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STATEMENT OF

WILLIAM J. ANDERSON, DIRECTOR

GENERAL GOVERNMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON COMMERCE, CONSUMER AND MONETARY AFFAIRS

GOVERNMENT OPERATIONS COMMITTEE

HOUSE OF REPRESENTATIVES

ON

WALTER C. LENAHAN'S COMPLIANCE WITH ETHICS LAWS

TABLE OF CONTENTS

Mr. Chairman and Members of the Subcommittee:

At your request and that of 39 other Members of the House of Representatives, we have conducted a preliminary investigation of certain allegations concerning Walter C. Lenahan's compliance with conflict of interest, post-employment, and foreign agent registration laws. Formerly Deputy Assistant Secretary of Commerce for Textiles and Apparel, Mr. Lenahan is now Vice-President of International Business and Economic Research Corporation (IBERC), which is affiliated with the law firm Mudge, Rose, Guthrie, Alexander, and Ferdon (Mudge Rose).

We have concluded that Mr. Lenahan, while discussing potential employment with IBERC and two other firms, participated in "particular matters" which he had reason to know would affect the financial interests of those firms--participation which may have violated a conflict-of-interest provision codified at 18 U.S.C. 208. Also, Mr. Lenahan, after joining IBERC, advised IBERC clients on some of the same matters he had dealt with as Deputy Assistant Secretary but without, in our opinion, violating post-employment laws. And although Mr. Lenahan is not registered under the Foreign Agents Registration Act, he is not in violation of that Act as interpreted by the Department of Justice.

Finally, we obtained information about a possible leak of the U.S. position for particular textile trade negotiations.

Although security classification precludes discussing this aspect of our investigation in open hearings, we can say we were not able to conclude that Mr. Lenahan was responsible for any leak that might have occurred.

In making our review we obtained information from the Department of Commerce, the Office of the U.S. Trade Representative, and the Department of Justice's Foreign Agent Registration Unit. We interviewed officials from each of these agencies, industry associations, and firms with which Mr. Lenahan discussed employment as well as Mr. Lenahan and the President of IBERC.

BACKGROUND

Walter C. Lenahan was a member of the U.S. Foreign Service and Foreign Commercial Service for more than 20 years prior to his retirement in February 1986. In 1982, he was appointed Deputy Assistant Secretary of Commerce for Textiles and Apparel where he was responsible for implementing the U.S. textile and apparel program. Specifically, he chaired the Committee for the Implementation of Textile Agreements (CITA); directed the Import Monitoring System and the Textile and Apparel Export Program; and participated in U.S. bilateral textile and apparel trade negotiations.

Beginning about April 1985, Mr. Lenahan discussed future employment with three firms: Liz Claiborne, Inc., Burlington Industries, and IBERC. On October 21, 1985, Mr. Lenahan recused himself from CITA work but continued to participate in bilateral negotiations and working groups that developed U.S. negotiating strategy for talks to extend the Multifiber Arrangement. In explanation, Mr. Lenahan said he believed that the CITA work involved individual actions which could be deemed by someone to favor particular parties, while his remaining work concerned general policy issues decided by interagency committees or cabinet councils. On January 27, 1986, after having accepted a position with IBERC, Mr. Lenahan recused himself from all remaining duties. He retired on February 7 and began employment with IBERC on February 8, 1986. In his current position, he has advised Israel, Hong Kong, and Japan in their textiles negotiations with the United States and provided services to other IBERC clients.

CONFLICT OF INTEREST LAW

Federal employees are prohibited from participating "personally and substantially" in any "particular matter" which to their knowledge will affect the financial interests of organizations with which they are negotiating for employment. This prohibition is codified at 18 U.S.C. 208.

While discussing potential employment with Liz Claiborne, Inc., Mr. Lenahan served on the inter-agency working group that developed the U.S. position for negotiating bilateral agreements with Hong Kong, Korea, and Taiwan--the primary sources of Liz Claiborne products. Mr. Lenahan said that he knew at the time that Hong Kong and Taiwan were large Liz Claiborne suppliers.

While discussing potential employment with IBERC, Mr. Lenahan chaired CITA meetings resulting in calls for consultations that led to the imposition of quotas for products imported from Hong Kong and China. IBERC and Mudge Rose represent the Hong Kong Department of Trade and the government-owned China National Textile Import and Export Corporation on quota issues. Mr. Lenahan said that he knew at the time that both were IBERC clients.

Also while discussing employment with IBERC, Mr. Lenahan participated in the negotiation of a bilateral trade agreement with Japan despite his apparent knowledge of IBERC's interest in the negotiations. Although Mr. Lenahan has said that he did not know that the Japan Chemical Fibers Association was a general retainer client, IBERC's President met with Mr. Lenahan on January 10, 1986, to discuss a visa arrangement which the United States was attempting to negotiate in connection with the trade agreement. The following week Mr. Lenahan participated in the negotiations in Tokyo.

While discussing employment with Liz Claiborne, Inc., IBERC, and Burlington Industries, Mr. Lenahan advised Commerce officials with respect to the proposed Textile and Apparel Trade Enforcement Act of 1985. This bill would significantly reduce textile imports and therefore affect the financial interests of all three firms.

From these actions, it appears that Mr. Lenahan as a government official participated personally and substantially in particular matters which he knew would affect the financial interests of organizations with which he was negotiating for employment. We have no evidence that any of his activities was for personal gain either directly or through benefit to the companies involved. Section 208, however, is not only directed at intentional wrongdoing but at the impairment of impartial judgment that can result when an employee's personal economic interests are associated with the business he transacts on behalf of the government. The statute, thus, is more concerned with what might have happened in a given situation than with what actually happened. Accordingly, we plan to refer our findings and relevant documents on this segment of the work to the Department of Justice for such actions as it deems appropriate.

POST-EMPLOYMENT LAWS

The post-employment laws applicable to former federal employees are codified at 18 U.S.C. 207 and implemented by the Office of Government Ethics through regulations published at 5 C.F.R. Part 737. There are four separate restrictions. Two restrictions apply to all former officers and employees of the Executive branch; the other two apply only to former occupants of positions defined by statute or designated in the implementing regulations as "senior employee positions." Because the position of Deputy Assistant Secretary of Commerce for Textiles and Apparel has not been designated a senior employee position since March 1984, Mr. Lenahan was not subject to senior employee restrictions. We did not find, however, that Mr. Lenahan's activities would have violated these restrictions.

The two restrictions applicable to Mr. Lenahan are limited to matters in which he played some role while employed by the government. Subsection 207(a) imposes a lifetime restriction on a former employee representing any other person before the government in connection with a "particular matter involving specific parties" if he or she participated "personally and substantially" in that same matter as a government employee. Subsection 207(b)(i) imposes a 2-year restriction on the same type of representational activity in connection with a "particular matter involving specific parties" if that same matter was actually pending under the former employee's official

responsibility within 1 year prior to the termination of that responsibility. Some form of representational contact with a federal agency or official is an essential ingredient of the restrictions imposed.

While several of Mr. Lenahan's activities on behalf of IBERC clients involve the same particular matters and the same specific parties as those he dealt with while Deputy Assistant Secretary, to our knowledge he has never represented those clients before a federal agency or official.

-- In the fall of 1985, while Deputy Assistant Secretary, Mr. Lenahan personally negotiated for the United States a memorandum of understanding with Israel. In February and March 1986, as an employee of IBERC, he said he advised the government of Israel on how to proceed after Israel decided to seek changes in the memorandum.

-- Similarly, in December 1985 and January 1986, Mr. Lenahan served on the U.S. delegation that discussed a new bilateral agreement with Japan. In February and May 1986, Mr. Lenahan, at the request of the Japan Chemical Fibers Association, advised the government of Japan on its negotiation of a new agreement with the United States.

-- During 1985, Mr Lenahan served on the government's working group which developed potential strategies for negotiating a new bilateral agreement with Hong Kong. Since leaving the government, Mr. Lenahan has advised Hong Kong on its negotiation of a new agreement with the United States.

-- Throughout 1985, Mr. Lenahan played a key role in support of the Administration's position opposing the Textile and Apparel Trade Enforcement bill. Since joining IBERC, he said he supervised the preparation of an analysis of the revised bill's effect on exporting countries.

Mr. Lenahan said that he did not contact any federal employee in relation to these clients or issues. Officials at the International Trade Administration and the U.S. Trade Representative's Office--two agencies of more likely contact--confirmed that no such contacts have occurred. Others at IBERC have contacted government officials about several of these issues since Mr. Lenahan joined the firm.

Mr. Lenahan's only reported business contact with federal officials since leaving government employment has been a meeting with two officials at our embassy in Bangkok, Thailand. Because that contact was for the purpose of sharing information and did

not involve an attempt to influence the officials, it was not precluded by section 207.

FOREIGN AGENTS REGISTRATION ACT

The Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.), requires agents of foreign principals to report certain activities to the Attorney General by filing periodic registration statements. Mr. Lenahan is not so registered. The Chief of the Department of Justice's Registration Unit told us that, at this time, there is no evidence that any of Mr. Lenahan's activities on behalf of clients of IBERC or Mudge Rose fall within the definition of "registerable activities." Mr. Lenahan's activities have been limited to advice and assistance without involving any contact with or attempts to influence U.S. government officials. We thus concluded that Mr. Lenahan is in compliance with this Act. However, IBERC and Mudge Rose may need to register an additional foreign client to be in compliance.

Four attachments to this statement provide more details on each of the sections above. A fifth attachment provides information on former employees of the International Trade Administration and the U.S. Trade Representative's Office who now represent foreign principals. This information, covering the past year, supplements a recent General Accounting Office report entitled FOREIGN REPRESENTATION: Former High-Level Federal

Officials Representing Foreign Interests (GAO/NSIAD-86-175BR, July 11, 1986)

Mr. Chairman, this concludes my statement.

ATTACHMENT I

CHRONOLOGY OF ACTIVITIES

This attachment describes Mr. Lenahan's duties and responsibilities as Commerce Department Deputy Assistant Secretary for Textiles and Apparel. It also describes the major issues he participated in from (1) the first discussion of outside employment in April 1985, until he left government service in February 1986, and from (2) the time he began working for the International Business and Economic Research Corporation (IBERC) in February 1986, until the start of this review in June, 1986.

MR. LENAHAN'S DUTIES AND RESPONSIBILITIES AS DEPUTY ASSISTANT SECRETARY

Walter C. Lenahan was a member of the U.S. Foreign Service and Foreign Commercial Service for more than twenty years prior to his retirement in February 1986. During that time, he served overseas in Hong Kong, Thailand, the Philippines, China, and Canada, and was responsible for a variety of commercial functions. In July 1982, Mr. Lenahan became Acting Deputy Assistant Secretary of Commerce for Textiles and Apparel while concurrently serving as a Foreign Commercial Officer in the American Embassy in Ottawa, Canada. He was appointed to the Deputy Assistant Secretary position on October 31, 1982.

As Deputy Assistant Secretary for Textiles and Apparel, Mr. Lenahan reported to the Assistant Secretary for Trade Development, who, in turn, reports to the Under Secretary for International Trade. He was generally responsible for serving as principal advisor to the Assistant Secretary on all matters involving the economic well-being of the U.S. textile and apparel industries domestically and internationally. His position description indicates specific responsibilities to:

(1) Chair the Committee for the Implementation of Textile Agreements (CITA), an interagency group responsible for implementation of the Multifiber Arrangement (MFA). (The MFA provides the legal framework for the regulation of trade in textiles and apparel.)

(2) Coordinate his activities with the President's Chief Textile Negotiator in the Office of the U.S. Trade Representative.

(3) Direct (a) the Import Monitoring System, (b) the Textile and Apparel Export Program, and (c) the Structural Adjustment Assistance Program, as it relates to the textile and apparel program.

(4) Provide Commerce Department participation in U.S. government textile and apparel negotiations, including (a) representation on U.S. delegations, (b) technical support for U.S. negotiating positions, and to U.S. delegations during negotiations, and (c) follow-up on agreements and assignments identified in the negotiating process by the head of the U.S. delegation (Special Trade Representative - Textile Ambassador, or designee).

(5) Provide liaison and consultation with the private sector on the textile program including (a) chair the Management-Labor Textile Advisory Committee, (b) chair the Exporters' Textile Advisory Committee (or provide alternate chairperson, as appropriate), (c) chair the Importers and Retailers' Textile Advisory Committee (or provide alternate chairperson, as appropriate), and (d) participate in the industry consultative process conducted by the Special Trade Representative for international textile negotiations.

Mr. Lenahan told us that as Deputy Assistant Secretary he was generally responsible for implementing bilateral agreements, providing input into interagency policy-making groups, and providing advice to the Secretary of Commerce on textile matters.

MR. LENAHAN'S ACTIVITIES FROM THE FIRST EMPLOYMENT DISCUSSIONS UNTIL LEAVING GOVERNMENT

On April 24, 1985, Mr. Lenahan discussed the possibility of working for Liz Claiborne, Inc. with a Co-Chairman of that company. Mr. Lenahan said he might be interested in employment with Liz Claiborne, depending on the circumstances. During the next five months, Mr. Lenahan had similar employment discussions with officers of two other companies--Burlington Industries and the International Business and Economic Research Corporation (IBERC).

On October 21, 1985, Mr. Lenahan recused himself from participation in CITA meetings, as well as all calls issued by CITA. Calls are requests for consultation with particular importing nations regarding potential domestic market disruption in specific textile and apparel product categories. Mr. Lenahan accepted employment with IBERC on January 25, 1986 and recused himself from all responsibilities as Deputy Assistant Secretary on January 27, 1986. Mr. Lenahan left his position with the U.S. government on February 7, 1986 and began employment with IBERC on February 8, 1986.

Mr. Lenahan's activities during the April 24, 1985 to January 27, 1986 period are presented in terms of four pertinent areas of responsibility: (1) chairmanship of CITA, (2) involvement in Multifiber Arrangement (MFA) negotiations, (3) involvement in bilateral negotiations under the MFA, and (4) chairmanship of various industry advisory groups. His activity with respect to proposed textile legislation is also discussed.

CITA Activities

The Committee for the Implementation of Textile Agreements was established in 1972 by Executive Order 11651 as an interagency group responsible for the implementation of the Multifiber Arrangement. Chaired by the Deputy Assistant Secretary for Textiles and Apparel, CITA also includes representatives from the Departments of State, Labor, and Treasury, and the Office of the U.S. Trade Representative (USTR). CITA determines whether and when to request consultations with an exporting country in order to avoid market disruption in the United States in a particular category of textiles and apparel. The executive order establishing CITA allows the Chairman of the Committee to make a decision to request consultations with a foreign government unless a majority of the members object.

The request, or "call," for consultations results from a series of administrative steps. This administrative process begins when a computerized system administered by the Office of Textiles and Apparel in the Department of Commerce generates a list of potential calls, based upon an analysis of potential market disruption. At this point, the process for issuing calls diverges. Procedures used for calls issued to Hong Kong, Korea, and Taiwan (referred to as the "Big Three") differ somewhat from those used for other countries. If the Chairman of CITA believes that market disruption criteria issued by the President in 1983 are met, he may refer Big Three calls directly to the Chief of the Textile Division in the State Department. Thus, in the case of Big Three calls, there is less involvement by other CITA members. Big Three cases in which the President's criteria are not met but in which market disruption might still occur must be referred to CITA.

For other countries, potential calls are reviewed within the Office of Textiles and Apparel, with recommendations for calls distributed to all CITA members. Staff from the CITA-member agencies (referred to as the "sub-CITA" group) review the call list before a final decision is made by the full CITA.

The request or "call" for consultations leads to the negotiation of quota levels with a foreign government. The negotiations themselves culminate in an agreed-upon import quota

or generally, if no agreement is reached between the governments, imposition of a quota based on a formula in the agreement between the countries. The formula is such that the speed with which CITA decides to make a call affects the quota level.

As Chairman of CITA, Mr. Lenahan recommended that calls be made when the Office of Textiles and Apparel believed that market disruption had occurred or would occur. Mr. Lenahan said he participated in all calls issued by CITA prior to his October 21, 1985 recusal. Between the date of Mr. Lenahan's first employment discussion with Liz Claiborne, Inc. on April 24, 1985, and October 21, 1985, CITA issued a total of 92 calls for consultation in various product categories. The calls that he participated in and those he recused himself from are summarized below by country.

CALLS DURING THE NEGOTIATING PERIOD (4/24/85 TO 1/27/86)

COUNTRY	CALLS MR. LENAHAN PARTICIPATED IN (4/24/85 TO 10/21/85)	CALLS MR. LENAHAN DID NOT PARTICIPATE IN (10/22/85 TO 1/27/86	TOTAL
Bangladesh	4	0	4
Brazil	3	0	3
China	8	2	10
Hong Kong	4	0	4
India	0	1	1
Indonesia	4	0	4
Japan	7	0	7
Korea	8	2	10
Malaysia	7	1	8
Nepal	1	1	2
Portugal	2	4	6
South Africa	5	0	5
Sri Lanka	5	0	5
Taiwan	18	1	19
Thailand	5	0	5
Turkey	6	0	6
Uruguay	1	1	2
Yugoslavia	4	0	4
TOTAL	92	13	105

In addition to his responsibilities as CITA Chairman, Mr. Lenahan supervised Department of Commerce participation in consultations on the calls.

MFA Activities

The Multifiber Arrangement is intended to reduce barriers and expand world trade in textile products while ensuring the

orderly and equitable development of trade and avoiding disruptive effects in individual markets and on individual lines of production in both importing and exporting countries. First effective January 1, 1974, the MFA was subsequently extended with some modifications through July 31, 1986. The U.S. and other governments which are party to the arrangement are attempting to negotiate another extension prior to its scheduled expiration.

The U.S. negotiating position for this latest extension of the MFA first evolved through the deliberations of a working group of sub-cabinet level officials during the summer and fall of 1985. This working group included representatives of the Departments of State, Treasury, Labor, Agriculture, and Commerce, the Council of Economic Advisors, and the Office of Management and Budget. According to USTR's Chief Textile Negotiator, the working group discussed various negotiating options for the MFA talks. Such options included the negotiation of a new MFA, the inclusion of additional kinds of fibers, and the call for a small amount of growth in imports by increasing imports from less-developed countries and freezing or cutting back growth from developed countries. The working group also discussed options with regard to the bilateral agreements then in force with the governments of Korea, Taiwan, Hong Kong, and Japan.

Mr. Lenahan served as the Commerce Department's representative to the interagency working group and, according to Commerce documents, succeeded in having several of his recommendations for changes in the MFA accepted by all concerned agencies. For example, Mr. Lenahan suggested that the MFA be expanded to include other kinds of fibers.

The locus of decisionmaking shifted during the fall from the working group to the cabinet-level Economic Policy Council. The Council decided on the U.S. negotiating position with Japan, but postponed a decision regarding Hong Kong, Korea, and Taiwan until February 14, 1986. The President ratified the Hong Kong, Korea, and Taiwan decision on February 19, 1986.

Multifiber Arrangement renewal talks were held in Geneva in July, October, and December 1985, and generally involved two different types of meetings: formal meetings of the 52 nations party to the General Agreement on Tariffs and Trade (GATT) Textile Committee, and informal but more substantive meetings of an executive committee composed of one or two representatives from each of the 17 major importing/exporting countries.

Mr. Lenahan attended the GATT Textile Committee meetings in July, October, and December 1985, but was not a participant in the smaller executive sessions. He provided information and advice to the U.S. representatives for purposes of the informal

meetings, however, and was privy to what took place in those sessions. The Chief U.S. Textile Negotiator described Mr. Lenahan as "well informed" about the U.S. MFA negotiating position throughout this period.

Bilateral Activities

Article 4 of the Multifiber Arrangement provides for bilateral restraint agreements between nations to regulate textiles and apparel trade. U.S. bilateral agreements vary from country to country, although they generally are in effect for 3 to 6 years and have covered cotton, wool, and manmade fiber textiles and apparel.

As of July 1986, the U.S. had bilateral textile agreements with 38 countries. The Chief Textile Negotiator directs all negotiations with other countries to establish agreements or to make changes in existing agreements but may delegate his authority to chairmen of additional negotiating teams as necessary. The Chief Textile Negotiator told us that he had broad and final authority for all textile and apparel agreements, but that he receives advice from representatives of all the key U.S. agencies (Commerce, State, Treasury, and Labor), as well as industry representatives and labor unions. During 1985, Mr. Lenahan was the principal Department of Commerce representative on U.S. delegations that negotiated bilateral trade agreements with foreign governments. According to a Department of Commerce document, Mr. Lenahan was responsible for Commerce Department participation in negotiations with Brazil, Egypt, Indonesia, Israel, Mexico, Panama, Singapore, and Turkey.

Mr. Lenahan played a particularly critical role in the U.S.-Israel textile negotiations, which resulted in a memorandum of understanding. Those negotiations took place in early November 1985, at the same time that negotiations with Thailand were being conducted. Mr. Lenahan assumed responsibility for the Israeli talks while the Chief U.S. Textile Negotiator handled the Thai negotiations. According to a USTR official, this was one of the few times that someone unaffiliated with USTR actually negotiated a textile agreement.

Mr. Lenahan also participated substantially in the renegotiation of a U.S.-Japan bilateral textile agreement--an agreement which expired on December 31, 1985. Negotiations took place between the two countries in December 1985 and January 1986. Mr. Lenahan attended the first round of meetings in Paris on December 6-10, 1985 and, according to USTR officials, helped develop the U.S. negotiating position, and chaired the discussion of visa matters. He did not attend a second set of meetings in Tokyo in late December. However, he did attend a third series of

meetings in Tokyo in mid-January. Additional U.S.-Japanese meetings have been held since January, although no agreement has yet been signed.

Advisory Group Activity

As stated in Commerce documents, Mr. Lenahan also chaired various industry advisory groups. One group, the Exporters Textile Advisory Committee, consists of textile, apparel, and fiber companies, trade associations representing their interests, and textile and apparel unions, and generally seeks to protect the domestic industry from the disruptive effects of increased imports. Another group, the Importers and Retailers Textile Advisory Committee, consists of retailers, importers, and trade associations representing their interests, and generally seeks to reduce the barriers to trade in textile and apparel products. Both groups meet periodically with CITA members to discuss problems and progress under the MFA bilateral textile agreements as well as industry developments and market conditions.

A third group is the management/labor textile advisory committee, composed of representatives from the trade associations, labor unions, and individual companies. The management/labor group also meets with CITA members periodically to discuss relevant problems and issues, similar to those of the other groups.

In 1985, the Importers and Retailers' Committee met 10 times, the Exporters' Committee met several times, and the Management Labor Committee met 10 times. Mr. Lenahan was responsible for chairing the meetings of these committees and assuring full discussion of important issues.

Legislative Activity

Mr. Lenahan also played a key role in supporting the Administration's opposition to the 1985 Textile and Apparel Trade Enforcement bill. The bill aimed to cut back imports from major textile and apparel producing countries and to hold most imports to a one percent annual growth rate. The Administration believed that the bill was unnecessarily protectionist. Mr. Lenahan authored and/or signed numerous internal memoranda and other documents in support of the Administration's efforts to defeat the bill. The President vetoed the bill on December 17, 1985, following congressional passage on December 3, 1985.

ACTIVITIES SINCE JOINING IBERC

Mr. Lenahan has worked as Vice President of IBERC since February 8, 1986 and engaged in a variety of activities on

behalf of that firm. IBERC is a consulting firm specializing in such areas as international trade and economic policy analysis, development of import strategies, and foreign investment and research promotion. It is closely associated with the law firm of Mudge, Rose, Guthrie, Alexander & Ferdon (Mudge Rose) and provides economic and statistical analyses in support of various Mudge Rose clients.

Since joining IBERC, Mr. Lenahan has spent much of his time attempting to expand IBERC's clientele. For example, during his first week on the job, Mr. Lenahan met with a number of IBERC clients attending a meeting on the Multifiber Arrangement in Geneva. The President of IBERC said that the primary purpose was to introduce Mr. Lenahan to many of the company's clients, but said Mr. Lenahan also introduced him to prospective clients from other countries. Mr. Lenahan recalled having met with representatives from Hong Kong, South Korea, Japan, Indonesia, Brazil, the Philippines, and the United Nations Committee on Trade and Development. Both Mr. Lenahan and the IBERC President said Mr. Lenahan had no contact with U.S. officials attending the MFA meeting.

Mr. Lenahan engaged in additional business development activities in May and June, 1986. During that period, he toured the Far East to promote IBERC services to existing and potential clients. The trip took him to several countries, including Hong Kong, the Philippines, Thailand, and Taiwan. In Thailand, for example, Mr. Lenahan met with Thai and U.S. officials, as well as a Thai businessman, to discuss the possible overshipment of textile products by that country. At that meeting, Mr. Lenahan provided certain information IBERC had developed as part of its Quota Management Service and obtained other information regarding Thailand's textile and apparel industry and the possible overshipment of textile products from that country.

Mr. Lenahan has also performed work for IBERC on behalf of particular IBERC clients. Mr. Lenahan, as well as documents in support of IBERC, reported that he has performed substantive work for the governments of Hong Kong and Israel, two Japanese trade associations (the Japan Chemical Fibers Association--JCFA--and Japan Woolen and Linen Textiles' Exporters Association--KEASA); Retail Industry Trade Action Colation (RITAC); Worlds of Wonder; Mast Industries; Phillips Van Heusen; and Sears World Trade. A brief characterization of each client and Mr. Lenahan's activities follows.

1. Hong Kong. Both Mudge Rose and IBERC provide assistance to the Hong Kong Department of Trade. Mr. Lenahan said that since joining IBERC in February, he has provided Hong Kong

officials with advice on renegotiating their bilateral agreement with the U.S. (Those negotiations concluded on June 30, 1986.)

2. Israel. Israel became a client of Mudge Rose in February 1986, when the Israeli government became dissatisfied with a Memorandum of Understanding (MOU) negotiated with the U.S. in the fall of 1985. Mr. Lenahan said that the Israeli representatives were told that, because of his involvement in the original negotiations while Deputy Assistant Secretary, he would not advise them on whether or not to abrogate the MOU, and would not provide assistance to them until after they made this decision and communicated it to USTR officials. According to Mr. Lenahan, once the Israelis decided to abrogate the MOU, he advised them on how to proceed from approximately February 26, 1986, until March 14, 1986.

3. Japanese Trade Associations. IBERC and Mudge Rose represent KEASA and JCFA on a retainer basis, particularly with regard to the negotiation of a new bilateral agreement between the U.S. and Japanese governments. Mr. Lenahan reviews and edits economic data IBERC submits to JCFA and KEASA. Also, at the request of JCFA, he met with Japanese government officials to advise them on whether and how to negotiate a new bilateral agreement. Mr. Lenahan has also provided advice to JCFA on a broad range of textile issues.

4. Worlds of Wonder. Worlds of Wonder is a toy manufacturing company. Mr. Lenahan prepared a memo for a Mudge Rose partner regarding changes in the treatment of toys under the 1985 Generalized System of Preferences.

5. Retail Industry Trade Action Coalition (RITAC). RITAC is a group formed by the U.S. retail industry concerned with legislation affecting textiles and other matters. Mr. Lenahan prepared a paper on the possible treatment of various kinds of fibers under bilateral agreements. He also supervised preparation of two other papers for RITAC, one on children's wear under the MFA and the other on trends in the domestic textile industry.

6. Mast Industries. Mast Industries is a large wholesale distributor of women's apparel. It is a wholly-owned subsidiary of The Limited, Inc., with extensive import activities and apparel plants overseas. Mr. Lenahan has counseled Mast with respect to Israeli textile interests, and has participated in studies involving the nations of Morocco and Mauritius.

7. Phillips-Van Heusen Corporation. Phillips-Van Heusen is a domestic manufacturer and importer of men's and women's clothing, and was a co-sponsor of Mr. Lenahan's study of the

ATTACHMENT I

Moroccan economy. Mr. Lenahan has also responded to the company's routine inquiries concerning import data.

8. Sears World Trade Corporation. Sears World Trade is an export trading company that does business in many manufactured products. Mr. Lenahan prepared data for Sears World Trade on the Generalized System of Preferences of toy exports from leading newly industrialized countries.

In addition to activities on behalf of these specific IBERC clients, Mr. Lenahan told us that he supervised the preparation of an analysis of the effect of the revised Textile and Apparel Trade Enforcement bill on exporting countries.

COMPLIANCE WITH CONFLICT-OF-INTEREST LAW

This attachment focuses on Mr. Lenahan's compliance with federal conflict-of-interest law as a result of his activities as Deputy Assistant Secretary during the period prior to his departure from government service while he was negotiating for employment in the private sector. Allegations of misconduct in this area focus on whether Mr. Lenahan, while Deputy Assistant Secretary, may have been involved in policy decisions and other matters which would affect the financial interests of the companies with which he was discussing employment. A federal employee's involvement in such matters is prohibited by 18 U.S.C. 208. We believe that several of Mr. Lenahan's actions may have affected the financial interests of potential employers.

LEGAL DISCUSSION

In brief, 18 U.S.C. 208 states that an employee may not participate "personally and substantially" in any "particular matter" which, to his knowledge, will affect his financial interests or the interests of specified persons or organizations, including those of an organization "with whom he is negotiating or has any arrangement concerning prospective employment." The "personal and substantial" participation prohibited by section 208 may take the form of "decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise." The context in which such participation is proscribed extends to a "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter." The statute also contains waiver provisions that were not invoked in Mr. Lenahan's case and are not at issue here.

As applied to Mr. Lenahan's case, analysis of 18 U.S.C. 208 requires three lines of inquiry. First, it must be determined whether and during what period of time Mr. Lenahan was negotiating for employment or had an arrangement concerning prospective employment with any person or organization. Second, it must be determined whether, during that period, he was personally and substantially involved in particular matters which would affect the financial interests of his potential employers. Finally, it must be determined whether Mr. Lenahan had knowledge of his potential employers' financial interest in those matters.

Negotiating for Employment

For purposes of the first line of inquiry, an understanding of the term "negotiating" is necessary. There is no definitive judicial interpretation of the statutory phrase "negotiating... concerning prospective employment" as used in 18 U.S.C. 208.

The Department of Justice has recognized that where there is a bilateral expression of interest, evidenced by discussions and active interest on both sides regarding prospective employment, the employee has entered into negotiations. The Federal Circuit has articulated a distinction between negotiations and "preliminary exploratory talks, directed at possibilities that never materialized." (CACI Inc. v. United States, 719 F. 2d 1567 [Fed. Cir. 1983].) In that case, however, the bilateral discussions had lapsed and there had been no expression of interest by either party for an extended period prior to the official actions at issue. The decision seems to have turned more on the fact that negotiations had ceased than on a determination that employees had never engaged in negotiations concerning prospective employment.

For the purpose of our investigation, we have viewed negotiations as having commenced if Mr. Lenahan and any prospective employer engaged in bilateral discussion of any nature concerning prospective employment. We have viewed those negotiations as continuing in the absence of a lapse in the discussions or affirmative action indicating that the interest of either party had terminated or was no longer active.

Several individuals we spoke with indicated that Mr. Lenahan became interested in employment outside the federal government when he became eligible for retirement from the Foreign Commercial Service in 1984. At that time, he had general discussions with several employers concerning employment possibilities. Because none of these discussions remained active, we focused our inquiry on firms with which Mr. Lenahan began substantive discussions in 1985: (1) Liz Claiborne, Inc.; (2) Burlington Industries; and (3) International Business and Economic Research Corporation (IBERC), which is affiliated with the law firm of Mudge, Rose, Guthrie, Alexander, and Ferdon (Mudge Rose). In his October 21, 1985, recusal letter, Mr. Lenahan refers to informal job proposals received from these firms.

Particular Matters and Financial Effect

As noted in attachment I, Mr. Lenahan was involved in a variety of activities as Deputy Assistant Secretary during the period April 1985 until January 1986, a number of which could have affected the financial interests of his potential employers. Of those activities, his participation in calls for consultation ("calls") and matters relating to bilateral agreements most clearly illustrate his actions in relation to particular matters which have a direct effect on specific interests. (See attachment I for a discussion of calls and bilateral agreements.) For his participation to violate 18 U.S.C. 208, the particular call or bilateral agreement would have to have a direct and

predictable effect on a company with which he was negotiating for employment. It is irrelevant, under section 208, whether the particular matter affects the company's interest in a positive or negative manner.

Mr. Lenahan told us that, as Deputy Assistant Secretary and Chairman of CITA, he was personally involved in all calls issued by CITA until his recusal on October 21, 1985, but that he was not involved in the call process after that date. Other information corroborates Mr. Lenahan's position. Our review of calls for this period indicates that Mr. Lenahan did not chair CITA meetings and did not sign any calls after October 21, 1985. Others involved in CITA and the call process told us he did not participate in calls after that date. Therefore, the relevant time period during which Mr. Lenahan participated in calls and was negotiating with each potential employer began as of the date of his first employment discussions with that employer and ended on October 21, 1985. Mr. Lenahan stated that he did not recuse himself from participation in matters relating to bilateral agreements. The relevant time period for bilateral negotiations, therefore, coincides with the period in which he was negotiating with each potential employer.

Within the meaning of 18 U.S.C. 208, a "particular matter" is not limited to a proceeding or other matter involving or directed at specific parties. A particular matter may be one involving legislation, broad policy determinations, or other matters of general applicability where the outcome has a "direct and predictable effect on the firm with which the government employee is affiliated or is negotiating." The Department of Justice has stated that an employee's involvement in such matters may amount to a violation of 18 U.S.C. 208 even though all other firms similarly situated will be affected in a like manner, provided that it affects the firm distinctively and not as part of the entire business community. (2 Op. Off. Legal Counsel 151 [1978].) An example of a particular matter in this instance is the drafting of environmental regulations which would require expenditures by all firms in the particular industry of which the company is a part.

During the period from April 1985 through January 1986, Mr. Lenahan was involved in matters having an effect on the entire textile and apparel industry, domestic and foreign. According to Mr. Lenahan, he continued to participate fully in issues related to the Multifiber Arrangement (MFA) and in Administration efforts to defeat the Textile and Apparel Trade Enforcement bill, even after his October 21, 1985, recusal. (See attachment I for a discussion of Mr. Lenahan's actions in regard to the MFA and the Textile bill.) In responding to his recusal memo, Commerce's Assistant General Counsel for Administration stated that an employee must recuse himself from participation in activity which

involves the development of specific policy options, legislative proposals, program initiatives and other actions which could have a direct and predictable effect on a company with which he is negotiating for employment or on the industry of which that company is a part. Mr. Lenahan stated that he did not recuse himself from work on the Textile bill because he viewed his role as implementing Administration policy previously decided by an interagency committee.

Knowledge of Financial Interest

An employee's participation in a particular matter does not violate 18 U.S.C. 208 unless the employee has actual personal knowledge of the disqualifying financial interest. Constructive or imputed knowledge is insufficient. In Mr. Lenahan's case, this means that he was disqualified from participating in those matters which he knew would affect the financial interests of firms with whom he was negotiating for employment. He did not view his involvement in matters other than calls as affecting the interests of any of the three companies with which he was involved in employment negotiations.

MR. LENAHAN'S COMPLIANCE WITH REGARD TO ISSUES INVOLVING LIZ CLAIBORNE, INC.

Negotiations Concerning Prospective Employment

Liz Claiborne, Inc. is a designer and retailer of apparel products, primarily women's clothing. A Co-Chairman of Liz Claiborne, Inc. said he met with Mr. Lenahan to discuss the possibility of employment with the company on April 24, 1985. The Co-Chairman, a member of the Importers and Retailers Textile Advisory Committee which Mr. Lenahan chaired, said that he had heard that Mr. Lenahan was interested in retiring from federal service. By reading his biographical information about Mr. Lenahan, he learned that he had served in the Orient and spoke fluent Mandarin Chinese. He said Mr. Lenahan was being considered for a position in the company's Hong Kong office to assist in dealing with suppliers in Hong Kong, Taiwan, and Korea, and to assist in obtaining additional products from other suppliers. Mr. Lenahan said he told the Co-Chairman that he might be interested in employment with the company under the right circumstances, and that they agreed to keep it "on the back burner" and talk later. He said they met and talked about the subject of possible employment four to six times during the next several months. The Co-Chairman said that he told Mr. Lenahan on January 8, 1986, that he was no longer considering him for employment. Mr. Lenahan believes their discussions concluded

about November, 1985, although he said he was not sure of the date.

The Co-Chairman said that he never formally offered Mr. Lenahan a job or discussed possible salaries. He said he does not have the authority to make job offers without concurrence from the board of directors--a possibility he never discussed with them. Nevertheless, we believe negotiations within the meaning of the statute began with Mr. Lenahan's meeting with the Co-Chairman on April 24, 1985, and continued until January 8, 1986, when he was told that he no longer was being considered for employment. Mr. Lenahan kept open the possibility of employment with Liz Claiborne, Inc. after the initial meeting and the interest on both sides appears to have remained active as evidenced by subsequent discussions between Mr. Lenahan and the Co-Chairman as well as Mr. Lenahan's reference to the firm in his October 21, 1985, recusal letter.

Participation in Matters
Affecting Liz Claiborne's Financial Interest

Liz Claiborne, Inc. is heavily dependent on imported apparel products. According to the Co-Chairman, approximately 90 percent of the company's products are produced in other countries, mostly Hong Kong, Korea, and Taiwan. Thus, bilateral agreements or calls restricting items imported by Liz Claiborne, Inc. from those countries have a potential financial effect on Liz Claiborne, Inc.

The list of calls provided by the Department of Commerce includes numerous calls for consultations with these three exporting nations, including 10 calls for women's apparel, during the period from April 24, 1985 to October 21, 1985. It was during this period that Mr. Lenahan negotiated with Liz Claiborne, Inc. and participated in all calls. Although Liz Claiborne, Inc. imported many of the called products from Hong Kong, Korea, and Taiwan during this period, the company did not import the specific products from the specific countries at the time of the calls on these products.

During the period in which he was negotiating with Liz Claiborne, Inc., Mr. Lenahan also participated in developing the U.S. position with respect to bilateral negotiations with the governments of Hong Kong, Korea, and Taiwan. For example, in memos prepared for the Secretary of Commerce and the Undersecretary for International Trade on October 18 and November 27, 1985, respectively, Mr. Lenahan proposed renegotiation of the bilateral agreements with Hong Kong, Korea, and Taiwan and growth limits on the importation of products from all three countries. He thus participated personally and substantially through recommendation or advice in particular matters that would appear

to have an effect on the financial interests of Liz Claiborne, Inc., a company that relies heavily on imports from these three countries.

Liz Claiborne also has an interest, in common with other apparel importers, in the U.S. position in the MFA negotiations and in the Textile and Apparel Trade Enforcement bill. A U.S. position with respect to the MFA--such as expanding the fibers covered--would further limit imports from Liz Claiborne, Inc.'s major suppliers and would appear to have an effect on the company's financial interests. The Textile bill, which would significantly reduce textile imports, would appear to have an even greater impact on U.S. companies such as Liz Claiborne, Inc. that are heavily reliant on imports. Mr. Lenahan's role in formulating policy for the MFA negotiations and in the Administration's efforts to defeat the Textile bill would appear to constitute personal and substantial participation through recommendation or the rendering of advice in a particular matter affecting Liz Claiborne, Inc.

Mr. Lenahan's Knowledge of
Liz Claiborne, Inc. Suppliers and Products

The knowledge required by 18 U.S.C. 208 is actual personal knowledge on the part of the employee, not merely constructive or imputed knowledge, that the person or organization with whom he is negotiating for employment has a financial interest in the particular matter. Mr. Lenahan confirmed that he knew that Liz Claiborne, Inc. was heavily reliant on textile imports, particularly from Hong Kong and Taiwan. He said that he was not aware of the extent of their imports from Korea, but did know that they obtained some products from that country. He also said that he was generally aware of their product lines. The Co-Chairman said he was certain that Mr. Lenahan knew that his firm imported a great deal from Hong Kong, Korea, and Taiwan because he told Mr. Lenahan that the reason he was interested in hiring him was because of the importance of these countries to Liz Claiborne, Inc. In view of these circumstances, we believe that Mr. Lenahan would have known that Liz Claiborne, Inc. had a financial interest in bilateral agreements involving Hong Kong, Korea, or Taiwan as well as in the MFA negotiations and the Textile Bill.

MR. LENAHAN'S COMPLIANCE WITH REGARD
TO ISSUES INVOLVING IBERC

Negotiations Concerning
Prospective Employment

International Business and Economic Research Corporation (IBERC) is a consulting firm specializing in such areas as

international trade and economic policy analysis, development of import strategies, and foreign investment and research promotion. It is closely affiliated with the law firm of Mudge, Rose, Guthrie, Alexander, and Ferdon (Mudge Rose), which, among other things, represents the interests of U.S. importers and overseas exporters. The President and Chairman of the Board of IBERC, who is also a partner in Mudge Rose, said he first talked to Mr. Lenahan about employment with IBERC on September 4, 1985. He said that the Co-Chairman of Liz Claiborne, Inc., one of IBERC's clients at the time, had asked him for information about Mr. Lenahan because they were considering hiring him. The IBERC President said he then approached Mr. Lenahan and asked if he would consider working for IBERC. Mr. Lenahan said he told him he would consider it, depending on the nature of the job. Other meetings took place throughout the rest of the year, during which time they discussed the specifics of the possible employment relationship, including salary and pension benefits. The President of IBERC said he showed Mr. Lenahan a list of all the company's clients sometime during January 1986; Mr. Lenahan recalled that it was after January 1Ø. On January 25, 1986, the IBERC President offered Mr. Lenahan the job and he accepted. The formal letter offering employment was prepared on January 27, 1986, and Mr. Lenahan began work on February 8, 1986.

Thus, we believe that Mr. Lenahan began negotiating for prospective employment with IBERC on September 4, 1985, and that negotiations continued until he decided to accept employment with that firm on January 25, 1986. As was the case with Liz Claiborne, Inc., Mr. Lenahan kept open the possibililty of employment with IBERC after meeting with the company President, and subsequently engaged in discussions concerning the terms and conditions of employment.

Mr. Lenahan's Involvement in Matters Affecting IBERC's Financial Interests

From September 4, 1985, through October 21, 1985, a period when Mr. Lenahan was negotiating with IBERC and participating in calls, IBERC's and Mudge Rose's clients included the China National Textile Import and Export Corporation (Chinatex), the Japan Chemical Fibers Association (JCFA), the Japan Woolen and Linen Textiles Association (KEASA), and the government of Hong Kong (Trade Department). In order to establish a possible violation of the statute, IBERC must have a financial interest in the particular matter. In the case of a particular matter involving an IBERC client, that interest may be established where it also affects IBERC, either as a result of IBERC's own relationship with the client or a consequence of the relationship between IBERC, Mudge Rose, and the particular client.

ATTACHMENT II

Hong Kong's relationship with IBERC is reflected in the December 1984 retainer agreement between the government of Hong Kong and Mudge Rose. The law firm is to provide advice to and represent the government of Hong Kong in certain areas of trade relations including such matters as "calls, negotiations, and consultations on textiles and other particular bilateral problems in the trade." The agreement incorporates the following clause:

> "It is understood that the Law Firm will utilize the services of the economic consulting firm of International Business and Economic Research Corporation (IBERC) in the performance of this agreement to provide economic and technical advice, research and assistance. Any such services...will be within the professional fees and expenses set forth herein without separate billing by IBERC. Representatives of Hong Kong will have direct access to IBERC personnel."

Chinatex is a government-owned corporation representing textile interests within the Peoples Republic of China. The firm of Mudge Rose succeeded to the interests of the law firm of Daniels, Houlihan, and Palmeter under its May 11, 1982, agreement with Chinatex. The agreement extends to the firm's representation of the interests of Chinatex

> "... in all problems it faces in the regulation of international trade in textile and apparel products in the United States market. Emphasis shall be placed upon negotiations on possible extension of the bilateral agreement between the United States and the People's Republic of China, and problems arising under that agreement and any extension thereof. Activities shall include reporting, analysis, advice, and consultation with regard to these problems, and the preparation of necessary legal, economic, statistical and other materials, together with such representational activities as may be appropriate and authorized by Chinatex."

Work related to calls is within the scope of the contract, as evidenced by the high priority to be given to "an analysis and forecast of problems in sensitive categories now not under control." The agreement contains no specific reference to IBERC. Contractual references to economic and statistical analysis, however, would appear to contemplate work by IBERC.

By virtue of these agreements, consultations precipitated by calls against Hong Kong and the People's Republic of China would involve a potential for additional business for IBERC. Since IBERC is not subject to a retainer agreement but bills Mudge Rose

for work performed for the law firm's clients, that potential affects IBERC's financial interests. The President of IBERC has stated that IBERC provides advice in support of consultations. Under these circumstances, we believe that a call against either Hong Kong or the People's Republic of China would have more than a speculative effect on the financial interests of IBERC.

Data provided by the Department of Commerce indicates that calls for consultations were made in regard to several countries which were Mudge Rose clients or the home nations of Mudge Rose clients while Mr. Lenahan was negotiating with IBERC and while he was participating in the call process from September 4, 1985, to October 21, 1985. Two calls in particular were (1) with Hong Kong involving luggage on September 27, 1985; and (2) with the People's Republic of China on cut and sewn headwear on September 30, 1985. According to Mr. Lenahan, he participated as Chairman of CITA in the decisions to issue these calls. Therefore, we believe his participation was personal and substantial, and we believe that the calls against Hong Kong and China were particular matters in which IBERC may have had a financial interest.

As noted previously, Mr. Lenahan prepared memoranda for the Secretary of Commerce and the Undersecretary for International Trade on October 18 and November 27, 1985, respectively, in which he proposed renegotiation of the bilateral agreement with Hong Kong and growth limits on the importation of products from that country. Since the retainer agreement between Mudge Rose and Hong Kong contemplates that the law firm will provide advice and assistance with respect to bilateral negotiations on textiles, with support to be provided by IBERC, the recommendation by Mr. Lenahan to renegotiate the bilateral agreement between the U.S. and Hong Kong would appear to be a matter in which IBERC had a financial interest.

In addition to these actions of interest to Hong Kong and Chinatex, Mr. Lenahan participated in negotiations of interest to the Japan Chemical Fibers Association (JCFA), another IBERC and Mudge Rose client. In December 1985 and January 1986, Mr. Lenahan assisted in attempting to negotiate a new bilateral textiles agreement with Japan. As part of the U.S. delegation at the first round of talks in Paris in December 1985, he helped design the first U.S. proposal by suggesting product categories for negotiation and specific import levels for each. He then participated in the discussions with the Japanese, providing support for the USTR negotiator, and chairing portions of the negotiations. Similarly, in January, he attended another round of talks in Tokyo. Thus, Mr. Lenahan's activities as Deputy Assistant Secretary involved personal and substantial

participation on his part in the negotiation of a bilateral agreement with the government of Japan.

JCFA is an association which represents the manmade fiber and fabric interests that would be affected by a bilateral agreement between Japan and the U.S. We have been told by Mudge Rose that the firm represents JCFA and that IBERC provides assistance in support of that representation, for which it bills Mudge Rose directly. We are also advised that the retainer agreement covers work in connection with the negotiation of bilateral agreements and the MFA. In view of the retainer relationship between JCFA and Mudge Rose and IBERC's role in support of services provided under that retainer, we believe that Mr. Lenahan's participation in the bilateral negotiations with Japan was personal and substantial participation in a matter affecting the financial interests of IBERC.

We also believe that Mr. Lenahan's actions in regard to the Textile bill affected IBERC's financial interests. According to the President of IBERC and documents prepared by Mr. Lenahan while he was Deputy Assistant Secretary, passage of the Textile bill would result in abrogation by the U.S. of all existing bilateral agreements and a significant rollback of imports. They said that this would trigger negotiation of new bilateral agreements between the U.S. and exporting countries, including many Mudge Rose and IBERC clients. Mudge Rose has been retained by Hong Kong, Chinatex, and the Japan Chemical Fibers Association to provide representation and assistance in relation to the negotiation of bilateral agreements. Since some of the support services contemplated by these retainer agreements are provided by IBERC, the firm would appear to have a financial interest in the Textile Act. Mr. Lenahan's activities with respect to the Textile Act, therefore, would appear to rise to the level of personal and substantial participation through recommendation or the rendering of advice in a particular matter affecting the financial interests of IBERC.

We do not believe that Mr. Lenahan's participation in the MFA renewal talks affected IBERC's financial interests. The MFA provides a framework for regulating international trade in textile and apparel products. To some degree it affects the interests of all the exporting countries that employ IBERC. However, we have been unable to identify any direct and predictable effect the negotiation of a new MFA would have on the financial interests of IBERC.

Mr. Lenahan's Knowledge of IBERC Clients

Mr. Lenahan told us that he was not aware of most of IBERC's clients until he was shown a list of clients by the firm's

President sometime after January 10, 1986. Until that time he said the only clients he was aware of were Hong Kong, Chinatex, Indonesia, the Textile and Apparel Group of the American Association of Exporters and Importers, JCFA, and a Brazilian industry association. Further, he said he was aware that IBERC was representing JCFA only with regard to a countervailing duty and an anti-dumping case, not that IBERC provided advice and assistance to JCFA on all textile issues. He said he was aware of some of the clients, including Hong Kong and Chinatex, as early as 1982, when IBERC was associated with the law firm of Daniels, Houlihan, and Palmeter.

According to Mudge Rose filings with the Department of Justice's Registration Unit and information from Mudge Rose, the IBERC President met with Mr. Lenahan on September 4 and September 27, 1985, to discuss Hong Kong textile matters. An earlier filing indicates contact with Mr. Lenahan with regard to Hong Kong textile matters during the six-month period ending on August 18, 1985. IBERC's President also met with Mr. Lenahan to discuss matters relating to Chinatex during the September 27, 1985, meeting, and Mudge Rose officials also contacted Mr. Lenahan about matters pertaining to Chinatex at least once during the six-month period ending August 18, 1985.

With Mr. Lenahan's general recollection and the meetings described above, we believe Mr. Lenahan knew that Hong Kong was a client of either Mudge Rose or IBERC while he was involved in the September 27, 1985, call which would have limited imports of luggage from that country. We also believe that Mr. Lenahan knew that Chinatex was an IBERC or Mudge Rose client while he was involved in the September 30, 1985, call on cut and sewn headwear from the People's Republic of China. Based on his initial employment discussions with the IBERC President on September 4, 1985, as well as numerous meetings he had with him before that date, there is reason to believe that he had knowledge of the close relationship between Mudge Rose and IBERC and therefore knew that a call against Hong Kong or the People's Republic of China could affect the financial interests of IBERC. For this same reason, we believe he knew that renegotiation of the bilateral agreement between the U.S. and Hong Kong and the passage of the Textile Act would affect the interests of IBERC.

Mr. Lenahan said that he did not know that the Japan Chemical Fibers Association was a general retainer client for a broad range of issues until he saw the client list some time after January 10, 1986. However, on January 10, 1986, the President of IBERC met first with the Chief Textile Negotiator and then with Mr. Lenahan to discuss a visa arrangement which the United States was attempting to negotiate in connection with the Japanese bilateral agreement. Thus, Mr. Lenahan should have known that these negotiations were of interest to IBERC or Mudge

Rose clients. The following week Mr. Lenahan participated in further bilateral negotiations with Japan in Tokyo.

MR. LENAHAN'S COMPLIANCE WITH REGARD TO ISSUES RELATING TO BURLINGTON INDUSTRIES

Negotiations Concerning Prospective Employment

Burlington Industries is a domestic manufacturer of textile products. According to the Executive Vice President of Burlington Industries, Mr. Lenahan approached the company in the spring of 1985 about the possibility of employment. The Vice President said that he contacted Mr. Lenahan in mid-1985 and discussed the possibility of Mr. Lenahan's employment with the firm. More serious discussions occurred throughout the fall of that year, when they discussed the possibility of Mr. Lenahan serving as a Washington consultant for Burlington Industries and other textile manufacturers. These discussions ended in January 1986, however, when the Executive Vice President said he was unable to develop the consortium of manufacturers needed to pay for a consulting contract with Mr. Lenahan. Mr. Lenahan recalls having been contacted initially by Burlington in early to mid-August 1985, and that the discussions continued until October. He said that Burlington expressed an interest in hiring him in their initial discussions, and that he told them that he might be interested depending on the nature of the job.

Mr. Lenahan's Involvement in Matters Affecting Burlington Industries' Financial Interests and His Knowledge of Those Interests

As a domestic manufacturer of textile products, Burlington Industries has a financial interest in limiting the importation of textile products into the U.S. from foreign nations. With the 62 percent increase of MFA textile products into the U.S. from 1982 to 1985, Burlington has faced increased foreign competition in the sale of its products. Thus, Burlington was greatly interested in passage of the Textile bill, which would have significantly limited textile imports. Mr. Lenahan described Burlington as "leading the fight" for passage of the Act.

Mr. Lenahan, on the other hand, was involved in Administration attempts to defeat the Textile bill. A listing of the primary objectives of his Office of Textiles and Apparel indicates that defeat of the Textile bill was a priority for fiscal years 1985 and 1986. From May 1985 until December 1985, Mr. Lenahan authored and/or signed numerous internal memos and other documents in support of the Administration's efforts to defeat the Act. Thus, we believe that Mr. Lenahan was personally

and substantially involved in the Administration's efforts to defeat the Textile Act during the period in which he was negotiating for employment with Burlington Industries. We also believe that he understood that passage of the Act would be in the financial interest of Burlington Industries.

CONCLUSION

This attachment deals with Mr. Lenahan's activities while negotiating with three firms, each of which had a different and sometimes competing interest in a particular matter. For example, Burlington Industries, as a domestic manufacturer, had an interest in passage of the Textile bill that was in direct opposition to the interests of Liz Claiborne, Inc., which relies heavily on imports. We found no evidence that Mr. Lenahan's activities in relation to the Textile bill were dictated by either of these interests rather than by Administration policy, and we found no evidence that any of his activities as Deputy Assistant Secretary was prompted by the interests of any company with which he was negotiating for employment.

The statute with which we are concerned does not, however, require actual corruption or even that there be any loss suffered by the government as a result of the employee's official actions. In regard to the predecessor statute, the Supreme Court stated:

> "The statute ... embodies a recognition of the fact that an impairment of impartial judgement can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, the statute is more concerned with what might have happened in a given situation than with what actually happened."

This statement of purpose is equally applicable to 18 U.S.C. 208. Thus, we believe that Mr. Lenahan may have violated the statute in that he knew that his actions in several areas affected the financial interests of his potential employers.

ATTACHMENT III

COMPLIANCE WITH POST-EMPLOYMENT LAWS

Another area of inquiry was to determine whether Mr. Lenahan violated federal post-employment laws through any of his activities on behalf of countries with whom the U.S. is negotiating in the area of textile and apparel imports. We do not believe that Mr. Lenahan has engaged in activities that violate post-employment laws.

LEGAL DISCUSSION

These post-employment laws are codified at 18 U.S.C. 207, with regulations published at 5 C.F.R. Part 737. The statute consists of four separate restrictions on representational activities before the federal government. Two of the restrictions apply to all former officers and employees of the executive branch, independent agencies, and the government of the District of Columbia. The other two restrictions, added by the Ethics in Government Act of 1978, apply only to former officials who occupied positions defined by statute or designated in the implementing regulations as "senior employee positions." Pertinent provisions of each section are presented in the chart on the following page.

The restrictions applicable to all former employees are limited to matters in which they played some role, either through personal participation or supervision, while employed by the government. Subsection 207(a) imposes a lifetime restriction on representing any other person before the government in connection with a "particular matter involving specific parties" if the former employee participated "personally and substantially" in that same matter as a government employee. Subsection 207(b)(i) imposes a 2-year restriction on the same type of representational activity in connection with a "particular matter involving specific parties" if that same matter was "actually pending" under the former employee's "official responsibility" within 1 year prior to the termination of that responsibility.

A former senior employee is subject to two additional restrictions, one triggered by actual participation as a government employee and the other a consequence of senior employee status. Under subsection 207(b)(ii), a former senior employee who participated "personally and substantially" in a "particular matter involving specific parties" may not represent or aid, counsel, advise, consult, or assist in representing any other person by "personal presence at any formal or informal appearance" before the government concerning that same matter for 2 years. Under subsection 207(c), known as the "no-contact" ban, there is a 1-year restriction on any former senior

ATTACHMENT III

CHART DESCRIBING PERTINENT PROVISIONS OF SECTION 207

	Life Time Ban	Two Year Ban		One Year "Revolving Door" Ban
Section	207(a)	207(b)(i)	207(b)(ii)	207(c)
Time period	Permanent	Two years	Two years	One year
Who affected	Any former U.S executive branch or independent agency, D.C., officer or employee including a special employee	same	Any person holding a position classified at Executive Level or the equivalent; GS-17 or above or the equivalent with significant responsibility; military personnel at Grade O-9 or above or a position designated by OGE. No position lower than GS-17 or equivalent, SES level position, or O-7 may be designated.	Same as 207(b)(ii) except special employees employees serving less than 60 days in a given year.
Proscribed activity	Knowingly act as agent or attorney or otherwise represent in any formal or informal appearance OR with intent to influence, make any oral or written communication	same	Knowingly represent or aid, advise counsel, consult, or assist in representing, by personal presence at any formal or informal appearance.	Same as 207(a). Prohibition not applicable to appearance, representation or communication by an official or employee of State or local Government, an accredited institution of higher learning, or a tax exempt hospital or medical research organization provided it was made on behalf of such Government, institution, hospital or organization.
For whom	any other person (except the United States)	same	same	any person
To or before whom	any U.S. or D.C. Government court, other entity or employee	same	same	The agency or an employee thereof in which the senior employee formerly served. Except OGE may permit appearance before or communication to an agency or bureau within a Department or Agency having separate and distinct subject matter than that of the employee's former agency or bureau.
About what	any particular matter involving a specific party or parties in which the U.S. or D.C. is a party or has a direct and substantial interest	same	same	
	AND	AND	AND	
Prior involvement	in which the former employee participated personally and substantially while employed	which was actually pending under the former employee's official responsibility within one year prior to termination of that responsibility	in which time former employee participated personally and substantially while employed.	None

ATTACHMENT III

employee's representation of anyone before his former department or agency on any "particular matter" which is pending before that department or agency or in which it has a direct and substantial interest.

While all four subsections of the post-employment statute are somewhat different, each requires some form of contact by the former employee with a federal department or agency or an officer or employee thereof. The prohibited contact may take the form of an informal or formal appearance or, under three of the subsections, it may consist of an oral or written communication. The law, however, does not prohibit every type of contact between former and current government employees. Social or informational contacts, for example, are not prohibited, even under the 1-year no-contact ban. The implementing regulations at 5 C.F.R. 737.5(b)(5) specifically provide that "communications which do not include an `intent to influence' are not prohibited. Moreover, acting as an agent or attorney in connection with a routine request not involving a potential controversy is not prohibited." The regulation sets forth the following examples of representational activities which are not prohibited:

> "... a question by an attorney as to the status of a particular matter; a request for publicly available documents; or a communication by a former employee, not in connection with an adversary proceeding, imparting purely factual information."

Under subsection 207(b)(ii), assistance in representation may constitute a prohibited contact as long as the assistance occurs while the employee is personally present at an appearance before the government. The law does not prohibit the former employee from providing in-house advice and assistance in connection with representations of another party before the U.S. government. The regulations at 5 C.F.R. 737.5(b)(6) illustrate this point by noting that a government employee who administers a particular contract with a private sector company may leave the government and work for that very company on matters covered by the same contract. The regulation explains that the former employee may even advise company officials on how best to deal with his former agency to resolve a dispute arising under the contract.

As originally enacted by the Ethics in Government Act of 1978, subsection 207(b)(ii) contained language that was broad enough to prohibit in-house advice and assistance of this type so long as it was given "concerning" a representational appearance before the government. In response to objections over the breadth of this provision, the Act was amended in 1979 to

eliminate the word "concerning" and to substitute the requirement of personal presence.

Senior Employee Status

Mr. Lenahan is not a former senior employee for the purposes of the post-employment conflict of interest law. Senior employee status is prescribed by the statute for all civilian employees of the executive branch compensated at rates equivalent to the Executive Schedule. For others who are in the Senior Executive Service or paid at rates equal to or greater than the GS-17 rate, senior employee status is a matter of designation based on a determination by the Office of Government Ethics that the particular position involves significant decision-making or supervisory responsibility. As a matter of procedure, 5 C.F.R. 737.25 requires agencies to annually identify all such positions and to recommend those positions which should be designated. Based on agency recommendations, the Office of Government Ethics determines whether particular positions should be exempted and publishes a list of designated senior employee positions.

Up until March 15, 1984, the position of Deputy Assistant Secretary of Commerce for Textiles and Apparel was shown in the Federal Register as a designated senior employee. According to Commerce officials, the position was abolished in 1982 shortly before Mr. Lenahan was appointed as Deputy Assistant Secretary. However, this change did not appear in the Federal Register until 1984. We understand that action has now been taken to again designate the position as a senior employee. While Commerce officials have characterized this lapse in the designation as an administrative error, its result is nonetheless to exempt Mr. Lenahan from the senior employee restrictions contained in 18 U.S.C. 207. Therefore, he is not subject to the limitation on assistance in representation through personal presence or to the 1-year no-contact ban. However, even if Mr. Lenahan had been designated as a senior employee, we did not find that he violated these sections of the law.

MR. LENAHAN'S ACTIVITIES

Since he began working for IBERC on February 8, 1986, Mr. Lenahan has worked on a number of matters in which he had been involved while Deputy Assistant Secretary. These include his work on bilateral agreements with Israel, Hong Kong, and Japan, his discussions concerning potential overshipments of textiles from Thailand, and his activity with regard to the Textile and Apparel Trade Enforcement bill. Nevertheless, we do not believe Mr. Lenahan has violated 18 U.S.C. 207 because he has not had any prohibited contacts with U.S. officials. In general, his work appears to have been confined to in-house assistance in the

representation of clients of IBERC and the affiliated law firm of Mudge Rose.

Work on an Israeli Bilateral Agreement

In November 1985, while Deputy Assistant Secretary for Textiles and Apparel, Mr. Lenahan personally negotiated a memorandum of understanding (MOU) with Israel. According to Mr. Lenahan, this was the only time during his tenure that he participated so substantially in such an agreement. Normally, personnel from the Office of the U.S. Trade Representative (USTR) negotiate such understandings with support from the Office of Textiles and Apparel (OTexA). In this instance, USTR was preoccupied with another negotiation and asked Mr. Lenahan to take lead responsibility. Mr. Lenahan said that he used parameters decided on by an interagency committee in negotiating the understanding.

USTR and OTexA personnel uniformly described the understanding as generally advantageous to the United States. In February 1986, Israel retained Mudge Rose to represent them in their attempts to amend the MOU. Mudge Rose, in turn, asked Mr. Lenahan to advise the Israelis on changing the understanding. Mr. Lenahan said he concluded that the desired changes were so substantial they would constitute an abrogation of the agreement. He said he declined to participate until the Israelis decided how they wanted to proceed and informed USTR of their position. Later, near the end of February, he said the Israelis told him that they and USTR had decided to abrogate the agreement. As a result, from February 26, 1986, to March 14, 1986, Mr. Lenahan advised the Israelis on negotiating a new understanding. In so doing, Mr. Lenahan said that he did not contact any U.S. government employee or agency. Surveys of USTR and Commerce's International Trade Administration employees did not reveal any contacts on this issue. However, in February and March 1986, other IBERC employees made several contacts with Commerce and USTR officials to discuss to U.S.-Israel negotiations.

However, there is some disagreement as to whether and if so when Israel decided to abrogate the agreement. USTR officials said the Israelis did not inform them of the decision to abrogate the agreement until March 11, 1986. An Israeli official, on the other hand, asserted that the agreement has never actually been abrogated.

Although the memorandum of understanding with Israel was the same "particular matter" involving the same specific parties that Mr. Lenahan participated in "personally and substantially" as a government official, we did not find that he represented Israel before or communicated on their behalf with any government

agency or official. We therefore do not believe that this work violated section 207.

Work on a bilateral agreement with Japan

In December 1985 and January 1986, Mr. Lenahan assisted in attempting to negotiate a new bilateral textiles agreement with Japan. As part of the U.S. delegation at the first round of talks in Paris in December 1985, he helped design the first U.S. proposal by suggesting categories for negotiation and specific import levels. He then participated in the discussions with the Japanese, providing support for the USTR negotiator and chairing the discussion of visa matters. Similarly, in January, he attended another round of talks in Tokyo.

The Japan Chemical Fibers Association is an IBERC client. Most Japanese textiles imports that would be affected by a bilateral agreement are of such manmade fibers. After moving to IBERC and at the request of the Association, Mr. Lenahan met with Japanese government officials to advise them on whether and how to negotiate a new bilateral agreement. Mr. Lenahan said he did not contact U.S. government employees on behalf of the Japanese. This was corroborated by surveys of USTR and ITA employees.

Although the Japanese bilateral agreement was the same "particular matter" involving the same specific parties that Mr. Lenahan participated in "personally and substantially" as a government employee, we did not find that he represented the Japanese before the U.S. government or that he communicated with any agency or official on their behalf. Consequently, we do not believe this work violated section 207.

Work for Hong Kong

The previous bilateral textiles agreement with Hong Kong was negotiated in 1982, prior to Mr. Lenahan's appointment as Deputy Assistant Secretary. During his tenure as DAS, Mr. Lenahan was responsible for implementing the agreement, resolving policy issues, and adjusting quotas. In March 1985, he engaged in talks with officials in Hong Kong on issues related to the bilateral agreement and the Multifiber Arrangement. In addition, as Deputy Assistant Secretary, he was responsible for calls for consultation on Hong Kong products in August and September 1985.

Beginning in mid-1985, the United States began to discuss ways to address rising textile imports from Hong Kong, Korea, and Taiwan. These discussions culminated on June 29, 1986, in a new bilateral agreement with Hong Kong which limited the overall growth rate in nearly all categories of textile imports to 1

ATTACHMENT III

percent per year through 1991. Mr. Lenahan told us that he was actively involved in developing the new policy which led to the agreement with Hong Kong. For example, in the fall of 1985, Mr. Lenahan made several recommendations to the Secretary of Commerce and to the Under Secretary for International Trade to limit growth in textile imports from Hong Kong, Korea, and Taiwan.

As a part of his duties at IBERC, Mr. Lenahan has provided advice to the Government of Hong Kong on negotiating its new bilateral agreement with the United States. In so doing, Mr. Lenahan did not appear before or otherwise contact any U.S government employee on behalf of Hong Kong. Therefore, this work would not constitute a violation of section 207. IBERC's President did, however, meet with a State Department official and a member of Congress in April and May 1986 on behalf of Hong Kong.

Contact with American Embassy Officials in Thailand

In September and October 1985, Mr. Lenahan participated in resolving an overshipment problem with Thailand. He advised the Chief Textile Negotiator as well as OTexA staff on how to handle the situation, although he did not attend the actual consultation. In November 1985, USTR reached an agreement with Thailand on the overshipment issue. Because Thailand's exports had approached the U.S. quota level well before the year had expired and because some U.S. contracts for Thai goods remained unfilled, there was continued concern that Thailand would overship textile products again in 1986.

In May 1986, Mr. Lenahan met with the American Embassy's Economic Counselor and Commercial Service Officer in Bangkok to discuss the Thai textiles industry generally and to obtain information about the prospect of overshipments. Mr. Lenahan explained that he sought this information on behalf of IBERC's domestic clients who import from Thailand and whose orders could be embargoed in the event of an overshipment. Although Mr. Lenahan identified himself as a representative of IBERC, the Economic Counselor described the intent of the meeting as information-sharing. Because Mr. Lenahan did not attempt to influence the two federal officials, but merely to obtain information, we do not believe that this contact violates section 207.

Work on the Textile and Apparel Trade Enforcement Bill

Throughout 1985, Mr. Lenahan played a key role in supporting the Administration's position on the Textile and Apparel Trade

ATTACHMENT III

Enforcement bill. The defeat of the bill was a top priority of his office, the Office of Textile and Apparel. During the period, Mr. Lenahan:

-- met frequently with Members of Congress to discuss Commerce's opposition to the bill;

-- developed position papers for the Under Secretary for International Trade and the Secretary explaining the Executive Branch's reasons for opposing the bill; and

-- helped draft the President's veto message.

At IBERC, Mr. Lenahan supervised staff in preparing an analysis of the bill's effect on exporting countries. Mr. Lenahan told us that he did not contact any U.S. government employees and surveys of USTR and Commerce's International Trade Administration employees did not reveal any contacts regarding the Textile bill. Mudge Rose attorneys, however, did meet with a congressional staff member in April 1986 and a member of Congress and other congressional staff in June 1986 to discuss the bill. Because Mr. Lenahan did not participate in any of these contacts, we do not believe his work on the Textile bill violated section 207.

ATTACHMENT IV

COMPLIANCE WITH FOREIGN AGENTS REGISTRATION ACT

We also examined Mr. Lenahan and IBERC and Mudge Rose's compliance with the Foreign Agents Registration Act in selected areas related to our review.1 Mr. Lenahan is not registered with the Justice Department as an agent for any foreign principals. Nevertheless, we believe that Mr. Lenahan is in compliance with those sections of the law that deal with "registerable activities" and exemptions from registration, as interpreted by the Department of Justice. IBERC and Mudge Rose may, however, need to register an additional foreign client to be in full compliance with these sections of the law.

The Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.), requires agents of foreign principals to report their activities to the Attorney General by filing periodic registration statements. Failure to file a registration statement (or filing an erroneous statement) may result in criminal penalties and fines as well as civil injunctive action.

The Act and accompanying rules require filing an initial registration statement; supplemental statements at intervals of six months for the duration of the principal-agent relationship; various exhibits containing information on each foreign principal covered by the registration; and a short form registration statement for each partner, officer, director, associate, employee, and agent of the registrant, unless otherwise exempted (Section 2 and Rules 200-205).

PERSONS/ORGANIZATIONS REQUIRED TO REGISTER

As noted above, the Act requires agents of foreign principals to register their activities with the Department of Justice. The Act defines "agent of a foreign principal" as an individual or organization which "directly or through any other person" engages in political activities for or in the interests of the foreign principal; acts as a public relations counsel, publicity agency, information-service employee or political consultant for or in the interest of the foreign principal; solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interests of the foreign principal; or represents the interests of the foreign principal before any agency or official of the U.S. government (Section 1(c)(1)).

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1 We examined certain registration documents for both Mudge Rose and IBERC, since the IBERC documents often referred to information contained in Mudge Rose filings, and because the two firms are closely related.

According to the Chief of the Registration Unit in the Department of Justice, the Department considers "registerable activities" to be essentially "political activities." He defined these activities as those which include both contact with an official of the U.S. government and the attempt to influence such official in formulating, adopting, or changing the domestic or foreign policies of the U.S., or in representing the political or public interests of a foreign country or foreign political party.

The Chief of the Registration Unit also told us that the provision of "advice and assistance" by an individual or organization to a foreign principal is not considered enough to require registration. While such activities may fall under the definition of "political consultant" contained in the Act, the Act has been interpreted on the basis of its legislative history to require registration only when individuals "attempt to influence either government officials or the public."

As noted earlier, Mr. Lenahan is not registered with the Department of Justice as an agent of any foreign principals. The Department of Justice's Registration Unit conducted an independent review of whether the activities of Mr. Lenahan are "registerable activities" according to the definition described above. The Chief of the Registration Unit told us that, at this time, there is no evidence that any of Mr. Lenahan's activities on behalf of Mudge Rose or IBERC clients fall under the definition of "registerable activities." Mr. Lenahan's activities appear to have been limited to advice and assistance provided behind the scenes and not to have involved any contact with or attempts to influence U.S. government officials. We thus concluded that Mr. Lenahan is in compliance with the Act, as interpreted by the Department of Justice.

We also examined IBERC and Mudge Rose's activities with respect to Israel (see attachment III). The firm maintains that its activities on behalf of Israel were not "political activities" since they involved no representational contacts with officials of the U.S. government. According to an official of the Office of the U.S. Trade Representative (USTR), however, two IBERC employees contacted USTR on several occasions in February and March, 1986, to obtain information related to IBERC/Mudge Rose's work on behalf of Israel and to present the firm's position on the U.S.-Israel textile negotiations.

IBERC and Mudge Rose's activities on behalf of Israel, as described above, appear to fit the Department of Justice's interpretation of "political activities," and therefore may be a "registerable activity." The Department of Justice is presently

reviewing IBERC and Mudge Rose's status with regard to its activities on behalf of Israel. To date, this review has not yet been completed.

EXEMPTIONS FROM THE REQUIREMENT TO REGISTER

The Act also contains exemptions from registration for numerous classes of individuals:

-- foreign government officials;

-- diplomatic or consular officers and their staff, under certain circumstances;

-- persons engaged in private and nonpolitical activities in furtherance of bona fide trade or commercial activities, or in other activities not serving predominantly a foreign interest, or in the soliciting or collecting of funds and contributions within the U.S. to be used only for medical aid and assistance, or for food and clothing to relieve human suffering;

-- persons engaged in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts;

-- certain persons whose foreign principal is a foreign government the defense of which is considered by the President to be vital to the defense of the U.S.; and

-- attorneys engaged in legal representation of a disclosed foreign principal before any court or agency of the United States.

Section 3(g) of the Act contains the legal exemption--the last one mentioned above.

During 1982 and 1983, Daniels, Houlihan & Palmeter, P.C.--the firm that merged with Mudge Rose in 1984--was subject to a Justice Department inspection of its Registration Act documents. The Registration Unit of the Department of Justice concluded in May 1983, that the law firm could avail itself of the 3(g) exemption for 19 listed foreign principals, including six textile and apparel-related clients. A memorandum prepared in support of this determination reasoned that much of the law firm's activities on behalf of the listed clients consisted of legal representation in proceedings concerning statutory import restrictions (for example, antidumping and countervailing duties cases).

The Department of Justice also commented, as follows, on the application of the 3(g) exemption to the firm's activities in the textile area.

> "... Textile import quotas are negotiated on a government to government basis under the terms of the Multinational Fiber Agreement (sic) (MFA) in order to effect a bilateral treaty between an exporting country such as Korea or Haiti and the United States. [The firm's] role at this stage is to advise and assist its principal for the group of textile manufacturers and exporters that it represents. At this level [the firm's] activities are clearly not exempt under either Sections 3(d) or 3(g) of the Act (emphasis added). However, these bilateral agreements anticipate that there will be questions which later require resolution at a lower level such as the clarification of a particular type of clothing article under the various quotas earlier arrived at. [The firm's] representation of its principal at this level would seem to qualify under Section 3(g) since these are informal proceedings contemplated by the bilateral agreement which otherwise meet the strictures of this exemption. Accordingly, both [the firm] and the Registration Unit reached the understanding that registration must be effected for a principal who was entering into negotiations or whose interests were involved in negotiations under the MFA, but that subsequent to the enactment of an agreement the activities might reach a point where [the firm] could qualify for the Section 3(g) exemption" (emphasis added).

The Chief of the Registration Unit confirmed that the distinction between what is and what is not likely to qualify for the legal exemption continues to be applied. If an agreement is in existence and Mudge Rose becomes involved in matters arising under the agreement, the Registration Unit would probably conclude that the activities concerned would qualify for a 3(g) exemption. If the firm is involved in the development of an agreement on behalf of a foreign principal, however, such activities would probably not qualify for a 3(g) exemption.

According to one of the partners of Mudge Rose, the firm has applied the determinations of the Department of Justice concerning registration by Daniels, Houlihan & Palmeter, P.C. to subsequent Mudge Rose decisions not to register on behalf of certain textile-related clients, for example, Israel. On June 25, 1986, officials of the Registration Unit of the Department of Justice and employees of Mudge Rose met to discuss the firm's and IBERC's registration status under the Foreign Agents Registration Act with respect to activities on behalf of Israel. The firm

ATTACHMENT IV

sent a letter on July 3, 1986 to the Department of Justice justifying its position that activities performed on behalf of Israel were not registerable activities. As suggested earlier, Mudge Rose claimed that its activities were not political activities since they involved no contact with U.S. agencies or officials on behalf of Israel to represent the Israeli position. The firm also stated its belief that even if such activities were deemed to be political activities, they would still be exempt under Section 3(g) of the Act.

As noted earlier, the Department of Justice has not yet completed its review of IBERC and Mudge Rose's activities on behalf of Israel. Nevertheless, the activities under review were directed at negotiating either revisions to the existing Memorandum of Understanding (MOU) or a new MOU, not to actions taken under the terms of the Memorandum of Understanding. For this reason, the activities do not appear to fall within the Registration Unit's interpretation of the 3(g) legal exemption or any other registration exemption. We were told by a Mudge Rose partner that the firm would register any clients in question if required to do so.

ATTACHMENT V

INDIVIDUALS WHO HAVE LEFT THE INTERNATIONAL TRADE ADMININSTRATION AND THE U.S. TRADE REPRESENTATIVE'S OFFICE AND NOW REPRESENT FOREIGN PRINCIPALS

This attachment identifies those individuals who left employment with the Department of Commerce's International Trade Administration and the Office of the U.S. Trade Representative in the past year and are now registered under the Foreign Agents Registration Act. Our work in this area supplements an earlier GAO report, FOREIGN REPRESENTATION: Former High-Level Federal Officials Representing Foreign Interests (NSIAD-86-175BR, July 1986), in which we identified 76 former high-level federal officials who represented foreign interests before the U.S. government after leaving office during fiscal years 1980-1985.

Information provided by the Department of Commerce showed that of 715 International Trade Administration employees GS-13 and above, 61 terminated employment with the U.S. government in the past year (July, 1985 to June 21, 1986). Of these, only one was from the Textiles and Apparel branch. In addition, seven of the 21 Textiles and Apparel employees GS-12 and below left the government in the past year. According to the Registration Unit of the Department of Justice, none of these 68 employees are registered as representing foreign principals.

Information provided by the Office of the U.S. Trade Representative showed that of a total 130 staff members, nine employees GS-13 and above left government service in the past year. Seventeen employees GS-12 and below either left the government or transferred to other federal agencies in the past year. Of those GS-13 and above, two are now registered as agents of foreign principals. One, Julia Christine Bliss, left government service on February 7, 1986, and is associated with the law firm of Mudge Rose Guthrie Alexander & Ferdon. The other, Claud Gingrich, left the government on July 1, 1985, and is associated with L. A. Motley and Company.

As detailed in earlier attachments, Mudge Rose represents a number of foreign principals presently engaged in textile and apparel negotiations with the U.S., as well as a variety of other interests. L. A. Motley and Company is a corporation that provides consulting services in the areas of international trade and investments and strategic planning for individuals, associations, and exporters. The firm has registered with the Department of Justice on behalf of four foreign principals, none of which is textile-related.

Our earlier report on foreign representation identified seven high level Commerce officials and two high level Trade

ATTACHMENT V

Representative officials who left government during fiscal years 1980-85 and subsequently represented foreign interests.