products we produce.

Sincerely yours,

JOHN SELLERS,
Executive Vice President.

BRIDGESTONE/FIRESTONE, INC.,
Wilson, NC, September 16, 1996.

Hon. JESSE HELMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: I am writing on behalf of Bridgestone/Firestone, Inc. and the 2,200 employees of the Wilson Plant to reiterate our strong support for the ratification of the Third International Natural Rubber Agreement (INRA III), which is scheduled for vote by the Senate this month. This will continue a treaty that has effectively served the needs of the U.S. tire industry.

Natural rubber is a strategic commodity for the production of tires as well as for a wide variety of other products. For the past 25 years, the International Natural Rubber Organization (INRO), which operated under the authority of the INRA Charter, has helped ensure a stable price and long-term supply of natural rubber, benefiting both producers and buyers of natural rubber. Without this stabilizing influence, we believe that the international rubber market could easily be disrupted, jeopardizing the availability of natural rubber and long-term damage to the industry.

INRA is different from many other commodity agreements. First, it uses a ''buffer stock'' mechanism (rather than export controls or market quotas) to dampen the swings in market prices that can hurt both producers and consumers. Second, the price intervention levels are directly and automatically linked to free market trends. Third, and perhaps the most important, it has worked.

During the last several years, much time and effort has been spent to achieve the consensus among producing and consuming countries embodied by this new agreement. We believe that a reasonable compromise among the parties has been reached in the adopted INRA III document, and that its ratification will serve the interests of the U.S. tire and rubber industry.

As a major U.S. tire manufacturer and an employer of 2,500 in North Carolina and nearly 35,000 nationwide, we urge you to vote for the ratification of INRA III by the U.S. Senate. We are eager to provide whatever assistance or information may be required to assist you in attaining this goal.

Sincerely,

JOHN MCQUADE,
Plant Manager—Wilson.

KELLY SPRINGFIELD TIRE CO.,
Fayetteville, NC, January 26, 1996.

Hon. MICHAEL KANTOR, *Ambassador,*
U.S. Trade Representative,
Washington, DC.

DEAR AMBASSADOR KANTOR: I have been working very closely with Senator Jesse Helms on the International Natural Rubber Agreement (INRA) since before Thanksgiving. Success in getting the Agreement renewed is crucial to the future health of North Carolina's large tire industry and our plant, in particular, which is the largest in the world.

It is my understanding that the Administration will sign INRA III shortly and send it to the United States Senate for its advice and consent. This would not have occurred without your personal support and leadership.

Thank you, Ambassador Kantor, for all your efforts in moving INRA III forward.

Sincerely,

J.R. KONNEKER.

Mr. HELMS. In order for the United States to retain its membership in INRO, the United States must ratify INRA 1995 prior to the end of 1996. I ask that the Senate move expediently to a vote on this treaty.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio. Who yields time? The Senator from Rhode Island?

Mr. PELL. Mr. President, I yield 8 minutes to the Senator from Ohio.

Mr. GLENN. I thank my distinguished colleague from Rhode Island.

Mr. President, I rise today also to speak on behalf of Senate ratification of the third International Rubber Agreement, INRA III.

As my colleagues are well aware, INRA III is a renewal of an existing commodity agreement. This is not new. It has been in existence between more than two dozen nations who are either producers or consumers of natural rubber. The first INRA was ratified in 1979. It was renewed in 1987. INRA III was negotiated in 1994–95 with the very active participation of the United States. According to the Department of State.

> . . . the objectives pursued by the United States resulted in a well-structured accord which offers a fair balance of benefits and responsibilities for both consumers and producers of natural rubber.

In the negotiations, the United States sought and achieved a number of improvements in the new agreement. After a very lengthy interagency review, INRA III was formally signed by the United States and sent to the Senate for our ratification.

United States participation in INRA has been supported by Republican and Democratic administrations, including those of Presidents Carter, Reagan, Bush, and Clinton. So it has enjoyed broad bipartisan support in the Senate when INRA I and INRA II were considered.

This year, the Senate Foreign Relations Committee recommended ratification of INRA III by a near unanimous and bipartisan majority. The agreement is strongly supported by the Rubber Manufacturers Association and by the Rubber/Plastic Industry Conference of the United Steelworkers.

Mr. President, more than two-thirds of the world's production of natural rubber comes from just three countries: Thailand, Malaysia, and Indonesia. The purpose of INRA is very simple. It is to ensure an adequate supply of natural rubber at fair and stable prices without distorting long-term market trends and to foster expanded natural rubber supplies at reasonable prices.

As Secretary of State Christopher points out in his letter of submittal accompanying the agreement:

> Prior to conclusion of INRA 1979, rubber prices had historically been unstable with strong rises.

This was particularly noticeable, Mr. President, in 1951, in 1955, in 1960 and in 1973, 1974, followed by sharp and sudden declines. ''This behavior not only destabilized producers' incomes, but also contributed to inflation in industrial countries.'' That was a statement by Secretary of State Christopher.

So those ups and downs in 1951, 1955, 1960, 1973 and 1974 are what led to INRA being passed in 1979.

The Secretary continued:

> In addition, it discouraged needed long-term investments in natural rubber production. This was and is of particular concern to the United States which, as the world's largest consumer of natural rubber, has a substantial interest in assuring adequate future supplies of this commodity.

In other words, what that says in simpler terms is, it's good for the consumers of this country that we have this kind of supply arrangement that does not permit price fluctuations.

In contrast with other commodity arrangements which have sought to control prices, INRA uses a buffer-stock mechanism to avoid severe price fluctuations which can injure both producing and consuming countries. Absent alternative institutions to manage market risk, the agreement represents the best way of assuring predictable supplies of fairly priced natural rubber. INRA III will provide a transition period needed to allow industry time to prepare for a free market in natural rubber and to allow for the further development of these alternative institutions.

That is very important. I already pointed out why to my colleague from North Carolina, because the fact is this will be the last INRA. After this, we go to a free market, and this time period for this INRA that we are going to approve today, I trust, will provide for arranging for development of these alternative institutions.

INRA has effectively discouraged cartel-like behavior on the part of the producing countries by supporting prices sufficient to ensure adequate production, as well as a fair return to the producer, while giving consuming countries an equal voice in how this unique commodity agreement is implemented.

The best part about it is, Mr. President, it has worked, it has been successful. Over the life of INRA I and II, production has increased by 50 percent to meet rising demand, yet prices have remained relatively stable. That is a great testament to the success of INRA I and II since they have been in effect. I repeat that. Over the life of INRA I and II, production has increased 50 percent to meet rising demand, yet prices have remained relatively stable.

Natural rubber is a component of every tire and many rubber products. There is no substitute. The amount of natural rubber used varies depending on the type of tire or rubber product. All aircraft, as an example, however, including military planes, have tires which contain a high percentage of natural rubber.

The economic impact on our whole Nation of ups and downs in the price of rubber is very real. A 1-cent-per-pound rise in natural rubber prices costs the United States an additional $22 million. Hence, the importance of price and supply stability is readily apparent. Short supplies or unreasonably high prices would be costly to American consumers and could be devastating to the tire and rubber industry in the United States.

I will say, we have a very substantial part of this industry represented in my home State of Ohio.

U.S. participation in INRA III should not require any additional money to cover our share of the buffer stock. It is my understanding the administration and the Senate are agreed that we will roll over moneys already invested in the buffer stock. This arrangement seems the simplest and most sensible means of addressing the financing question and is the same procedure which was used successfully for the transition from INRA I to INRA II.

In closing, Mr. President, as the world's largest consumer of natural rubber, U.S. participation in INRA III is critical to the continued viability of the arrangement. I urge my colleagues to approve INRA III in the broad, bipartisan fashion which has characterized consideration of this issue to date.

Mr. President, I yield back the remainder of my time to Senator PELL.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I yield 3 minutes to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I thank the Senator.

Mr. President, this is the second extension of a treaty that has already been approved by this body on two separate occasions: in 1980 on a vote of 90 to 1, and in 1988 on a vote of 97 to 0.

The purpose of this treaty is to stabilize the supply and price levels of natural rubber in the world market. Through a buffer-stock mechanism, the treaty assures that natural rubber will be available to the United States in sufficient supply and at reasonable prices.

Mr. President, securing a reliable supply of natural rubber at fair prices is essential for our tire and rubber industry. As a letter from treaty supporters put it, ''you cannot manufacture such products for our varied civilian and military transportation needs—or provide jobs in this vital industry—without natural rubber. Contrary to a common misconception, there is no substitute for this critical industrial input. If future supplies of natural rubber are inadequate, there can be no question that job disruptions and losses would result.''

This treaty is extremely important because 75 percent of the world's natural rubber supply is produced in just three countries—Thailand, Indonesia and Malaysia—and the United States is, by far, the world's largest importer of natural rubber. Since natural rubber is a commodity whose production is strictly limited by climate, without this treaty, the United States could be subject to great market volatility.

On the one hand, one possible problem could be the formation of cartels that could push the price of rubber way up, almost beyond reach; on the other hand, at the other extreme is a danger that rubber production could become unprofitable, and there would be a disruption in supply. This treaty charts the way between these two extremes.

The INRA addresses these issues not by eliminating market pricing and production, but by restraining some of the volatility. INRA's buffer-stock mechanism goes into action only when prices move beyond 15 percent above or below the reference price. That reference price is adjusted annually to reflect long-term market trends.

Under the Reagan administration, the U.S. Trade Representative distinguished the rubber agreement from other commodity agreements by stating the following:

> Experience shows that most arrangements with economic measures have not worked and often result in market disruptions by attempting to support prices at unrealistic levels.
>
> In contrast, however, the rubber agreement has been successful in moderating price fluctuations through a market-oriented mechanism that operates consistent with market trends.

My colleague from Ohio put out a very important figure in terms of the impact of rapid price fluctuations. Every 1-cent increase in the price of natural rubber is estimated to cost the U.S. tire and rubber industry $22 million on an annualized basis.

This agreement is strongly supported not only by U.S. tire and rubber manufacturers, but also by organized labor—the people who work in the tire and rubber manufacturing industry. It has been supported by four successive administrations: Presidents Carter, Reagan, Bush, and Clinton. We have the benefit of 16 years of experience with this treaty to know that it can and does work.

Mr. President, it would be a great mistake if we did not take advantage of this opportunity to give our advice and consent to ratification of the International Natural Rubber Agreement. I urge my colleagues to do so. I yield the floor.

Mr. HOLLINGS. Mr. President, I rise in support of the International Natural Rubber Agreement [INRA] and urge the Senate to ratify this agreement. This is the third INRA. The first two agreements were ratified by this body by overwhelming margins in 1980 and 1988. The third agreement merits that same level of support.

Since entry into force of the first agreement, INRA has effectively met its basic purpose: to encourage cultivation of natural rubber by reducing market volatility and thus ensuring adequate supply. Unless INRA is ratified, we will return to the unstable price situation that characterized the period before the first INRA went into effect. Price volatility discourages investment in natural rubber production, which in turn affects supply. Rubber trees can only be grown in a few areas of the world and production does not begin until at least 5 years after the trees are planted. Therefore, a reduction in planting has a long, adverse effect on supply.

As the world's largest consumer of natural rubber, the United States has a particularly strong economic interest in assuring stability and adequate supply for the future. Natural rubber is an essential product for which there is no substitute. Seventy-five percent of the world's rubber production is used in the manufacture of tires. Every tire must contain some amount of natural rubber in order to meet required performance and quality specifications. If U.S. rubber manufacturing plants cannot obtain adequate supplies of natural rubber, jobs will be disrupted and consumers will face increased prices. In South Carolina alone, more than 10,000 workers are employed in the rubber manufacturing industry.

The administration has proposed funding INRA by rolling over the existing U.S. share of the buffer stock. I endorse this proposal. A rollover is specifically permitted under the terms of INRA. This was the method used when the second INRA was ratified. Based on historic experience, these funds should be adequate to meet our obligations under the third INRA. And these funds will be returned to the taxpayers when the agreement terminates.

I urge my colleagues to support the resolution of ratification.

Mr. HEFLIN. Mr. President, I rise in support of the resolution of ratification of the third International Natural Rubber Agreement [INRA]. The purpose of INRA is to assure adequate supplies of natural rubber by stabilizing natural rubber prices without distorting long-term market trends. It accomplishes this through the operation of a buffer stock which buys and sells natural rubber whenever the price falls outside of a market-based price band. The INRA benefits both producers and consumers of natural rubber.

Natural rubber is a critical material used in virtually every tire and many rubber products made in the United States. There is no material that can serve as a complete substitute for natural rubber. The United States is the largest consumer of natural rubber in the world, and adequate supplies are critical to major U.S. manufacturers such as the automotive industry. For 16 years, the United States has benefited substantially from the market stability which resulted from the operation of the two previous INRA agreements. Failure to ratify the third INRA is likely to result in price volatility and supply shortages. This in turn will have serious adverse consequences for workers and consumers across the country and in my own State.

Alabama is a major producer of tires and other rubber products. Companies manufacturing these products have invested an estimated $1.5 billion in their Alabama facilities. They employ nearly 6,000 workers. The price volatility and supply shortages that would follow if INRA is not ratified would have an immediate impact on these workers. And the price effect of short supplies would soon be felt by consumers.

INRA has the support of the Rubber/Plastic Industry Conference of the United Steel Workers of America as well as the tire and rubber products industry. Other major consumer and producer nations have already approved INRA. Our action today will allow this beneficial agreement to go into effect.

Finally, the administration is not requesting an appropriation of funds to carry out this agreement. Rather it proposes rolling over the U.S. share of the buffer stock under the second agreement to carry out our obligations under the third agreement. This is precisely the course of action taken when the second INRA agreement was approved. When the agreement ends, these funds will return to the Treasury.

Mr. President, I urge the Senate to support INRA.

Mr. SHELBY. Mr. President, today the Senate is considering ratification of the International Natural Rubber Agreement. This agreement will impact large sectors of our economy, primarily those for which natural rubber is a vital interest.

The first International Natural Rubber Agreement was ratified in 1979 by all major rubber producing and consuming countries. The second agreement was ratified in 1988 and expired in December 1995. The purpose of renewing this agreement is to stabilize the price of natural rubber and to guarantee adequate supplies. The agreement accomplishes this through the International Natural Rubber Organization which maintains a natural rubber buffer stock from which the organization may purchase or sell natural rubber to help control the volatile price.

Agricultural growth for natural rubber is limited to a small area around the equator, and it takes 5 to 7 years to cultivate this product. Seventy-five percent of the world's natural rubber is grown in just three countries—Thailand, Indonesia, and Malaysia. I generally do not favor Government intervention in the marketplace to stabilize prices, but failure to ratify this agreement could lead to a few small countries colluding to fix natural rubber prices. Even small fluctuations in the price of natural rubber have a significant impact on American industry; a one-cent increase in the natural rubber price costs industry $22 million. Sharp fluctuations in the natural rubber price will, in turn, impact American consumers heavily.

Moreover, this program is not draining the taxpayers' money; the original U.S. contribution was $53 million and our share of the organization has grown to $78 million. When the INRA terminates, these funds will be returned to the Treasury.

The Government should play a minimal role in regulating or controlling the price of any commodity. There are rare circumstances where, for the sake of American consumers, it is permissible for the Government to ensure the stability of certain commodity prices, and this is one of those circumstances. I urge my colleagues to support this agreement.

Mr. ROBB. Mr. President, I rise in support of ratification of the International Natural Rubber Agreement [INRA III].

For the last 16 years, INRA has provided the consuming nations of the world with a reliable supply of natural rubber at stable prices. The United States, as the world's largest consumer of natural rubber, has much to gain from the stabilization provided by the agreement. Many believe that the tires and other rubber products U.S. consumers use daily do not need natural rubber. But that is simply not the case.

Natural rubber is, in fact, a critical material in the manufacture of most rubber products. Aircraft tires used by the U.S. military have a particularly high percentage of natural rubber and it just so happens the world's largest aircraft tire plant is located in Danville, VA. At least a third of the plant's production provides aircraft tires to the U.S. military, and this production depends on the availability of natural rubber.

U.S. consumers and workers also have much to gain from renewal of INRA. Every one-cent rise in the price of natural rubber costs the U.S. tire and rubber industry $22 million on an annualized basis. Such cost increases will inevitably lead to higher prices for consumers and possible shortages and potential job losses.

On behalf of the nearly 4,000 workers in Virginia that are employed in the tire and rubber industry and for the broader economic and defense preparedness interests of the United States, I urge the favorable consideration of the International Natural Rubber Agreement.

In closing, I ask unanimous consent that a letter I sent to National Security Adviser Anthony Lake be printed in the RECORD, as well as his return reply.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, June 12, 1996.

Hon. W. ANTHONY LAKE,
Assistant to the President for National Security Affairs, The White House, Washington, DC.

DEAR TONY: I wanted to convey my strong support for the International Natural Rubber Agreement [INRA], and urge that the National Security Council expedite its review of the accord and submit it to the Senate for its advice and consent.

The INRA serves an important purpose in ensuring an adequate supply of rubber to U.S. corporations using this product in bulk in their manufacturing operations. The Chairman of Goodyear Tire & Rubber Company, Mr. Stan Gault, visited my office yesterday to emphasize that very point and explain how important extension of the rubber pact is to his corporation. Should the pact not be renewed, our industrial base would face serious production and supply shortages, and the American consumer would ultimately be forced to pay higher prices.

The Senate supported renewal of INRA in 1988 by a wide margin, 97–0, and I believe there is a consensus to support extension of the pact once again. I hope the White House can submit the accord to the Senate in short order so that we can move ahead.

Sincerely,

CHARLES S. ROBB.

THE WHITE HOUSE,
Washington, DC, July 3, 1996.

Hon. CHARLES S. ROBB,
U.S. Senate,
Washington, DC.

DEAR CHUCK: I am writing in response to your letter urging support for renewal of the International Natural Rubber Agreement (INRA). I fully agree with you on the importance of providing adequate natural rubber supplies, at reasonable prices, for U.S. manufacturers to ensure U.S. consumers pay reasonable prices for rubber-related products.

I am pleased to report that on June 19, President Clinton transmitted the INRA to the Senate for advice and consent. The new agreement incorporates improvements sought by the United States to help ensure that the INRA fully reflects market trends and is operated in an effective and financially sound manner. We believe that renewal of the agreement will provide the transition period necessary for the industry to prepare for a free, open market in natural rubber.

We appreciate your interest in this important matter.

Sincerely,

ANTHONY LAKE,
Assistant to the President For National Security Affairs.

The PRESIDING OFFICER (Mrs. FRAHM). Who yields time?

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BROWN. Madam President, I yield myself 20 minutes.

Madam President, the advocates of this treaty have come to the floor with the suggestion that this measure has been considered and approved by large margins in the past. That assertion is correct. It has been. They have come with the assertion and the implication that the American companies that buy rubber products support this agreement. Madam President, I believe that assertion is largely correct as well.

They have come to the floor with the assertion that this measure has broad support of rubber producers. And I believe that assertion is correct as well. They have come to the floor and suggested that, implied that the labor organizations that work for the big rubber companies may support this agreement. Madam President, I believe that assertion as well is correct.

This country has had experience with cartels. It is not new. It is as old as commerce is itself. It is perhaps a most natural inclination that could come about. One who reads Warren Buffett's books, in terms of investing, is quickly impressed with his understanding of the market. And one of the things he looks for is markets where there is not competition or there is reduced competition, where it is possible for the industry to have a greater margin because of the limited competition—or the franchise, as he refers to it.

The simple fact is, if you have a very competitive commodity market, margins, that is, profits, tend to be less than they are if it is a somewhat protected market. It is natural and understandable that businesses and entrepreneurs would seek to limit competition, would seek to minimize risk. That is human nature. And it is a way to maximize profits.

Madam President, I think our responsibilities go further than simply responding to big labor or to big business or to large producers of rubber. Our responsibilities go to the consumers of this country and the citizens of this country as well. We have had experience in recent years with cartels. When we have a limited number of producers, and they organize and they work together to control prices, we have seen what happened.

The lessons of the 1970's in dealing with the oil cartel was a dramatic reminder to the Americans of what happens when competition is reduced. The oil cartel was an association of oil-producing companies that conspired together to dramatically increase oil prices; and they did it. It had a dramatic and shocking impact on the consumers of America, and, as a matter of fact, the economy of the entire world.

We have a number of other examples where countries have talked about developing cartels. Thankfully, they have been resisted. As a matter of fact, the distinguished chairman of the Foreign Relations Committee is one who has been a key fighter in the effort to eliminate many of these cartels. I think Members and American citizens will be surprised to learn that many of these cartels' efforts to control the market had the blessing of the Federal Government.

The coffee association. Ironically, this country produces very little coffee, but we have been a member of what was an attempt to develop a coffee cartel. One can understand why the producing country would want a coffee agreement that would limit competition of their product, but why in the world would the United States want to be a member of it? We import coffee.

The distinguished chairman of the committee played a key role in helping us eliminate the coffee cartel. Imagine taking American taxpayers' money to participate in a cartel that had the impact of boosting the price Americans have to pay for coffee.

When that agreement was proposed by administrations—and it had been proposed by administrations in the past—it was not the American taxpayer they were looking out for. They were responding to the special interest groups that had found a way to limit competition. I do not condemn people for looking out for their own economic interest, but I do think it is wrong for American legislators to think that their responsibility goes only to respond to those special interests.

This Congress in the last few years has played a key role in eliminating some of these cartels or efforts to limit competition. International organizations designed to help control, manipulate the price of coffee or jute or other products that we import have fallen by the wayside, and great progress has been made when we focus on them.

Now what comes to the floor is an agreement on rubber. Madam President, some facts are painfully clear. One, the United States does not produce rubber. We are an importer. We are a consumer of rubber. Is rubber important? It has been alleged so. The answer by the advocates of this treaty is yes. Madam President, I agree completely. Of course natural rubber is important, important in the world economy and important in our economy.

They have alleged that the rubber agreement will help producing countries. Madam President, I agree. It will help the producing countries because it will help them get a better price for their product.

They have alleged that the rubber agreement will help the tire companies and the rubber processors in this country. And, yes, I agree, it will help them.

It will bail out rubber producers by protecting them against lower prices, because, you see, the way the agreement is set up is, we put up the money with other countries, and when prices get lower or are attempted to be dropped, the association will step in and buy rubber at a low price. That does help the producers. It will help the tire companies. They have a huge investment in inventory. That investment in inventory is at risk because it can drop. By stabilizing the price, keeping it from getting too low by buying up inventory when there is a big supply, it will help those tire companies from ever suffering a loss on that inventory or at least some of the dangerous suffered loss on that inventory.

It will also protect them against competition because when they are out there trying to maintain a high price, and the price of rubber falls, someone else can come in and produce the product and undersell them in the market. So I agree, it is in the interest of the big rubber companies to maintain a restriction on competition, as this agreement implies.

But, Madam President, it is also true that America is the biggest consumer. It is in our interest to have low prices, not high prices for rubber. How in the world do you justify taking taxpayers' money—in this case $78 million of money—to be used to guarantee that prices do not get too low?

Are we standing up for the American taxpayer when you do that? I do not think anyone can seriously suggest we are. Yes, I talked to some Members who tell me with great earnestness that if we do not have this agreement, if we do not guarantee the producers against the possibilities of low prices, that maybe nobody will produce rubber at all. Madam President, if they believe that—and I believe many of them who said that are sincere; I do not count the chairman of the committee in that group—but there are Members who do believe that the market system would not work without Government controls and without Government assistance and that indeed people might go out of business in producing rubber and we would not have any rubber at all if we did not have Government interference. And if they believe that, they will want to support this agreement.

But, Madam President, the history of economics is quite clear. When the economic system provides rewards and a good price, people want to produce it because they want to make money. And when it does not, they drop production and cut back. And that responsiveness is what makes the market system work. And the reality is, that product after product after product that is produced in the American marketplace responds to market incentives, and that far from going out of business, this will make it more healthy if we eliminate the agreement.

Madam President, I hope as Members vote they will ask themselves some questions. Will producers not produce without Government subsidies? The advocates of the treaty will tell you yes. I think the facts are quite clear, in the industries across our land, production is not dependent on Government subsidies. It is a function of the marketplace and marketplace incentives. Will tire producers not process tires without Government subsidies?

The advocates of this agreement, some of them, will tell you yes, that there is a danger of people not producing tires in America—or, for that matter, around the world—to meet the market demand unless we have a Government program to subsidize them and stabilize them. Those who believe that will want to support this agreement.

Madam President, the facts belie that allegation. The fact is that a strong, healthy, vibrant economy thrives on competition and is stifled by Government controls and Government subsidy programs. Will buying up rubber supplies lower the price? Here is an interesting question. Will buying up the supplies of rubber, when there is a surplus on the market, increase price or lower price?

The advocates of this treaty have come to the floor and said this agreement will help give us lower prices. If you believe that buying a product in the marketplace will lower its price, then you will want to support this treaty. Madam President, anybody who believes that ought to take Economics 101 or simply use common sense. Buying the product props up the price. That is why the producing countries are interested in this agreement. They want higher prices. That is why they fought so hard for this.

This treaty is simple logic. This treaty is a simple question: If you want to be responsive to the big rubber companies who want to stabilize their product and avoid risk with their inventory, you will want to vote for it; if you want to please big labor who works for those companies and is concerned about the potential of outside competition in their marketplace, you will want to support the treaty; if you want to help out the producers of rubber, who are all overseas, you will want to support the treaty.

But, Madam President, if you are concerned about competition in our economy, you will be concerned about a treaty that reduces competition; if you are concerned about consumers in America, you will want to be concerned about a treaty that guarantees they will not have low prices, because that is the purpose of this measure. Madam President, if you are concerned about the taxpayers of this country, you will have some misgivings about taking $78 million of our taxpayers' money and giving it in subsidies or putting it out in subsidies for these big producers.

This is a vote that people should have no doubt about because the sides are very clear. Big labor, big business, lobbyists for importers, all favor the treaty; people who are concerned about the taxpayers of this country and about the consumers of this country will want to vote against the treaty.

I was concerned particularly about the lesson it sends and the message it sends with regard to our economy. If there is one hallmark of the American economy, it has been a concern about the concentration of power and a commitment to a competitive economy. Our very existence of the antitrust laws comes out of an experience when you had cartels and restrictions on competition. The Sherman Antitrust Act and the Clayton Act and other measures that have come forth in this area have focused on our efforts to ensure we continue to have price competition in products just such as rubber.

In that effort, I sent an inquiry to the Congressional Research Service, the American Law Division. Madam President, I ask unanimous consent to have their entire response to my letter, along with my letter, printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, July 11, 1996.

Hon. JANET RENO,
Attorney General of the United States, Department of Justice, Washington, DC.

DEAR MADAM ATTORNEY GENERAL: Your answers to the questions below concerning the application of United States antitrust law and practice to an organization's business practices would be greatly appreciated.

(1) Under United States antitrust law, is it permissible for 26 competing producers and purchasers of a particular commodity to form a single organization for the purpose of regulating their business interests or activities?

(a) Would the fact that three of the producers provide 92% of the commodity affect your answer to question 1?

(b) Would the fact that three of the purchasers buy 77% of the commodity affect your answer to either question 1 or 1a?

(2) Under United States antitrust law, can an organization of producers and purchasers be formed for any of the following expressed purposes:

(a) To achieve a balanced growth between the supply and the demand for a commodity in order to alleviate difficulties arising from shortages or surpluses of that commodity?

(b) To stabilize a commodity price in order to avoid excessive price fluctuations that might adversely affect the long-term interests of both producers and purchasers?

(c) To stabilize the earnings of the producers of a commodity and to increase their earnings based on expanding the commodity supply at fair and remunerative prices?

(d) To ensure an adequate supply of a commodity to meet purchasers' needs at a ''reasonable price'' (determined by the organization)?

(e) To take feasible steps to mitigate members' economic difficulties in case of a commodity surplus or shortage?

(f) To expand international trade in, and market access for, products derived from the commodity?

(g) To improve the overall competitiveness of a commodity by supporting research and development of commodity-related products?

(h) To facilitate the efficient development of a commodity by improving its processing and distribution?

(f) To promote international cooperation and consultations regarding commodity supply and demand and to coordinate commodity research?

(3) Under United States antitrust law, can an organization of producers and purchasers of a particular commodity set a reference price which establishes a permissible price range for that commodity?

(4) If members of an organization of producers and purchasers of a particular commodity were to contribute substantial funds to establish a large buffer stock of that commodity to enable the organization to intervene in the market to stabilize the supply of that commodity and to defend the organization's reference price, would that violate United States law?

(a) Specifically, would it be permissible under United States law for an organization of producers and purchasers of a particular commodity to establish a buffer stock?

(b) Specifically, would it be permissible under United States law for an organization of producers and purchasers of a particular commodity to use the buffer stock to intervene and regulate the market?

(5) Under United States law, can an organization of producers and purchasers of a particular commodity defend its reference price—support its minimum price—by buying any market surplus of that commodity that causes the commodity price to drop 15% below the organization's reference price?

(6) Under United States law, can an organization of producers and purchasers of a particular commodity sell some of its buffer stock to cover a commodity shortage?

(7) Under United States law, whenever the commodity price is 15% above the reference price, can an organization of producers and purchasers of a particular commodity sell some of its buffer stock to decrease the market price?

(a) If the answer to question 7 is no, please discuss fully what aspects of United States law are violated by the organization's behavior in question 7?

(8) Under United States law, is it permissible for an organization of producers and purchasers of a particular commodity to decide what grades of that commodity are eligible to be included in its buffer stock?

(9) Under United States law, may an organization of producers and purchasers of a particular commodity penalize members for failing to meet their obligations to contribute to the buffer stock by suspending their voting privileges in that organization?

(10) Under United States law, is it permissible for an organization of producers and purchasers of a particular commodity to conduct an annual financial audit of its activities?

(a) Would the behavior in question 10 tend to suggest anticompetitive practices? Please explain.

(11) Under United States law, is it permissible for an organization of producers and purchasers of a particular commodity to require all its members to accept as binding its decisions regarding the market for that particular commodity?

(12) Under United States law, is it permissible for an organization of producers and purchasers of a particular commodity to have its members formally agree not to limit or undermine in any way the organization's decisions concerning that commodity?

(13) Under United States law, can an organization of producers and purchasers of a particular commodity limit the potential liability of each of its members for the organization's activities to the amount each member contributes to the administration of that organization and to the creation of a buffer stock?

(14) Before supporting the development of a more efficient supply of a particular commodity, is it permissible under United States law for an organization of producers and purchasers of that particular commodity to consider the development's financial implications to all of its producers and purchasers?

(15) Under United States law, is it permissible for an organization of producers and purchasers of a particular commodity to encourage and facilitate "reasonable freight rates" as determined by that organization for the purpose of providing a more efficient and regular supply of the commodity?

I thank you in advance for your assistance and consideration of this matter.

Sincerely,

HANK BROWN,
U.S. Senator.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, July 24, 1996.

To: Senate Committee on the Judiciary, Subcommittee on Constitution, Federalism, and Property Rights, Attention: Jack Saul

From: American Law Division

Subject: Partial Answers to Some Questions About the Antitrust Implications of Forms/Activities of Certain Business Organizations

You have requested that we provide you with answers to several hypothetical questions concerning some activities of business organizations or associations. As we indicated in a conservation with your office, however, many or most of the questions you have submitted cannot be answered definitively by us; we will attempt, therefore, to set out some of the considerations which would be relevant to decisions by (1) the Antitrust Division of the Department of Justice to investigate or prosecute an activity, or (2) a court hearing a complaint (Government or private), and which require us to answer most of the questions with either "it depends" or "probably not." A small number of your questions can be answered with probable "Okays."[1]

Your first question—"Under United States antitrust law, is it permissible for 26 competing producers and purchasers of a particular commodity to form a single organization for the purpose of regulating their business activities?"—is the basis for all those which follow. Certainly the act of forming an organization comprised of members with like interests is neither unheard of nor automatically (per se) unlawful; that is precisely the rationale for the formation of trade associations or other cooperative activity among competitors that is meant to enhance their business or professional positions. Because the antitrust laws are concerned with competition and not competitors, they are not generally invoked to challenge the existence of organizations, only organizational behavior or activities which may disadvantage consumers (i.e., the "market"). (For the same reasons, an organization such as the one posited in Question 2 (one formed for the purpose of carrying out the specific purposes set out in Questions 2a–2i), would not likely offend any of United States antitrust laws, although, as we discuss below, and the enclosed article illustrates, the actual carrying out of some of them may constitute violations of those laws.)[2]

Market share data is most generally used with respect to the likely consequences of a merger or acquisition, i.e., with whether the "effect of [the transaction] may be substantially to lessen competition, or to tend to create a monopoly."[3] Accordingly, the information contained in Questions 1a and 1b (three producers in the proposed organization supply 92% of the commodity in question; three purchasers in the proposed organization buy 77% of the commodity) would not likely affect the lawfulness of the formation or existence of an organization or association. Those market-share numbers could, however, be determinative of the lawfulness of several of the activities described in your subsequent questions. Because the use of market power has the potential to harm consumers, it has been suggested that the market power of the participants in an organization may be an appropriate starting point in an antitrust analysis of the organization's actions: an examination of an agreement among competitors, for example, should focus on determining whether the agreement's (organization's) provisions "enrich the participants by harming consumers" (i.e., "whether the participants have an incentive to behave in anticompetitive ways").[4]

Using such a test, and assuming the market-share numbers you offer in Questions 1a and 1b, agreements or by-laws expressing the purposes you set out in Questions 2a–2i, any concerning the establishment or use of "buffer stocks," as well as any that spell out a participant's obligation to act in accordance with organization-designated rules designed to maintain a stable market price for the commodity at issue, would be ideal candidates for close antitrust scrutiny. In addition, use of "buffer stocks" to influence or stabilize prices, as would any agreement or action directly or indirectly affecting price, would constitute price fixing under Section 1 of the Sherman Act (15 U.S.C. §1). Notwithstanding its decision in *Broadcast Music, Inc.* v. *Columbia Broadcasting System* that seems to suggest a tolerate for at least some agreements that technically fix prices,[5] the Supreme Court has stated innumerable times that

"The aim and result of every price-fixing agreements, if effective, is the elimination of one form of competition. The power to fix prices, whether reasonably exercised or not, involves power to control the market and to fix arbitrary and unreasonable prices. The reasonable price fixed today may through economic and business changes become the unreasonable price of tomorrow. Once established, it may be maintained unchanged because of the absence of competition secured by the agreement for a price reasonable when fixed."[6]

Situations similar to those described in questions 4b (use of "buffer stock" to "intervene and regulate the market"), 5 (use of a "reference price" and "buying any market surplus * * * that causes the commodity price to drop 15% below the organization's reference price"), and 7 (sale of some of "buffer stock" to cause market prices to decrease when they are 10% above the reference price) have been addressed by the Court in, e.g., *United States* v. *Socony-Vacuum Oil Co.*[7] In that case, the Court declared unlawful a program pursuant to which gasoline companies effectively placed a "floor" under prices by purchasing surplus gasoline on the spot market. Noting that the program was instituted in order to prevent gasoline gasoline price from dropping sharply, the Court stated that even if the agreeing companies "were in no position to control the market, to the extent that they raised, lowered, or stabilized prices they would be directly interfering with the free play of market forces":

"[U]nder the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se."[8]

As the enclosed article notes, the Court has also taken the position that per se price fixing occurs even when the agreement attempts to decrease a commodity's price (the situation described in Question 7):

"The respondent's [competing physicians who agreed to limit fees charged to certain patients] principal argument is that the per se rule is inapplicable because their agreements are alleged to have procompetitive justifications. The argument indicates a misunderstanding of the per se concept. The anticompetitive potential inherent in all price-fixing agreements justifies their facial invalidation even if procompetitive justifications are offered for some."[9]

Question 9 (re whether an organization of producers and purchasers of a particular commodity may "penalize members for failing to meet their obligations to contribute to the buffer stock by suspending their voting privileges") is one of the few to which the answer is "Probably yes" *if* the organization rule violated is not one found likely to have an anticompetitive effect.[10] Suspension of organization voting privileges probably does not violate the antitrust laws,[11] and is certainly not likely to considered as a *per se* violation of them.[12] On the other hand, any organization rule directed at maintenance of a "buffer stock" is, as noted above, likely subject to antitrust scrutiny; further, a finding that full access to the organization was necessary in order for the denied member to effectively compete in the market could also affect the antitrust lawfulness of a suspension of voting rights.

An annual financial audit of an organization's activities (Question 10) would probably not present an antitrust problem so long as the audit were conducted in a manner that would not permit organization members to achieve any competitive advantage over other members: an audit conducted by a third party, and in which any reported data were aggregated so as not to indicate the source of any particular information would probably pass antitrust muster (Question 10a).

We do not know of any antitrust reason that an organization would be required to support an activity/development it considered not to be in its best interests; accordingly, there would not seem to be any antitrust reason that would prevent an organization from "consider[ing]" the "financial implications to all of its producers and purchasers" of the "development of a more efficient supply of a particular commodity" (Question 14).

Depending upon what is meant by "encouraging" and "facilitating" "reasonable freight rates," such an activity could subject an organization of producers and purchasers of the commodity to be shipped to antitrust sanctions. If, for example, "encouragement"

[1] Footnotes to appear at end of article.

and "facilitation" translated to an organization-sponsored or -enforced boycott of shippers whose rates the organization did not consider "reasonable," the organization could be considered as a combination in restraint of trade in violation of Section 1 of the Sherman Act;[13] endorsement or encouragement or sponsorship of various pricing schemes in which freight costs are included in the price paid by buyers, on the other hand, have received varying treatment by the courts.[14]

JANICE E. RUBIN,
Legislative Attorney.

FOOTNOTES

[1] We are also supplementing this memorandum with a copy of an article, "The Future of Horizontal Restraints Analysis," by James T. Halverson, reprinted in Collaborations Among Competitors: Antitrust Policy and Economics, Fox and Halverson, eds., Section of Antitrust Law, American Bar Association, 1991, at 659–674. The article discusses at length virtually all of the cases mentioned in our July 22 conversation with your office.

[2] "The law of horizontal restraints has undergone considerable change in recent years. Starting with the Supreme Court's decision in *Broadcast Music, Inc. v. Columbia Broadcasting System,* 441 U.S. 1 (1979), the courts have become increasingly reluctant to apply a strict rule of per se illegality predicated on particular characterizations of conduct at issue. Instead, the courts have been more willing to explore the economic effects of collaborative conduct between and among competitors under the rule of reason approach. The retreat from the per se rule has led to the development of new legal rules for analyzing horizontal restraints and of more sophisticated microeconomic models to guide the application of those rules." Collaborations Among Competitors (note 1) at 655.

[3] 15 U.S.C. §18 (Section 7 of the Clayton Act). See also the Horizontal Merger Guidelines promulgated jointly by the Department of Justice and the Federal Trade Commission on April 2, 1992 (reprinted in a Special Supplement to 62 Antitrust & Trade Regulation Report (April 2, 1992)).

[4] Collaborations Among Competitions (note 1) at 801.

[5] 441 U.S. 1 (1979).

[6] United States v. Trenton Potteries, Co., 273 U.S. 392, 397 (1927).

[7] 310 U.S. 150 (1940).

[8] *Id.* at 221, 223 (emphasis added).

[9] Arizona v. Maricopa Medical Society, 457 U.S. 332, 351 (1982).

[10] "[T]he courts have long recognized that every association must have some type of limiting rules, criteria, or disciplinary procedures which, when invoked, restrain trade at least incidentally. In determining whether such rules . . . constitute unlawful horizontal concerted refusals to deal, courts typically have examined whether the collective action is intended to accomplish a goal justifying self-regulation and, if go, whether the action is reasonable related to the goal. It also has been considered significant that the members actually making the decision to exclude were not economic competitors of the excluded party." ABA Antitrust Section, Antitrust Law Developments (3d ed. 1992) at 86–87 (citations omitted).

[11] But see, Fashion Originators' Guild of America, Inc. v. Federal Trade Commission, 312 U.S. 457 (1941), affirming a Commission cease and desist order pursuant to which the Guild was prohibited from carrying out its plan to penalize (via a boycott of them) Guild members (textile and garment manufacturers) who sold to retailers who sold "style-pirated" garments: "In addition to [violating the edicts of the Sherman and Clayton Acts concerning concerted refusals to deal, and "narrowing the outlets" to which garment manufacturers may sell and from which retailers may buy, and requires each manufacturer to "reveal to the Guild the intimate details of their individual affairs"], the combination is in reality an extra-governmental agency, which prescribes rules for the regulation and restraint of interstate commerce, and provides extra-judicial tribunals for determination and punishment of violations, and thus 'trenches upon the power of the national legislature". 312 U.S. at 465 (citations omitted).

[12] Northwest Wholesale Stationers Inc. v. Pacific Stationery & Printing Co., 472 U.S. (1985). There, the Court refused to find a *per se* antitrust violation in the expulsion from membership of a member that had refused to abide by the rule of the subject organization (a buying cooperative). The case is discussed is the enclosed article, at page 666.

[13] See note 11 discussion of Fashion Originators' opinion.

[14] See enclosed material copied from ABA Antitrust Law Developments (full citation in note 10).

Mr. BROWN. Madam President, the first question—and I will read a portion of their answer because I think it is quite relevant to this question of this treaty's impact on reducing competition. The question is, under the U.S. antitrust law, is it permissible for 26 competing producers and purchasers of a particular commodity to form a single organization for the purpose of regulating their business activities?

That was an effort to sum up in a question what this rubber treaty, this rubber agreement, is designed for. The American Law Division, I thought, would have a good handle on what U.S. law is, and if this happened outside of the support of the U.S. Senate in the treaty arrangement, would this agreement be legal under antitrust laws? Is what we are about to approve something that is legal under the antitrust laws? Or are we, by approving this treaty, making something that is illegal permissible?

Their answer will be in depth in the RECORD, but I want to quote briefly from their response because I think it is direct and to the point. This is from the American Law Division of the Congressional Research Service:

Because the use of market power has the potential to harm consumers, it has been suggested that the market power of the participants in an organization may be an appropriate starting point in an antitrust analysis of the organization's actions: an examination of an agreement among competitors, for example, should focus on determining whether the agreement's [that is, the organization's] provisions "enrich the participants by harming consumers" (i.e., "whether the participants have an incentive to behave in anticompetitive ways").

Using such a test, and assuming the market-share numbers you offer in Questions 1a and 1b, agreements or by-laws expressing the purpose you set out in Questions 2a–2i, any concerning the establishment or use of "buffer stocks," as well as any that spell out in participant's obligation to act in accordance with organization-designated rules designed to maintain a stable market price for the commodity at issue, would be ideal candidates for close antitrust scrutiny.

Madam President, in other words, the agreement we are considering today would be an ideal candidate for close antitrust scrutiny.

If Members have a doubt about how to vote, they ought to be concerned that the very kind of agreement we are putting forth here would be a candidate for close antitrust scrutiny. Those are my words which I have interjected.

Continuing:

In addition, use of "buffer stocks" to influence or stabilize prices, as would any agreement or action directly or indirectly affecting price, would constitute price fixing under Section 1 the Sherman Antitrust Act.

Let me repeat that, Madam President: "* * * would constitute price fixing under Section 1 of the Sherman Antitrust Act."

Anybody who votes on this treaty who thinks they are stocking up for the American consumers ought to think about that, because there is real indication here that what we are about to do would violate the antitrust laws if it were considered on its own merit without the blessings of the U.S. Senate in the treaty format.

They go on to quote from the Broadcast Music versus Columbia Broadcasting decision by the Supreme Court. I will quote their passage that they have selected from the Supreme Court decision:

The aim and result of every price-fixing agreement, if effective, is the elimination of one form of competition. The power to fix prices, whether reasonably exercised or not, involves power to control the market and to fix arbitrary and unreasonable prices. The reasonable price fix today may through economic and business changes become the unreasonable price of tomorrow. Once established, it may be maintained unchanged because of the absence of competition secured by the agreement for a price reasonable when fixed.

Madam President, I am under no illusions that this treaty will be ratified today. I am cheered by recent progress, though, of eliminating some of these international cartels, and I am cheered greatly by the distinguished chairman of the committee and a commitment that this will be the last time this kind of measure comes before the U.S. Senate with regard to rubber. His plea for a phaseout period is a reasonable and thoughtful argument. I appreciate the great support he has given to American consumers as he has dealt with this issue in the past.

Madam President, as Members consider this issue, I hope very much they will ask themselves if they are comfortable in taking $78 million of taxpayers' money to be used to stabilize prices.

The PRESIDING OFFICER. The Senator has used 20 minutes.

Mr. BROWN. I yield myself an additional 5 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BROWN. Madam President, I hope they will ask themselves if they are comfortable taking $78 million of taxpayers' money to help out the big tire companies and the other special interests that will benefit by this. I hope they will ask themselves if they are comfortable in passing or ratifying something that appears to violate our very antitrust laws, if they hadn't put it in the form of a treaty. I hope they will ask themselves whether or not they are comfortable in telling consumers that we are going to protect them against lower prices.

Madam President, this agreement is an embodiment of special interests. There isn't anybody lobbying against the treaty. There have been tire companies lobbying on the hill for it. There have been people interested in higher prices for rubber lobbying for it. There have been representatives of corporations and labor on the hill lobbying for it.

Madam President, there hasn't been anybody lobbying against it. The taxpayers don't really have a lobby. The consumers don't really have a lobby. No one pays people to come up here and speak for them—except one group. You see, the people who sent us here believed and thought that it was our obligation to stand up for them. I think most of them would be surprised to know that sometimes when they don't have a lobbyist, that voice goes unheard.

Madam President, this agreement is wrong. It is wrong because it is anticompetitive. It is wrong because it is a response to the special interests. It is wrong because it is a misallocation of taxpayers' money. And it is wrong because it sets the bad example for what a competitive economy is all about. At a point in our world's history when the rest of the world is waking up to the advantages of free enterprise and competition, it is a shame to see the United States consider and enact this kind of anticompetitive agreement.

Madam President, I yield the floor and retain the balance of my time.

The PRESIDING OFFICER. Who seeks recognition.

Mr. PELL. Madam President, how much time do I have?

The PRESIDING OFFICER. The Senator has 8 minutes 47 seconds.

Mr. PELL. Mr. President, I rise to express my strong support for the third International Natural Rubber Agreement, which was reported favorably by the Foreign Relations Committee 3 months ago. After holding a hearing on this important measure, our committee agreed that it would clearly serve the interests of the United States and ordered it reported favorably on a voice vote.

I believe that the Natural Rubber Agreement is a clear example of the way in which both producing and consuming nations of a major natural resource can work together to ensure adequate supply and stable prices. Its primary purposes are to encourage investment in rubber production in order to assure adequacy of supply, and to set up a mechanism to prevent excessive volatility in prices. These functions are particularly important because the United States is the largest importer of natural rubber, while just three countries—Thailand, Indonesia, and Malaysia—control 75 percent of the world's production. Without a mechanism like the INRA, U.S. tire and rubber manufacturers as well as consumers would be more vulnerable to cartel-like behavior that raises prices and creates uncertainty of supply.

U.S. participation in INRA has been supported by four successive administrations, Democratic and Republican alike, and has received the advice and consent of the Senate on two previous occasions. The original agreement was adopted in 1980 by a vote of 90 to 1, and the first extension in 1988 was approved unanimously, by a vote of 97 to 0. The United Steelworkers of America has called ratification of this treaty "a matter of critical importance to our union, its members and families—and the consumers who purchase the products we produce." If the United States fails to ratify this treaty by the end of this year, it could mean the end of an agreement which has served to the benefit of the United States and the world for the last 16 years.

Mr. President, during the course of my service in the Senate I have risen many times in support of treaties that have come under attack. There are currently a number of extremely important treaties pending before the Senate that I deeply regret have not been taken up during this session. The Chemical Weapons Convention is only the most recent example, but several other agreements such as the U.N. Convention on the Law of the Sea, the Convention on Biological Diversity, and the Convention on the Elimination of All Forms of Discrimination Against Women, should also be taken up at the earliest opportunity. I welcome the chance to consider the International Natural Rubber Agreement today, and I urge that it be followed expeditiously by the other treaties I have mentioned.

In closing, let me say that a failure to approve this treaty now would be a great mistake. The objections that have been raised are not borne out by our experience with this agreement, and I urge my colleagues to join me in giving their advice and consent to its ratification.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. BROWN. Madam President, my distinguished friend from Rhode Island has summarized the case well, and, as is always the case, he is a very accurate describer of events and facts. In this case, I find myself coming to an opposite conclusion. But I continue to admire his commitment to a sound presentation.

Madam President, I want to indicate that I think he is right that both Democratic and Republican administrations in the past have supported the agreement. I indicate that he is right. I think both the large corporations and the unions—at least it is my information—support the agreement. But, Madam President, I want to invite the Members' attention to what happens if this agreement is not ratified, the specter that the distinguished Senator has raised. What happens? If the agreement is not ratified, $78 million goes back in the Treasury that would be used to prop up prices of natural rubber. In other words, the taxpayers of this country get a $78 million break.

Second, if this agreement is not ratified, we will have lower prices for rubber than we would if the agreement is ratified.

Third, if the agreement is not ratified, we will have greater competition in the marketplace.

Finally, I think if the agreement is not ratified, we will have set an example that this country is serious about competition and its antitrust laws, and we will have renewed a commitment to our consumers. My sense is that returning money to the Treasury, lower prices for consumers, increased competition in the marketplace are good things, and that saying no to the special interests is appropriate as well. So at least in this Senator's judgment, we have a responsibility to vote against the treaty.

I retain the balance of my time.

The PRESIDING OFFICER. Who seeks recognition?

Mr. PELL. How much time remains?

The PRESIDING OFFICER. There are 5 minutes 30 seconds.

Mr. PELL. I am happy to yield that back.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BROWN. I yield back all time as well.

The PRESIDING OFFICER. The question is on agreeing to the resolution of ratification.

Mr. PELL. Madam President, I ask for consideration of the resolution before the Senate by a division vote.

The PRESIDING OFFICER. A division is requested. Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

Mr. BYRD. Madam President, is the Senate in executive or legislative session?

The PRESIDING OFFICER. It is in executive session.

Mr. BYRD. Madam President, I ask unanimous consent that the President be notified of the approval of the treaty.

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

LEGISLATIVE SESSION

Mr. BYRD. Madam President, I ask unanimous consent that the Senate return to legislative session.

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

Mr. BYRD. Madam President, I ask unanimous consent to proceed out of order.

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

SENATOR CLAIBORNE PELL

Mr. BYRD. Madam President, at the end of this session of Congress, one of the Senate's longest-serving Members will be retiring. Senator CLAIBORNE PELL's sterling 35-year record—actually it is 36 years this year—of dedicated service to the people of Rhode Island and the United States began in 1960, when he was elected to the first of his six terms. He is the third longest-serving Member of today's Senate, after only Senator THURMOND and myself. Yet Senator PELL's service to the United States and to his own strong principles began even earlier.