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REPORT BY THE

Comptroller General

OF THE UNITED STATES

10/6/97

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RELEASED

Problems Confronting U.S. Urban Railcar Manufacturers In The International Market

Five of nine urban railcar orders partially funded by the Urban Mass Transportation Administration were awarded to foreign firms during 1976-78. Foreign competition entering the U.S. railcar market has raised concerns about whether U.S. firms can compete and has prompted one U.S. firm to commission Gordian Associates Incorporated to study the issue.

GAO reviewed the study's findings at the request of the Chairman, Subcommittee on Transportation and Related Agencies, Senate Committee on Appropriations.

SEN 00319

GAO found that U.S. firms submitted acceptable bids on only two of the five orders awarded to foreign firms. GAO agrees with Gordian that railcar markets in Europe, Japan, and Canada are closed to U.S. railcar firms and that, before a "Buy America" provision was included in recent transit legislation, the U.S. urban railcar market was open. GAO does not believe the study demonstrated that U.S. firms are at a competitive disadvantage.



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JULY 9, 1979



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-169491

The Honorable Birch Bayh
Chairman, Subcommittee on Transportation
and Related Agencies
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

This report summarizes the results of our review of a study prepared by Gordian Associates Incorporated, entitled "An Analysis of the International Urban Railcar Market." It discusses such issues as the entry of foreign railcar firms into the U.S. urban railcar market, the openness of railcar markets in foreign countries to U.S. manufacturers, the effect of government assistance on competition, and U.S. legislation affecting foreign competition. We made this review pursuant to your April 12, 1978, request.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Thomas P. Stack".

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE SUBCOMMITTEE
ON TRANSPORTATION AND RELATED
AGENCIES
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

PROBLEMS CONFRONTING U.S.
URBAN RAILCAR MANUFACTURERS
IN THE INTERNATIONAL MARKET

D I G E S T

Foreign competition entering the U.S. urban railcar market has raised concerns about the ability of U.S. firms to compete. One U.S. manufacturer commissioned Gordian Associates Incorporated to study this issue. GAO reviewed the study's findings for accuracy and completeness.

ABC 00230
During 1976-78 five of nine urban railcar orders, partially funded by the U.S. Urban Mass Transportation Administration (UMTA), were awarded to foreign firms. GAO found that three of these contracts went to foreign firms because U.S. firms were unwilling or unable to bid or did not submit acceptable bids.

The reasons for U.S. manufacturers' lack of interest included

- limited production capacity at the time of the order,
- restrictive contract terms and conditions,
- lack of interest in manufacturing the type of railcar ordered, and
- restrictions placed by creditors.

For example, one U.S. manufacturer could not bid on five of the nine procurements because it was restricted by its creditors from bidding on the type of railcar ordered. (See pp. 8 to 13.)

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Spell out

UMTA has undertaken several measures to alleviate these problems. However, manufacturers continue to have some problems with the timing of railcar orders and contract terms and conditions. UMTA believes it can do little to control the timing of railcar orders because of the uncertainty involved in arranging local financing for the procurements. UMTA is working with manufacturers to resolve problems with contract terms and conditions. (See ch. 2.)

In commenting on this report, both the Boeing Vertol Company and the Budd Company criticized UMTA's efforts to solve manufacturers' problems with contract terms and conditions and the timing of railcar orders. Both firms believed the agency could do more to assist the industry. (See apps. III and IV.)

Boeing cited three examples of clauses from a recent procurement to indicate that UMTA was not enforcing its guidelines for transit authorities on contract terms and conditions. Two of the clauses, however, were not addressed by these guidelines and an UMTA official indicated that Boeing never advised UMTA of its specific problems with the third clause.

Concerning the timing of railcar orders, UMTA indicated it will closely monitor the placement of future railcar orders. GAO believes this could help increase competition. (See pp. 20 and 21, and apps. II, III, and IV.)

THE INTERNATIONAL URBAN RAILCAR MARKET

The Gordian study accurately reported that the railcar industry in many countries could produce more railcars than were being ordered. However, the study was not correct in implying that the only way these countries can maintain their industries is by increasing railcar exports. Increasing exports was considered only one of several alternatives. (See pp. 22 to 26.)

GAO also found that future railcar demand in the six countries it visited was not as bleak as the Gordian study portrayed. For example, West Germany's local transit authorities were expected to keep their demand over the next few years at 1978 levels.

According to the study, the U.S. urban railcar market is the prime export market for foreign firms. Although the firms GAO contacted expressed interest in upcoming U.S. railcar orders, they viewed the United States as one of many potential export markets and seldom identified it as the prime market. The U.S. market could be viewed more favorably now, however, since there is only one U.S. firm willing to compete for U.S. urban railcar orders. During the 1976-78 period, four U.S. firms participated in the market. (See chs. 2 and 3.)

OPENNESS OF FOREIGN MARKETS TO U.S. RAILCAR MANUFACTURERS

✓The Gordian study accurately reported that foreign railcar markets in Europe, Japan, and Canada were essentially closed to all but firms in those countries. ✓ Foreign procurement agencies GAO visited rarely purchased railcars from foreign suppliers when local firms were capable of producing the product. (See pp. 30 to 38.)

The procurement situation in the six countries visited contrasts with the urban railcar market in the United States which, before the "Buy America" provision of the Surface Transportation Assistance Act of 1978, was essentially open to foreign competition.

GOVERNMENT ASSISTANCE TO RAILCAR MANUFACTURERS AND ITS EFFECT ON COMPETITION

The Gordian study maintained ^{and} that foreign railcar firms received incentives and subsidies not available to U.S. railcar firms; thus providing

an unfair competitive advantage. GAO believes there is no simple answer to the question of who has a competitive advantage due to government assistance because making such a determination would require the full cooperation of all parties and the disclosure of information considered proprietary.

GAO did not attempt to determine the effect on competition of various government assistance programs but rather analyzed whether the Gordian conclusions were justified based on information in its report. GAO does not believe the Gordian conclusions were justified.

Although the study accurately identified many benefits provided by foreign governments, such as export tax incentives, regional aid grants, and export marketing assistance, it did not point out that these programs are not automatically available to all firms. For example, railcar firms in one country were not eligible for one such program. (See pp. 42 to 45.)

GAO also found that when a foreign firm received a particular incentive or subsidy, it did not necessarily mean that the firm had a competitive advantage over U.S. firms. For example, foreign regional aid assistance and foreign tax incentives to encourage investment in depressed areas sometimes had little impact on the competitiveness of the recipient firm in the export market. (See pp. 43 to 45.)

The tax issue was much more complex than reported in the Gordian study. Although there were significant differences in the tax systems of the United States and other countries, the relative competitive advantage of one system over the other is not readily determinable. (See pp. 41 to 43.)

AB-000074 In commenting on the report, the Department of Commerce agreed with Gordian's point that

foreign manufacturers had more favorable official export financing and insurance arrangements than U.S. firms. GAO believes the Department may be correct in its assertion that overall U.S. export financing may not be competitive with other countries. With respect to urban railcars, however, the U.S. Export-Import Bank which is responsible for export financing has made an effort to provide U.S. firms with competitive financing, and GAO found no evidence to indicate U.S. firms were losing export sales because of a lack of competitive financing. (See p. 52 and app. VII.)

LEGISLATION AFFECTING FOREIGN COMPETITION

The Surface Transportation Assistance Act of 1978, effective November 6, 1978, contains a Buy America provision giving preference to U.S. products. Even if this provision had been in effect from 1976 to 1978, when foreign firms were awarded five railcar contracts, the provision would have had little impact on the awards, assuming the bidders on these procurements did not change, mainly because U.S. firms did not bid or did not submit acceptable bids.

X Sufficient time has not passed to determine the full impact of the Buy America provision. However, GAO's cursory review of the first three railcar procurements initiated since enactment of the provision showed that at least one foreign firm was persuaded not to bid because of the provision. On the other hand, a foreign firm which submitted a certificate indicating its product complied with the provision (and was thus considered a domestic product) was the low bidder on one procurement.

giving preference to U.S. products

GAO believes it may be difficult to implement a preference for U.S. manufactured products, which the provision was intended to establish, now that only one U.S. firm is willing to bid on railcar procurements. In

addition, if the application of the provision deters foreign firms from competing for U.S. railcar orders, it could result in limiting competition for federally funded railcar orders and, thus, increase costs.

In the case of legislation providing U.S. firms recourse against unfair trade practices, GAO found that two pieces of legislation--the Anti-dumping Act of 1921 and the countervailing duties section of the Tariff Act of 1930--may not provide remedies suitable to the railcar industry. The remedy in both laws is the imposition of additional duties. Neither law contains any mechanism for overturning contract awards.

Sections 201(b) and 301 of the Trade Act of 1974 may offer more potential to the railcar industry, although both have some limitations. For example, railcar firms could petition the U.S. Government for assistance under section 301, either on the basis that foreign firms received government subsidies which reduced U.S. firms' domestic sales or that railcar markets were closed overseas to U.S. railcar exports. The latter appears to offer the best prospects although the railcar industry must show that the other country's actions are unreasonable or unjustifiable before action can be taken. (See ch. 6.)

Although GAO provided Gordian Associates a copy of the draft report for comment, it did not formally comment.

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ABBREVIATIONS

Eximbank	Export-Import Bank
GAO	General Accounting Office
GATT	General Agreement on Tariffs and Trade
ITC	International Trade Commission
RPI	Railway Progress Institute
UMTA	Urban Mass Transportation Administration

CHAPTER 1

INTRODUCTION

From January 1976 through December 1978, five of the nine urban railcar procurements 1/ partially funded by the Urban Mass Transportation Administration were awarded to foreign manufacturers. Before that time no foreign company had ever been awarded a contract for urban railcars financed with Federal funds. These five procurements had a contract award value of about \$240 million.

The entry of foreign competition into the U.S. urban railcar market raised concerns among U.S. manufacturers about their ability to compete against foreign manufactures. In an effort to gain an understanding of this and other problems, Pullman Incorporated, one of four U.S. railcar manufacturers, commissioned a study by one of its subsidiaries, Gordian Associates Incorporated. The major findings of this March 1978 study, entitled "An Analysis of the International Urban Railcar Market," were:

"Overseas manufacturers are finding it increasingly necessary to export passenger railcars in order to maintain the domestic industry and its associated employment. This need to increase exports results from substantial excess capacity, declining or static domestic markets, and limited Third World markets.

"Domestic markets in foreign countries are essentially closed to all but these countries' domestic firms, due to prevailing industry structures and government/industry relationships.

"Foreign firms operate in a political and socio-economic environment which provides a multitude of tax and non-tax incentives and subsidies. These effectively provide advantages that are not available to U.S. firms competing in either the U.S. or Third World market.

1/These procurements relate to intracity passenger railcars. They do not include intercity passenger or freight cars. Intracity passenger railcars account for the largest portion of passenger railcars procured in the United States. In contrast, intercity passenger railcars dominate the passenger railcar markets of most of the other countries discussed in this report.

"The United States' market has become the primary export market for foreign manufacturers because of the U.S. government's continuing commitment to urban mass transit funding, and because entry barriers are, in effect, non-existent.

"United States firms are also experiencing excess manufacturing capacity. Many are experiencing severe deficits on current or recent contracts, and several have ceased operations altogether in recent years.

"In general, United States firms can compete effectively on a technological basis for all mass transit car markets. Manufacturer efficiency is considered to be on par with foreign firms."

FEDERAL GOVERNMENT'S ROLE IN PROCUREMENT OF URBAN RAILCARS

The Urban Mass Transportation Administration (UMTA), Department of Transportation, administers the capital facilities grant program authorized by the Urban Mass Transportation Act of 1964 (49 U.S.C. 1601 et. seq.). Under this program, UMTA makes grants to State and localities to enable them to improve existing transit systems or to build new transit systems in urban areas. Because UMTA funds 80 percent of net project costs with the remaining cost being provided from non-Federal sources, it is important to understand UMTA's procurement policies.

Before the enactment of the Surface Transportation Assistance Act of 1978 (Public Law 95-599) on November 6, 1978, UMTA's policy was to permit its grantees to award contracts to the lowest responsive responsible bidder without having to get UMTA's concurrence. However, for awards to other than the low bidder or in requests for a sole-source procurement it was necessary to obtain UMTA's concurrence. Under no circumstances did UMTA permit its grantees to impose any restrictive or preferential procurement practices.

However, the enactment of the Surface Transportation Assistance Act changed UMTA's procurement policy. The act amends the Urban Mass Transportation Act of 1964 and includes a Buy America provision (title IV, section 401) which, in effect, requires that when procuring railcars, preference be given to U.S. products. The details of this provision and how it will affect railcar procurements are discussed in chapter 6.

SCOPE OF REVIEW

At the request of the Chairman, Senate Subcommittee on Transportation and Related Agencies, Committee on Appropriations, we reviewed the Gordian Associates Incorporated study. Our review was directed toward evaluating the study's accuracy and determining whether it identifies and deals with all pertinent issues relating to the international urban railcar market. As agreed with the subcommittee, we did not determine whether U.S. firms could compete effectively on a technological basis with foreign firms due to the complexity of the issue.

Our review was made at UMTA headquarters in Washington, D.C.; appropriate agencies within the Departments of State, Treasury, and Commerce; the Office of the Special Trade Representative; the International Trade Commission; and transit authorities located in Atlanta, Georgia; Baltimore, Maryland; Boston, Massachusetts; Chicago, Illinois; Cleveland, Ohio; Trenton, New Jersey; Philadelphia and Pittsburgh, Pennsylvania; and Washington, D.C. In addition, review work was performed in the following countries: France, Italy, West Germany, Belgium, Japan, and Canada.

We interviewed officials of UMTA, other governmental agencies, transit authorities, the four U.S. railcar manufacturers, railcar component suppliers, the Railway Progress Institute, and the American Public Transit Association concerning railcar procurements, international trade issues, and related matters. We reviewed applicable legislation, UMTA policies and procedures, and the railcar project and contract records and reports at UMTA headquarters and the transit authorities. We also reviewed a report entitled "The United States And The International Market For Rail Equipment" prepared for UMTA by Richard J. Barber Associates, Inc.

During our visits to foreign locations, we interviewed officials of the American Embassy, host government agencies, and foreign railcar manufacturers. Although we attempted to obtain comparable data for each country, the Government of France objected to the nature of our review and thus, limited our work.

We solicited comments on our report from the agencies involved with the issues discussed in the report, the four U.S. railcar manufacturers, the Railway Progress Institute, and Gordian Associates Incorporated. Appendixes II through VIII contain the responses of those organizations that submitted comments. The Office of the Special Representative for Trade Negotiations, Pullman Standard Incorporated, General Electric Company, and the Railway Progress Institute did not formally comment on the report. The Department of State and Gordian Associates Incorporated provided informal comments.

CHAPTER 2

THE U.S. URBAN RAILCAR INDUSTRY AND MARKET

Foreign firms did not enter the U.S. urban railcar market in large numbers until 1976. The Gordian study implied that foreign competition is a major cause for concern. However, our analysis of urban railcar procurements awarded during 1976 through 1978 showed that the majority of these contracts went to foreign firms because U.S. firms were unwilling or unable to bid on them or they did not submit acceptable bids.

THE U.S. URBAN RAILCAR MARKET AND INDUSTRY

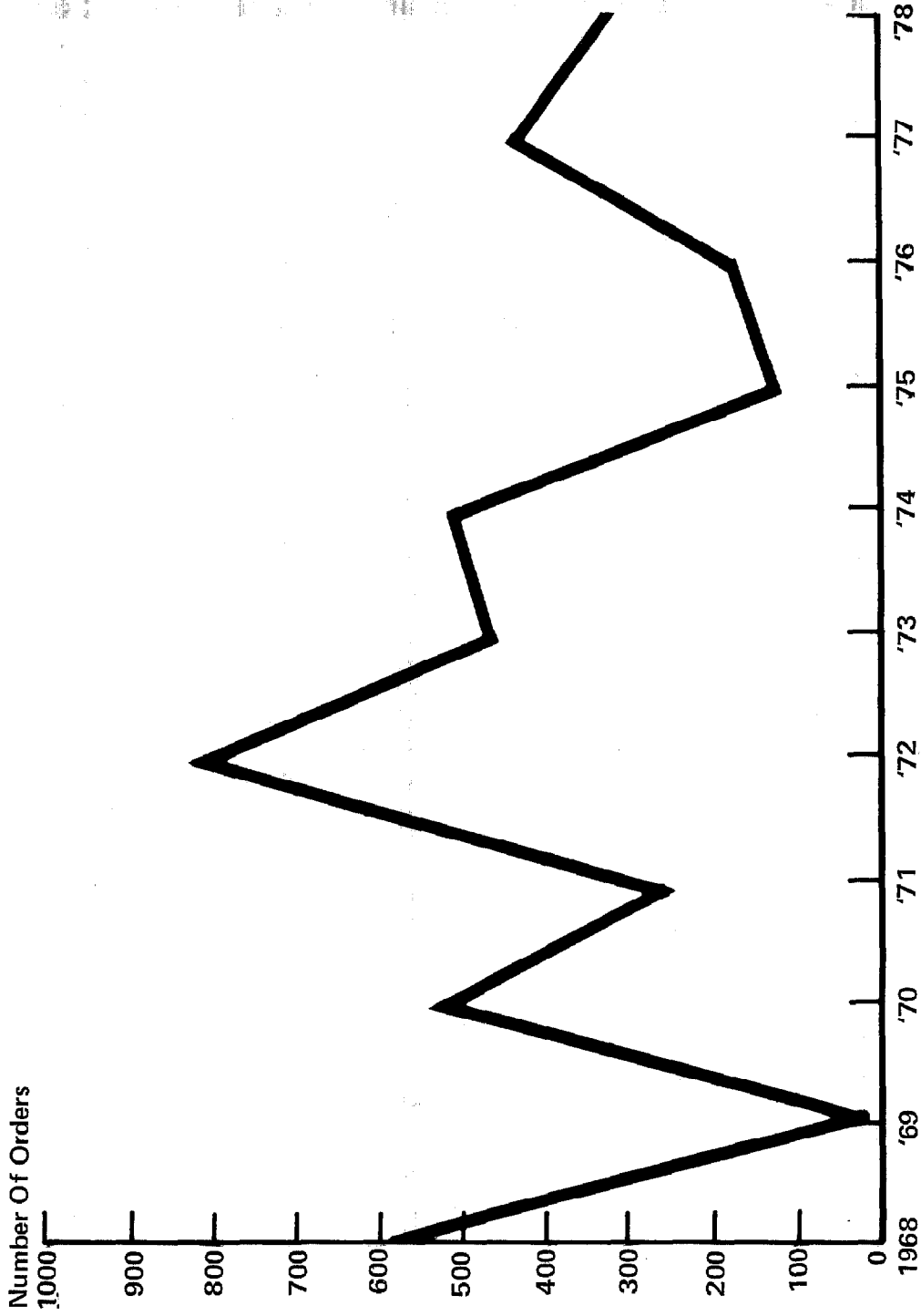
When UMTA began awarding Federal funds to transit systems in 1968, U.S. manufacturers anticipated a boom and companies, such as Rohr, General Electric, and Boeing-Vertol, entered the market amid forecasts of large, profitable railcar orders. One industry executive predicted annual orders for 1,100 railcars. However, as the chart on the next page illustrates, the railcar market turned out to be far smaller and more erratic than the companies anticipated. One trade magazine cited the following reasons for the reduced market:

- Inflation, which nearly doubled the cost of a railcar, sharply reduced the number of units ordered.
- Technical and financial problems with new rail transit systems in San Francisco, California, and Washington, D.C., convinced many officials that expanding bus systems was a less risky solution to urban transportation problems.
- More of the Federal transit dollar was going to subsidize existing transit lines rather than to buy new equipment.

In addition to the erratic market, railcar manufacturers were also hurt by several other costly problems. Some manufacturers were caught with fixed-price contracts with no escalation provision in the mid 1970s, when double-digit inflation hit the United States. Still other manufacturers experienced problems trying to comply with complex railcar specifications which required new, untested technology. These manufacturers were forced to make costly design changes, when the technology did not work satisfactorily.

The problems took their toll, leaving the market to fewer companies. In 1974, St. Louis Car went out of the railcar business after losing about \$32 million on railcar contracts.

UMTA RAILCAR COMMITMENTS BY CALENDAR YEAR (1968-1978)



In 1976 another domestic manufacturer, Rohr Industries, announced it was leaving the railcar business because of losses incurred on the Washington cars and turbo trains built for Amtrak.

With those two firms gone, only four U.S. manufacturers participated on UMTA-funded railcar contracts during 1976 through 1978. The four manufacturers and their respective 1978 railcar production capacities are shown in the following schedule:

<u>Name of manufacturer</u>	<u>Location</u>	<u>Approximate annual production capacity</u>
Boeing Vertol	Philadelphia, Penn.	480
Budd Company	Philadelphia, Penn.	245
General Electric Company	Erie, Penn.	60
Pullman Standard	Chicago, Illi. and Hammond, Ind.	<u>720</u>
Total		<u><u>1,505</u></u>

All of these manufacturers underwent business changes during 1978 and 1979. The Budd Company was acquired by the German firm, Thyssen AG, in 1978. In the summer of 1978, General Electric reduced its production capacity to 60 cars per year from about 250 cars a year and did not plan to bid as a prime contractor on several late 1978 and 1979 procurements. Boeing Vertol announced in November 1978 that it plans to stop building passenger railcars once its current production commitments are completed in early 1980. Finally, Pullman Standard announced in March 1979 that it would stop making passenger railcars after completing work on existing orders.

ENTRY OF FOREIGN COMPETITION

During the first half of the 1970s, there were three instances where foreign firms participated in the U.S. urban railcar market. In 1970 Hawker Siddeley, a Canadian firm, bid successfully on an \$8.8 million contract to build 46 subway cars for the Port Authority Trans-Hudson Corporation. This contract was funded entirely by the local transit authority and did not involve Federal funds. In the other two

instances, Hawker Siddeley bid unsuccessfully in 1971 on a railcar order for Philadelphia, while Tokyo Shibaura, a Japanese firm, bid unsuccessfully on an order for Washington in 1972.

As the following schedule shows, from January 1976 through December 1978 foreign firms were awarded five of nine UMTA-funded urban railcar procurements, accounting for 62 percent of the railcars ordered and 60 percent of the contract dollars awarded.

Of the five contracts awarded to foreign firms, Canadian firms received three, amounting to \$152.8 million, representing about 38 percent of the total value awarded during 1976 through 1978. French and Italian firms received the other two contracts.

The Italian firm, Breda, received the only UMTA-funded railcar contract awarded in 1978. This procurement attracted considerable foreign interest. Twenty separate proposals were submitted by 10 firms from six nations--United States, Italy, Germany, Canada, Belgium, and Japan.

The five foreign firms awarded the UMTA-funded contracts made extensive use of U.S. components. According to foreign manufacturing representatives, U.S. material content of the contracts ranged from 42 to 80 percent. U.S. material content on cars built by U.S. firms ranged from 85 to 100 percent.

Foreign manufacturing representatives told us they use U.S. components for both economical and practical reasons. One foreign manufacturer noted that transportation costs are reduced when using U.S.-built components. Two other manufacturers also noted that U.S. custom duty is reduced since the duty is only levied on the foreign content of the imported car.

LIMITED PARTICIPATION BY U.S. RAILCAR
MANUFACTURERS FOR PROCUREMENTS DURING
1976-78

U.S. firms submitted acceptable bids on only two of the five contracts that were awarded to foreign companies. As the following schedule shows:

- Except for the Cleveland procurement, no more than two U.S. firms competed for any procurements.
- No U.S. firms submitted an acceptable offer on two of the three procurements awarded to Canadian firms. There were no U.S. bidders on the other procurement.

UMTA-FUNDED, U.S. URBAN RAILCAR PURCHASES
FROM JANUARY 1976 TO DECEMBER 1978

<u>Purchasing authority</u>	<u>Date of award</u>	<u>Value of award</u> (millions)	<u>Type of cars</u>	<u>Number of cars</u>	<u>Bidders and country</u>	<u>Comments</u>
New Jersey Dept. of Transportation	2/76	\$ 117.5	Self-propelled a/commuter	160	b/General Electric (U.S.)	Contract included options for an additional 70 railcars. These were exercised in April 1976 and April 1977 at a total cost of \$51,869,660.
Metropolitan Atlanta Rapid Transit Authority	5/76	56.3	a/Heavy rail	100	b/Franco-Belge (France) General Electric (U.S.)	
Chicago South Suburban Mass Transit District	6/76	27.7	Self-propelled a/commuter	36	b/Bombardier-MLW (Canada) Hawker Siddeley (Canada) General Electric (U.S.)	Procurement involved competitive negotiation for railcars which were similar to the existing fleet of railcars. Although one U.S. manufacturer submitted a proposal, this was for an alternate railcar which the transit authority considered unacceptable.
Massachusetts Bay Transit Authority	8/76	90.4	c/Heavy rail	190	b/Hawker Siddely (Canada) Bombardier-MLW (Canada)	
West Suburban Mass Transit District	1/77	9.4	Locomotive-hauled a/commuter	20	b/Budd (U.S.) Pullman (U.S.)	This procurement was handled through a joint buy with the Chicago Regional Transit Authority's order for 50 railcars. However, two separate contracts were signed with the Budd Co. West Suburban's contract included an option for an additional two railcars which was exercised in June 1977 for \$926,064.
Chicago Regional Transit Authority	1/77	22.5	Locomotive-hauled a/commuter	50	b/Budd (U.S.) Pullman (U.S.)	Contract included an option for an additional 30 railcars which was exercised in October 1977 in the amount of \$13,121,150.

<u>Purchasing authority</u>	<u>Date of award</u>	<u>Value of award</u> (million)	<u>Type of cars</u>	<u>Number of cars</u>	<u>Bidders and country</u>	<u>Comments</u>
Delaware River Port Authority	4/77	34.7	<u>c</u> /Heavy rail	46	<u>b</u> /Canadian Vickers (Canada)	Negotiated procurement for railcars which were similar to the existing fleet of railcars. Although one U.S. manufacturer expressed an interest in the order, it made an offer for an alternate railcar which the transit authority considered unacceptable.
Massachusetts Bay Transit Authority	12/77	10.8	Locomotive-hauled <u>a</u> /commuter	25	<u>b</u> /Pullman (U.S.) Budd (U.S.)	Contract included an option for an additional 35 railcars which was exercised in July 1978 for \$15,052,048.
Greater Cleveland Regional Transit Authority	2/78	31.0	<u>d</u> /Light rail	48	<u>b</u> /Breda (Italy) Nissho-Iwai (Japan) Boeing (U.S.) Duwag (Germany) Pullman (U.S.) La Brugeoise et Nivelles (Belgium) Bombardier-MLW (Canada) Urban Transportation Development Corporation (Canada) Cleve-Tran (Urban Transportation Development Corporation/Budd) (Canada & U.S.) Hawker Siddeley (Canada)	
Total		\$400.3		675		

a/Commuter-type cars operate on transportation systems which encompass urban passenger train service for local short-distance travel between a central city and adjacent suburbs.

b/Received contract.

c/Subway-type transit vehicle railway constructed on exclusive private right-of-way with high-level platform stations.

d/Streetcar-type vehicle railway constructed on city streets, semiprivate right-of-way, and exclusive private right-of-way; formerly known as "streetcar" ("trolley car") and "subway-surface," depending upon local usage or preference.

--Only one U.S. firm submitted a bid on the Atlanta procurement awarded to a French firm.

In those instances where no U.S. firms submitted proposals, the transit authorities went to considerable efforts to encourage U.S. firms to submit bids. For example, officials of the Massachusetts Bay Transit Authority delayed their bid opening several months and personally visited U.S. manufacturers in an effort to encourage them to bid.

U.S. urban railcar manufacturers did not actively compete on all orders awarded to foreign firms for a variety of reasons. These include limited production capacity, restrictive contract terms and conditions, lack of interest with type of railcar requested, small order size, and restrictions placed by creditors. Each is further discussed in the following sections.

Limited production capacity

Limited production capacity was cited as a reason by one or more U.S. manufacturers for not competing on the Massachusetts, New Jersey, Atlanta, and Chicago South Suburban Mass Transit District railcar procurements.

During 1976 through 1977 most of the U.S. manufacturers were either starting up a new order, completing an order, or experiencing problems with an ongoing order. Boeing Vertol, for example, was just starting work on railcars for Boston, San Francisco, and Chicago. Pullman Standard, on the other hand, was in the process of completing a large railcar order for New York. As a result, it would have been impossible for such manufacturers to meet the delivery schedule requested by the transit authorities.

Restrictive terms and conditions

One U.S. manufacturer cited restrictive contract terms and conditions as the reason for not bidding on three procurements--the Atlanta, New Jersey, and Massachusetts Bay Transit Authority railcar orders.

Although the manufacturer was unable to provide us with specific information as to the problems it had with each of the three procurements, a representative of the manufacturer stated that, generally, his company objected to transit authority contract terms and conditions which, in his opinion

- permitted the transit authority's engineer to change the design of a railcar any time before it is delivered with no requirement for the transit authority to adjust the contractor's delivery schedule or price,
- provided unfavorable escalation and progress payment terms, and
- allowed the transit authority to impose unlimited penalties on the contractor for such things as late delivery.

The Atlanta Transit Authority revised its initial contract terms and conditions based on concerns expressed by manufacturers and component suppliers. Although the U.S. railcar manufacturer, who cited terms and conditions as a reason for not bidding on this procurement, apparently found the revised contractual terms and conditions acceptable, the company chose not to bid because it claimed there was insufficient time to consider the revisions and submit a bid proposal by the bid opening date. The transit authority's board of directors, however, did not extend the bid opening date because they believed a postponement would have made it impossible to begin operating the Atlanta mass transit rail system as originally scheduled.

In the case of the New Jersey procurement, this manufacturer also requested an extension of the bid opening date to allow time to resolve contract terms and conditions which it considered unacceptable. However, transit authority officials were out of town and did not learn of the manufacturer's request until after the bid opening date. Although only one firm submitted a bid, the procurement was not reopened for bidding. The transit authority maintained that it had spent a considerable amount of time trying to resolve terms and conditions problems with potential contractors and that the final bid document resolved many of these problems.

Although the manufacturer cited the Massachusetts Bay Transit Authority's terms and conditions as the reason for not bidding on this procurement, our review of the project files did not reveal any problems with the authority's contract terms and conditions. The transit authority maintained that it was unable to interest U.S. manufacturers in its procurement not because of terms and conditions but because the manufacturers were busy with other commitments.

Lack of interest in manufacturing type of railcar requested

Two U.S. manufacturers did not compete on certain 1976-78 procurements because they were not interested in building the type of car the transit authority wanted to buy. Three of the nine 1976-78 procurements were for locomotive-hauled railcars. Officials of one manufacturer told us they were not interested in orders for locomotive-hauled railcars which did not require a propulsion system, because they are a major propulsion supplier. Officials of the other manufacturers also expressed little interest in this type of railcar.

Some manufacturers also declined to submit bids on railcars that have unique features. For example, the Chicago South Suburban Mass Transit District ordered 36 bi-level railcars operating on 1,500 volts. Railcar procurements normally involve a single-level car operating on 600 to 750 volts, and a larger quantity. The Massachusetts Bay Transit Authority's order for 190 subway cars involved cars of two different lengths--a 48-foot car and a 65-foot car.

Small order size

According to U.S. manufacturing officials, they do not generally like to bid on orders for less than 100 railcars because the startup costs on small orders are expensive. Six of the nine procurements were for less than 100 cars, and the Cleveland procurement was the only small order to attract more than two U.S. manufacturers.

Restrictions placed by creditors

As a result of losses incurred on railcar contracts during the late 1960s, one manufacturer was restricted by its creditors from bidding on orders which required propulsion systems. This manufacturer, therefore, could not bid on five procurements awarded during 1976-77 because bids were requested on these procurements prior to the date the restriction was lifted (July 1976).

EFFORTS TO RESOLVE PROBLEMS LIMITING COMPETITION ON UMTA-FUNDED PROCUREMENTS

From November 1978 through 1979, transit authorities planned to order 918 to 963 railcars. UMTA has undertaken several measures in an attempt to address some of the problems which prevented manufacturers from bidding on past railcar procurements. These measures include combining

procurements to make the order size more attractive for bidders and issuing special procurement guidelines that address some of the manufacturers' problems with contract terms and conditions. Despite these efforts, manufacturers continue to have problems with the timing of orders and contract terms and conditions. The UMTA efforts and the remaining problems are discussed in the following sections.

Joint procurements

Primarily because of UMTA's concern that bidders would be discouraged by the small size of five upcoming procurements (Baltimore, Miami, Cleveland, Philadelphia, and Washington, D.C.), it contracted for a study on the feasibility of combining some of these orders. As a result of this feasibility study, Baltimore and Miami will jointly procure 208 subway cars, while Cleveland and Philadelphia will procure about 200 subway cars. The Washington order was excluded from a joint buy because its car design was not compatible with those desired by the other four transit authorities.

Manufacturing officials generally favored the idea of combining car orders and felt joint procurements would encourage competition.

Timing of orders

Although railcar manufacturers continue to experience problems with the cyclical nature of railcar orders, little has been done to solve this problem. For example, in November 1978, five transit authorities--Chicago, Philadelphia, Baltimore, Miami, and Washington, D.C.--planned to order railcars during a 4-month period from November 1978 to February 1979. There had been no orders during the preceding 17 months.

Encouragement from the manufacturers, however, prompted the Washington, D.C., transit authority to reschedule its procurement for a later date.

UMTA officials informed us that they are aware of the manufacturers' problems, but there is little they can do to control the placement of railcar orders, primarily because UMTA has no control over the availability of local share funding. In addition, a delay in the bidding process could escalate the cost of the procurement. Although UMTA officials believe it is unreasonable to ask them to control the railcar market, they told us they try to stage each procurement at least 30 days apart. A transit authority representative, however, stated that 30 days is not sufficient

time between railcar orders to allow a manufacturer to prepare a proposal. This representative suggested that UMTA try to stage each procurement at least 60 days apart.

Contract terms and conditions

In February 1978, UMTA issued special procurement guidelines that addressed some of the manufacturers' complaints about contract terms and conditions. These guidelines were the result of a series of events dating back to the summer of 1975. At that time, the Railway Progress Institute (RPI), a national association representing railcar manufacturers and component suppliers, had complained to the Secretary of Transportation and the UMTA Administrator about the excessively restrictive terms and conditions imposed on them by transit agencies.

In October 1975 a public hearing was held on the industry's problems with contract terms and conditions. Thirteen major problem areas were identified, including the authority of the transit authority's consultant engineer, guarantee/warranty, indemnity, liquidated damages, approval of subcontractors, and inspections and tests. Afterwards, to address these problems, UMTA, with the assistance of RPI and the American Public Transit Association, a national association representing the transit operators, prepared guidelines covering 16 areas.

The manufacturers, however, were not completely satisfied with the guidelines. One said the guidelines address only about 75 percent of the problems. RPI members believed that there were still several items that were not adequately addressed in the guidelines. For example, manufacturers complained that the guidelines:

- Did not provide a limitation on penalties assessed for such things as late delivery.

- Did not provide clear and concise criteria for transit authorities to approve or reject subcontractors.

In addition, RPI members identified several items which were not covered by the guidelines. For example, manufacturers stated that guidelines are needed to:

- Adequately define the contractual and legal responsibilities of the transit authority's consultant engineer.

- Provide reasonable periods of guarantee and warranty.
- Remove limitations on escalation, i.e., economic price adjustments.
- Provide a more reasonable formula to calculate progress payments.

In November 1978, RPI representatives met with the UMTA Administrator and several other UMTA officials to discuss issues of ongoing concern to the rail rapid transit industry, including contract terms and conditions. In response to the RPI representatives' request for clarification of the guideline dealing with approval of subcontractors, UMTA officials indicated they were revising this guideline and in early 1979, the agency issued a revised guideline.

A representative of one manufacturer stated that the revised guideline was an improvement over the first guideline but that changes are still needed. He maintained the guideline is not consistent in that one section allowed the transit authority to disapprove subcontractors prior to bid opening while the second section allowed disapproval prior to contract award or after bid opening. This official believed approval or disapproval of subcontractors should be accomplished prior to bid opening.

An UMTA official disputed the manufacturer's contention that the guideline is inconsistent. He stated that the second section allowing disapproval of subcontractors after bid opening but prior to contract award relates to determining the responsiveness and responsibility of the lowest bidder and can only be done after bid opening at which time the lowest bidder is determined. He said this section now requires transit authorities to follow prescribed practices as outlined in the Federal Procurement Regulations to determine the responsiveness of the low bidder.

According to the RPI minutes of the November 1978 meeting, UMTA also agreed to reopen its efforts on several items not fully covered in the original guidelines. According to an UMTA official, the agency is working on such things as the guarantee and warranty issue and escalation and progress payments. RPI officials seem satisfied that UMTA was addressing the problems and issues raised in the November meeting.

Despite these efforts, contract terms and conditions continue to be a problem for some manufacturers. For

example, on the recent Southeastern Pennsylvania Transit Authority's order for light rail vehicles in which bids were opened on December 21, 1978, one manufacturer did not bid because it objected to certain terms and conditions. We cannot report on its specific objections since the manufacturer considered the details to be proprietary information.

A representative of the transit authority told us that this manufacturer was the only one who had major problems with the terms and conditions. The representative stated that the transit authority did revise one of its terms and conditions dealing with the assessment of penalties to incorporate a limit on the penalties as requested by the manufacturer but that the manufacturer considered the limit to be unreasonable.

Although the manufacturer submitted a letter to the transit authority protesting the terms and conditions in the contract, it did not file a formal complaint with UMTA. In fact, UMTA officials were not aware of the manufacturer's specific problems. A representative of the manufacturer told us that a complaint was not filed with UMTA because UMTA would not have taken any action. An UMTA official pointed out, however, that unless these problems are brought to their attention there is nothing they can do to resolve them.

Discussions with manufacturers during November 1978 through January 1979 indicated they were also having problems with the terms and conditions of two upcoming orders--the joint procurement of subway cars by Baltimore and Miami and the Washington, D.C., procurement. Manufacturers, for example, claimed the transit authorities were still not providing a reasonable limitation on penalties 1/ and that one authority was limiting the amount of escalation. However, subsequent discussions with one manufacturer and representatives of the transit authorities indicated that the manufacturers' problems were being resolved. Transit authorities' representatives also expressed a willingness to work with the manufacturers to resolve any remaining problems.

1/According to manufacturing representatives, penalties can be imposed up to 100 percent of the contract value. They believe this is unreasonable and that penalties should be limited to no more than 5 or 10 percent of the contract value.

An UMTA official told us that for issues such as terms and conditions they prefer that the transit authorities and the manufacturers try to negotiate a solution. If they cannot agree on a solution then, according to the official, UMTA will attempt to resolve the problem. However, the official pointed out that generally manufacturers must file a complaint with UMTA before it will become aware of the problem.

OTHER MATTERS AFFECTING RAILCAR PROCUREMENTS

Procurement study

Section 309 of the Surface Transportation Assistance Act of 1978 (Public Law 95-599) requires the Secretary of Transportation to evaluate the procurement process used by recipients of UMTA funds to purchase rolling stock and other technical equipment. The evaluation is to consider the benefits of more widespread utilization of negotiated procurements. The act requires the Secretary to submit a report to the Congress on the results of this evaluation together with recommendations for necessary legislation by July 1, 1979.

In response to this requirement, UMTA formed a Procurement Study Task Force in late 1978. The tentative plans of this group are to (1) research the legislative history of section 309, (2) determine the approach and methods the study should take, and (3) determine advantages and disadvantages of the present procurement process and alternative methods.

Railcar standardization

In view of rapidly increasing rail transit car costs, the declining reliability in newly delivered equipment, and the trend toward customized designs, UMTA initiated a rapid rail standardization project in 1976. The goal of this project, which consists of two phases, was to develop jointly with industry a standardized specification that each transit authority can use with minimum modification to meet its requirements. The anticipated benefits include reduction in the dramatic rise in railcar prices to a more reasonable level, reduced operating costs, greater car reliability and fleet availability, and an orderly method for technology improvement.

The first phase of the project was completed in August 1976. The UMTA contractor for this phase found that railcar standardization was feasible and recommended development of: (1) performance and dimensional specifications, (2) a qualified subsystems product list, (3) a car system integration and prototype certification procedure, (4) uniform acceptance test procedures, (5) subsystem dimensional standards, (6) subsystem interface standards, and (7) provisions for evolutionary specification improvement.

UMTA adopted the recommendations of the contractor and initiated the second phase of the project in September 1977. The UMTA contractor for this phase estimated work will be completed in August 1979. UMTA then plans to solicit industry comments on the second phase results before it implements standardization on future procurements. At this time, it is not known when railcar standardization will be fully implemented for industry use.

CONCLUSIONS

The five urban railcar procurements awarded to foreign companies during 1976 to 1978 resulted largely because U.S. firms were unwilling or unable to bid on them or did not submit acceptable bids. There were a variety of reasons why U.S. manufacturers did not actively compete for these procurements. UMTA has undertaken several measures to address the problems which prevented manufacturers from bidding on past procurements. Manufacturers, however, continue to have some problems with the timing of railcar orders and contract terms and conditions.

In the case of the timing of railcar orders, UMTA maintains that there is little it can do to control the placement of railcar orders other than trying to stage them at least 30 days apart. We agree that it would be difficult, because of the uncertainty involved in obtaining local financing, for UMTA to control the timing of orders but we would encourage UMTA to continue to work with the manufacturers and transit authorities to resolve problems in this area.

With respect to contract terms and conditions, UMTA is attempting to work with the manufacturers in an effort to resolve the problems. The agency issued special procurement guidelines which addressed some of the manufacturers' problems with terms and conditions and it is in the process of issuing additional guidelines.

AGENCY AND MANUFACTURERS COMMENTS
AND OUR EVALUATIONS

We solicited comments on this report chapter from the Department of Transportation, the Railway Progress Institute, Boeing Vertol Company, the Budd Company, Pullman Standard, and General Electric. Only the Department of Transportation, Boeing Vertol Company, and the Budd Company had specific comments. (See apps. II to IV.)

The Department of Transportation agreed with our conclusions that contract terms and conditions and technical specifications may have influenced some U.S. railcar manufacturers not to bid on recent procurements. The Department stated that UMTA has been most responsive to the problems that the U.S. railcar industry has encountered with terms and conditions imposed in past procurements. The Department further stated that meetings have been held recently with the U.S. railcar industry to identify further contractual problems that they have encountered and that UMTA will take appropriate action to resolve such problems when a full definition and understanding of the problems can be reached.

Boeing Vertol and the Budd Company do not agree that UMTA has been responsive to problems manufacturers have experienced. Boeing maintains UMTA has not taken a leadership role in managing the development and acquisition of equipment and that UMTA has taken a "hands off" attitude with respect to the health and stability of the manufacturers. In addition, Boeing stated that since the issuance of UMTA "Guidelines for Terms and Conditions," UMTA has not rigorously enforced compliance.

Boeing cited three examples of clauses from a recent railcar procurement to indicate UMTA was not enforcing the guidelines. Two of the clauses, however, were not addressed by the 1978 guidelines. Although the third clause cited was addressed by the guidelines, an UMTA official indicated the manufacturer never advised UMTA of its specific problems with this clause. This official acknowledged that UMTA was generally aware of the problems some manufacturers were having with the first two clauses cited by Boeing and that they tried to encourage the transit authority to make changes where appropriate.

Boeing and Budd were also critical of UMTA for not exercising more control over the timing and placement of railcar orders. Budd stated that considering the desirability of having as many bidders as possible, the timing, itself seems

to drive people away because no bidder will have adequate time to submit a valid bid if he only has 30 days between bids.

The Department stated that spacing of railcar orders will receive UMTA's attention on a continuing basis and that, whenever feasible, and without having a detrimental impact on new system implementation or system rehabilitation, UMTA will do all practical to avoid the bunching of future railcar orders.

We believe that if UMTA closely monitors the placement of future railcar orders and does all practical to space the orders, this could help to increase competition.

CHAPTER 3

THE INTERNATIONAL URBAN RAILCAR MARKET

EXCESS CAPACITY AND THE NEED TO EXPORT

The Gordian study concluded that foreign manufacturers were finding it increasingly necessary to export passenger railcars to maintain the domestic industry and its associated employment because

- the utilization of manufacturing capacity was less than 50 percent throughout the noncommunist world;
- there had been no capacity decreases in the countries studied and, in fact, Italy was still adding capacity;
- several countries had limited their transit expansion plans, thereby diminishing demand for additional cars; and
- the majority of railcars built before World War II had been replaced, signaling a decline in the replacement markets.

Because foreign railcar manufacturers tended to be more diversified than U.S. manufacturers and shift production resources from one product line to another, we could not verify the Gordian statement that less than 50 percent of the available manufacturing capacity was being utilized.

It appears, however, that in several countries, as reported in the Gordian study, foreign manufacturers are capable of producing more railcars than are currently being ordered, as evidenced by the following examples:

- In Canada, although railcar manufacturers could produce approximately 480 cars annually, assuming a 40 hour workweek, the annual domestic market was estimated to average only 100 to 150 cars.
- In Japan, where railcar firms for a long time were capable of producing more railcars than were being ordered, current plant utilization was estimated to be about 50 percent of capacity. For example, in 1976, the railcar industry produced 1,674 passenger, electric, and diesel railcars when it was capable of producing twice this number.

-- In West Germany, railcar orders from the national railroad, which purchased about 40 percent of the railcars produced in that country, had been declining since 1970. In 1977, 284 railcars were produced for the national railroad compared to 335 in 1976, a 15-percent reduction.

The Gordian study reported that none of the three countries studied in detail (France, Italy, and Japan) had reduced its railcar industries' production capacity. Although we were unable to confirm this finding for France, we did find that other countries had reduced capacity. For example, in Belgium the railcar industry, which prior to World War II consisted of several railcar firms, now consisted of only one firm. Officials of the surviving firm maintained there was no overcapacity in Belgium's railcar industry.

Manufacturing officials in Japan, West Germany, and Canada reported significant changes in their work forces in response to reduced railcar orders. According to an association of German railcar manufacturers' official the German rail industry's labor force had decreased more than 50 percent (from 22,000 to 10,000) in recent years. In Canada, one of the three manufacturers reported being able to shift its labor force to other product lines when faced with reduced railcar orders. The other two manufacturers reported they were highly susceptible to demand fluctuations and resorted to laying off employees during slack periods.

Officials of the Japanese Ministry of Transportation and two railcar manufacturers told us that Japan's rail industry had been able to adapt to reduced demand for railcars by diversifying, not replacing retiring personnel, or transferring employees to other divisions. In addition, a representative of one manufacturer, who was producing about 40 to 50 electric railcars a month when it could be producing about 85, stated that his firm curtailed subcontracting work to other firms, preferring now to do the work itself.

The Gordian study accurately reported that additional capacity was being added in Italy as a result of the opening of a new plant by a Swiss-owned firm. The new plant will employ about 200 people compared with some 13,000 employees in the existing railcar firms. Thus, the additional capacity is negligible and, further, officials of the Swiss firm maintained projected demand created by a new government financial program would exceed Italy's domestic capacity. Other Italian manufacturers and government officials, however, were not as optimistic as the Swiss firm although they believed there

would be substantial increases in orders. In spite of the additional capacity being added, according to one manufacturer, the Italian Government planned to restructure and streamline the railcar industry. This reorganization plan was viewed as an effort to limit the number of Italian firms that would be producing new railcars and thereby increase the efficiency of those firms that maintained this capability.

Contrary to the Gordian finding, with the exception of the West German national railroad, we did not find that transit expansion plans were being limited or cut back. Specifically, we found that:

- In West Germany, although buses instead of rail systems were being considered for rural areas and although the elimination of rural rail system routes was expected to sharply reduce the demand for intercity passenger railcars, Germany's local transit authorities were expected to keep their demand at current levels. Currently, German railcar manufacturers sold about the same percentage of their passenger railcar production to the national railroad and local transit authorities--40 percent to each. The remaining 20 percent was exported.
- In Italy, the largest purchaser of railcars, the national railroad, was expecting to substantially increase its railcar orders in the near future, and one municipal transit authority planned to purchase 150 light rail vehicles within a few months.
- In Japan, the Japan National Railways, which purchases about 55 percent of the country's railcar production, planned to open additional intercity lines in 1980. This is expected to result in railcar orders exceeding current levels. Also, three local transit authorities contacted were in the process of planning or completing new transit lines.
- In France, the consulting firm Gordian Associates used obtained information which indicated that the national railroad and the Paris metro will have reduced demands for railcars during the 1980s because of recent railcar purchases. However, according to a U.S. transit magazine, the Paris metro plans to extend its system during the 1980s. In addition, French manufacturers have delivered railcars to two local transit systems. Since both systems were new and would be expanded, additional railcar orders were

expected. Further, another local system will begin operating in a few years.

--In Belgium, the city of Brussels was constructing additional metro lines and was expected to begin full-scale operations in the late 1980s. Additional expansions of this system were planned by the year 2000. Also, other cities in Belgium were planning metro lines.

--In Canada, neither the Montreal nor Toronto transit system, which procured the greatest portion of Canada's passenger railcars, were planning any major purchases of railcars within the next few years. However, Canadian government officials identified four other Canadian cities as being likely to build transit systems in the near future.

The Gordian finding that the replacement market in foreign countries had declined because the majority of the railcars built before World War II had been replaced was not entirely correct. Although the French, Japanese, and German national railroads had replaced old passenger railcars, the Italians and Canadians had not. In Italy, the national railroad proposed a new redevelopment program to replace and expand Italy's rolling stock. If the program is approved, it would result in substantial increases in railcar orders, as about 44 percent of Italy's railcars are over 35-years old, according to an Italian State Railway's study which was cited in the Gordian study.

In Canada, the national railroad is expected to have a modest equipment investment program of \$30 million annually for the next 5 years. One Canadian official stated Canada had not replaced its intercity passenger railcars in several years, suggesting a potential market in this area.

In addition, the West German National Railroad planned to decrease the useful life of its passenger railcars from 35 to 30 years to 10 to 15 years. This action would presumably increase future railcar orders in this country.

Several manufacturers pointed out that although they would be interested in exporting railcars during periods of reduced domestic demand they did not believe they were forced to seek export markets during such periods because there were other ways, as previously discussed, of adapting to reduced demand. In addition, not all foreign railcar manufacturers were capable of exporting. For example, there are over 30 railcar firms in Italy but, according to one manufacturer, only two

of these firms had the technology and resources needed to export. Most of the remaining firms are considered too small to export. One of the two Italian firms stated they had only been successful in exporting diesel railcars and had not exported any railcars during 1978.

THE UNITED STATES AS A MAJOR RAILCAR EXPORT MARKET

The Gordian study concluded that the only potential export markets for foreign companies were in the Third World and the United States. But according to the study, because the Third World market would be slow in developing and because Third World nations would want to develop their own manufacturing capabilities, potential export sales would be reduced in that area. Therefore, the study concluded, the United States would become the prime export market for foreign firms because of the U.S. Government's continuing commitment to urban mass transit, and the nonexistence of entry barriers. 1/

Foreign firms contacted expressed interest in upcoming U.S. railcar orders. However, many of them were only interested in the smaller orders (less than 100 cars) for which they believed they could effectively compete against U.S. firms. Generally, the U.S. market was viewed as one of many potential export markets and was seldom identified as the prime market. In addition to the U.S. market, other markets, such as the oil producing and exporting countries, South America, Africa, and Mexico were generally cited by foreign manufacturers as offering export opportunities because of these countries' planned future procurements of railcars.

Available export statistics for 1976 and 1977 show that 43 percent of the European Community countries' exports of self-propelled electric railcars went to countries within the Community. Most of the remainder was exported to Canada, Chile, Yugoslavia, and Tunisia. Approximately 87 percent of non-self-propelled exports went to countries outside the European Community, with the major share going to Algeria, Ivory Coast, Switzerland, and Iran.

1/ The Buy America provision which is discussed in chapter 6 had not been enacted at the time the Gordian report was released or when we conducted most of our interviews with foreign officials.

Japanese exports of electric railcars, diesel railcars, and passenger coaches during 1976 and 1977 went primarily to Asian countries, Nigeria, Brazil, Egypt, and New Zealand. Canadian officials told us they had only exported self-propelled passenger railcars to the U.S. and non-self-propelled railcars to Mexico.

While many Third World countries were developing their own manufacturing capabilities, many foreign manufacturing officials still considered these countries to offer some excellent export opportunities. Foreign manufacturing officials pointed out that, when they sell railcars to countries starting new systems, they do not have to worry about changing their railcar products to meet different standards and specifications. According to the officials, the ability to use standards similar to those used in their domestic markets enables them to produce a more competitive export product.

As the Gordian study indicated, prior to the passage of the Surface Transportation Assistance Act of 1978 with its Buy America provision, there were no formal entry barriers to prevent foreign firms from competing for U.S. urban railcar orders. Although the United States does levy 11.5 percent duty on fully assembled, imported, self-propelled railcars and 5.5 percent duty on the value of foreign components if the railcar is not assembled, representatives of two foreign manufacturers that won contracts in the U.S. stated they did not consider those duties as obstacles to their competing in the U.S. market.

Not reported in the Gordian study, however, is the fact that the small U.S. market for intercity passenger railcars is effectively closed to foreign firms. These types of railcars are purchased by National Railroad Passenger Corporation (Amtrak). Amtrak has had an internal Buy America procurement policy and had not purchased any foreign made rolling stock since 1974. In addition, the Amtrak Improvement Act of 1978 (Public Law 95-421, Oct. 5, 1978) includes a domestic preference provision for all Amtrak purchases of more than \$1 million in contracts entered into after the date of enactment. Amtrak officials maintained they rarely buy products from foreign suppliers if the product can be supplied by U.S. firms. For example, Amtrak is leasing some railcars from a Canadian firm for testing. According to Amtrak officials these cars incorporated new technology not available in the United States. They stated, however, if a future decision is made to purchase this type of equipment, the Canadian firm would have to form an agreement with a U.S. supplier to supply the equipment to Amtrak.

Foreign manufacturers did point out several problems which do affect their participation in the U.S. market. For example, West Germany, Belgium, and Japanese firms cited the decline of the U.S. dollar as adversely affecting the competitiveness of their products. From March 1976 to September 1978, the dollar depreciated 20 percent or more against their domestic currencies. However, the competitive disadvantages resulting from appreciating currencies could be offset by the willingness of foreign manufacturers to absorb some of the appreciation through reduced profits. Japanese manufacturers have, in some instances, done this but it is not known if railcar manufacturers in any of the three countries mentioned have sought to absorb the appreciation of their currencies.

Foreign manufacturers also cited legal costs associated with doing business in the United States and more extensive reporting requirements about activities and finances than found in other markets. U.S. transit authorities' unique design requirements were also cited by several foreign firms as to why they did not bid on some U.S. railcar orders.

Most of the problems cited, however, do not appear to be serious enough to prevent these foreign firms from competing for U.S. orders. For example, firms from two of the three countries who cited the decline of the U.S. dollar as a hindrance in competing in the United States submitted lower bids than the only U.S. bidder on Philadelphia's order for about 100 light rail vehicles. The bid results were announced in December 1978.

Even the Buy America provision of the Surface Transportation Assistance Act, discussed in chapter 6, does not appear to pose any major barriers to foreign firms from competing in the United States provided they are willing to adjust their manufacturing procedures or assembly locations. In addition, the fact that there is now only one U.S. railcar manufacturer willing to bid on railcar procurements could result in increased foreign participation.

CONCLUSIONS

Although the Gordian study accurately reported that many foreign countries were capable of producing more passenger railcars than required, the study was not correct in implying that the only mechanism available to deal with this problem was to expand exports. Increasing exports was only one of several methods used by foreign manufacturers

to bring passenger railcar production more in line with demand. Also cited were (1) trying to reduce productive capacity by not replacing retiring personnel, (2) transferring employees to other divisions with the company, and (3) curtailing subcontracting work. In addition, in several countries, future railcar demand did not appear as bleak as portrayed by the study.

While most foreign railcar firms we contacted were interested in exporting railcars to the United States, contrary to the Gordian study claim, they did not view the United States as the prime sales target but only one of several potential export markets. However, the U.S. market could be viewed more favorably now that there is only one U.S. railcar manufacturer willing to compete for U.S. urban railcar orders.

CHAPTER 4

OPENNESS OF FOREIGN MARKETS

TO U.S. RAILCAR MANUFACTURERS

The Gordian study concluded that domestic markets in foreign countries are essentially closed to all but these countries' domestic firms, due to prevailing industry structures and government/industry relationships. Most countries visited maintained their railcar procurements are open to foreign competition. However, foreign procurement agencies rarely purchase railcars from suppliers who did not have local manufacturing facilities when there were local firms capable of producing the product.

In our September 30, 1976, report entitled "Governmental Buy-National Practices of the United States and Other Countries--An Assessment" (ID-76-67), we reported the following as some reasons cited by procurement officials in Great Britain, France, Germany, and Japan for limiting procurement to domestic sources:

1. The most frequently expressed reason was a traditional tendency to favor domestic firms. Procurement officials cited some advantages of this favoritism: familiarity and ease of dealing with local suppliers; the ready availability of service, maintenance, and repair parts; and the greater facility to legal recourse against an incorporated domestic company in case of contractual problems.
2. Officials desire to protect domestic companies and jobs. According to procurement officials this rationale was being invoked frequently because of recessionary trends in their respective economies.

These reasons were also cited by officials in several countries we visited. In addition, we noted the following procurement practices which effectively would serve to exclude the United States and other foreign firms not having manufacturing facilities in these countries, from successfully competing for railcar procurements:

1. Procurement officials of the national railroad in Italy, in addition to acknowledging that they consider it their obligation to protect the domestic railcar industry, follow the practice of dividing up railcar orders so that the orders can be spread

among several firms. The order size would, therefore, probably not be large enough to interest non-domestic firms to invest the resources necessary to undertake the production.

2. In Japan and West Germany, the procurement authority, rather than the prime contractor, negotiates the contracts for the component supplies, such as brakes and air conditioning, and then supplies these components to the prime contractor for final assembly. This practice would make it essential that the prime contractor be located in the particular country.
3. In Japan, firms must be certified as a qualified supplier before they would be invited to bid on procurements. The criteria used to qualify suppliers was not specified.

All four U.S. railcar manufacturers active in the U.S. market during 1976 to 1978 considered the urban passenger railcar markets in the six countries we visited to be closed. None of the manufacturers has sold urban passenger railcars in any of the six countries and a bid was submitted in only one country.

U.S. suppliers of railcar components (e.g., brakes, propulsion system, and doors) contacted also stated they considered markets in these countries closed. A representative of one supplier which sold components in foreign markets stated that his company was able to sell in these markets only because they had production facilities located there. He also stated that although many of these countries request bids on their procurements there was no way a foreign company could win the procurement if there was a domestic supplier of the product.

The railcar procurement practices of the six countries visited are discussed in the following sections.

EUROPEAN COUNTRIES

The following table shows the number of electric self-propelled railcars imported in 1976 and 1977 by the four European countries we visited.

	<u>Number of units imported</u>	
	<u>1976</u>	<u>1977</u>
Germany	0	6
Belgium and Luxembourg	2	22
France	3	2
Italy	<u>0</u>	<u>0</u>
Total	<u>5</u>	<u>30</u>

Imports of self-propelled railcars were extremely small. Further, only 2 of the 35 units imported by the five countries in 1976 and 1977 came from countries outside the European Community.

As we reported in 1976, a high level European task force was commissioned in November 1973 to review the reasons for the low levels of intra-European Community public procurement. After a 6-month fact-finding mission, it concluded that the major obstacles to increased openness in public procurement were political, not technical in nature. According to the task force report, the major difficulties are:

1. A deep-rooted feeling, common to politicians, officials, and industry that the taxpayers money should be used to purchase domestic and not foreign goods.
2. All governments regard themselves (and are so regarded to varying extents by their electorates) as responsible for their countries' economic well-being, employment, balance of payments, and industrial development. Government purchasing is used to fulfill these responsibilities.
3. The public buyer has responsibility to his government and, in the case of criticism, to the public for his actions. A private buyer can make a private bargain and this is the essence of trade. The public buyer must always be aware that he may have to defend his actions, sometimes against political pressures generated by the rejected bidder.

The task force report recommended that public utilities, such as railways, not be included in a prospective European Community agreement to open up public procurement to international competition.

The report concluded that the relationship between utilities and national suppliers was so inextricably intertwined that an attempt should not be made to sacrifice this relationship to a more liberal public procurement policy.

During our visit, European officials acknowledged the continued existence of obstacles to increased openness in procurements. An Italian Government official stated that while the European Economic Community advocates free trade this is not the case for railway equipment. He said there are few cases where foreign manufacturers compete with domestic companies for railcar procurements. Another official in Italy stated that all European governments protect their railcar industries. This official believed that inroads into European markets are possible through technical innovations not by offering lower prices. A German official noted that while the European Community has made efforts to open up railcar procurements it is very difficult to change procurement practices which have been in existence for almost 100 years.

Information on the railcar procurement practices of the four European countries we visited follows.

West Germany

Officials of West Germany's Federal Railroad, which accounts for 40 percent of West Germany's railcar procurements, acknowledged that when the railroad is purchasing railcars to fulfill needs of its country it is only concerned with dealing with German manufacturers. They explained that they follow a two-step procurement process. During the first step, or development phase, they cooperate with the railcar industry on the design and development of the railcar. According to the officials this cooperation is competitive in nature in that they specify what they want and then solicit German manufacturers to submit proposals stating what the manufacturer can offer to meet the specifications, delivery time, and price.

Once the prototype railcar has been designed, developed, and tested, the blueprints are sent to the purchasing department. Just because a manufacturer receives the development contract does not mean it will receive the production contract. The manufacturer is selected through open competition to produce the railcars and is told by the Federal Railroad what type of brakes, wheels, air conditioning, energy supply system, and other items will be used. The Federal Railroad supplies all components to the prime contractor. Officials

noted they may use more than one prime contractor to assemble the railcars when there are short timeframes for delivery.

Federal Railroad officials did not believe it would be possible for a foreign firm to obtain a development contract, citing language barriers and differing standards as prohibiting factors. They also stated they were required to give preference to manufacturers located in West Berlin, border areas, and those firms hiring disabled persons.

Local transit authorities account for another 40 percent of Germany's railcar procurements while the remaining 20 percent is exported. German officials noted that a Hungarian firm won a contract to produce light rail vehicles for one of Germany's cities.

Officials of one municipal transit authority told us that while their procurements are open and United States or other foreign manufacturers could be considered for their orders such consideration is likely to be limited to only those foreign companies represented in West Germany. This transit authority, like the West Germany Federal Railroad, negotiates contracts with the component suppliers and provides these components to the prime contractor for final assembly, thus making it essential that the prime contractor be located in Germany. The officials stated they would be very apprehensive about dealing with a firm located outside of West Germany, particularly in regard to servicing and spare parts.

Italy

Italy is the only country visited which has a law requiring that the domestic industry be given preference by the State Railways, the largest purchaser of railcars in Italy. State Railways representatives also stated that they are obligated, based on the law establishing the agency, to protect and assist the domestic industry whenever possible. The representatives could not recall having ever purchased a railcar from a foreign firm.

The State Railways representatives stated that to assist the many railcar firms in Italy, they follow the practice of dividing up their railcar orders so that the orders can be spread among several firms. Initially the agency would ask for bids on a portion of their order and award the contract for this portion to the lowest bidder. The remainder of the order would be divided up among firms willing to accept the price established by the lowest bidder. The representatives

noted that it would not be economical for most foreign firms to compete for the quantities being ordered. In fact, representatives of one Italian firm complained that this practice was uneconomical and they believed it affected their competitiveness in foreign markets.

Representatives of one municipal transit authority stated they have never purchased railcars from a foreign supplier. They said there have been instances where they have requested foreign bids but this was done primarily to induce domestic firms to lower their prices. Representatives of another municipal transit authority stated that although they expected to receive some foreign bids for an upcoming railcar procurement it would be unlikely that they would accept a foreign-made product because of local political pressures.

Despite the obvious preference shown by Italian procurement authorities for Italian railcar firms, a Swiss-owned railcar firm located in Italy has been able to penetrate the market. Officials of the firm explained that although they are not part of the association of Italian manufacturers they have been able to enter the market on a step by step basis, gradually building experience and gaining a reputation. They pointed out that because of the practice of dividing up orders among the domestic firms, the industry had become stagnant and there was little technological development and competition. According to the official, his firm was able to offer procurement authorities a technologically superior product at a lower price than existing Italian firms.

Belgium

Belgium officials maintain their railcar procurements are open to foreign competition. They stated they invite bids from various European manufacturers and award contracts on the basis of the lowest bid. According to the officials, no U.S. railcar firm has ever been asked to bid on their procurements because they claim the U.S. firms have no experience in the field. They also claim no U.S. firms have ever expressed an interest in their railcar orders. The officials acknowledged that no foreign firm has ever been awarded a contract to build railcars for Belgium.

France

The French Government did not permit us to meet with French railcar procurement officials. However, a French government official stated that there are very strong links

between the French National Railroad and French railcar manufacturers. He maintained that although the National Railroad is 51 percent government-owned, the French Government does not require them to buy only from French firms. According to this official, railcar procurements are generally open, and negotiated procurements are only used in specific instances when regulations identify that negotiated bids are proper.

We reported in 1976 that although France does not have any formal "buy France" legislation, local firms are heavily favored by the French Government. All business officials we interviewed at that time commented that the French Government and nationalized industries favor local firms, and rarely, if ever, imported items which were available domestically. As further evidence of the preference shown French firms, one French railcar manufacturer representative contacted during this study told us his company has never had to compete against foreign manufacturers in the French railcar market.

Representatives of Belgium's only railcar manufacturer told us they had been able to sell light rail vehicles to France. It was pointed out, however, that at the time French firms did not have much experience in building this type of railcar so the French decided to seek foreign sources.

JAPAN

Four types of rail systems procure railcars in Japan--the national railroad, metropolitan, semipublic, and private. There appears to be little opportunity for foreign railcar firms to sell to any of the four systems.

According to national railroad officials, in 1962 they solicited bids from 18 countries for the original procurement of bullet trains. No foreign firms submitted bids. Officials could not explain why no foreign firms bid, but speculated that perhaps Japan was the only country that had the technological capability to build the specific type car requested.

Currently, the national railways, which accounted for about 54 percent of railcars purchased in Japan during 1976, only purchases railcars from manufacturers which they have certified as being qualified to build railcars. Although there are currently only Japanese firms certified to build railcars, Japanese officials claim that their market is not closed to foreign competition saying that if a foreign firm could demonstrate a successful railcar performance record it might be possible for them to enter the market.

Japan has six metropolitan subway systems which are funded about equally by the transit authority and the central and local governments. Like the national railways, only qualified firms as determined by the local government, can bid on railcar procurements. Additionally, only firms which have prior experience selling in Japan are eligible to become qualified to bid. As is the case with the national railways, foreign firms are effectively excluded from competing for these procurements.

Semipublic systems also receive central and local government funding but are not required to follow the government procurement regulations. According to a representative of one such system, they limit purchases to four Japanese manufacturers which they utilize about equally. They buy all the components and merely ask the manufacturer to assemble them. This policy is similar to Germany's and appears to limit procurements to those firms actually located in Japan. The representative said that foreign firms could bid on a contract, but because of the language barrier and the close relationships which have been built up between the manufacturer and the procurement authorities it is unlikely that a foreign firm could win an award.

Private railway systems receive no government funds and therefore are not subject to any government procurement regulations. The one system we contacted does not purchase railcars since it is capable of manufacturing its own cars. Information was not available on the other private systems.

CANADA

According to Canadian officials, Canada does not have a national buy-Canada policy. The national railroad follows the normal commercial competitive procurement practices. On the recent order for 50 coaches, which was awarded to a Canadian firm, one U.S. manufacturer submitted a bid.

The municipalities of Toronto, Ontario, and Montreal, Quebec, procure the greatest portion of Canada's passenger railcars. Toronto's rail system was started in the mid-1950s while Montreal's rail system was started in the mid-1960s. The only other Canadian city operating a rail system was Edmonton, Alberta. Calgary, Alberta was in the process of implementing one at the time of our review. All four systems are controlled by municipal or regional governments and do not receive any Canadian Government funding. Federal officials said they have no control over the procurement policies of these systems.

Representatives of the Montreal and Toronto transit authorities stated that their procurements are openly advertised in the local papers and any firm, including foreign firms, are free to bid. The criteria for awarding the contract is the lowest responsive bidder. However, representatives of both authorities stated Canadian firms would be shown preference. The nature of the preference was not specified. This preference was evident in 1977 when Toronto purchased 190 light rail vehicles from an Ontario manufacturer even though a Quebec firm submitted a bid which was \$2 million lower. The Provincial government cited the high unemployment rate in the province as one reason for awarding the contract to the local firm.

Representatives of the Montreal transit system stated that in addition to advertising their procurements locally they also invited selected firms to bid on their 1974 order for 420 railcars. According to the representatives, the one U.S. firm invited to bid did not submit a proposal. Representatives of Toronto's transit system stated they had not received a foreign bid in the last 5 years.

Edmonton and Calgary, located in a province which does not have railcar manufacturers, purchased light rail vehicles from a German firm. According to Canadian officials, although there was a Canadian firm capable of producing the railcar, the cities wanted a proven product in a short time-frame and, therefore, decided to buy an existing car from a foreign manufacturer. The German manufacturer told us that under the terms of the contract it progressively increases the Canadian content on the cars from 25 to 80 percent.

EFFORTS TO ELIMINATE DISCRIMINATORY PROCUREMENT PRACTICES

One of the main objectives of the multilateral trade negotiations which were initiated in Tokyo, Japan, in 1973 was to eliminate or reduce nontariff barriers, such as government procurement practices which discriminate against foreign suppliers. In late 1978, negotiators reached a tentative agreement on a procurement code requiring that countries provide potential foreign suppliers with treatment no less favorable than that accorded domestic products and suppliers. Procurement of passenger railcars, however, will not be subject to the code's provisions since the code is not applicable to

--State, local, and other political subdivision purchases even though the majority of the funds may come from

the national government since the controlling factor is the source of procurement rather than the source of funds and

--the intercity railcar market which is dominated by public corporations both here and abroad.

CONCLUSIONS

The Gordian study accurately reported that foreign railcar markets in Europe, Japan, and Canada were essentially closed to all firms not located in these countries. Foreign procurement agencies rarely purchase railcars from foreign suppliers who do not have local manufacturing facilities when there were domestic firms capable of producing the product.

CHAPTER 5

GOVERNMENT ASSISTANCE TO RAILCAR MANUFACTURERS

AND ITS EFFECT ON COMPETITION

The Gordian study maintained that foreign governments provide their domestic railcar manufacturers with a multitude of tax and nontax incentives and subsidies that were not normally available to U.S. manufacturers. As a result, foreign manufacturers had unfair competitive advantages over U.S. firms in both U.S. and Third World markets.

We examined these issues and determined that:

- Although the Gordian study's description of the differences in the tax systems of the United States and other countries was accurate, the complexities involved in analyzing these differences prohibited any clear-cut determination about their effect on the relative competitiveness of U.S. and foreign railcar manufacturers.
- Although foreign governments in many cases provided various tax and nontax incentives and subsidies, such benefits were not automatically available to railcar manufacturers and, in some cases, railcar manufacturers were not eligible for them at all.
- Certain regional aid assistance programs provided by foreign governments did not appear to provide foreign manufacturers with a competitive advantage in export markets.
- Contrary to the study's findings, U.S. official export financing programs available to railcar manufacturers through the Export-Import Bank (Eximbank) generally appeared to be competitive with those offered by foreign governments. We found that other financial arrangements, however, besides official export financing, were sometimes used by foreign countries and could put U.S. manufacturers at a competitive disadvantage.
- Foreign government ownership of railcar manufacturing facilities, as accurately pointed out in the Gordian study, could provide benefits which were not available to U.S. firms.

DIFFERING TAX SYSTEMS

Structural differences in tax policy

The Gordian study's description of the differences in tax systems between the United States and other foreign countries was essentially accurate. However, their interpretation that these differences adversely affect the international competitiveness of U.S. versus foreign firms raised a controversial issue for which there is no apparent consensus of opinion. As an illustration of the complexity involved in analyzing these differences the Gordian study stated that certain foreign countries did not tax or largely exempted foreign source income from taxation because under their territoriality system of taxation, foreign branch profits were only taxed by the country where the branch was located. The United States, on the other hand, taxed the profits of foreign branches, but provided a foreign tax credit for any taxes paid in the foreign country.

The benefits accruing from a territorial system of taxation were overstated in the Gordian study in that firms operating under this system would be taxed less only in low tax countries. Both U.S. and foreign firms would be taxed about equally if branch operations were located in high tax countries because the U.S. foreign tax credit would offset any domestic U.S. taxes. Despite these differences in treatment of foreign source income, it was unclear what effect they may have on international competitiveness. A U.S. Treasury Department official did not believe the differences would be an influential factor in encouraging exports.

Another difference in tax policy which the study cited as putting U.S. firms at a competitive disadvantage resulted from international tax practices which allowed the rebate of indirect taxes on export while prohibiting the rebate of direct taxes. 1/ European countries and Japan relied more heavily on indirect taxes than did the United States.

It was also very difficult to reach any firm conclusions on the rebate of indirect taxes. The extent to which foreign tax adjustments put U.S. producers at a disadvantage depends on the extent to which (1) direct taxes, such as taxes on profits, are actually shifted to the consumer through higher prices

1/Examples of indirect taxes are sales taxes, excise taxes and value-added taxes which are levied upon goods while direct taxes, such as corporate income taxes and social security taxes, are levied upon the factors of production.

and (2) indirect taxes are absorbed by the producer rather than passed on to the consumer. There are many conflicting viewpoints on tax shifting with very little hard evidence. However, even if some advantages do accrue to foreign manufacturers because of the rebate of indirect taxes these advantages must be considered in light of the foreign countries' overall tax burden, which in many cases tends to be greater than in the United States. According to the Treasury Department, of 13 major industrialized countries studied, 7 had a greater direct tax burden than the United States, including West Germany and Belgium.

Due to the complexity involved in making a comparative analysis of relative tax burdens and their effect on international competitiveness, the Gordian study did not support its conclusion that U.S. firms are at a competitive disadvantage because of these differences. We did not attempt to make this comparison because of time constraints and anticipated difficulties in making any clear-cut determination in this area.

Specific export tax incentives

Historically, the need to export to maintain a healthy domestic economy has been greater for some competitors than for the United States. Exports make up only about 6 percent of the U.S. gross national product, while the average for our major competitors--Germany, Japan, France, Italy, Canada, and the United Kingdom--was about 19 percent. This dependence has naturally led to more emphasis on the export market and the development of a wide array of tax incentives specifically designed to encourage exports.

The Gordian study listed a number of export tax incentives provided by foreign governments and implied that railcar manufacturers were eligible to receive these benefits. We found, however, that foreign railcar manufacturers in some cases did not automatically receive these benefits and were not even eligible for one of them.

For example, the study mentioned a direct export incentive for Japanese firms which allowed tax deductions to create funds earmarked for overseas market development. We found, however, that none of the Japanese railcar manufacturers exporting passenger railcars were eligible because this incentive was designed to encourage small- and medium-sized firms to enter the export markets and the railcar manufacturers were

too large to qualify. Only those firms which were capitalized at less than \$5 million were eligible. The smallest Japanese railcar manufacturer involved in exporting passenger railcars, however, was capitalized at over \$5 million.

The study also cited a French policy which when authorized by France's Ministry of Finance, allowed a company to compute its taxable income on a worldwide basis by adding together the profits and losses of their French and foreign branch activities. It was pointed out that this provided an advantage since losses from foreign operations can be used to eliminate otherwise taxable profits from French operations. The Gordian report stated that this provision was enacted to put French oil companies on a par with U.S. and United Kingdom oil companies, but that election of group taxation was not limited to oil companies. However, in testimony before the Senate Finance Committee in April 1976, a major U.S. accounting firm stated that although this provision of the French tax code exists the Ministry of Finance rarely authorized its use.

INCENTIVES INDIRECTLY BENEFITING EXPORTS

The Gordian study accurately stated that foreign governments provided tax and nontax incentives for businesses to invest in certain geographical areas or industrial product lines. This was often done to fulfill such socioeconomic objectives as achieving balanced economic growth or eliminating pockets of unemployment. Not mentioned in the study, however, was the fact that the United States also provided similar incentives. For example, at the State and local level, an increasing number of sizeable property tax breaks were being offered to lure industrial and commercial development. One U.S. trade publication listed 23 States offering tax exemptions or moratoriums on land and capital improvements, up from 14 States a decade ago. Similarly, the number of States providing tax breaks on equipment has risen from 22 to 28 since 1968.

"The Wall Street Journal" reported in June 1978 that property tax abatements and exemptions come in many varieties. Some are restricted to development of inner-city neighborhoods, while others carry few geographic restrictions. Tax abatements also vary in duration, amount, and form. Some are straight-out reductions or exemptions, while others are more indirect. At the Federal level

there is the investment tax credit, which allows a company to deduct 10 percent of any new investment from taxable income.

The above examples of tax breaks are merely illustrative. As with the large number of similar programs listed in the Gordian study it is difficult to say whether any railcar manufacturers have or will make use of these programs. However, representatives of U.S. firms as well as the German, French, Japanese, and Italian firms which have been active in the U.S. market claim that they are not eligible for regional assistance in their respective countries since they do not manufacture in areas qualifying for such assistance.

One of the three Canadian firms which sold railcars in the United States had been the recipient of regional aid assistance. In October 1974, the Canadian Government provided the firm with a \$1.1 million grant to help it transform a snowmobile plant into a railcar-producing plant. The grant was intended to help maintain employment levels in the area where the plant was located, which was considered a depressed area of Canada. According to Canadian officials, all railcars produced by the plant from 1974 to 1977 were for the domestic market.

Even if railcar firms had been recipients of regional aids, it is not certain whether this type of assistance increased the international competitiveness of traded goods. Many of these programs were meant to compensate for the increased cost of doing business in a nonoptimal area and therefore did not necessarily lead to a competitive advantage. In fact, U.S. Treasury officials stated that the regional assistance program they had analyzed had little export impact.

U.S. Treasury countervailing duty investigations have shown several instances in other industries where regional development assistance in Italy, Germany, and Belgium was considered to be a subsidy which, nevertheless, did not constitute a "bounty or grant" under the countervailing duty law and thus did not require the imposition of countervailing duties. Among the criteria used by the Treasury to determine whether a domestic subsidy falls within the law is to look at the percentage of production exported as well as the amount of the subsidy as a percentage of the value of production. If either a very significant percentage of production is exported or if the amount of the subsidy is determined to be substantially greater than the increased cost of manufacturing in nonoptimal areas, the Treasury Department would consider the subsidy as subject to countervailing duties. Besides the firms visited who stated that they had not received regional aid assistance, the foreign

railcar industry as a whole in France, West Germany, Japan, and Italy were not exporting in excess of 50 percent of domestic railcar production.

EXPORT FINANCING PROGRAMS

According to the Gordian study, foreign manufacturers had more favorable official export financing and insurance arrangements than U.S. firms. Our analysis showed, however, that U.S. export financing programs available to railcar manufacturers generally appeared to be competitive with those offered by foreign governments.

Eximbank is the U.S. Government agency responsible for assisting in the financing of U.S. export sales. Most other countries have government-related agencies comparable to Eximbank.

The Gordian study reported that Eximbank's support on a direct loan basis applied to a relatively low percentage of the contract price (30 to 55 percent) when compared with other countries' practices (77 to 90 percent). This comparison, however, was made between the average terms available in the United States versus the most favorable terms available in foreign countries. For example, Eximbank reported in July 1978 that its average terms provided for up to 60 percent Eximbank participation, with the balance being provided by private lenders at floating interest rates. Railcar manufacturers, however, can qualify for Eximbank participation up to 85 percent of the contract value, in cases in which foreign competitors are offering concessional, official fixed-rate financing. This compared favorably with the level of government participation in foreign countries and actually exceeded the 77 percent participation that the Gordian study reported for West Germany. 1/

Eximbank officials pointed out that railcar exports were considered to be one of the best type of exports because (1) they do not create future products that could eventually compete with U.S. products for sales, (2) there is always a demand for spare parts, and (3) future system expansion possibilities provide for additional exports. As a result Eximbank officials maintained, they had been very willing to provide competitive financial packages for railcar exports. These officials also maintained that, although recent awards

1/Because of an increasingly aggressive lending policy, Eximbank, on the average, was financing over 70 percent of a transaction as of early 1979.

for railcars in Mexico, Venezuela, and Iran had been lost by U.S. firms, the awards were not lost because of financing arrangements.

Eximbank officials specifically cited the 1976-77 Caracas, Venezuela, railcar procurement which was won by a French firm. The following are the main elements of the financial packages offered by the French firm, the Japanese firm who was the second lowest bidder, and Pullman, Inc., who was the fifth lowest bidder.

	<u>Bid price</u>	<u>Percent government financed</u>	<u>Maturity</u>	<u>Effective interest rate</u>
	(000 omitted)		(years)	
French firm	\$229,115	85	8-1/2	7.75 to 8.75
Japanese firm	242,914	85	8-1/2	8.3
Pullman, Inc.	305,025	85	8-1/2	8.0

A Pullman representative stated Pullman, Inc., was satisfied with the financial package offered by Eximbank for the Caracas procurement and acknowledged that it was competitive with those offered by the other countries.

The Gordian study claimed that French and Japanese exporters were granted so-called "mixed credits," which are a combination of normal commercial terms plus aid financing. We were informed by an Eximbank representative, however, that the use of mixed credits was not as large as believed. They had been able to identify only three mixed credit authorizations in the last 5 fiscal years, all used in Japan. 1/

1/Although the use of mixed credit in Japan appeared to be relatively infrequent, we were told by the Japan Rolling Stock Exporters Association that approximately 17 percent of their passenger railcar exports are financed by official development assistance--a form of government aid provided on concessional terms. Under this type of assistance, the recipient country must purchase their railcars from Japan. A U.S. Agency for International Development official informed us that the agency's funds could also be available for intercity passenger car exports, but were rarely used since U.S. firms were not actively exporting this type of railcar.

Mixed credit authorization in France for the first half of calendar year 1977 amounted to \$571 million, which according to Eximbank calculations represented only about 3 percent of officially supported French exports and less than 1 percent of all French exports.

However, in commenting on the report, the Department of Commerce (see app. VII) suggested that the issues of mixed credits needs to be examined more critically. It pointed out that while French mixed credits may represent only 3 percent of officially supported French exports and only 1 percent of all French exports such mixed credits are extended (1) only to less developed countries and not globally and (2) preferentially or exclusively for capital goods and not consumer goods or intermediates. The agency believed a more appropriate comparison would, therefore, involve a look at mixed credits as a percentage of French capital goods exports to less developed countries. It also noted that French mixed credits appear to be concentrated on urban mass transit systems and telecommunications, rather than being scattered over a wider range of industrial sectors.

An Eximbank official stated that on at least one occasion the French Government offered a government-to-government loan to a Third World country to build a subway system, thereby circumventing international competitive bidding. According to this official, government-to-government loans were provided on very attractive repayment terms that could not be matched by any official export financing organization. This official further stated that he was unaware of any official U.S. agency that could offer comparable loans to foreign countries for similar projects. An Agency for International Development official stated that the agency's funds are generally not used for subway system projects.

The Gordian report correctly pointed out that the inflation insurance offered by the French was a government subsidy program since the cost of the program to the French Treasury was approximately \$325 million in 1977 and was projected to be \$500 million in 1978. However, this program had limitations not covered in the Gordian study since it did not pay off until after the manufacturers production costs exceeded 6.5 percent of those costs originally projected. Besides this threshold, a fee which was raised during 1978 from 1 percent to 3 percent of project costs was assessed. Therefore, the insurance did not start paying off until production costs start exceeding 9.5 percent of those originally estimated. Despite these limitations,

use of the program by French railcar manufacturers would provide benefits not available to U.S. firms. We were not able to determine, however, whether French railcar firms were using it.

OFFICIAL EXPORT MARKETING ACTIVITIES

The Gordian study accurately pointed out that foreign governments often provided a greater level of export marketing assistance than was available to U.S. firms. According to a Commerce Department official, the United States spent only about \$340 in export promotion for each million dollars of manufactured goods exported. Among the major trading nations, only West Germany spent less--about \$140. Canada, France, and Japan all spent around \$600, while Italy spent about \$1,400.

Although many of these export marketing programs were generally available, we found that foreign railcar manufacturers utilized them in varying degrees. For example, Japanese railcar firms relied more heavily on the vast resources of the major private trading firms which appear not to receive any government assistance. The manufacturers maintained they seldom made use of their government's export marketing programs. Officials in West Germany and Italy minimized the effect of marketing support activities of their respective governments.

Two of the three Canadian railcar firms had made use of the Canadian Government's export marketing development program, but neither of the firms used the program to support sales in the United States. A representative of one such firm stated that the firm received some grants for bid preparation costs but believed the value of the grants were minimal considering the actual cost of preparing bids. He said the firm received about \$20,000 in 1976, and \$2,000 in 1977, under the program compared to bid preparation cost which he estimated could amount to over \$100,000 per bid. According to Government sources, the manufacturer must repay the Government if the bid is successful and the program cannot be used more than once in any given market. A representative of the firm which had not used the program stated his firm felt that the benefits were so minor as to not warrant the effort necessary to apply for them.

GOVERNMENT-OWNED INDUSTRIES

The Gordian study pointed to the government ownership of some manufacturing capabilities as a factor that made

foreign firms more competitive. The only government-owned railcar firm we identified for the countries under review was the Italian firm Breda, which is 100 percent state-owned.

There are conflicting views, however, on the benefits available to Breda because of government ownership. Both State Department officials and company representatives contend that the fact that Breda is a state-owned firm does not entitle it to benefits not available to other firms. According to Breda representatives, state holding companies only have the financial participation of the state at the moment of creation. After the company is formed it is like any private firm. This information was contradicted by a private research organization that claimed state-owned companies had special privileges--a primary one being favored access to the money market because the ultimate guarantor is the state. According to the research organization these privileges have been a factor in inducing many foreign firms to engage in joint ventures with state companies. The research organization also pointed out that the ventures sometimes fail in reconciling different goals--one disappointed private firm said its state partner's primary objective was to create jobs, while the private firm wanted an adequate return on investment.

Even though there were differing opinions on the question of favored access to capital markets, the mere fact that Breda is a state-sponsored industry lends credence to the Gordian claim that the state would be a lender of last resort in case of financial difficulty, a benefit not normally available to private firms. Besides providing for more favorable credit terms than would otherwise be available, such an arrangement would seem to remove some of the operational constraints experienced by private firms.

CODE ON SUBSIDIES AND COUNTERVAILING MEASURES

In the multilateral trade negotiations, the United States and its major trading partners recently completed negotiations on a code on subsidies and countervailing measures. The new code represents an improved international agreement concerning the use of both government subsidies and countervailing duties or other measures employed to offset the effects of subsidies on trade. The only previous guidance on subsidies was an illustrative list of prohibited export aids drawn up by the General Agreement on Tariffs

and Trade (GATT) 1/ in the early 1960s. The GATT list, however, was very general and did not include numerous methods of aiding exports.

The new code prohibits the use of export subsidies on industrial products or primary mineral products irrespective of whether the export subsidies lead to lower prices in export markets than would be charged for similar products marketed domestically. According to the Department of Commerce, the negotiators included an extensive illustrative listing of those practices to which it applies.

Although the new code does not prohibit the use of domestic or internal subsidies, there is an explicit recognition, for the first time, that such practices as regional aids, government ownership of industries, and government research and development grants can have harmful effects on trade. Adherence to the code entails a commitment from signatory countries that they will seek to avoid causing adverse effects on other countries through the use of internal subsidies.

The new code also provides for improving and streamlining methods of providing remedies to parties who might be adversely affected by foreign subsidies. Internationally, the code's dispute settlement procedure will make it possible to obtain a speedy resolution of international subsidy disputes including the possible authorization of retaliatory countermeasures against parties who pay subsidies in violation of their international obligations. Domestically, the United States implementation of the code will provide for a more expeditious countervailing duty process--whereby provisional countervailing measures will be possible in as little as 75 days (as opposed to 1 year under the current statute).

CONCLUSIONS

There is no simple answer to the question of who has a competitive advantage due to government assistance. To find out would require the full cooperation of all parties

1/GATT is an international agreement concluded in 1947 which is intended to promote a healthy, worldwide trade environment. Among other things, GATT prescribes trade principles for free trade which restrict undue protection of domestic producers and other practices encouraging discrimination in international trade.

and the disclosure of information which may be considered proprietary. Therefore, we limited our objective to analyzing whether the Gordian study's conclusions regarding unfair competition were justified based on the information found in the report. The Gordian conclusions were not justified for the following reasons:

- Although the study accurately identified many of the benefits provided by foreign governments, it did not determine whether foreign railcar firms were eligible to receive such benefits. In some cases they were not eligible.
- The fact that a foreign railcar firm received a particular incentive or subsidy did not necessarily mean that the firm would have a competitive advantage over U.S. firms. In the case of regional aid assistance and tax incentives to encourage investment in depressed areas, it appeared that such assistance sometimes had little impact on the competitiveness of the recipient firm in the export market.
- Although the study accurately reported that foreign countries put a greater emphasis on official export marketing activities, not all foreign railcar manufacturers actively make use of these programs. Therefore, it is not clear to what extent such programs already affect U.S. manufacturers, if at all.
- The study also accurately reported that foreign government ownership could provide benefits which were not available to U.S. railcar firms. However, for the one country visited which had a state-owned firm, there is some disagreement as to the benefits which are derived from this ownership.
- The Gordian study was not correct in its assertion that U.S. railcar manufacturers were at a competitive disadvantage in the area of official export financing assistance. The Eximbank's export credit financing rates available to U.S. railcar manufacturers were competitive with those offered by similar agencies in other countries. Railcar exports financed through other mechanisms, such as government-to-government loans, however, could place U.S. firms at a competitive disadvantage.

--Generally, the tax issue was much more complex than reported in the Gordian study. Although there were significant differences in the tax systems of the United States and other countries, the relative competitive advantage of one system versus the other was not readily determinable.

AGENCY COMMENTS AND OUR
EVALUATION

The Department of Commerce agreed with Gordian's point that foreign manufacturers had more favorable official export financing and insurance arrangements than U.S. firms. The Department stated that France and the United Kingdom provide the most favorable terms allowable on a routine basis for long-term export projects and that all major countries except Canada provide such terms on larger and choicer projects, such as urban mass transit systems. According to the Department, Eximbank, because of budgetary and policy considerations, is constrained from providing these liberal terms routinely, but may do so in highly competitive situations. The Department also pointed out that Eximbank does not provide--or is reluctant to provide--related export credit inducements, such as local costs, foreign costs, mixed credits, and inflation insurance.

The Department may be correct in its assertion that overall U.S. export financing may not be competitive with other countries. With respect to urban railcars, however, we believe Eximbank has made an effort to provide U.S. firms competitive financing and we found no evidence to indicate U.S. railcar firms were losing export sales because of a lack of competitive financing.

CHAPTER 6

LEGISLATION AFFECTING FOREIGN COMPETITION

SURFACE TRANSPORTATION ASSISTANCE ACT

The Surface Transportation Assistance Act of 1978 (Public Law 95-599, November 6, 1978), which authorized appropriations for the construction of certain highways, mass transportation in urban and rural areas, and other purposes, contains a Buy America provision (section 401) giving substantial preference to U.S. firms. It states that:

"Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by this Act and administered by the Department of Transportation, whose total cost exceeds \$500,000 unless only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, and supplies mined, produced, or manufactured, as the case may be, in the United States, will be used in such project."

However, the Buy America provision does not apply to procurements where the Secretary of Transportation determines that at least one of four conditions exists. (See p. 55.)

The legislative history of the Buy America provision indicated an intent to (1) protect U.S. manufacturers from what was perceived to be unfair competition resulting from foreign governments subsidizing their manufacturers and (2) help American industry not by preventing foreign firms from bidding but by giving contracts to American suppliers when the cost of doing so was reasonable. It was believed the preference would help offset the numerous subsidies enjoyed by foreign manufacturers.

BUY AMERICA PROVISION APPLIED TO URBAN
MASS TRANSPORTATION

UMTA issued the regulations implementing this Buy America provision on December 6, 1978, without public comment because the legislation had to be immediately implemented. However, UMTA invited public comment on its regulations and plans to issue some revisions clarifying the regulations based on these comments in June 1979.

The December 1978, regulations provided, with exceptions, that funds could not be obligated for urban mass transportation projects in excess of \$500,000 unless materials and supplies are of U.S. origin. For a product to be considered of U.S. origin, the cost of its domestic components must exceed 50 percent of the cost of all of its components and the final assembly of the components to form the end product must take place in the United States. In determining component cost, transportation costs to the place of incorporation into the end product must be considered and, in the case of foreign components, applicable duties must be considered.

According to UMTA's legal counsel, the only components that will be considered in determining origin will be those which are directly incorporated into the end product at the final assembly stage. In addition, he said that even though a component received from a foreign country is comprised partially of U.S. materials or supplies, the component will be considered a foreign component.

Since U.S. origin determination is also based on final assembly being in the United States and the possible final assembly variations are practically limitless, UMTA's counsel indicated that a final assembly decision will have to be made on a case by case basis. In making such decisions, UMTA expects to be guided by (1) a test of reasonableness, (2) the historical final assembly practices of the industry, and (3) Comptroller General decisions related to the Buy American Act of 1933.

The regulations require UMTA grantees to include a notice of the Buy America provision in their bid specifications. In turn, the specifications require a bidder to submit a completed Buy America certificate with the bid. The bidder must certify that each applicable end product is domestic and that components of unknown origin have been considered foreign. However, any bidder may petition UMTA to investigate whether a successful bidder is in compliance with the Buy America provision.

If UMTA determines that evidence indicates noncompliance, it will require the grantee to investigate by requiring the bidder to document compliance with its Buy America certificate. If a successful bidder fails to demonstrate compliance, it will be required to substitute sufficient domestic components to meet its original certification. Failure to comply will result in a breach of the contract and where the violation is shown to be willful the bidder may be prevented from receiving further UMTA contracts.

Buy America provision waivers

The act lists four instances where the Secretary of Transportation may grant a waiver to the Buy America provision. The Secretary delegated this responsibility to the Administrator, UMTA, which enables him/her to grant a waiver on his/her own initiative or at a grantee's request.

The four instances and their determining factors are:

<u>Waiver</u>	<u>Consideration</u>
1. Its application would be inconsistent with the public interest.	All appropriate factors including, but not limited to, the cost, red tape, and delay time that would be imposed if the provision was not waived.
2. In the case of acquisition of rolling stock, its application would result in unreasonable cost after granting appropriate price adjustments to domestic products based on that portion of project cost likely to be returned to the United States and to the States in the form of tax revenues.	Only taxes paid by the bidder of domestic products will be considered.
3. Supplies are not available in the United States in sufficient and reasonably available quantities and of a satisfactory quality.	A domestic end product will be presumed unavailable if no responsive and responsible domestic bid has been received.

Waiver

4. Inclusion of domestic material will increase the cost of the overall project contract by more than 10 percent.

Consideration

The lowest responsive and responsible bid offering foreign end products will be multiplied by 1.1. If this number is less than the lowest responsive and responsible bid offering all domestic end products the waiver will be granted.

UMTA's counsel said the second waiver will be the most difficult to administer, as there are many unanswered questions concerning the waiver. (Such as how many levels of taxes should be considered? how should it apply to a corporate tax structure? and should certain duties be considered as taxes?) Also, the legislative history of the act is silent on tax analyses and there is no legal precedent for implementing the waiver. For implementation purposes, UMTA's counsel said a determination on whether to grant the second waiver will be based on taxes paid by the bidder only. Thus, in order for this waiver to be granted, a foreign company would have to be the low bidder and the price offered by the nearest domestic bidder must be larger by an unreasonable amount. UMTA is in the process of determining how to implement this waiver.

A bidder cannot directly request a waiver but must seek one through the grantee. The grantee, according to UMTA's counsel, may request a waiver based on one or more instances, but only one instance warranting a waiver needs to be met for the waiver to be granted.

Application of Buy America based on UMTA regulations

Procurements awarded to foreign firms during 1976-78

As discussed in chapter 2, foreign railcar manufacturers were awarded five of nine UMTA-funded urban railcar procurements from January 1976 through December 1978. These procurements are summarized below:

<u>Purchasing authority</u>	<u>Date of award</u>	<u>Foreign firm awarded contract</u>
Metropolitan Atlanta Rapid Transit Authority	5/76	Franco Belge (France)
Chicago South Suburban Mass Transit District	6/76	Bombardier-MLW (Canada)
Massachusetts Bay Transit Authority	8/76	Hawker Siddeley (Canada)
Delaware River Port Authority	4/77	Canadian Vickers (Canada)
Greater Cleveland Regional Transit Authority	2/78	Breda (Italy)

Since the Buy America provision was not effective until November 6, 1978, it is impossible to know how the provision would have affected the foreign manufacturers' decision to compete for the above contracts. It might be that the new provision will give domestic manufacturers an incentive to bid in the future since domestic bids have a preference. However, had the provision been in effect and the bidders on the above procurements did not change, the provision would have had no impact on four of the five awards, as they would have qualified for a waiver based on UMTA's interpretation of the provision. An assessment of the provision's probable impact on the remaining award cannot be made since it did not involve any formal bid process.

On two procurements, the Chicago South Suburban Mass Transit District and the Massachusetts Bay Transit Authority, there were no responsive U.S. bidders. These procurements would, therefore, qualify for a waiver of the Buy America provision since a domestic end product would be presumed to be unavailable.

Although there were U.S. bidders on two procurements--Metropolitan Atlanta Rapid Transit Authority and Greater Cleveland Regional Transit Authority--the lowest U.S. bid on each exceeded the bid of the foreign firm awarded the contract by 27.5 percent for the Atlanta order and 11 percent for the Cleveland order. These procurements also would have qualified for a waiver since the U.S. firms' bids exceeded the foreign bid by more than 10 percent.

The Delaware River Port Authority award to the Canadian firm was a negotiated procurement. According to authority officials, only the Canadian firm responded favorably when they initially solicited railcar manufacturers' interest in their planned order. The officials said that since the Canadian firm was the only manufacturer capable of delivering the railcars within the desired timeframes, UMTA concurred in the authority's negotiating a contract with the firm. UMTA's counsel stated that, while it appears domestic firms were not interested in the procurement, in the absence of a formal bid solicitation process he could not conclude the procurement qualified for a waiver based on the unavailability of a domestic end product.

Procurements awarded after November 6, 1978

From November 6, 1978, until January 31, 1979, when we completed our review, there were three orders for railcars which were subject to the Buy America provisions. On two of the orders, Chicago Transit Authority's order for 300 subway cars and Baltimore-Miami's order for 208 subway cars, there were no foreign bidders.

On Southeastern Pennsylvania Transit Authority's order for light rail vehicles, however, in addition to one U.S. firm, firms from Italy, Canada, Japan, and Belgium, submitted bids. The lowest bidder was a Japanese firm. This firm submitted a certificate indicating compliance with the Buy America provision. The transit authority, however, as of January 24, 1979, was still in the process of evaluating the bids.

Views of Canadian officials on Buy America provisions

Canada was the only country we visited after the Buy America provision had been enacted. Officials of that country were very concerned about the passage of the legislation.

Canadian Government officials pointed out that in the 50 years preceding the late 1960s trade between the United States and Canada in transit vehicles and equipment was entirely in one direction--from the United States to Canada. The Canadian trade deficit in this sector, according to the officials, between 1971 and 1977 was more than \$450 million. They further noted that even now most Canadian vehicles include a significant portion of components designed and manufactured in the United States. The four sales of Canadian

vehicles into the United States in the last 10 years was viewed as partially serving to offset the continuing Canadian deficit in bilateral trade in this sector.

Representatives of the three Canadian manufacturers we visited in early December 1978 told us that although the full details of the Buy America provision were not yet available they believed they would be able to meet the provision's requirements and that it would not affect their decision to compete in the U.S. market. Canadian officials, however, did express concern as to how the final assembly requirement in the United States would be interpreted. Representatives of the Canadian manufacturers cited reasons other than the Buy America provision for not bidding on the Chicago railcar order in November 1978.

As a result of the Baltimore-Miami bid opening in late January 1979 in which no foreign firms submitted bids, we contacted representatives of two Canadian firms who were expected to bid to determine if the Buy America provision had, in fact, affected their decision not to bid. A representative of one firm stated it was not a factor and instead cited the complexity of the bid document as the primary reason for not bidding. He also said that his company planned to bid on an upcoming U.S. railcar order. A representative of the other firm, however, stated the Buy America provision was a major factor influencing the decision not to bid. He explained that based on their interpretation of the Buy America provision's U.S. componentry requirement, his firm would have had difficulty meeting this requirement. Because of these problems, the representative was not certain as to whether the firm would compete for future U.S. railcar orders.

LEGISLATION PROVIDING U.S FIRMS RECOURSE AGAINST UNFAIR TRADE PRACTICES

Under three different laws U.S. industries are provided recourse against unfair trade practices, such as governmental subsidization of foreign industry. The industry generally must petition the U.S. Government for an investigation and only after the validity of the complaint is established will the Government take action. The two major types of actions which would be taken are to restrict the amount of goods being imported or apply additional duties to imported goods.

The laws and their suitability to the railcar industry are discussed in the following sections.

The Antidumping Act of 1921

The Antidumping Act (19 U.S.C. 160 et seq.) was passed in 1921 to counteract the practice of dumping, which is selling goods in the U.S. market at less than their fair value. ^{1/} Its purpose is not to protect domestic products from the impact of foreign imports but to counteract against those imports which are traded unfairly, thereby injuring a U.S. industry. An antidumping action first involves a determination by the Secretary of the Treasury that import sales are at less than fair value and a subsequent determination by the International Trade Commission (ITC) that a U.S. industry is being or is likely to be injured by reason of such sales. After publication of a dumping finding, a special dumping duty is then assessed on the merchandise to put it on a market value basis equal to the sales value of goods sold in the exporter's home market.

U.S. manufacturers and government officials identified the following limitations of this law as it applies to the railcar industry:

- It would be very difficult to determine whether a foreign manufacturer is selling railcars in the United States below prices charged in its domestic market because railcars represent a custom-made and technically sophisticated product for which there is probably no comparable car being sold in the foreign manufacturer's country.
- The procedure of determining dumping and injury to U.S. industry is a slow process which is more suitable to continuous production type items, such as consumer products. Since railcars are unique products which are not sold with regularity, dumping duties would not provide the same protection that they would for such continuous production type items.
- Even if dumping is proven and dumping duties are applied the U.S. manufacturer might not benefit since such duties are applied only prospectively. Thus,

^{1/}Antidumping legislation is also contained in the Revenue Act of 1916 which provides severe penalties for proven predatory dumping. However, because of a near impossible requirement of proving intent of the offender, the legislation has been rarely used.

only those railcar procurements with deliveries scheduled after dumping was established would be affected.

--Antidumping investigations usually are initiated on a country-by-country basis in response to a specific complaint. Therefore, investigations of less than fair value sales would have to be conducted for each country if the Department of Treasury believes the country has been dumping in the U.S. During 1976 through 1978, nine foreign firms from six different countries competed for U.S. railcar procurements.

In 1970 a U.S. railcar manufacturer filed the only dumping action on record against a foreign manufacturer. However, the U.S. Treasury Department, after a 19-month investigation, determined that railcars from that country were not being sold at less than fair value in the United States. The U.S. manufacturer objected to the ruling on the basis that since there was no comparable railcar being sold in the foreign country the Treasury Department should have constructed a price based on what was being sold in the U.S. market rather than adjusting the sales price of what the Treasury Department considered to be a similar railcar in the foreign country. A Treasury Department official told us that although the act permits use of a constructed home market price, the act expresses a strong preference for using the adjusted price of similar merchandise sold in the home market as a basis of comparison. Constructed value can only be used where market price data is insufficient or inadequate.

The Tariff Act of 1930

Countervailing duties (section 303)

Under the current provisions of the Tariff Act of 1930 (19 U.S.C. 1303), the Secretary of the Treasury is empowered to determine whether imported goods have received a bounty or grant from a national entity or political subdivision at the time they are manufactured or exported. If an affirmative determination is made he can levy an additional duty to countervail the net amount of the bounty or grant. Injury to domestic industry need not be determined in an investigation involving dutiable goods; however, there will be a change in this policy, which would require an injury determination, as a result of the recently completed multilateral trade negotiations.

The primary limitation of countervailing duty law like the Antidumping Act is that it applies only prospectively. Thus, only those railcar procurements with deliveries scheduled after subsidization was established would be affected.

We were not able to find any instance of U.S. railcar manufacturers filing countervailing duty actions and railcar manufacturers indicated that they would not use this legislation because they feel it does not provide them with any protection.

Unfair trade practices (section 337)

Under section 337 of the Tariff Act (19 U.S.C. 1337) unfair methods of competition and unfair acts in the importation of articles into the United States which substantially injure a domestic industry are considered unlawful. The investigation is performed by the ITC which can issue an exclusion order against a product or a cease and desist order with respect to certain parties.

According to ITC officials, in the past this section has been generally applied only to one type of unfair practice--the infringement of domestic patents by imported merchandise--and it is unlikely that an exclusion order prohibiting the import of railcars would be issued because of the types of unfair trade practices alleged in the Gordian study.

In commenting on the report, ITC stated that while the majority of section 337 cases have in the past involved domestic patents, there are a number of cases involving other unfair trade practices. According to ITC such complaints, submitted to it under the provisions of the law, are regularly the basis for full investigations. The ITC stated it has authority to temporarily restrain importation of articles that benefit from unfair trade practices.

Trade Act of 1974

Section 201(b)

Under this section (19 U.S.C. 2251(b)), ITC determines whether an article is being imported into the U.S. in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing a similar article. Unlike the other pieces of legislation, this section does not require any determination of wrong doing or unfair trade practice by a foreign manufacturer. The ITC has 6 months to make its investigation and, in those cases where a positive

finding is made, the President must decide within 60 calendar days what, if any, import restrictions are to be placed on the item. The President, in deciding whether to grant import relief to a U.S. industry, must consider such things as the effect of relief on competition in the U.S. market, the inflationary impact, the effect on the international economic interests of the United States, the possibility of retaliation by our trading partners, and the ability of the U.S. industry to adjust in order to compete successfully with imports after the relief is terminated.

ITC lawyers commented that a positive finding under this legislation would be difficult to implement because of problems in defining the product (e.g., frame, major component, etc.) and arriving at an acceptable level of importation required under the legislation. They also stated that the President has agreed with their recommendation for import relief in approximately one-third of the cases. A Presidential decision to deny import relief or to impose a different form of relief than recommended by ITC is subject to congressional override.

Section 301

Section 301 of the Trade Act of 1974 (19 U.S.C. 2411) covers foreign import restrictions and export subsidies and authorizes the President to respond to foreign policies which burden, restrict, or discriminate against U.S. commerce. The statute authorizes the President to suspend or withdraw trade concessions and to impose duties, fees, or other restrictions in retaliation. However a Presidential response to the providing of export subsidies or subsidy-like incentives may be made only if (1) the Secretary of the Treasury determines that they exist, (2) ITC finds that the subsidized products being imported are substantially reducing the sales of competitive U.S. products, and (3) the President determines that the Antidumping Act and the countervailing duty statute are inadequate to deter such practices.

Railcar manufacturers could petition the U.S. Government for assistance under this section either on the basis that foreign manufacturers received governmental subsidies which were reducing U.S. firms' domestic sales or that railcar markets were closed overseas to U.S. railcar exports. This section has not been used successfully by a U.S. industry with regard to subsidization of foreign manufacturers' exports to the United States. In the case of unfair import practices by our trading partners which result in closed markets for U.S. exports, U.S. industries have successfully

sought relief under this provision. According to the Department of Treasury, however, the U.S. industry must show that the other country's actions are unreasonable or unjustifiable before action can be taken.

CONCLUSIONS

If the Buy America provision, as interpreted by UMTA, had been in effect during 1976 to 1978, it would have had little impact on the outcome of the five railcar procurements awarded to foreign firms, assuming the bidders on these procurements did not change. This is mainly because U.S. firms did not bid or did not submit acceptable bids.

Sufficient time has not passed to determine the full impact of the Buy America provision. However, our cursory review of the three railcar procurements initiated since enactment of the provision showed that at least one foreign firm was persuaded not to bid because of the provision. On the other hand, a foreign firm which submitted a certificate indicating its product complied with the Buy America provision (and was thus considered a domestic product) was the low bidder on one procurement. (At the time of our review no contract had been awarded.)

A change in the U.S. railcar industry could have some effect on the Buy America provision's impact. There is now only one U.S. railcar manufacturer willing to bid on most railcar orders. It may be difficult, therefore, to implement a preference for U.S. manufactured products, which the provision was intended to establish, if only one U.S. firm is willing to bid. At the same time, if the application of the provision deters foreign firms from competing for U.S. railcar orders, it could result in limiting competition for UMTA-funded railcar orders and, thus, increase costs.

In regard to legislation providing U.S. firms recourse against unfair trade practices, the Antidumping Act and the countervailing duty section of the Tariff Act of 1930 may not provide remedies suitable to the railcar industry. The remedy in both laws is the imposition of additional duties. Neither law contains any mechanism for overturning contract awards. The special antidumping or countervailing duties would be applied only prospectively--after an investigation which established international price discrimination and resulting injury or subsidization. Thus, only those railcar

procurements with deliveries scheduled after dumping or subsidization was established would be affected.

Sections 201(b) and 301 of the Trade Act of 1974 offer more potential, although both may have some limitations. Under section 201(b) the President can grant import relief to a U.S. industry without requiring any determination of wrong doing or unfair trade practice by a foreign manufacturer. In the case of the railcar industry, however, it may be difficult to implement a positive Presidential finding because of problems in defining the product being imported (e.g., frame, propulsion system, brakes or other major components) and arriving at an acceptable level of importation required under the legislation.

Railcar manufacturers could petition the U.S. Government for assistance under section 301, either on the basis that foreign manufacturers received government subsidies which were reducing U.S. firms' domestic sales or that railcar markets were closed overseas to U.S. railcar exports. The latter would appear to offer the best prospects, although the railcar industry must show that the other country's actions are unreasonable or unjustifiable before action can be taken.

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United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510

April 12, 1978

Honorable Elmer B. Staats
 Comptroller General
 General Accounting Office
 441 G Street, N.W.
 Washington, D.C. 20548

Dear Mr. Staats:

I recently received a report entitled An Analysis of the International Urban Railcar Market. This two volume report, prepared by Gordian Associates, Inc. contains some very alarming data concerning the recent entry into the U.S. railcar market by foreign manufacturers. During 1976, for example, nearly 60 percent of the railcar procurement grants awarded by the Urban Mass Transportation Administration went to foreign firms. These grants, which are 80 percent Federally funded, totaled more than \$203 million in that year alone.

As Chairman of the Appropriations Subcommittee on Transportation, I feel that it is important that the Subcommittee have, as quickly as possible, a GAO review of that report by Gordian Associates. I intend to do all that I can to ensure that American companies continue to have a fair chance to compete in the railcar construction market. Your assessment will prove very helpful to the Subcommittee in that effort.

Mr. Jerry Kilean of your staff has already been provided a copy of the report and has indicated that perhaps an oral presentation by GAO would be possible within 90 days, with a formal report to follow sometime later, depending on the complexity of the material to be analyzed.

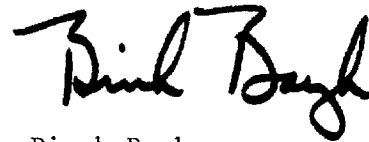
Let me take this opportunity to thank you for the very close cooperation my Subcommittee staff and I have received from your transportation experts this year. This idea of GAO briefings prior to our hearings on each DOT agency has proven very effective.

Honorable Elmer Staats
Page 2
April 12, 1978

Please let me know when I can be of assistance to you.

With best personal regards, I am

Sincerely,

A handwritten signature in black ink that reads "Birch Bayh". The signature is written in a cursive, slightly slanted style.

Birch Bayh

BB/jeb



ASSISTANT SECRETARY
FOR ADMINISTRATION

OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

April 19, 1979

Mr. Henry Eschwege
Director, Community and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

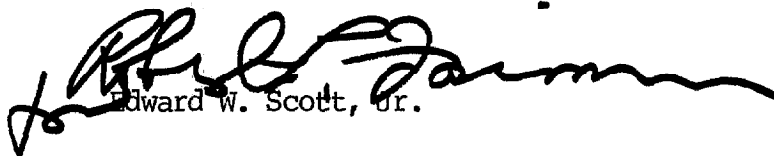
Dear Mr. Eschwege:

We have enclosed two copies of the Department of Transportation's reply to the General Accounting Office (GAO) draft report, "An Analysis Of Problems Confronting U.S. Railcar Manufacturers In The International Urban Railcar Market."

The Urban Mass Transportation Administration (UMTA) agrees with the conclusions reached by the GAO that contract terms and conditions and technical specifications may have influenced some U.S. railcar manufacturers not to bid on recent procurements. In response to complaints by U.S. manufacturers, UMTA has promulgated guidelines for certain contractual terms and conditions, which were said to be the most onerous in past contracts. UMTA will, in accordance with GAO's suggestion, continue to try to space railcar procurement orders so as to offer maximum bidding opportunity for U.S. suppliers.

If we can further assist you, please let us know.

Sincerely,


Edward W. Scott, Jr.

Enclosures

DEPARTMENT OF TRANSPORTATION REPLYTOGAO DRAFT OF A PROPOSED REPORTAN ANALYSIS OF PROBLEMS CONFRONTING
U.S. RAILCAR MANUFACTURERS IN THE
INTERNATIONAL RAILCAR MARKETSUMMARY OF GAO FINDINGS AND RECOMMENDATIONS

This GAO report contains no recommendations. The conclusions which have applicability to DOT and UMTA are contained in Chapter 2 of the report, titled "THE U.S. URBAN RAILCAR INDUSTRY AND MARKET".

GAO concludes that several urban railcar procurements made in the 1976-1978 period went to foreign firms largely because U.S. manufacturers did not actively compete for these procurements. There were numerous reasons given for the failure of U.S. manufacturers to bid. UMTA has undertaken several measures to address some of these problems. Manufacturers continue to have problems with the timing of railcar orders and contract terms and conditions.

GAO states that UMTA maintains that there is little that they can do to control the placement of these orders other than trying to stage them at least 30 days apart. GAO recognizes this difficulty, but encourages UMTA to continue to work with transit authorities and manufacturers to resolve problems related to the timing of orders.

GAO also states that UMTA has issued special procurement guidelines that addressed some of the manufacturers problems with terms and conditions and is in the process of issuing additional guidelines.

SUMMARY OF DEPARTMENT OF TRANSPORTATION POSITION

The Urban Mass Transportation Administration agrees with the conclusions reached by the GAO that contract terms and conditions and technical specifications may have influenced some U.S. railcar manufacturers not to bid on recent procurements. In response to complaints by U.S. manufacturers, UMTA has promulgated guidelines for certain contractual

terms and conditions, which were said to be the most onerous in past contracts. UMTA will, in accordance with GAO's suggestion, continue to try to space railcar procurement orders so as to offer maximum bidding opportunity for U.S. suppliers.

POSITION STATEMENT

UMTA has been most responsive to the problems that the U.S. railcar industry has encountered with terms and conditions imposed in past procurements. A set of guidelines covering sixteen of these terms and conditions was formally promulgated early in 1978, and all grantees procuring railcars are required to follow these guidelines explicitly. Additional effort is underway on guidelines for guarantees and warranties, which were not covered by the 1978 guidelines because of the complexity of the issues involved.

Recent meetings have been held with the U.S. railcar industry to identify further contractual problems that they have encountered. UMTA will take appropriate action to resolve such problems when a full definition and understanding of the problems can be reached.

Spacing of railcar orders will also receive UMTA's attention on a continuing basis. Several such orders will be placed by mid-1979, constituting most of the pending near-term orders for railcars. Whenever feasible, and without having a detrimental impact on new system implementation or system rehabilitation, UMTA will do all practical to avoid the bunching of future railcar orders.

BOEING VERTOL COMPANY
A DIVISION OF THE BOEING COMPANY
P.O. BOX 16858 • PHILADELPHIA, PENNSYLVANIA 19142

April 9, 1979

Mr. Henry Eschwege, Director
Community & Economic Development Division
U. S. General Accounting Office
Washington, D.C., 20548

Subject: Draft Report "An Analysis of Problems Confronting
U.S. Railcar Manufacturers in the International
Urban Railcar Market"

Attachment: a) Letter dated March 15, 1979; John B. Crosetto
to W.H. Lytle; Subject: UMTA Procurement Study

[See GAO note, p. 74.]

Dear Mr. Eschwege:

Boeing Vertol Company has reviewed portions received of the subject report and submits the following comments:

- 1) Since sections covering conclusions and recommendations were not provided for review, it is difficult to develop comprehensive comments on the report as a whole. However, we are submitting comments on the material provided and have indicated our conclusions and/or recommendations.

April 9, 1979
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BOEING

- 2) The most significant comment in this regard concerns inadequacies in the procurement procedures and recommendations for modifications thereof. This is one of the major problems confronting manufacturers and is not addressed in appropriate depth in the report. Attachment a) is a letter covering a joint response from Boeing Aerospace Company and Boeing Vertol Company to UMTA covering this subject under Federal Register, Vol. 44, No. 24, February 2, 1979.
- 3) The title of the report appears to be inappropriate in that it is not limited to the international market. We suggest adding the words "Domestic and" before "International" or dropping the word "International".
- 4) The report notes that an UMTA official stated that if the manufacturers have an unresolved disagreement on terms and conditions, UMTA will attempt to resolve the problem provided that it is brought to their attention. A manufacturer's representative indicated on a specific disagreement that they did not file a complaint with UMTA because, in their opinion, UMTA would not have taken any action. This opinion is generally shared by the manufacturing community. We have filed letters of complaint with UMTA on various issues which have not been acted upon by UMTA. Copies of a number of these letters are provided in Attachments b), c), and d). [See GAO note, p. 74.]
- 5) UMTA has permitted the imposition of unreasonable contract terms and conditions on equipment manufacturers. Prior to the issuance of UMTA Guidelines, UMTA has permitted this by their approval of contracts containing such provisions. For example, under the U.S. Standard Light Rail Vehicle contract, Boeing was forced to accept a clause which requires Boeing to perform and to bear the costs of any disputed work until such time as the matter is resolved by legal means. In another example, allowable costs incurred for delay or suspension of work do not include overhead and profit.

Since the issuance of UMTA Guidelines for Terms & Conditions, UMTA has not rigorously enforced compliance. The following examples are taken from the recent SEPTA Light Rail Vehicle Terms & Conditions issued with the RFP:

Part A-II, Sec. 6:

Omissions & Discrepancies

"Any items of Material or Equipment which are not fully described, or are omitted from the specifications, and which are necessary for the completion of such Material or Equipment and its appurtenances, shall be considered a part of such Material and Equipment, although not directly specified or called for in the specifications."

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BOEING

5) Continued

Comment

This clause makes the manufacturer responsible for the supply (without any cost adjustment) of additional items not included in the specifications upon which the contract is based. There is no provision for such a clause in the Guidelines.

Part D-I, Sec. 8.12:

Replacement of Major Components

"The contractor shall guarantee a supply of components, including parts obtained from the Contractor's subcontractors and suppliers, for a period of fifteen (15) years from date of delivery of the last unit."

Comment

This clause requires the manufacturer to provide a sustained source of spare parts without any commitment on the part of the purchaser to buy those spare parts from him. There is no provision for such a clause in the Guidelines.

Part D-I, Sec. 9.6.1.:

Liquidated Damages for Delay

"Liquidated Damages in the amount of One Hundred Dollars (\$100.00) per day PER UNACCEPTED ITEM OR UNIT SHALL be imposed for each and every calendar day beyond the Completion Date, as defined in Section 4.2, that required performance under the Contract remains uncompleted. Liquidated damages will be limited to 100% of the value of the undelivered vehicles."

Comment

The 100% limit is unrealistic and unfair. The Guidelines require the buyer to establish a rationale supported by analyses for the amount of damages. We understand such a rationale has not been furnished.

- 6) UMTA has taken a "hands off" attitude with respect to the health and stability of the manufacturers. This is evidenced not only with regard to foreign competition, but also in such areas as controlling the timing of orders to stabilize the market, implementing the guidelines on terms and conditions, and improving

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6) Continued

the procurement process. UMTA has not taken a "leadership role" in managing the development and acquisition of equipment. With UMTA failing to exert appropriate leverage in the development and acquisition of new equipment, we have the present situation wherein UMTA funds as well as local share funds are not being prudently utilized.

UMTA should foster a "Government/Operator/Manufacturer Relationship" as has been successfully established in other countries. The purpose of such a relationship would be to simultaneously further the requirements and goals of the members while providing effective and cost-efficient equipment. In other countries, equipment manufacturers enjoy the benefits of coordinated efforts on the part of their government and operators in sustaining a stable and profitable business while providing equipment that meets requirements and provides effective transportation as well as supporting export opportunities as a team.

A number of recent UMTA actions (or inactions) have served to the detriment of U. S. manufacturers in sustaining a stable and profitable business. In general these include: the lack of a continuing commitment to vehicle standardization; not vigorously enforcing the terms and conditions guidelines; and the lack of control over timing of placement of orders. More specifically, from a Boeing Vertol Company standpoint, UMTA did not follow through with its original commitment on Light Rail Vehicle standardization that was promulgated when the program was initiated. Our recommendations with respect to the potential application of the U. S. Standard Light Rail Vehicle for the Rio de Janeiro, Brazil, Pre-Metro System (see Attachment b) were not supported, and the inclusion of a restrictive clause in the Cleveland contract with Breda requiring the final assembly of light rail vehicles to be accomplished in Cuyahoga County, Ohio, excluded Boeing from the opportunity to assemble the vehicles for Breda at the Boeing Vertol plant in Philadelphia (see Attachment d).
[See GAO note.]

Sincerely,



A. Hitsman
Surface Transportation Systems
General Manager

cc: Robert W. Smith
Railway Progress Institute

GAO note: The letters attached by Boeing to support its contention that UMTA has not acted on its complaints concerned issues not addressed by GAO's review and GAO did not determine why UMTA did not respond to Boeing's complaints. The letters have not been included in the final report.

April 9, 1979

BOEING AEROSPACE COMPANY

Attachment a)
Page 1 of 2
P.O. Box 3999
Seattle, Washington 98124

A Division of The Boeing Company

March 15, 1979
2-1706-0000-073Mr. W. H. Lytle, Director
Office of Procurement and Third Party Contract Review
UMTA/UAD-70
2100 Second Street, S.W.
Washington, D.C. 20590Subject: UMTA Procurement Study Task Force: Evaluation of Rolling Stock and
Equipment Procurement Procedures

Dear Mr. Lytle:

The Boeing Company is pleased to have the opportunity to submit this statement in response to your request for comment on the process for procuring rolling stock and other technical equipment purchased with UMTA assistance under the Mass Transit Act of 1964. This is a joint response of the Boeing Aerospace Company and the Boeing Vertol Company each of which supplies transit hardware covered by the subject act.

Over the past several years Boeing has participated with your office, RPI, and APTA in many studies and forums motivated to find solutions to the problems which beset the seriously troubled United States Mass Transit equipment supplier industry. Equipment standardization, impact of foreign competition and the procurement process including business terms and conditions have been identified as crucial issues. With the passage of the "Buy America" legislation in Congress, and the updating of "UMTA Guidelines" for the procurement of rolling stock, progress has been made; however, much yet remains to be done to ensure that the intent of the foregoing actions are uniformly and rationally reflected in grantees' procurement actions.

In our judgment inadequate progress has been made in standardization and virtually none has been made in improving the present procurement process. UMTA initiative and leadership is required in both instances.

We are convinced that the present low-bid FFP procurement process does not result in contracts where the government, the operating property, and industry are mutually motivated as a team to solve the nation's transit problems on a cost-effective basis. The adversarial relationships promoted by such contracts is a direct consequence of the inequities resulting from disproportionate sharing of responsibilities and risks associated with the development and production of new equipment. The Department of Defense, other branches of government and UMTA in direct procurements from industry have responded to this fundamental problem with an array of contracting options tailored to meet particular procurement circumstances. The procedures for such are clearly established in the Federal Procurement Regulations. For UMTA-supported procurements this contracting methodology should be applied at the state and local level.

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Attachment a)

Page 2 of 3

Mr. W. H. Lytle, Director

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We are persuaded that the general procurement method should be changed from "formal advertised" to "competitive negotiated" with a greater degree of UMTA involvement in the evaluation process. While preserving a competitive environment, this alternative permits weighting of technical factors, the contractor's performance record, life-cycle costs, standardization and other factors along with bid price as considerations for contract award. The foregoing are of vital importance to UMTA since the Federal Government pays for a considerable share of transit operators' cost through subsidies.

The present low-bid, fixed-price process combining development and production places all financial risks directly on the supplier rather than being shared between the parties. The record of substantial losses suffered by U.S. industry performing under such contracts should be a major concern to UMTA for without profit to reinvest in transit hardware improvements our transit industry will continue to fall behind foreign competitors notwithstanding protective legislation.

For projects involving new performance requirements or where the operating environment is new we recommend a two-step procurement process which recognizes separate development and production phases. Development programs should be contracted for on a cost-reimbursable fixed-fee or incentivized basis as appropriate to ensure contractor performance. Multiple competitive contracts should be considered when appropriate to maintain competition or if significant technical uncertainties exist. Development contracts can be initiated, negotiated and administered directly by UMTA, or by the Grantee, with UMTA participation and assistance, in either case following established Federal procurement guidelines. The UMTA-sponsored program for the Morgantown Automated Transit System has utilized both methods, each appropriate to its time and circumstance. The Phase II contract, presently nearing completion, deserves serious study as a uniquely successful example of a team effort, commonly motivated by equitable sharing of risk by the parties.

At the completion of the development phase when product characteristics can be clearly specified the production contractor can be selected on the basis of "negotiated" or "advertised" fixed-price bid. UMTA guidelines for terms and conditions for such contracts are appropriate; UMTA need only insist they are uniformly reflected in Grantee procurement contracts.

The major problem faced by transit operators today is not the capital cost of new equipment acquisition - it is the lack of modern, reliable, maintainable hardware that can be operated at a reasonable cost. Industry, faced with the requirement to submit the lowest possible fixed-price bid, cannot close the gap. As long as low-bid, fixed-price contracting which fails to recognize the tradeoff between cost and performance continues to dominate transit procurements this need will remain unsatisfied and all elements of our society will be the loser.

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Attachment a)
Page 3 of 3

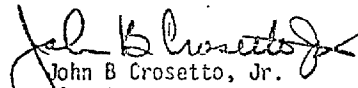
Mr. W. H. Lytle, Director

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2-1706-0000-073

The Federal Procurement Regulations provide all the flexibility necessary to solve this problem. We urge UMTA to take the lead in applying this established body of contractual methodology to mass transit procurement at all levels.

Very truly yours,



John B. Crosetto, Jr.
Director
Automated Transportation Systems

BOEING



RAILWAY DIVISION • RED LION PLANT • RED LION & VERREE ROADS • PHILADELPHIA, PENNSYLVANIA 19115 • (215) 673-1020

April 25, 1979

Mr. Henry Eschwete, Director
Committee and Economic Development Division
General Accounting Office
441 "G" Street, N.W.
Washington, D.C. 20548

Subject: RPI-GAO Report: "An Analysis of Problems
Confronting U.S. Railcar Manufacturers in
The International Urban Railcar Market"

Dear Mr. Eschwete:

The following are comments which you may wish to review for inclusion in your report to Congress.

We take exception to the statement at the top of page 5, which indicated that U.S. firms were unwilling to bid on car procurements. A term other than the word "unwilling" should be utilized here inasmuch as, in many cases the manufacturers were unable to bid because of work conflicts or because of peculiar contractual requirements that were attempted to be imposed on them.

Perhaps a favorable comment should be made on the finding in the last full paragraph on page 5 which does recognize the imposition on manufacturers of new, untested technology in the production contracts. As a result, many of the manufacturers who were victimized by this requirement, eventually were forced out of the business. You might indicate Rohr and Boeing.

We question the page 7 statistics as listed and, although Pullman Standard is mentioned in the paragraph following the numbers, the reference should also include Pullman's departure from the business. Also on page 8, there is no mention of the SEPTA bid even though reference to the various bids covers the entire year of 1978.

Pages 9-10 do not include references to the SEPTA or CTA bids which would probably give a more accurate picture of the market in 1978. On page 11, in the middle of the second full paragraph from the top, the term "lack of interest" is used as a reason for not competing on all orders. We believe a better term might be "conflict" because some of the manufacturers took issue with the requirements and elected not to bid because of a difference in their abilities or capabilities to produce the particularly specified car.

[See GAO note, p. 80.]

THE BUDD COMPANY

Mr. Henry Eschwete, Director
General Accounting Office
Washington, D.C.

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Page - 2 -

Mention is made of restrictive terms and conditions on page 11 and the last paragraph makes reference to the lack of specific information. We would like to take this opportunity to mention the fact that the authorities have attempted to invoke onerous indemnity clauses and that CTA has a requirement to, and WMATA is attempting to have insurance coverage carried by the manufacturer to insure the authorities' operations after delivery of the car. This last point should be emphasized.

We believe that the GAO report should place stronger emphasis on the timing of orders and the lack of coordination by UMTA of the various bids being requested by authorities. Considering the desirability of having as many bidders as possible, the timing, itself, seems to drive people away because no bidder will have adequate time to submit a valid bid if he only has 30 days between bids.

As we have previously advised, insurance provisions contained in many transit car contracts are excessive, and in many cases, totally impossible to comply with. These provisions are unnecessary to the total contract price. We strongly believe UMTA should investigate this question and establish guidelines agreeable to both the authorities and builders.

On page 17, reference is made to terms and conditions which were the subject of revisions. The revisions referred to were necessary because the terms and conditions did not meet the UMTA guidelines. Somewhere in the report, it should be pointed out that the guidelines should not be a subject of negotiation between the bidder and the authority.

On page 18, on the very last line, issue should be taken with the statement of declining reliability. The main reason for declining reliability is the untested technical innovations, which are included in specifications by the consulting engineer and the authority. In their attempt to have custom cars, authorities very often include items and mechanisms that, when publicized, give the authority an aura of technical innovation and in fact, add little or nothing to improved performance.

With respect to the "Buy America" provisions covered from pages 53 on, we have previously commented to UMTA. These comments are attached. The main comment we have, is that under the present interpretation voiced by UMTA, the U.S. input is not assured because of UMTA's definition of subcomponents. Since the source of the subcomponent is immaterial in making up a component, it is conceivable that most of a car could be foreign manufactured

[See GAO note, p. 80.]

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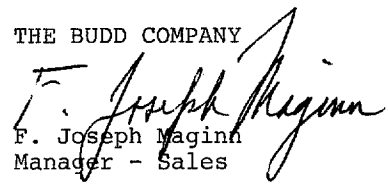
Mr. Henry Eschwete, Director
General Accounting Office
Washington, D.C.

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as subcomponents and when placed in the final assembly of various components (which requirement is only 51%), the manufacturer could comply with a Buy America when these components were assembled in the United States. Comparing the total labor input of the various subcomponents and components to the final assembly phases, it is, in our opinion, somewhat unrealistic to settle for such a small portion of the total job and claim that U.S. jobs are being protected by this provision. Our recommendation is that some other criteria beside just dollar value be used to measure the U.S. input.

Very truly yours,

THE BUDD COMPANY


F. Joseph Maginn
Manager - Sales

FJM:etl
c.c. Mr. Phil Jones - R.P.I.
Attachment

GAO note: Page references in this appendix were changed to agree with the page numbers in the final report.

THE BUDD COMPANY

RAILWAY DIVISION / PHILADELPHIA, PA. 19115

February 13, 1979

Dr. Richard S. Page
Administrator
Urban Mass Transportation Administration
Department of Transportation
Room 9320, UCC-10
400 7th Street, S. W.
Washington, D. C. 20590

Reference: UMTA Docket No. 78-B

Dear Dr. Page:

The following is submitted in connection with the invitation for comments on the regulations implementing Section 401, "Buy America", of the Surface Transportation Act of 1978, Pub. L. 95-599, which regulations were published in the Federal Register of December 6, 1978.

The Budd Company is extremely concerned about the increasing number of contracts for purchase of railroad passenger cars which have been awarded to foreign car manufacturers in the past few years. For the most part, contracts have been awarded to foreign car builders strictly because their prices are well below those quoted by domestic producers. The Budd Company is not opposed to fair competition from abroad. However, we are opposed to competition from foreign car builders who are able to offer low prices only by resort to what The Budd Company believes are unfair trade practices.

As you know, Section 401 was added to the recently-enacted Surface Transportation Assistance Act of 1978 (the "Act") in recognition of the difficulties domestic railcar builders were encountering from foreign competitors. In adding this Section to the Act, Congress sought to help domestic railcar manufacturers by generally requiring that railcars procured with financial assistance from the U. S. Government consist substantially of U. S. made components. The regulations implementing the Buy America provision in the Act, apparently based upon interpretations of the Buy America Act of 1933. For example, they require that U. S. components exceed 50% of the cost of all components used in the railcars. The regulations further provide that transportation costs to the United States and Customs duties are to be included in arriving at the cost of foreign components and that "final assembly" of the components into railcars must take place in the United States.

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The Budd Company recognizes that the emergency regulations implementing the "Buy America" preference represent a conscientious attempt to reflect the Congressional objectives of Section 401 of the Act. However, we believe that the regulations, as published on December 6, 1978, will permit foreign manufacturers to circumvent the obvious intent of the Act. This circumvention will be permitted because we believe the Regulations fail to address two major areas: the peculiar commercial circumstances present in the railcar manufacturing industry (both domestic and foreign), and the unfair trade practices employed by foreign railcar manufacturers in selling in the United States market. Each of these areas is discussed below in connection with our recommendations on how the regulations ought to be amended.

Delivery of railcars to a grantee ordinarily begins about two years after a contract is awarded, and may continue for several years thereafter. The lag between contract award and delivery is necessary to permit completion of engineering work and to permit a manufacturer to gear up for production. One effect of the lag time between date of contract award and date of manufacture, is the likelihood of variation between the original estimated costs by a bidder and the actual costs years later.

For foreign manufacturers who are preparing bids to meet the requirements of the Buy America preference, the process of estimating costs for articles to be manufactured years later is perhaps more uncertain. Surely, any authentication which might later be required is extremely difficult. This is due to many factors, including the necessity for estimating future manufacturing costs in a foreign country as well as in the United States, estimating foreign exchange rates and their effects on costs, estimating costs of ocean freight and the rates of duty which will be applicable at the time the railcars are imported into the U.S., etc. The accuracy of these estimates, of course, is of paramount importance in valuing domestic and foreign components for purposes of insuring that the "Buy America" certification can, in fact, be executed.

Section 660.21 of the regulations provides that grantees shall require all bidders to submit a Buy America Certificate with their bids. However, the Certificate required by Section 660.21(b) calls for nothing more than the bare assertion that the end product is a domestic end product. In view of the fact that no data to support the validity of the Certificate is required, neither a grantee, nor UMTA, nor an unsuccessful bidder is in position to judge whether a Certificate is valid. It seems to us that information should be provided in sufficient detail so as to permit, at the least, initial analysis of whether a bidder has reasonable grounds to execute a Buy America certificate.

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Therefore, we suggest that the Buy America Certificate required by Section 660.21(b) be amended to require a specific listing of the foreign components a bidder contemplates incorporating in end products, along with the estimated costs thereof and an explanation of the methods used at arriving at such costs.

Section 660.22 of the Regulations

Section 660.22(a) of the Regulations provides that in order for a railcar to be considered a domestic end product, the cost of domestic components must exceed 50 percent of the cost of all its components. We believe that Section 660.22 should be amended to provide specific guidelines for determining the cost of foreign components for Buy America purposes. We believe such amendment is necessary because, after careful analysis of bids submitted by foreign companies on projects funded by UMTA, The Budd Company has concluded that many such bids are made at prices which are below the foreign manufacturers' actual costs of producing the railcars. Without a doubt below cost pricing of the foreign components makes it easier for a foreign manufacturer to meet the present requirements of "Buy America".

The business lost to foreign manufacturers because their below-cost bids has resulted in substantial harm to the U. S. railcar industry. Such sales at below cost have long been recognized as unfair trade practices which, it would seem, should be of concern to UMTA and the Department of Transportation as a matter of general policy. However, these below-cost sales have the additional effect of undermining the purposes of the Buy America provisions in the Act. In this regard, we find it hard to believe that the Congress, in drafting Section 401 of the Act, intended that the permissible portion of foreign components in railcars be determined by attaching an artificially low cost or value to the foreign components while at the same time, presumably, using the full cost or value of American components.

Thus, the present regulations fail to address the situation where artificially low values attached to foreign components may be used by a foreign manufacturer in certifying that the Buy America requirements are met. It seems to us that this practice invites the frustration of Congress' intent in enacting the Buy America preference.

Another strange result occurs from the below-cost bids referred to above. Assuming a foreign manufacturer has assessed below-cost figures to the foreign components of the job and for any of a number of reasons cannot execute a "Buy America" certificate and so must seek a waiver - under the past practice and the requirements of Section 660.32(a)(4), which have been interpreted liberally, a waiver will normally be granted if the foreign bid is more than 10 percent or lower than a comparable domestic bid. This is likely to occur despite the fact that the foreign bid is lower because its foreign components are priced at below cost.

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It is submitted that greater weight should be given to Section 660. 32(a)(2) of the regulations than Section 660. 32(a)(4) when a waiver of "Buy America" is being sought for "Rolling Stock". The Budd Company has prepared a study and assembled statistics for one job which indicate that approximately 20% of a domestic source bid is returned to the U. S. economy in the form of taxes. Because of this favorable impact and the specific reference in Section 660. 32(a)(2) to "Rolling Stock", it is submitter's conclusion that the legislation intent of Congress was to use the tax impact as a dominant consideration for Rolling Stock when a request for a waiver to "Buy America" is submitted by a foreign manufacturer.

At present, there are two problems associated with the application of Section 660. 32(a)(2). The first concerns the meaning of "tax revenues". The regulation quotes the statute (49 USC 1602) verbatim, and nowhere in the legislative history is the term "tax revenues" treated. UMTA has elected to define "tax revenues" as "taxes paid only by the successful bidder".

Looking at the listed exceptions, it becomes obvious that exceptions (1), (3), and (4) are directly applicable to the party seeking a waiver. This seeking-party has to demonstrate that his submission is: (1) in the public interest, (3) lacks U. S. availability or (4) is at least 10% lower in price than the domestic bidder. This is true for any type of acquisition in which DOT funds are involved (e. g. highways, buses, etc.). However, where "Rolling Stock" is concerned, Budd believes that exception (2) is only indirectly applicable to a waiver seeker inasmuch as price adjustments for tax revenues returned on domestic products can only be calculated to a reasonable degree by the party (most likely an unsuccessful bidder) against whom the waiver would have an effect. Therefore the successful bidder would not be the likely party involved except on rare occasions. It is believed that exception (2) is more likely to be invoked by a domestic party trying to demonstrate that when after-tax-revenues are allocated to its domestic products the result is a lower cost than that offered by a foreign manufacturer who is seeking a waiver.

This leads to the second problem in the application of UMTA's definition to Section 660. 32(a)(2). The definition "taxes paid...bidder". If "bidder" is changed to --- requesting party --- a problem still exists with the term "taxes paid only by". This term has been interpreted by UMTA to be limited to income taxes. There has apparently been a determination that the "requesting party" (or "bidder" as presently used) will always be profitable and thus always pay income tax. The recent history of car builders in the United States is just to the contrary. The industry's profit difficulties are, perhaps, the reason why exception (2) was inserted (otherwise why limit exception (2) to "rolling stock"?)

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Budd submits that all taxes generated should be considered, particularly company payroll taxes, workers' income taxes, social security taxes by both employer and employee, real estate taxes, inventory taxes, and the like. These taxes are controlled by, and are proportional to, the work being conducted in the plant. Income taxes on profits (taxes directly paid by the interested parties) are not necessarily generated by the work in-house because of a number of reasons, such as a carry-forward loss from prior years' unprofitable operations.

If Budd's estimate of taxes generated (approximately 20%) is demonstrated to be applicable to most rail car acquisitions, then exception (2) would, in effect, indicate to a waiver-seeking foreign manufacturer, that where rolling stock is concerned, the "Buy America" provision should be observed or the waiver-seeking should have a price about 20% lower than the domestic supplier's price, not just the 10%, which normally applies to DOT acquisitions under exception (4).

We wish to point out that still another result, which also frustrates Congressional intent behind Section 401 of the Act, flows directly from assigning artificially low values to foreign components. That is, where arbitrary values not reflective of the actual costs of producing merchandise are assigned to foreign components, the actual liability of a foreign seller for customs duties on foreign components may be substantially understated. The end result, therefore, is that the cost of foreign components, of which customs duties are a part, may be substantially understated. Needless to say, a Buy America Certificate based upon such calculations may be of questionable accuracy.

The customs valuation of imported railcars and parts occurs at the time they are imported into the United States. This is the first time at which imported railcars and parts which are sold at below cost may be appraised, for customs duty purposes, at values which reflect the true worth or cost of the merchandise. At this time, the Customs Service, on its own initiative, may appraise merchandise entered into the United States at artificially low values at higher values which are more reflective of the true value of the merchandise. Inasmuch as the rates of duty applicable to imported railcars and parts are expressed in ad valorem percentages, an increase in the appraised values of imported merchandise can substantially affect an importer's liability for customs duties, thereby affecting the value of foreign components for Buy America purposes. We wish to inform you that where The Budd Company believes imported railcars and parts are entered into the United States at below cost, it will actively seek to have appraisal of such merchandise made at the proper higher values for duty purposes.

As previously discussed, delivery of railcars normally begins about two years after a contract is awarded. In the case of railcars which incorporate a substantial portion of foreign components which are entered into the U.S. at

THE BUDD COMPANY

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artificially low values, this means that increased duties due to a finding of higher Customs appraised values may not be properly allocated to the value of the foreign components until years after a contract is awarded and years after a Buy America certificate is executed.

Examples of what The Budd Company believes are bids by foreign manufacturers at less than actual cost occurred in the recent solicitation for bids by the Southeastern Pennsylvania Transportation Authority (SEPTA). The SEPTA solicitation was published on December 21, 1978, and requested bids on 60 to 141 light rail vehicles (SEPTA Bid No. 12128). Attached as Appendix A is a table, obtained from SEPTA, which shows the quotations submitted by 6 companies (5 foreign bidders and one domestic bidder, The Budd Company.) As the attached table indicates, the Nissho-Iwai Railway Company of Japan submitted the lowest bid. Nissho-Iwai is not a railcar manufacturer, but is a trading company. The builder of the cars would be the Kawasaki Company, also of Japan. Although a SEPTA contract has not been awarded yet, based upon past experience, it seems probable that Nissho-Iwai, as low bidder, will be selected.

The Nissho-Iwai bid in Option 1 (for 94, 4 axle, single end cars) is illustrative of below-cost bids by foreign manufacturers. A bid price of \$418,700 per car was submitted, or a total bid of \$39,357,800 (418x94). However, based upon our conservative estimates, we believe that Kawasaki's actual cost of manufacturing the car would be at least \$484,000, even assuming that 141 cars, the maximum number of cars SEPTA could acquire if it decided to do so, were manufactured. Thus, we believe that each car has been offered to SEPTA at a price which is at least \$65,300 below Kawasaki's cost of production.

We also wish to note that Urban Transportation Development Corporation, Ltd., (UTDC), a Crown corporation located in Toronto, Ontario, Canada, submitted a bid totaling \$61,499,136, albeit choosing to bid on different options than Nissho-Iwai. Like Nissho-Iwai, UTDC is not a railcar manufacturer, but must rely on others to manufacture railcars it sells. If the SEPTA bid is awarded to UTDC, it is anticipated that Hawker Siddeley, also a bidder on the SEPTA contract would build the cars. We wish to call your attention to the fact that Hawker Siddeley submitted a bid for the same options as did UTDC, but at a total bid price of \$77,369,754. We believe that the Hawker Siddeley bid is especially noteworthy in that it is \$14,870,618 higher than that of UTDC, the company Hawker Siddeley would manufacture cars for if UTDC were awarded the contract.

From the above, it can be readily seen that below-cost bids by foreign companies are a real occurrence which the present regulations fail to address. Accordingly, it is suggested that Section 660.22 of the Regulations be amended to provide that the value attached to foreign components for Buy America purposes must be high enough to cover all costs of manufacture plus an amount for profit equal to that ordinarily realized by the manufacturer. Where no profit is ordinarily realized by a foreign railcar manufacturer (which we believe commonly is the case for

THE BUDD COMPANY

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Dr. Richard S. Page

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many railcar manufacturers owned or funded by foreign governments), we believe that serious consideration should be given to requiring the addition of a presumed profit.

Because of the serious effect below-cost bids from foreign manufacturers have on the economic health of the U. S. railcar industry, and because of the effect such bids have on the validity of Buy America certificates, we respectfully request that UMTA not concur in any awards made by grantees in which both domestic and foreign railcar builders are involved until after a decision is reached on whether the Buy America Certificate in Section 660. 21(b) of the Regulations should be amended as suggested above. In particular, we request that UMTA not concur in any award made by SEPTA until the amendment of Section 660. 21(b), as outlined above, is fully considered.

Another area of concern to The Budd Company involves the number of railcars a foreign manufacturer will use in arriving at its estimated production costs of foreign components. Typically, most grantees require, in order for a bid to be responsive, submission of bids for a number of cars over and above the number the grantee contemplates acquiring. These additional cars, referred to as "mandatory options" in bid solicitations, may or may not be acquired by the grantee. In computing the percentage of cost attributable to foreign components in an end product, the number of railcars which a manufacturer decides will be awarded under the contract is a significant factor in determining the cost of a foreign component. As more units are produced, of course, the fixed costs attributed to each unit are normally reduced. Although the regulations are silent as to the number of units upon which a manufacturer may estimate his costs, it would seem to us that, for purposes of the Buy America Certificate, a foreign manufacturer should be required to figure the cost of foreign components only over the number of units which are certain to be awarded. If the orders for additional cars are considered in estimating the production costs of foreign components and such orders fail to materialize, the estimated cost of the foreign components will be understated. We suggest that the regulations be amended to clarify this point.

The Budd Company, recognizes that UMTA is not charged with the responsibility of investigating unfair practices employed by foreign companies in selling imported merchandise in the U. S. Market, and that the primary responsibility for this area lies with other governmental agencies. However, we do believe that such below-cost sales in procurement projects funded by UMTA are a proper concern to UMTA, and one which should be addressed in regulations effectuating the Congressional intent of Section 401 of the Act.

THE BUDD COMPANY

- 8 -

Dr. Richard S. Page

February 13, 1979

In recognition of the role of other governmental agencies in this area, we wish to advise you of other actions being taken or contemplated by The Budd Company. In this connection, The Budd Company is considering the filing of a petition with the International Trade Commission under Section 201 of the Trade Act of 1974, requesting relief from increased imports of railcars and parts. If it is determined that relief is warranted, a number of remedies can be granted, including increases in duty rates, or a combination of the above. Increased duty rates, of course, would raise the cost of foreign railcar components and thereby could affect the validity of Buy America Certificates filed prior to such rate increases.


With respect to the rates of duty presently applied to imported railcars and parts by the U.S. Customs Service, we wish to advise you that The Budd Company strongly believes that these rates are incorrect, and that higher duty rates should be applied. Essentially, The Budd Company believes that the rate of duty on certain railway cars should be increased by 6.5% ad valorem, and that the rate of duty on parts of certain railway cars should be increased by 3.5% ad valorem. The steps which we have taken and those which will follow in requesting such duty rate increases by the Customs Service are more fully set forth in Appendix B, attached.

Consideration is also being given to the taking of additional actions against what The Budd Company believes are unfair trade practices on the part of foreign railcar sellers. These actions include seeking the imposition of special (i. e., dumping) duties under the Anti-Dumping Act of 1921, as amended, and seeking the imposition of countervailing duties under Section 303 of the Tariff Act of 1930 where foreign railcar manufacturers are subsidized by foreign governments. As we understand the "Buy America" provisions, special dumping duties and countervailing duties would be included in the costs of foreign components.

We respectfully request that the matters discussed in this letter receives your earliest attention. Also, we request the opportunity to meet with you or your designees so that our suggestions on amending the present regulations can be explained in more detail.

Very truly yours,

THE BUDD COMPANY


W. I. Wilson, Sr.
General Manager
Railway Division

Attach. (2)

cmv

c. c. Mr. John Collins - UMTA

APPENDIX A

SEPTA BID NO. 12128

69 to 141 NEW LIGHT RAIL VEHICLES

DECEMBER 21, 1978

BIDDERS

BID OPTIONS	Budd	UTDC	Hawker- Siddeley	Nissho- Iwai Rwy.	BN Co. (LaBrugeoise)	Breda
Base Bid						
Option 1: (94) 4-axle single-end or-----	\$ -	436,549 41,039,836	560,510 52,687,940	418,700 39,357,800	589,440 55,407,360	484,000 45,496,000
Option 2: (69) 6-axle single-end	\$ 815,790 56,289,510	-	-	-	778,295 53,702,355	627,000 43,263,000
MANDATORY OPTIONS						
Option 3-1: (18) 4-axle single-end or-----	\$ -	393,100 7,075,800	484,437 8,719,866	385,200 6,933,600	512,032 9,216,576	455,300 8,195,400
Option 4-1: (12) 6-axle single end and-----	\$ 663,400 7,960,800	-	-	-	668,055 8,016,660	593,450 7,121,400
Option 3-2: (29) 4-axle double end or-----	\$ -	461,500 13,383,560	550,412 15,961,948	394,750 11,487,750	573,703 16,637,387	509,300 14,769,700
Option 4-2: (22) 6-axle double-end	\$ 899,895 19,797,690	-	-	-	737,648 16,228,256	654,400 14,396,800
<u>TOTAL</u>	\$ 84,048,000	61,499,136	77,369,754	57,739,150	SE 81,261,323 DE 77,947,271	SE 68,461,000 DE 64,781,200

APPENDIX B

The Budd Company has taken the initial steps necessary to challenge the rate of duty assessed against certain imported railway cars and parts by the Customs Service. The dispute with the Customs Service centers around the rate of duty applied to so-called "married" rapid transit cars and parts of these cars. "Married" rapid transit cars consist of two railway cars, commonly referred to as "A" and "B" units, neither of which, when operated alone, is capable of self propulsion. When the A and B units are "married" (coupled together and the necessary connections made), the combined units are capable of self propulsion.

It is our understanding that the Customs Service presently classifies imported "married" units (A and B units in the same shipment) as "self-propelled rail vehicles" under tariff item 690.10, which carries a rate of 11.5% ad valorem. We also understand that when an A or B unit is imported separately or where parts of A and B units are imported, such individual units and parts are being classified as parts of self-propelled railcars under tariff item 690.40, which carries a rate of 5.5% ad valorem. We contend that when an A or B unit is imported separately, such unit may not be considered a self-propelled railcar because it is not capable of self-propulsion by itself, but acquires this capability only after being "married" to another unit. Therefore, we believe that A or B units imported separately are properly classifiable as passenger cars, not self-propelled under tariff item 690.15, which carries a rate of 18% ad valorem, and that parts of such cars are properly classifiable as parts of cars, not self-propelled, under tariff item 690.35, which carries a rate of 9% ad valorem.

We are awaiting formal advice from the Customs Service confirming our understanding of its present practice with respect to the rates of duty assessed against "married" railcars and parts. If, as we fully expect, our understanding is confirmed, it is our intention to file a petition with the Customs Service requesting that this practice be changed and, in the future, that A and B units imported separately and parts of such units be classified under tariff items 690.15 (18% ad valorem) and 690.35 (9% ad valorem), respectively.

If our petition is successful, the rate of duty assessed against A and B units imported separately will be increased by 6.5% (from 11.5% to 18%) and the rate assessed against parts of such cars will be increased by 3.5% (from 5.5% to 9%). Such a change in the duty rates applicable to foreign railcars and parts would have two important effects. First, the increased duty costs would have to be absorbed by foreign manufacturers, thereby causing them to raise their bid prices. Second, the cost of foreign components would be increased, thereby affecting the computations upon which the Buy America Certificate is based.



PRESIDENT
AND
CHAIRMAN

EXPORT-IMPORT BANK OF THE UNITED STATES
WASHINGTON, D.C. 20571

March 22, 1979

CABLE ADDRESS "EXIMBANK"
TELEX 89-461

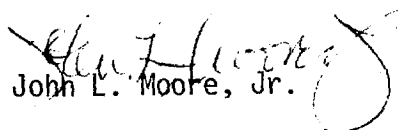
Mr. J. K. Fasick
Director, International Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Fasick:

This is in reply to your letter of March 12 regarding the draft report by the General Accounting Office on problems confronting U.S. railcar manufacturers.

Although we have not reviewed the entire report and are not specialists in this particular field, we have reviewed the sections which deal specifically with Eximbank and we find that we have no objections to the manner in which it is presently drafted. We have inserted a few clarifying sentences on page 44 of the enclosed draft.

Sincerely,


John L. Moore, Jr.

Enclosure



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

APR 24 1979

Dear Mr. Voss:

Thank you for your letter of March 14, 1979, addressed to Secretary Blumenthal and the opportunity it has given me and my staff to review the draft of your report entitled "An Analysis of Problems Confronting U.S. Railcar Manufacturers in the International Urban Railcar Market."

As you suggested, members of my staff have met with representatives of your office to review the draft. We have made various suggestions, largely of a technical nature, pertaining mainly to the draft's discussion of Sections 201(b) and 301 of the Trade Act of 1974 and of the Antidumping Act of 1921. There were no substantive differences between us, and your staff members assured us that the appropriate wording changes would be made in the final version of the report.

Again, thank you for the opportunity of commenting on this draft.

Sincerely,

C. Fred Bergsten

Mr. Allen R. Voss
Director
General Government Division
United States General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Administration
Washington, D.C. 20230

27 APR 1979

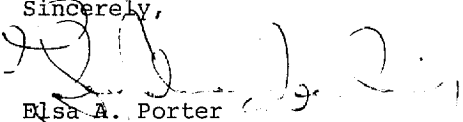
Mr. Henry Eschwege
Director, Community and Economic
Development Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in reply to your letter of March 9, 1979,
requesting comments on the draft report entitled
"An Analysis of Problems Confronting U. S. Railcar
Manufacturers In The International Urban Railcar
Market."

We have reviewed the enclosed comments of the
Assistant Secretary for Industry and Trade and
believe they are responsive to the matters
discussed in the report.

Sincerely,


Elsa A. Porter
Assistant Secretary
for Administration

Enclosure



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Industry and Trade
Washington, D.C. 20230

APR 16 1979

Mr. Henry Eschwege
Director
Community and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

The proposed report entitled "An Analysis of Problems Confronting U.S. Railcar Manufacturers In The International Urban Railcar Market" has been reviewed and comments appropriate to those sections concerned with government assistance (including export financing), U.S. "Buy America" provisions, and the multilateral Government Procurement Code are enclosed.

Sincerely,

Frank A. Weil
Assistant Secretary for
Industry and Trade

Enclosures



Comments of
Industry and Trade Administration
Department of Commerce

on

Draft GAO Report

entitled

"An Analysis of Problems Confronting
U.S. Railcar Manufacturers in the
International Urban Railcar Market"

dated

March 9, 1979

Chapter 5: Government Assistance to Railcar ManufacturersRegional Assistance Programs

The section of the draft report which is addressed to the effects on competition of regional aids (beginning on page 43) is a bit too simplistic--particularly with respect to Treasury officials' alleged contention that "regional assistance (subsidy programs) had little export impact". Foreign regional aid programs are among the most frequently cited as subsidies by U.S. industry and the Treasury Department has found such programs to constitute "bounties or grants" within the meaning of the U.S. countervailing duty statute--notably in Canada.

The problem arises from the fact that foreign governments very often provide subsidies under the guise of regional assistance which are in excess of the amount needed to offset the financial disadvantages associated with a particular geographic location. Where such excessive assistance obtains, the beneficiary firm will naturally realize competitive advantages in both domestic and foreign markets. The recently negotiated MTN Code on Subsidies and Countervailing Measures specifically recognizes that regional assistance subsidies are capable of causing injury to the domestic industries of other countries through the distortions they created in international trade patterns.

[See GAO note 1, p. 101.]

Government Ownership

The issue of the effects of government ownership on international trade essentially centers on the degree to which government equity participation leads to the operation of a firm on the basis of other than commercial considerations. Privately owned companies have as their primary objective the generation of profits--not employment. In this connection, the last sentence in paragraph 3 on page 49 is

[See GAO note 2, p. 101.]

2

particularly enlightening. A state-owned industry which is incapable of generating an adequate return on investment is clearly not operating in accordance with commercial considerations. We would suggest that GAO's investigation of the effects of government ownership on the railcar industry should give greater attention to uncovering the details behind statements such as that referred to on page 49. As with regional assistance programs, the new Code on Subsidies and Countervailing Measures recognizes that government subscription to, or provision of, equity capital can be a form of subsidy with significant potential for distorting international trade.

Attempts to Negotiate a Subsidies Code

The MTN effort to negotiate a new international discipline over the use of subsidies and countervailing measures has now been completed. To reflect this fact, page 49 should be rewritten along the following lines:

"Code on Subsidies and Countervailing Measures

In the Multilateral Trade Negotiations (MTN) the United States and its major trading partners have recently completed negotiations on a Code on Subsidies and Countervailing Measures which represents a greatly improved international discipline over the use of both government subsidies and countervailing duties or other measures employed to offset the effects on trade of subsidies. The Code flatly prohibits the use of export subsidies on industrial products or primary mineral products irrespective of whether the export subsidies lead to lower prices in export markets than would be charged for similar products marketed domestically. This prohibition is backed up with an extensive illustrative listing of those practices to which it applies.

Under the Code, there is no prohibition on the use of domestic or internal subsidies; however, for the first time, there is an explicit recognition that such practices as regional aids, government ownership of industries and government research and development grants can have harmful effects on trade. Adherence to the Code entails a commitment from signatory countries that they will seek to avoid causing adverse effects on other countries through the use of internal subsidies.

The new Code not only improves the GATT regime on subsidies but also provides the basis for improved and streamlined methods of providing remedies to parties who might be adversely affected by foreign subsidies.

[See GAO note 2, p. 101.]

On the multilateral side, the Code's dispute settlement procedures will make it possible to obtain a speedy resolution of international subsidy disputes including the possible authorization of retaliatory countermeasures against parties who pay subsidies in violation of their international obligations. Domestically, U.S. implementation of the Code will provide for a more expeditious countervailing duty process--whereby provisional countervailing measures (e.g., suspension of liquidation) will be possible in as little as 75 days (as opposed to one year under current statute).

The Code and the domestic legislation implementing its principles in the United States will undoubtedly reduce the adverse impact of foreign government assistance to the urban railcar industry in the future."

Export Financing Programs

The GAO report (pages 45-48) suggests that U.S. export financing terms are actually more competitive than indicated in the Gordian study (page 45, paragraph 3). "Terms" as used here, refers to the proportion of government support--which in turn affects the amount of fixed and low-cost interest rates. In fact, France and the U.K. provide the most favorable terms allowable under the international consensus on a routine basis for long-term export projects. All major countries except Canada provide such terms on larger and choicer projects such as urban mass transit systems. Eximbank, because of budgetary and policy considerations, is constrained from providing these liberal terms routinely, but may do so in highly competitive situations. Eximbank does not provide--or is reluctant to provide--related export credit inducements such as local costs, foreign cost, mixed credits, and inflation insurance. On balance, therefore, we consider Gordian's basic point valid, although perhaps over-simplified.

The GAO report further indicates that the use of mixed credits (according to an Eximbank representative) was not as prevalent as was believed and that French mixed credits represent only 3 percent of officially supported French exports and only one percent of all French exports. These comparative statistics should be examined more critically as French mixed credits are extended (1) to LDCs only and not globally; and, (2) preferentially or exclusively for capital goods and not consumer goods or intermediates. Accordingly, a more appropriate comparison would involve a look at mixed credits as a percentage of French capital goods exports to LDCs. It should also be noted that French mixed credits appear to be somewhat concentrated on urban mass transit systems and telecommunications, rather than being scattered

[See GAO note 2, p. 101.]

4

over a wider range of industrial sectors.

The use of favorable export credits to achieve the introduction of given specifications and technologies into any mass transit rail system confers a marked competitive advantage upon the exporting country in terms of future exports of spare parts or products used in system expansion. Moreover, a broad base of export orders may be essential to achieving scale economies and a high level of capacity utilization for any national railcar industry--particularly as domestic orders tend to be cyclical.

We understand that the major new export opportunities for urban mass transit systems (which are not already technologically preempted by one or another supplier) are located in those major cities of LDCs which are not committed to a system of personal vehicular transport; are residentially dense; and, which are not overly built up. The UNDP has projected that, of the world's ten largest cities in the year 2000, most will be located in LDCs. In these circumstances, the use of mixed credits to obtain a competitive advantage for a national industry supplying mass transit equipment should, as a matter of industrial policy, be viewed with some concern.

Finally, the GAO report makes the point that French inflation insurance is costly and offers benefits only within a limited range (page 47). This is accurate, but perhaps less relevant than the fact that users of the program can offer fixed price contracts (increased by allowances for fees and inflation deductibles) versus exporters in other countries who can only offer a base price plus provisions for cost escalation. Thus, inflation insurance can be considered as beneficial to French firms because (1) fixed prices are always attractive compared to estimated escalated cost prices since public utilities managers place a high value on cost certainty; and, (2) the fixed price will often be lower than the estimated escalated cost price.

Government Procurement and "Buy America" Provisions

We believe the report should go further into the facts concerning the situation which exists in the United States for U.S. railcar manufacturers. As a start, the three domestic manufacturers of railcars other than Pullman Incorporated might be identified, and something more might be said on conditions affecting their ability to meet foreign competition in the U.S. market. The same comment applies to U.S. manufacturers of parts for these units. Additional comments, where possible, would also be helpful on the reasons why U.S. firms did not actively participate in the bidding on

[See GAO note 2, p. 101.]

5

railcar procurements funded in part by the U.S. Urban Mass Transportation Administration (UMTA) during the 1976-1978 period. Supplementary information which could be provided on two other points would be useful. Details are given on pages 56 and 57 concerning the five UMTA-financed purchases during the same period that went foreign, but similar information on the purchasing authority, date of award, and name of the successful bidders was not provided for the awards to domestic firms. Also, the report on page VII states that two of the four U.S. railcar manufacturers do not intend to bid as prime contractors on future railcar procurements, but without further comment.

[See GAO note 1, p. 101.]

The following statement is proposed in substitution for the passage beginning at the bottom of page 38 with "In late 1978, representatives..." and ending with "...dominated by public corporations both here and abroad" on page 39: "An agreement was reached on the outlines of a Government Procurement Code during late 1978 by countries participating in its drafting. The Code, which is open to adherence by countries agreeing to accept its obligations, provides for treatment of suppliers from other Code signatories that is no less favorable than that accorded to domestic products and suppliers. Coverage of the Code extends to those entities under the direct or substantial control of central governments which are specifically listed in the annex to the Code. Despite U.S. interest in including foreign transportation entities under the Code, these entities generally are not covered because the major trading partners of the United States could not agree to their inclusion at this time. By virtue of the foregoing rule on entity coverage, procurements by State and local authorities--including purchases of railcars by local authorities--fall outside the scope of the Code even though the Federal Government may provide financial assistance for such purchases."

We concur with the view in the report that the time elapsing

[See GAO note 2, p. 101.]

6

since the Buy America provision of the Surface Transportation Assistance Act of 1978 came into force has been too short to assess its trade impact. Canada has been quick to complain about its trade-restrictive effect, however, making a formal charge that the U.S. action impairs U.S. tariff concessions to Canada.

Worldwide Productive Capacity

The "Pullman Paper" and the draft GAO Report agree that there is excess rail car productive capacity in the world. We concur.

The "Pullman Paper" suggests that such excess capacity stimulates exports to the U.S. The draft GAO Report does not agree. Although not proven by hard evidence, we agree with position taken in the "Pullman Paper".

In its comments, the draft GAO Report does not address situations in which foreign companies with a protected home market and excess capacity use "incremental pricing" to sell in world markets. The resulting prices - used during periods of low demand in home markets - cover variable costs arising in connection with the sales and little or no fixed costs. Using "incremental pricing" to win contract awards, the companies concerned can keep their labor forces employed until demand increases in home markets.

The Washington Star of March 22, 1979, reported that Pullman Inc., has withdrawn from the rail passenger car market upon completion of its present contracts. This departure leaves the Budd Company - recently purchased by Thyssen of West Germany - as the single U.S. manufacturer producing rail passenger cars. This development should be reflected in the final GAO report.

GAO notes:

1. Deleted comments pertained to matters no longer in the final report.
2. Page references in this appendix were changed to agree with the page numbers in the final report.

CHAIRMAN



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

MAY 10 1979

Mr. J. K. Fasick
International Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Fasick:

Enclosed are the comments of the Commission on chapters 1 and 6 of the draft of a proposed report prepared by the General Accounting Office entitled "An Analysis of Problems Confronting U.S. Railcar Manufacturers in the International Urban Railcar Market." If you have any questions with respect to the Commission's comments, you may wish to contact the Commission's General Counsel, Mr. Michael Stein who can be reached by phone at 523-0350.

Sincerely,

A handwritten signature in cursive script that reads "Joseph O. Parker".

Joseph O. Parker
Chairman

GAO note: Agency comments contained in the enclosure pertain to matters no longer in the final report, matters discussed in chapters of the report which it did not review, or suggestions by the agency that were incorporated in the report.

MEMORANDUM TO THE UNITED STATES INTERNATIONAL TRADE COMMISSION
FROM THE GENERAL COUNSEL ON GAO'S "DRAFT OF A PROPOSED REPORT
ON THE PROBLEMS CONFRONTING U.S. RAIL CAR MANUFACTURERS
IN THE INTERNATIONAL URBAN RAIL CAR MARKET" 1/

Background

The General Accounting Office has requested the Commission to review part of a draft report being prepared by the Office for a subcommittee of the Senate Appropriations Committee. The subject of the report is competition from foreign manufacturers in procurement of urban rail cars (or components of rail cars) by U.S. municipal authorities with financial assistance from the federal government. Since the Commission has been given only pieces of the report, 2/ the Commission is unable to make any complete analysis of the proposed report. In addition, the Commission has no recent study data available on the urban railcar market in the United States or the competitiveness of U.S. and foreign products within that market. For these reasons, the comments of the Commission are primarily restricted to technical inaccuracies or oversights in the draft report.

The comments are as follows:

1. Relationship of this subject to the Multilateral Trade Negotiations.

In the material submitted to the Commission, inadequate attention has been given to the impact of the Multilateral Trade Negotiations upon the issues set forth in the paper. The paper is primarily concerned with the fact

1/ Draft submitted to the ITC for review on March 12, 1979.

2/ The pieces we have been given are a cover, a table of contents, pages i-ix, chapter 1 and chapter 6.

that between 1976 and 1978, when there was no "Buy America" preference applicable to purchases by local authorities of urban railcar equipment with the assistance of the federal government, five out of nine such procurements went to foreign manufacturers. It would appear from the report, that some members of the domestic industry feel that foreign "subsidization" by foreign governments of foreign manufacturers of railcars and railcar equipment were in some part responsible for the ability of foreign manufacturers to compete successfully for these bids. Notwithstanding the fact that the multilateral trade negotiations are at several points mentioned in the portions of the draft which has been given to the Commission no detailed analysis is made of the two most important codes for these purposes. One is the government procurement code, which would require the United States, if it becomes a signatory, to suspend application of its buy-national policies with respect to certain types of procurements, from certain entities, with respect to exports from countries which are also signatories to the agreement, and the second is the subsidy/countervailing duty code.

While the text of the international codes agreed to in Geneva are publicly available, much of the related agreement material is still classified, and since we do not have a complete edition of the report, we are unable to comment completely upon the impact of the government procurement code upon the present buy-American provision in the Surface Transportation Assistance Act of 1978 (Public Law 95-599), discussed in the GAO draft report at page 2. We suggest contacting the Office of the Special Representative for Trade negotiations for complete information. We can, however, offer the following comments.

Part I:1(c) of the government procurement code states that the code applies only to procurement by "entities under the direct or substantial control" of the parties to the agreement or other designated entities. The only entities falling within this normative rule are ones listed in Annex I to the code. The United States' entity list does not include the Department of Transportation, or any of its constituent offices, including the Urban Mass Transportation Administration. Therefore, purchasing practices of UMTA, including the buy-America policy mandated by the Surface Transportation Assistance Act, will not be affected by United States accession to the procurement code.

Further, part I:2 of the code obligates the parties merely to "inform" entities not covered, and regional and local governments, of the "objectives, principles . . . rules (and) benefits" of the code; by negative inference, and clear intent as revealed by the negotiating history of the agreement, this paragraph admits that the code does not apply to buy-America policies of state or local governments which might affect the use of UMTA funds. Whether the code applies to national buy-America conditions imposed on grants to local governments made by covered entities is less clear, especially in view of the normative coverage rule, but again the language of part I:1(c) seems determinative--the code only applies to purchases by the entities listed on Annex I, which do not include any state or local governments. Because agreement to the code by the U.S. hinges on a close determination of the quality and quantity of the value of procurements conceded by the other parties, it seems unlikely that entities not on the

Part I:1(c) of the government procurement code states that the code applies only to procurement by "entities under the direct or substantial control" of the parties to the agreement or other designated entities. The only entities falling within this normative rule are ones listed in Annex I to the code. The United States' entity list does not include the Department of Transportation, or any of its constituent offices, including the Urban Mass Transportation Administration. Therefore, purchasing practices of UMTA, including the buy-America policy mandated by the Surface Transportation Assistance Act, will not be affected by United States accession to the procurement code.

Further, part I:2 of the code obligates the parties merely to "inform" entities not covered, and regional and local governments, of the "objectives, principles . . . rules (and) benefits" of the code; by negative inference, and clear intent as revealed by the negotiating history of the agreement, this paragraph admits that the code does not apply to buy-America policies of state or local governments which might affect the use of UMTA funds. Whether the code applies to national buy-America conditions imposed on grants to local governments made by covered entities is less clear, especially in view of the normative coverage rule, but again the language of part I:1(c) seems determinative--the code only applies to purchases by the entities listed on Annex I, which do not include any state or local governments. Because agreement to the code by the U.S. hinges on a close determination of the quality and quantity of the value of procurements conceded by the other parties, it seems unlikely that entities not on the

federal ministerial level will be subject to inclusion now or in the foreseeable future. This indeed appears to be the position adopted by the Administration in its efforts to win Congressional approval of the code, and we find no reason to doubt that this is the United States position viz. the other negotiating parties.

Finally, we understand that Canada has instituted a disputes settlement against the United States proceeding under Article XXIII of the GATT because of the buy-America provisions of the Surface Transportation Act. Since procurement of products has long been considered generally not within the purview of the GATT, it is unclear what comprises the theory of the Canadian complaint. The Office of the Special Representative for Trade negotiations should be able to verify the existence and substance of the proceeding. We note, however, that institution of the complaint seems plainly at odds with the Canadian attitudes reported in the GAO study, and portends far-reaching consequences for this and other similarly restrictive federal grant programs.

Since subsidization is alleged with respect to railcar equipment, some greater account ought to be taken of the impact of the subsidy/countervailing duty code under the Multilateral Trade Negotiations. This possibility is mentioned but not discussed in any detail at page 60 of the partial draft delivered to the Commission, but the discussion is inadequate in our view. Again, however, some aspects of the negotiation remain classified by the Executive Branch and without more time, a copy of the full report and background information, the Commission is unable to comment at this time. The Office of the Special Representative for Trade Negotiations in the Executive Office of the President may, however, be able to provide some assistance.

2. Technical deficiencies in the report.

The Commission has identified the following inaccuracies of deficiencies in the partial draft of the report that has been delivered to us.

Pages vi, 57 and 64: These pages suggest that the buy-American provision added to the law applicable to government procurement of railcar equipment by means of the Surface Transportation Assistance Act of 1978 (see above) would have had little impact on the outcome of procurements which had, without the provision, been awarded to foreign firms, since United States firms did not bid on those contracts. While the language is somewhat ambiguous, the obvious problem with the statement is that without the preference for domestic purchases, there may have been little incentive for those companies to bid.

Pages 59-64 (U.S. remedial statutes): Generally, the Commission does not take the position that U.S. statutes for the relief of dumping, foreign subsidization of exports to the United States, and relief from unfair trade practices and unfair acts in the importation and sale of articles in the United States are inadequate, nor that the import relief provisions of the Trade Act of 1974 are inadequate. Our specific comments are:

On page 60, the Antidumping Act, 1921 is made to appear to be the only U.S. antidumping act, and the practice of dumping is made to appear to be "selling goods in the United States market at less than their fair market value." In fact, there was an antidumping act passed in the United States in 1916. Moreover, dumping includes not only selling at less than fair value, but injury by reason of that selling to a U.S. industry.

[See GAO note, p. 110.]

Several of the five subparagraphs on page 60 of the partial draft report contain inaccuracies. In the first subparagraph, there is a statement of "U.S. manufacturers and government officials," to the effect that, since railcars are custom-made and technically sophisticated, there may be no way to determine less than fair value margins. In fact, such margins can be determined notwithstanding a lack of sales in the domestic market. This is by virtue of the provisions on constructed value in section 206 of the Antidumping Act, 1921, 19 U.S.C. 165.

In the second subparagraph, the comment that the Antidumping Act, 1921, is "a slow process," and one that is suitable to "continuous production type items such as television sets or other consumer items," are not wholly true. The injury portion of dumping proceedings is subject to strict time limits, and those time limits may well be shortened under the statutes necessary to implement the agreement on antidumping being negotiated at the multilateral trade negotiations. Moreover, the Dumping Act has occasionally been applied to items similar in nature to urban railcars. See the Commission investigation in Railway Track Maintenance Equipment from Austria, Investigation No. AA192-173. Moreover, note that Antidumping Act determinations may have a retroactive effect, since the Department of Treasury is authorized to withhold appraisement on entries based upon a tentative determination which may occur a number of months before a final determination is reached.

Finally, the complaint that dumping duties are an inadequate remedy for the domestic firm does not take account of the market impact of dumping proceedings, much less the duty assessment process itself. The tendency has [See GAO note, p. 110.]

been in the past for the existence of the proceeding to cause companies allegedly engaging in the practice to readjust their pricing so as to avoid the duty. It may be, however, that under "cost plus" contracts, which permit adjustment of contract prices to reflect a successful bidder's increasing costs, antidumping or countervailing duties would be treated as a cost. In order to avoid the anomaly that could arise under such a contract of the United States allowing a contract price to increase to reflect the U.S. duties and charges, you may want to advise the Congress to consider whether the "Buy-America" provisions of the Surface Transportation Act can be administered so as to prevent readjustment of contract prices where foreign contractors experience "increased costs" through assessment of U.S. countervailing and antidumping duties.

Page 62. The second full paragraph concerning section 337 on this page is inaccurate. While the majority of section 337 cases have in the past been applied to cases involving domestic patents, there are a number of cases involving other unfair trade practices. Such complaints, submitted to the Commission under the provisions of the law, are regularly the basis for full investigations. The Commission has authority temporarily to restrain importation of articles that benefit from unfair trade practices. While the Commission has authority to notify the Treasury Department of matters that come to its attention which appear to be within the purview of the Antidumping Act, 1921, or the countervailing duty law, and to suspend for coordinate proceedings in other agencies, it is not at the present time required to do so. Indeed, section 337(a) provides that the statute is "in addition to" other provisions of law.

[See GAO note, p. 110.]

Page 61. The paragraph at the bottom of page 61, while generally accurate, does nothing more than describe the limitations upon the import relief provisions adherent in the law. Notwithstanding these technical difficulties, product definitions and findings of increasing imports are made by the Commission in cases that are appropriate for relief under the law. The Commission prefers that the report reflect no position of this agency on the President's authority to overrule the Commission, since under the law he considers factors that are not considered by the Commission. However, we believe it would be useful for the law to reflect that in the event the President disagrees with the Commission, Congress has reserved the right to impose the Commission's remedy over the objections of the President.

[See GAO note.]

GAO note: Page references in this appendix were changed to agree with the page numbers in the final report.

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