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STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

SENATE COMMITTEE ON FINANCE

ON

S. 958, A BILL TO PROVIDE A SPECIAL REMEDY FOR THE ARTIFICIAL PRICING OF ARTICLES PRODUCED BY NONMARKET ECONOMY COUNTRIES

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to testify before you today on S. 958, a bill that would change U.S. import laws as applied to products from nonmarket economies. We agree that improvements in this area are warranted. In our recently issued report, "U.S. Laws and Regulations Applicable To Imports From Nonmarket Economies Could Be Improved" (ID-81-35), we identified several weaknesses in current U.S. laws and procedures.

We believe that certain changes proposed in S. 958 would contribute to alleviating some of the problems discussed in our report; however, some features of the bill could lead to problems. I would like to comment on the major provisions of S. 958.

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First, S. 958 would explicitly retain as a basic option in dumping and countervailing duty cases the use, when possible, of the actual prices or costs of a nonmarket producer. This would be permitted when the nonmarket producer furnishes verifiable information sufficient to allow a "normal" dumping or countervailing duty investigation--in other words, when the prices or costs adequately reflect market forces.

We agree that nonmarket economy prices or costs should be used when possible, although we believe the likelihood of actually doing so is very limited.

S. 958 also stipulates, however, that even when nonmarket economy enterprises' actual prices or costs are used in a dumping investigation, that investigation will not require a test of injury to domestic industry unless the nonmarket economy in question is a party to the Agreement on Implementation of Article VI of the GATT (relating to antidumping measures). This is not consistent with the way other countries are treated. Market economy countries receive an injury test whether or not they are signatories of the Antidumping Code. If this provision of S. 958 is enacted, nonmarket countries, such as the People's Republic of China, that have not signed the Code would not receive an injury test. This change could encourage the initiation of investigations involving products from nonmarket countries, and adversely affect trade with countries with which the United States wishes to trade for economic and foreign policy reasons.

When actual prices or costs of a nonmarket producer cannot be used in an antidumping or countervail investigation, S. 958 would replace the existing procedures with what is called in the bill an "artificial pricing investigation." The extent to which a nonmarket economy product is artificially priced would be calculated with reference to the lowest prices actually charged in the United States by free-market producers of like articles. Any nonmarket economy product that is the subject of an investigation would be considered unfairly priced if priced below the lowest priced equivalent market economy product.

We believe that the method for calculating artificial pricing of nonmarket economy products proposed in S. 958 (an approach essentially the same as one we recommend in our report) is simpler and would be easier to administer than the methods currently used by the Commerce Department to establish dumping and would substantially ameliorate the problems in administering current law.

It should be noted, however, that exclusive reliance on this method of pricing would not allow a nonmarket producer to demonstrate economic efficiencies that would justify pricing its product below that of other producers. A pricing method is currently available in certain circumstances to provide nonmarket producers the opportunity to demonstrate such efficiencies. We believe that this method should be available as an option in any artificial pricing investigation. This method estimates production costs by taking the actual production factors (e.g., labor

hours, energy, raw materials, etc.) used by a nonmarket economy producer in making the product under investigation and valuing them at the prices prevailing in the most comparable market economy. To use this option, the nonmarket economy producer must provide for and be willing to allow the Commerce Department to verify the types and quantities of production factors used.

Although there are elements of difficulty and expense in this method and the outcome would not be a precise measure of economic efficiency, we believe this method is a fair way to permit a nonmarket economy producer to attempt to show it has economic efficiencies.

S. 958 is silent regarding an injury test in artificial pricing investigations and therefore could be interpreted to mean no injury tests will be required in such investigations. If this is what is intended by the bill, nonmarket economy products which are found to be unfairly priced under the bill's artificial pricing standard would be subject to duties regardless of whether a domestic industry is being injured by reason of those imports. This could adversely affect U.S. importers and domestic consumers of those products. It could also discourage or disrupt trade with countries with which the United States wishes to trade.

S. 958 also stipulates that artificial pricing cases will in many respects conform to the provisions of existing countervailing duty law. This would provide greater flexibility to suspend artificial pricing investigations than does U.S. antidumping law. Countervailing duty law permits the suspension of

investigations based on quotas or price adjustments; dumping law does not allow the use of quotas.

We found the methods provided in the antidumping law to be very difficult to apply in nonmarket economy cases, and consequently we support in principle changes that would improve the administration's ability to suspend investigations. We believe, however, that the Subcommittee should be aware that the use of quotas is considered by some to be more anticompetitive than suspensions based on price adjustments.

Finally, S. 958 would repeal the existing market disruption provision (section 406) of the Trade Act of 1974. In our report, we noted that domestic industry has been granted no relief under section 406 and that essentially the same protection is available through other means (such as sections 201-203 of the Trade Act of 1974 and section 232 of the Trade Expansion Act of 1962). Moreover, some agencies and U.S. businesses believe section 406 may be discouraging desirable trade.

We did not attempt to determine the specific effect of section 406 on trade. If, however, the Subcommittee believes section 406 is discouraging desired trade, it could be repealed without significantly increasing the risk to U.S. producers.

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We hope our testimony and report will be useful to you in your deliberations, and we would be pleased to work with the Subcommittee in developing legislative language. In that

connection, I believe that some of the specific recommendations in our report would achieve the key objectives of S. 958 without creating the problems I have discussed today. This concludes my prepared statement and we welcome questions you or Members of the Subcommittee may have.