

1 EXECUTIVE MEETING

2 THURSDAY, MAY 3, 1984

3 U.S. Senate

4 Senate Committee on Finance

5 Washington, D. C.

6 The committee met, pursuant to notice, at 10:10 a.m.  
7 in room 2D215, Dirksen Senate Office Building, the Honorable  
8 Robert J. Dole (chairman) presiding.

9 Present: Senators Dole, Packwood, Danforth, Chafee,  
10 Heinz, Armstrong, Symms, Grassley, Long, Bentsen, Moynihan,  
11 Baucus, Boren, Bradley, and Mitchell.

12 Also present: Ambassador Brock, Messrs. DeArment,  
13 Carter, Healy, Kassinger, Lang, Miller, and Ms. Weaver.

14 (The press release announcing the meeting and the  
15 prepared statements of Senators Grassley and Bentsen  
16 follow:)

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OK'd by Charles E. Grassley *My amendment*

Mr. Chairman, ~~I am pleased to announce that I have introduced an amendment to request~~ the International Trade Commission to conduct an investigation of the reasons behind the tremendous increase of U.S. pork imports from Canada. This is certainly an important issue for our nation's pork producers, particularly those of Iowa, the number one pork producing state accounting for over one-fourth of all pork production.

Between 1976 and 1982, the value of pork imports from Canada have skyrocketed by over 1000 percent, from 28,642,000 Canadian dollars in 1976 to 308,952,000 Canadian dollars in 1982. In 1977, 2,266 metric tons of fresh or chilled Canadian pork was imported; by 1983, this figure had jumped to 93,151 metric tons.

The United States is now also importing a great number of live hogs from Canada. In 1977, Canada exported 43,000 live hogs into the U.S. By 1983, this figure had jumped to an astounding 447,391. Interestingly, the U.S. exports little more than a hand full of breeding hogs because Canada has restricted U.S. hog imports supposedly upon concerns about pseudorabies. Live hogs from the U.S. must be placed in quarantine 30 days prior to entry into Canada, and must come from a herd that has been disease free for 12 months. The U.S. does not impose similar restrictions, an inequity that needs to be studied.

What is so surprising about these live hog imports is that most of them, from my understanding, are shipped for slaughter to Iowa. I cannot help but wonder how Canadian pork producers can compete with Iowa hog producers in our own backyard.

It is my hope that the ITC can answer some of these questions and that appropriate action be taken to restore some balance in this area of Canadian/U.S. trade.

~~I wholeheartedly support this amendment and urge my colleagues to join us.~~

C. Briggs

1 The Chairman. The next item on the agenda is the  
2 increase in the limit on the public debt. Senator Packwood  
3 had hearings on it, is that correct?

4 Senator Packwood. I had hearings, had one Treasury  
5 witness, and that was it -- "send it out."

6 The Chairman. I don't know of any reason to not record  
7 it. I mean, we can argue about if it is fair or not, but  
8 what did we increase the debt to, Rod?

9 Mr. DeArment. Mr. Chairman, the amount depends on the  
10 day you would want to go to. One suggestion would be to  
11 take it to the end of March next year. That amount they  
12 estimate would be \$1.697 trillion.

13 Senator Packwood. To get us to the end of March next  
14 year you need \$1.67 trillion?

15 Mr. DeArment. It is \$1.697 trillion.

16 Senator Packwood. All right. Almost \$1.7 trillion will  
17 get us through -- ?

18 Mr. DeArment. Through March 29th, that is their  
19 estimate. And the farther they get out, of course the  
20 less reliable the estimates are.

21 Senator Packwood. Discussion? Pat?

22 Senator Moynihan. Let's see, how does that work out?  
23 That in the four years of the Administration, the national  
24 debt has just about doubled. Is that it?

25 Senator Packwood. As I recall, we went over a trillion

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1 just --

2 Senator Moynihan. About 964 on the 20th of January.

3 Senator Packwood. We went over a trillion about  
4 September 1st as I recall.

5 Senator Moynihan. Of 1981?

6 Senator Packwood. Yes.

7 Senator Moynihan. I ask the question, and maybe somebody  
8 from Treasury would answer: Are we proposing to just about  
9 double the national debt in four years?

10 Senator Packwood. Well, I don't think, when you are  
11 saying "are we proposing to." What we are simply going to  
12 do is recognize the money that we have already spent or  
13 committed ourselves to spend. It is close to a doubling,  
14 not quite a doubling.

15 Senator Moynihan. It is 964, in that range.

16 Senator Packwood. It is close to a doubling. Is that  
17 right, Treasury?

18 Mr. Carter. Yes, Senator, that is correct. We ended up  
19 the fiscal year, if I can speak to that, fiscal year 1980,  
20 with a total public debt subject to limit of \$908.7 billion.

21 Senator Packwood. That is as of September 1979?

22 Mr. Carter. That is September 30, 1980.

23 Senator Packwood. All right.

24 Mr. Carter. And we are asking through September 30,  
25 1984, \$1.589 trillion.

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Senator Moynihan. How much is that, again, sir?

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Mr. Carter. We are asking for \$1.589 trillion to take us through September 30, 1984.

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Senator Moynihan. So that is getting pretty close to the doubling. It's like 82 percent.

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Mr. Carter. Yes, sir, that is correct.

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Senator Moynihan. The reason I ask, Mr. Chairman, is that last January the Secretary of the Treasury came to this committee, and I asked him about who owns the national debt. He said he would get us an answer. He thought it was mostly labor unions, I think.

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I make the point -- would the Treasury listen, perhaps? Have a heart, all right?

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You have never given us this answer. And the simple fact is that what we are involved in here, if I am not mistaken, is the largest transfer of wealth from labor to capital that we have ever seen in this society.

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Now, we are going to shortly be requiring half the personal income tax to pay the interest on the debt -- 80 percent of the personal income tax is withheld from wages. This is a huge change in our political economy. And it is not a change directed towards entrepreneurs; it is directed toward what the French and the economists call "rentiers," people who have capital and lend it out.

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1           And we still haven't heard from the Treasury. I mean,  
2 we had a solemn -- I'm sorry, sir, I don't know your name.

3           Mr. Carter. I'm sorry. My name is Warren Carter. I am  
4 the Deputy Assistant Secretary for Federal Finance.

5           Senator Moynihan. Well, Mr. Secretary, your colleague  
6 Donald Regan solemnly undertook to give this committee an  
7 accounting of who owns the national debt, as best it's known.  
8 And we haven't got a thing.

9           Mr. Carter. Senator, in response to a letter that you  
10 have sent us which has requested that information by June 1  
11 of this year, we are working on that.

12           Senator Moynihan. That letter came about three months  
13 after the personal commitment was given and no response was  
14 made.

15           Mr. Carter. Well, I can go over with you now, or I  
16 can send you this table at a later date -- our estimated  
17 ownership of the public debt as of the end of last year.

18           Senator Moynihan. I am not going to ask to hold up the  
19 committee, but I just wanted to make this point: Does the  
20 Treasury understand that you are turning enormous amounts of  
21 wealth away from income earned by work towards persons who  
22 simply own wealth? I mean, this is massive; there has been  
23 no such change in our history. Can you personally think  
24 of such a time when the Federal Government will be  
25 transferring as much wealth from labor to capital as it will

1 be under the condition of this indebtedness?

2 Mr. Carter. Well, I can't speak to the economic flows  
3 that you are referring to -- I am not an economist. It is  
4 clear, though, that the size of the government's presence  
5 in the credit markets, the amount of the debt that we are  
6 needing, and certainly the size of the deficits themselves  
7 are historically very large.

8 Senator Moynihan. But remember, this Administration  
9 came to office espousing a doctrine of supply-side economics,  
10 which basically said that entrepreneurial activity should  
11 be rewarded; and we are ending up with a condition that may  
12 take a generation to overcome. And what will be rewarded is  
13 having chosen your grandparents carefully. I mean it is a  
14 "rentier's economy," and a very serious change in the  
15 balance of social forces. And no one seems to understand  
16 it or want to speak to it.

17 I don't mean to pester you, but I just want to make the  
18 point that we haven't had our report, sir, and you really  
19 ought to be interested. I am sure you are.

20 Mr. Carter. We will see that you get your report.

21 Senator Chafee. I am a step behind here. Is the problem  
22 that you are discussing the debt situation?

23 Senator Moynihan. Yes, Charles.

24 Senator Chafee. But that results from the government  
25 spending more money than it takes in.

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1 Senator Moynihan. Right.

2 Senator Chafee. And the solution to this massive  
3 outpaying of so-called unearned income you talked about is  
4 to eliminate the deficit.

5 Senator Moynihan. I just couldn't more agree. But  
6 it just seems to me we might get to that solution a little  
7 more quickly than we are doing if we saw the implications  
8 for our society in terms different from which it is usually  
9 discussed.

10 Senator Chafee. I see.

11 The Chairman. I think the point is that the Treasury  
12 did promise us that information. I recall that. When will  
13 we have it? By the first of June? Or before that time?

14 Mr. Carter. I think, Mr. Chairman, we can give the  
15 ownership table certainly before then.

16 The Chairman. As I understand, and I would like to  
17 make it a part of the record, the explanation was provided by  
18 the Joint Committee on Taxation, which is a two-page summary,  
19 Present Law, Current Situation.

20 At what level are we going to act on it? You would take  
21 us to what date? I regret that I was out of the room when  
22 this was discussed.

23 Mr. DeArment. The suggestion was that we would have  
24 a level that would be sufficient to take us through the  
25 end of March, and that level would be \$1.697 trillion.



1           The Chairman. I understand that is what the House  
2 intends to do; is that correct?

3           Mr. DeArment. Based on my discussion with staff over  
4 there, that is what they are looking at.

5           The Chairman. Is there a request for some long-term  
6 bond amendment?

7           Mr. DeArment. Yes, Mr. Chairman. The Administration  
8 would, in their first preference, like to see us repeal the  
9 limitation; but their second choice, which we would  
10 recommend, would be to increase that long-bond authority  
11 to \$200 billion.

12           Senator Moynihan. Mr. Chairman, could I just ask a  
13 question?

14           The Chairman. Sure.

15           Senator Moynihan. This is to the point which I think  
16 this committee is going to have to concentrate on, the  
17 extraordinary new position which we have created for owners  
18 of capital.

19           We have in law a limit of 4.4 percent on Treasury  
20 securities -- those are long-term securities?

21           Mr. Carter. Securities over 10 years, Senator.

22           Senator Moynihan. Over 10 years?

23           Mr. Carter. Yes, sir.

24           Senator Moynihan. When does that law date?

25           Mr. Carter. I would have to check to be certain, but it

1 is quite a long time ago, perhaps as long ago as World War I.

2 Senator Moynihan. It was once thought that a proper  
3 return on the most secure instrument the nation had to  
4 offer was a 4 1/2 percent maximum.

5 Mr. Carter. Four and a quarter.

6 Senator Moynihan. Four and a quarter, sorry.

7 This Congress said you cannot pay capital more than  
8 4 and 1/4 percent, right?

9 Mr. Carter. That's what the law would say, yes, sir.

10 Senator Moynihan. What is the rate on a 10-year  
11 bond today?

12 Mr. Carter. Approximately 12 and 7/8 percent.

13 Senator Moynihan. So we are in effect -- and my friend  
14 from Rhode Island might want to hear this -- we are now  
15 paying to capital three times the rate which Congress set  
16 as the limit a half-century ago. We are not only paying  
17 more of it, but we are paying an interest rate three times  
18 what was thought the maximum that could reasonably be  
19 expected.

20 So it is not just that there is more transfer at this  
21 level, and, there being more debt, there is more return on  
22 it; but the return is at a rate of three times the historic  
23 level. We are changing the nature of our society through  
24 this debt.

25 The deficit has to be thought of, in my view, in a very

1 different way in terms of the transfer of wealth, which is  
2 massive now.

3 And of course those interest rates move all across the  
4 society. The rate for Treasury Bonds is directly  
5 correlated to the general rate for capital; so the return  
6 on capital has been vastly increased, and the need to tax  
7 wages in order to pay it in terms of the national debt has  
8 been extraordinarily increased.

9 I guess the time will come when something like 60 percent  
10 of wages withheld from paychecks under the withholding  
11 plan will go directly to pay the interest on the debt. I  
12 mean, that is the sort of thing that is said to have  
13 caused revolutions.

14 The Chairman. Well, as I understand the Treasury's  
15 request, the first preference is to repeal the 4 1/4  
16 percent; the second is to increase it by \$50 billion. We  
17 are at about \$137 billion under the present exception, is  
18 that correct?

19 Mr. Carter. Yes, sir.

20 The Chairman. Is there any objection to reporting out  
21 the second preference?

22 Senator Moynihan. Well, Mr. Chairman, I would like to  
23 make this point: We are being awfully casual about this.  
24 During World War II, long-term bonds -- we were at war, and  
25 the war outcome wasn't settled -- the rate on World War II

1 bonds was 2.75 percent. Now we are paying something very  
2 close to four or four-and-a-half times that.

3 It shouldn't be regarded as something, "Oh, we are  
4 just doing," because this has to be paid by taxes, and the  
5 taxes will be paid by people who work for a living and have  
6 them withheld, as they should.

7 Senator Packwood. But, Pat, at this stage what do  
8 you suggest?

9 Senator Moynihan. I suggest we take note and not  
10 act as if, "Well, it just happens every day." This is an  
11 historic change.

12 Senator Packwood. Well, no, it didn't happen every  
13 day; it has been happening for the last 10-15-20-35 years  
14 as we have been gradually spending and spending and spending  
15 more than we have been taking in. And we are all aware  
16 we have been doing it. And most of us at this table have  
17 voted for most of those expenditures.

18 Now, having gotten ourselves to this position, what  
19 do we do about it?

20 Senator Moynihan. Have we ever gotten in the position  
21 where we almost doubled the debt in four years?

22 Senator Packwood. No, although I would wager that most  
23 of the members of this committee voted for the things that  
24 got us there.

25 Senator Moynihan. That is right.

1 All I would wish to do is draw attention to the  
2 a-historic flavor of what we are doing. I don't think this  
3 is on the curve, Bob; I really don't.

4 Senator Bradley. If I could just follow what  
5 Senator Moynihan said, if you want to be even a little more  
6 perverse, because a lot of this Treasury debt is bought by  
7 foreigners -- last year \$172 billion -- essentially U.S. tax  
8 dollars are going to pay 12 percent interest to a wealthy  
9 foreigner.

10 Senator Packwood. But I would hate to think what that  
11 interest would be if the foreigners weren't investing and  
12 we were funding it all domestically.

13 Senator Bradley. Well, the reality of the international  
14 capital markets is what it is today, and it is indeed an  
15 open market, and capital flows wherever the interest rates  
16 are the highest. But the effect of that is to essentially  
17 take it out of the pocket of taxpayers and put it into the  
18 pockets of those who buy them.

19 The Chairman. I don't disagree with Senator Moynihan.  
20 We were told by the experts -- I'm not one -- that is going  
21 to be 2.5 trillion by 1989 unless there is some reversal.  
22 Is that your projection? Do you have any long-range  
23 projections on where we are headed?

24 Mr. Healy. Nothing different than what would be in the  
25 budget update of early April.

1           Senator Moynihan. That would constitute about a  
2 tripling over eight years.

3           The Chairman. I don't know what the alternative is,  
4 and I know this is not a pleasant task, but I would hope  
5 that we would report out the request. It is my under-  
6 standing the House wishes to do the same thing, go through  
7 next March, and hopefully we won't be back here after the  
8 election.

9           If there is no objection, let's report it out for  
10 the second preference. You will have to have an S-numbered  
11 bill. I don't think we have any House vehicle, is that  
12 correct?

13           Mr. DeArment. We don't have any very good House  
14 vehicles. We have some private relief bills.

15           Senator Moynihan. Mr. Chairman, I have no objection,  
16 and no respectable person has; but I would like to note that  
17 on the editorial page of the Wall Street Journal of April 1,  
18 Mr. Herbert Stein, who is Chairman of the Council of  
19 Economic Advisors, had a very simple proposal for dealing with  
20 this matter, with the debt. He said: "Repudiate." He said  
21 "If you won't repudiate it, then the only alternative" -- and  
22 he is very serious about this, and I think historically he is  
23 correct -- "is to do so by inflation."

24           If we triple the debt in eight years, future governments  
25 will in fact debauch the currency. That will be the only way

1 they can handle it.

2 I think what I would like to see, sir, I would like to  
3 see the United States Treasury come into this room with a  
4 little interest in this subject. You are levying vast  
5 amounts of money on labor, and you are transferring it  
6 somewhere. I think about 20 percent of interest payments  
7 go overseas now. And the attitude is, "Well, we don't know,"  
8 or "It can't be very important," or, you know, "Hmm."

9 I think you really owe it to us, sir. Mr. Carter, I  
10 am not being personal; I'm sure you know that. But if we  
11 don't raise this, you surely do not. And you represent not  
12 just the people who own that debt; you represent the people  
13 who have to pay.

14 As I say, I don't in any mean to be personal; but it  
15 would do the Treasury good to act like this isn't exactly  
16 a routine discount-house proposition.

17 Mr. Healy. Senator, I think we all wish mightily that  
18 we could lower the damned interest rates, and if the  
19 Congress could pass a law that would do that, that would  
20 impose that on the market, we would be up here first saying  
21 it.

22 Senator Moynihan. Please, no "Economics 101." The  
23 question is, "Who-who." That's what we would like to hear.  
24 Tell us what the effects are as you can see them, so we can  
25 understand and have better arguments, or perhaps less good

1 good arguments, the facts will be what they are, about what  
2 to do, what is going on.

3 Senator Chafee. Well, I think that is all very  
4 interesting and a nice exercise, but we all know what has  
5 to be done. It is no secret around here. Everybody knows  
6 the way to solve the problem is to reduce the spending or  
7 increase the revenue. And those suggestions are consistently  
8 rejected by the Congress, whether it is the Republican  
9 Senate or the Democratic House. We are not prepared to do it.

10 There are all kinds of proposals out there, to "CPI-  
11 minus-three" or do this, or do that; but when everything  
12 settles we take the bold step of doing nothing. I mean,  
13 it is interesting for Mr. Carter and Mr. Healy to come  
14 forward with proposals, but it is no secret what the  
15 solution is.

16 The Chairman. Well, as I understand, and I think  
17 properly so, Senator Moynihan had requested information which  
18 has been rather slow in getting to the committee and to the  
19 Senator, but I think the thing we have, like we always have  
20 had as long as I have been on this committee, we always have  
21 a deadline. And I understand that the deadline is May 24th.  
22 That is supposed to be the "absolute deadline." Sometimes  
23 they get mixed up at Treasury -- but is that the one you  
24 are peddling now, the 24th?

25 Mr. Healy: It is our current best estimate,



1 Mr. Chairman. Yes, sir.

2 The Chairman. And the 24th happens to be the day we  
3 leave here for five or six days -- is that correct? The  
4 Memorial Day recess.

5 So I would like to pass the proposal and suggest that  
6 the Treasury get this information that has been requested.  
7 Obviously we can't treat it lightly; it is a matter of some  
8 concern.

9 Senator Long?

10 Senator Long. Mr. Chairman, I joined with Senator  
11 Armstrong in offering an amendment that we hoped would  
12 help to contain the deficit and reduce it over a period of  
13 time, and it got a substantial vote on the floor of the  
14 Senate when we voted on the debt-limit bill last time. And  
15 I am interested in offering that amendment again.

16 I thought that Senator Armstrong would be here today  
17 and that we would have a chance to communicate and discuss  
18 it here in the committee. Do I understand that he is  
19 planning to offer it on the floor?

20 The Chairman. Right.

21 Senator Long. Well, if you are anxious to report the  
22 bill out, maybe we could report it with the understanding  
23 that the amendment will be offered on the floor. I would  
24 perhaps like to have an opportunity to discuss it with the  
25 committee before we vote on it on the floor, because I would

1 committee might find some appeal to it.

2 As I recall, some Senators on the committee did vote  
3 for it besides me and Senator Armstrong. And if you can see  
4 that we have whatever consideration that is appropriate  
5 under the circumstances, we will offer the amendment later  
6 on, then.

7 The Chairman. I visited briefly with Senator Armstrong,  
8 and it is my understanding that he does propose -- hopefully  
9 you will join him in offering the amendment on the floor.  
10 Is there any modification, or do you know whether or not  
11 there is going to be?

12 Mr. DeArment. Not that I am aware of. One of the  
13 practical difficulties with adding it as a committee  
14 amendment is that the amendment deals with subject matter  
15 outside our committee's jurisdiction, in part. And if we  
16 reported it out as an amendment, it would be subject to a  
17 point of order on that basis. That point of order wouldn't  
18 lie if it's offered on the floor.

19 The Chairman. I think it will be offered. I certainly  
20 have no intention to try to shut off that amendment, or any  
21 other amendment. Hopefully, there won't be any other  
22 amendments.

23 So if there is no objection, let's agree to the second  
24 preference and the debt-limit outline.

25 Mr. DeArment. Senator Dole, Senator Armstrong had

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1 requested three days to file additional views to the  
2 report.

3 The Chairman. Right. He will have them.

4 Mr. DeArment. We would then raise that to \$1697.2  
5 billion.

6 The Chairman. Right. That will get to March 31st?

7 Mr. DeArment. March 29th we have listed.

8 The Chairman. The next item on the agenda, the  
9 authorization bill --

10 Senator Grassley. Mr. Chairman, I want to be recorded  
11 as voting No on this.

12 The Chairman. All right.

13 Senator Grassley. And I want to put a statement in the  
14 record, in the committee record, in opposition to it.

15 The Chairman. All right.

16 The authorization bills for the Office of the United  
17 States Trade Representative, the U.S. Customs Service, and  
18 the International Trade Commission.

19 Are there any Trade Representative staff people around?  
20 Let's get them in here.

21 All right, now, as Ted Kassinger has been working on  
22 this with staff and members, I would propose that we strip  
23 H.R. 5188 of its House-passed content and substitute instead  
24 the following -- it has six items:

25 (1) An authorization for the USTR of \$14,179,000, with

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1 up to \$80,000 available for entertainment and representation  
2 expenses;

3 (2) An authorization for the ITC of \$28,410,000, with  
4 up to \$2,500 for entertainment and representation expenses;

5 (3) An authorization for the Customs Service of  
6 \$662,239,000;

7 (4) The House-passed provision requiring public  
8 disclosure of certain import manifest information, which  
9 Senator Heinz had proposed to offer;

10 (5) The Baucus provision requiring 6-months notice  
11 prior to major organizational changes within Customs; and

12 (6) A Humphrey bill (S. 2495) allowing the Customs  
13 Service to establish user's fees for a few airports that  
14 otherwise would not have Customs services.

15 So I suggest that as the basic proposal. And I want  
16 to recognize now Senator Bentsen, who has to leave here in  
17 the next few minutes.

18 Senator Bentsen. Thank you very much, Mr. Chairman.

19 Let me compliment you in particular on the authorization  
20 for the Customs Service. Frankly, I was going to offer one  
21 with very comparable figures.

22 The Customs Service budget as presented by the  
23 Administration I think has really become a joke. The 1984  
24 level was \$624 million. Now they are talking about doing  
25 something just over \$600 million. The Customs Service itself

1 requested \$739 million, and the Treasury passed on a budget  
2 of \$690 million to the OMB.

3 They are talking about \$602 million and doing everything  
4 from improving Customs receipts to defending our borders  
5 against crime.

6 Along the border of Texas the U.S. Customs Service is  
7 a vital link; from El Paso to Brownsville I think you have  
8 more border crossings than any other State.

9 For example, the bridge at Laredo passes more people,  
10 more people enter at that point, than you see come through  
11 the international airport at JFK in New York.

12 The economy along the Texas border is in the worst shape  
13 of any part of the nation. Today, Star County, Texas, has  
14 the highest unemployment in the nation and the lowest  
15 per-capita income. And then to talk about doing things to  
16 cut down on the Customs Service and to impede trade makes  
17 no sense at all. The idea that they are going to be able  
18 to substitute computers for people to the degree that they  
19 are talking about -- they didn't even have a management  
20 consultant report to try to prove that they were going to be  
21 able to accomplish their objectives. It is sort of a windage  
22 thing in trying to deduce how many.

23 I don't see any justification for this budget. Senator  
24 Danforth and I both requested of the Commission and the  
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1 Customs Service, Mr. Raab, on February the 23rd, 1984, asking  
2 him to provide in detail the staffing implications  
3 port-by-port of that proposed budget. We haven't heard from  
4 him yet. We still haven't had an answer to that, and that  
5 has now been at least a couple of months.

6 I think we ought to maintain the Customs Service at  
7 the current levels, and I go along with your recommendation.  
8 I have seen what the House has done, and frankly, if it  
9 wasn't such a tight budget with the problem of the big  
10 deficit, I would go along with that one. My guess is that  
11 what finally comes out of conference is something in between.

12 So, Mr. Chairman, I will support your number, but I  
13 think this requires our attention. And I hope this time we  
14 can finally get an authorization through, get it through the  
15 Senate, and that the Conference gives us a figure somewhere  
16 between the House and the Senate.

17 And I would strongly suggest that we use the House  
18 language insofar as the distribution of the personnel when  
19 we finally take action on this.

20 I would like to introduce the rest of my comments for  
21 the record, Mr. Chairman.

22 The Chairman. Let me just ask: Do we use the House  
23 language?

24 Mr. Kassinger. The Baucus amendment basically tracks  
25 the House language.

1 Mr. DeArment. No, I think Senator Bentsen is referring  
2 to the language in the House report, which requires that if  
3 there are new people introduced to the Service, they be  
4 equitably distributed throughout the nation, according to the  
5 need of the various locations.

6 Senator Bentsen. I just don't want them bunched up in  
7 any one place.

8 The Chairman. Senator Heinz?

9 Could I just say -- I know Senator Heinz has an  
10 amendment -- that as I understand, there is no problem with  
11 the U.S.T.R. authorization, and none with ITC. Is that  
12 correct?

13 Mr. Kassinger. That is correct, Mr. Chairman.

14 The Chairman. So, without objection, we can agree to  
15 those two authorizations.

16 I think Senator Heinz, you are addressing the Customs  
17 Service. Is that correct, John?

18 Senator Heinz. Yes, Mr. Chairman. Thank you.

19 First of all, I want to commend Lloyd Bentsen on an  
20 excellent statement regarding the challenges and the problems  
21 of the Customs Service, and I think your amendment, Mr.  
22 Chairman, is a good one. But I am not sure -- indeed, I  
23 don't believe it goes quite far enough.

24 Your amendment is about \$20 million or so dollars below  
25 the House level, and I am concerned that even at the level you

1 propose, which is certainly much more than the Administration  
2 proposes, that we are going to continue to have some very  
3 serious problems. So, in a minute, on behalf of Senator  
4 Bradley and myself, I am going to offer an amendment to  
5 increase the amount for the Customs authorization.

6 Let me give you the amount that I will offer, which will  
7 be for the same amount that was in the House bill.

8 I was somewhat shocked that a constituent of mine  
9 forwarded me a letter from the Director of the Office of  
10 Trade Operations in the Customs Service of the Treasury,  
11 which I ask to be put in the record at this point.

12 (The letter from Senator Heinz's constituent follows:)

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*Moffitt Reporting Associates*

2849 Lafora Court  
Vienna, Virginia 22180





DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 2 1984



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REFER TO

RES-9-CO:T:D:E

LA

*Bill R  
Should be submitted  
for Review  
Committee*

*ALJ*

Dist. Comm., Staff, ALJ,

Div. reserved *CH*

The Honorable  
Alfred Eckes  
Chairman  
United States International Trade Commission  
701 E Street, NW.  
Washington, D.C. 20436

OFFICE OF THE SECRETARY  
DOCKET/USIT

1984 FEB -2 P11:52

RECEIVED

Dear Mr. Eckes:

In reviewing the initial determination in Investigation No. 337-TA-140, Certain Personal Computers and Components Thereof, and the Commission's notice of decision to review this determination, we have come upon certain matters which we believe merit your attention.

One area of concern is the construction to be placed upon the term "components thereof." In the initial determination, Judge Saxon appears to have found violations of 19 USC 1337 in the importation of personal computers and in the importation of motherboards for these computers. Based upon the limited record available to us, we thus believe that the only actionable "components" would be those motherboards found to be in violation, rather than the numerous components not addressed by Judge Saxon.

Of even greater concern is the matter of enforcement of the patents in issue. While the Customs Service has developed considerable expertise in the detection of violations of the copyrights in issue, enabling us to readily ascertain those items whose importation constitutes a probable violation, this is not the case with the patents. While it is reasonable to assume that a computer or motherboard which is in violation of the copyrights is also in violation of the patents, the reverse is not the case.

Enforcement of the patents would necessitate testing of all importations of every type of computer and motherboard for presence of the patented circuitry. Given the volume of these importations, a great number of which consist of single items imported for personal use, such testing would strain our limited analytical resources to the point where many other programs

administered by Customs and requiring these resources could suffer irreparable harm. While this may not be a classic example of the "public interest" provisions of the law, the diversion of these resources to protect the intellectual property rights of one individual (the complainant) could be construed as contrary to the general welfare of the people of the United States. We, therefore, urge the Commission to limit any exclusion order which may result from this investigation to those computers and motherboards which violate the copyrights in issue, irrespective of whether the patents are involved.

Sincerely,



Margaret M. O'Rourke  
Director  
Office of Trade Operations

1           Senator Heinz. Basically what the Customs Service said  
2 was that with respect to the imports of certain personal  
3 computers and components, that they simply did not have the  
4 personnel to do the inspections necessary; and then they  
5 wrote to the International Trade Commission to ask the  
6 Trade Commission not to do anything that would require the  
7 inspection of these computers even though trademark or  
8 patent or other intellectual property rights was being  
9 violated.

10           We all know the Customs Service is stretched thin; they  
11 have to perform the border patrol duty that Senator Bentsen  
12 has mentioned. They are not doing an adequate job and won't  
13 even with the amount of money proposed by Senator Dole in  
14 policing the exportation of national security controlled items  
15 under the Export Administration Act, and it should be of  
16 great concern to us that even though there are far more  
17 items subject to anti-dumping and countervailing duties, in  
18 effect last year the amount of collections by the Customs  
19 Service has actually dropped. They are not able to do their  
20 job.

21           So the amendment that I propose would allow the Customs  
22 Service to add 450 inspectors -- those are the people who do  
23 the job on the docks, looking at what is going out as well as  
24 what is coming in and getting the contraband -- 150 import  
25 specialists and 50 border patrol personnel.

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1 I might add that the amount of money that we are asking  
2 is in fact below that asked by the Customs Service. The  
3 Customs Service asked for \$739 million. As the Chairman  
4 will recall, we asked Mr. Von Raab that.

5 The Treasury Department itself asked OMB for \$680 million  
6 and that is \$18 million above the Chairman's proposal. And  
7 I would hope, Mr. Chairman, that we would act on this  
8 amendment.

9 Could the staff give me the exact number in the House  
10 bill? It is 686, is it not?

11 Mr. Lang. Yes, Senator, that is correct.

12 Senator Heinz. All right, 686. So what we are proposing  
13 to do is add \$24 million, still only slightly above what  
14 the Treasury Department itself asked for, and roughly  
15 \$50 million below what the Customs Service felt it needed to  
16 do the job.

17 Mr. DeArment. That total number would be 710?

18 Senator Heinz. The number I am proposing would be  
19 650 new positions. And the amount would be 686-339.

20 The Chairman. Senator Moynihan?

21 Senator Moynihan. Mr. Chairman, I guess I am basically  
22 asking where we are now. The proposal before us involves a  
23 reduction of 923 positions, and that is on the edge of  
24 outrage. The situation just of drug smuggling in this  
25 country today is on the edge of threatening social order.

1           In New York City not two weeks ago we had the  
2 largest mass slaying in human memory, all evidently simply  
3 over cocaine -- I mean three-year-old children. Every child  
4 in the building was shot, every man, woman, and child. And  
5 the Treasury is coming to us and saying they want to have  
6 fewer Customs officials?

7           The Chairman. We just discussed the national debt, and  
8 how we ought to try to control it, and now we want to add  
9 another \$20-30 million. And the very people who were talking  
10 about controlling it want to add it.

11          Senator Moynihan. Now, Mr. Chairman, this is a proposal  
12 to reduce our Customs.

13          The Chairman. Well, I think there are reasons for that.  
14 I think there is a lot of automation going on. I don't have  
15 any real problem. My own view is that we will probably go  
16 to conference and end up somewhere between where we are and  
17 where they are.

18          Mr. Kassinger. Senator Moynihan, the Chairman's  
19 proposal would maintain current levels.

20          The Chairman. Yes. I don't think we do that in our  
21 proposal.

22          Mr. Kassinger. He doesn't cut.

23          Senator Moynihan. Your proposal would maintain present  
24 levels.

25          Senator Heinz. Well, Mr. Chairman, I think it is

1 accurate to say your proposal does maintain current levels.  
2 And your proposal is so much better than the Administration  
3 proposal, we shouldn't be talking about the two in the same  
4 breath.

5 But my only point is that, at current levels, notwith-  
6 standing the automation, we are letting so much slip through  
7 the cracks, that our laws against unfair trading practices  
8 are just about no longer worth the paper they are written on.  
9 And Senator Moynihan and I did establish that even Mrs.  
10 Liebler does value the paper they are written on.

11 (Laughter)

12 Senator Heinz. Second, they cannot do the job everybody  
13 says that we ought to do on policing the Export  
14 Administration Act.

15 And, thirdly, I think even Lloyd Bentsen would like a  
16 little more enforcement down on the Border Patrol to keep  
17 people and drugs from coming in.

18 So I would hope -- it is a modest amount. I would hope  
19 the committee would agree to it. And it is still well below  
20 what the Customs people say they need and said they needed to  
21 the Treasury Department.

22 Senator Bradley. Mr. Chairman, if we could, also, when  
23 we talk about the revenue, I would like to know what the  
24 Treasury estimate is as to how much an additional Customs  
25 official brings in. I mean, it is one thing to say the old

1 argument at the IRS, "You add an IRS person and you collect  
2 more taxes," and you can take that argument out to where it  
3 doesn't return as much as it costs. But I wonder if Treasury  
4 could give us a number on what it would return in increased  
5 collections.

6 The Chairman. Let's hear from the Administration.

7 Mr. Miller. Yes, sir, Mr. Chairman.

8 First if I may respond to the general overall concerns  
9 about the Administration's submission for Customs, we are  
10 calling for some reductions. We have taken a hard look at  
11 the expenditures for the Customs Service. We are trying to  
12 do our part, realizing the need to help with the deficit  
13 situation. We believe our proposal is a reasonable  
14 proposal and that surely there are areas where we can make  
15 some reductions. But we are aware that reasonable men and  
16 women can and do disagree over matters of substance. And I  
17 am sure that we may be in some disagreement with some members  
18 of the committee with respect to this issue.

19 But we have tried to cut down expenditures in areas of  
20 administration where we can make some administrative savings  
21 to eliminate some duplication, and also we are pursuing a  
22 program of selectivity with respect to our inspections. And  
23 I believe we have put forth a reasonable submission,  
24 Mr. Chairman.

25 With respect to Senator Bradley's question, we raised

1 \$10 billion in revenues last year, Mr. Chairman, and we  
2 have onboard approximately 13,700 positions. I would have  
3 to work that out to see how revenues match numbers of  
4 employees we have. I don't know that we could calculate  
5 for you the figure that would be appropriate with bringing  
6 on additional personnel. And I would also point out that  
7 bringing on additional personnel I don't believe we would  
8 feel would necessarily raise additional revenues, or we might  
9 not draw that conclusion.

10 Senator Bradley. Well, the number that I had from  
11 Customs was that an additional official adds about \$17 in  
12 increased collection. But you are right -- after you increase  
13 a number, that will go down. But the minimum is 3-to-1.

14 So if you look at this only as a revenue loser, I think  
15 that you are mistaken, because it would yield increased  
16 collections as well as being able to tighten up some of the  
17 laws that all of us talk so strongly about that we are going  
18 to deliver to foreigners who are competing unfairly.

19 So I think this should be supported on budgetary grounds  
20 as well as on trade policy grounds.

21 Senator Heinz. Mr. Chairman, may I ask Mr. Miller a  
22 question?

23 Mr. Miller, is it not true that imports increased  
24 substantially in 1983 over 1982?

25 Mr. Miller; That is my understanding, sir. Yes.



1 Senator Heinz. By roughly how much?

2 Mr. Miller. I'm sorry, Senator, I don't have that  
3 figure with me. It is a significant amount.

4 Senator Heinz. I understand from the merchandise  
5 reports that it increased by 22 percent.

6 Mr. Miller. I wouldn't disagree with your figures; I  
7 just don't have them in front of me.

8 Senator Heinz. And would you not agree that the volume  
9 of merchandise subject to countervailing and anti-dumping  
10 duties increased significantly as well?

11 Mr. Miller. I would not disagree with your statement,  
12 Senator.

13 Senator Heinz. Now, could you tell us whether total  
14 collections from tariff and trade activities increased or  
15 decreased last year -- 1983 versus 1982?

16 Mr. Miller. They decreased slightly, Senator.

17 Senator Heinz. Well, Mr. Chairman, clearly, rather  
18 than having them decrease, with trade flows, imports  
19 increasing, merchandising increasing, the volume of goods  
20 being subject to tariffs increasing, they should not be  
21 going down? They should be going up. And if they went up  
22 just a fraction, we would pay for this measly \$20 million  
23 or so dollars -- \$18 million or so dollars -- three or seven  
24 or 17 times over, as the Senator from New Jersey points out.

25 I hope we can adopt the amendment.

1 The Chairman. I hoped we could vote on it.

2 Senator Moynihan. Well, Mr. Chairman, there are places  
3 where this is just so serious a matter.

4 The Chairman. I know it's serious. We just throw  
5 more people into the breach, is the way we are going to  
6 address it.

7 Senator Moynihan. Well, let me ask Mr. Miller a  
8 question -- may I, Mr. Chairman?

9 The Chairman. Sure.

10 Senator Moynihan. Mr. Miller, I believe the Port of  
11 New York is the largest single entry of foreign goods and  
12 people into this country.

13 Senator Bradley. You mean the Port of New York in  
14 New Jersey.

15 (Laughter)

16 Senator Moynihan. The New York Port Authority. All  
17 right, check. Sure.

18 What is your information about the importation of  
19 cocaine in the United States in 1983? Was it up or down?

20 Mr. Miller. Well, necessarily we have to estimate those  
21 things, Senator. I think it would be fair to say that the  
22 importation of cocaine is regarded as a growing problem.  
23 I am not sure you could precisely say from one year to the  
24 next, but certainly in recent history, in recent years, you  
25 have seen an increase. And it is regarded as a serious

1 problem by the Treasury and the Customs Department.

2 Senator Moynihan. We not only had more machine tools,  
3 we had more cocaine imported last year, or likely to. I  
4 mean it is an estimate the Drug Enforcement Agency makes,  
5 and it has to be an estimate.

6 But we have price series in these things now, and  
7 we have medical statistics; we have criminal statistics.

8 Did your seizure of cocaine go up last year at Customs?

9 Mr. Miller. Yes, sir.

10 Senator Moynihan. Seizure of cocaine went up last  
11 year at Customs. That's right; it's been going up pretty  
12 steadily.

13 Mr. Miller. It has been going up steadily, Senator.

14 Senator Moynihan. On the whole, isn't it a good thing  
15 to seize drugs by Customs officers rather than have them  
16 seized by narcotics agents or bought by individuals? As a  
17 matter of efficiency, isn't it better to have a Customs  
18 officer confiscate cocaine than a narcotics officer arrange  
19 a buy and then go to courts and jails?

20 Mr. Miller. Well, Senator, I certainly would agree with  
21 you that it is a good idea to seize as many of these drugs  
22 as is possible.

23 Our compatriots at the FBI and DEA and the State and  
24 local agencies are certainly doing a good job here, too, and  
25 I wouldn't want to say we were necessarily more efficient

1 than another law-enforcement office.

2 Senator Moynihan. Well, think of yourself as a  
3 management consultant. Wouldn't you think it is more  
4 efficient to seize it at Kennedy Airport than to seize it  
5 on the Lower East Side of Manhattan in \$5-bags?

6 Mr. Miller. Well, we would rather seize it at the  
7 airport, yes, obviously.

8 Senator Moynihan. Well, then, how did you let OMB  
9 talk you into cutting a thousand positions?

10 (Laughter)

11 Senator Moynihan. You don't have to answer that,  
12 Mr. Miller; you don't have to answer that question.

13 Mr. Miller. Thank you, Senator.

14 Senator Moynihan. I would like to cosponsor Mr. Heinz's  
15 amendment.

16 The Chairman. You've already done it once. Would you  
17 like to cosponsor it again?

18 Senator Moynihan. Well, I would like to emphasize it.

19 (Laughter)

20 The Chairman. I would like to vote. We want to take  
21 up GSP next.

22 Senator Packwood. Well, if we adopt the Heinz  
23 amendment, this will increase the deficit again.

24 The Chairman. Right.

25 Senator Bradley. Well, not if you look at the 17-to-1

1 figure.

2 Senator Heinz. I don't agree. We are going to reduce  
3 the deficit, because instead of having declining revenues from  
4 Customs enforcement, we are going to increase them.

5 The Chairman. Well, I don't know. We are still getting  
6 along all right in the airlines after all those people left;  
7 I don't know why we always have to add more employees to make  
8 things work in government. It seems to me we ought to be  
9 going the other way and pushing them a little harder.

10 But maybe we can vote on this matter. As long as we  
11 defeat it, it's not important.

12 (Laughter)

13 Mr. DeArment. Mr. Packwood?

14 Senator Packwood. No.

15 Mr. DeArment. Mr. Roth?

16 The Chairman. No.

17 Mr. DeArment. Mr. Danforth?

18 The Chairman. No.

19 Mr. DeArment. Mr. Chafee?

20 Senator Chafee. No.

21 Mr. DeArment. Mr. Heinz?

22 Senator Heinz. Aye.

23 Mr. DeArment. Mr. Wallop?

24 The Chairman. No.

25 Mr. DeArment. Mr. Durenberger?

1 (No response)  
2 Mr. DeArment. Mr. Armstrong?  
3 Senator Armstrong. Aye.  
4 Mr. DeArment. Mr. Symms?  
5 Senator Symms. No.  
6 Mr. DeArment. Mr. Grassley?  
7 Senator Grassley. No.  
8 Mr. DeArment. Mr. Long?  
9 Senator Long. No.  
10 Mr. DeArment. Mr. Bentsen?  
11 (No response)  
12 Mr. DeArment. Mr. Matsunaga?  
13 (No response)  
14 Mr. DeArment. Mr. Moynihan?  
15 Senator Moynihan. Aye.  
16 Mr. DeArment. Mr. Baucus?  
17 Senator Baucus. No.  
18 Mr. DeArment. Mr. Boren?  
19 (No response)  
20 Mr. DeArment. Mr. Bradley?  
21 Senator Bradley. Aye.  
22 Mr. DeArment. Mr. Mitchell?  
23 Senator Mitchell. Aye.  
24 Mr. DeArment. Mr. Pryor?  
25 (No response)

1 Mr. DeArment. Mr. Chairman?

2 The Chairman. No.

3 I understand Senator Baucus had a question on the  
4 Humphrey amendment. We have agreed to make that change.

5 The Yeas are 5, the Nays are 11. The amendment is not  
6 agreed to.

7 Senator Baucus. Mr. Chairman, first of all, has the  
8 committee taken any action on the Humphrey amendment at this  
9 time?

10 The Chairman. We agreed to your amendment, his  
11 amendment; but I understand you wanted to modify his  
12 amendment.

13 Senator Baucus. Well, yes. There are a couple of  
14 questions I have:

15 One, I think the user fee situation is fine, but I just  
16 want to make sure that Customs doesn't use that authority to  
17 discontinue Customs service and then institute the user-fee  
18 system.

19 The user-fee system is fine, so long as Customs would  
20 not otherwise discontinue service. I want to make that  
21 clear, that Customs isn't going to do that.

22 Mr. Miller. May I comment on that, Senator?

23 The Chairman. Sure.

24 Mr. Miller. With respect to Senator Humphrey's  
25 amendment, as we understand it, we are certainly sympathetic

1 to the concerns which he tries to address in his amendment.

2 To be candid, we have not completely reviewed the  
3 amendment. It may very well be that we would have some  
4 concern regarding whether or not -- well, we know that OMB,  
5 as an example, counts positions against their ceiling, and  
6 we would just simply possibly have a concern.

7 But we don't have a position right now; we would have  
8 to look at the amendment, and we are doing that.

9 Senator Baucus. My worry is this: that Customs is going  
10 to use the Humphrey amendment as an excuse to discontinue  
11 the service.

12 Mr. Miller. We have no desire to do that, or wish to  
13 do so.

14 Senator Baucus. Therefore, Customs understanding is  
15 that the Customs will not discontinue service at any airport  
16 unless it would do so under current standards, notwithstanding  
17 the existence of and independent of the existence of the  
18 Humphrey amendment?

19 Mr. Miller. Yes, that would be correct, Senator. We  
20 constantly review staffing levels and staffing needs, and  
21 I am not aware of anything that is on the platter right now  
22 with respect to reducing service at an airport, Senator.

23 Senator Baucus. Mr. Chairman, I had hoped that some  
24 language be included to make sure the Customs doesn't do  
25 that, and, second, that any user fee conversion be subject



1 to the same notice requirements as any closures.

2 The Chairman. Without objection.

3 Senator Baucus. Thank you.

4 Mr. Miller. And you want to just limit it to five  
5 airports, Senator?

6 Senator Baucus. Five airports, as well. That's right.

7 Senator Chafee. Mr. Chairman, are we still on the  
8 Customs?

9 The Chairman. Yes.

10 Senator Chafee. Mr. Chairman, when Mr. Von Raab  
11 appeared before us, he and I had a long discussion on the  
12 subject of attempts by certain retailers to prevent the  
13 importation of goods from overseas being sold through  
14 discount markets -- in other words, an attempt to enforce  
15 what we used to call so-called "fair trade" in this  
16 country, and which we have since abolished.

17 So I just want to briefly read you a quote from the  
18 discussion Mr. Von Raab and I had. I use as an illustration  
19 Seiko watches, which were imported by some Seiko dealers  
20 and then were also being sold through Sears or K-Mart, or  
21 somebody like that.

22 The longstanding understanding in this country has been  
23 that the Customs Service would not get involved with this,  
24 but there are some suits being brought against them that  
25 may force them to do it. And that's all right, if the

1 courts decide it that way, but I didn't want Treasury or  
2 Customs to get involved directly with attempting to do  
3 this.

4 It falls under trademark protection -- that's the  
5 language they use, but I can't understand how trademark  
6 gets into it.

7 But in any event, Mr. Von Raab said, "There is a  
8 technical matter." And I said, "What do you mean? Do they  
9 have an injunction against you?"

10 "No. No one is acting on it," Mr. Von Raab said, "and  
11 will not act on it until the court has decided. And when  
12 the court has decided -- "

13 And I said, "Do you mean that nobody is acting on the  
14 petition of the trademark owners?" And Mr. Von Raab said,  
15 "No. It's not quite a petition; it was a Notice of a  
16 Proposed Rulemaking."

17 Anyway, Mr. Chairman, to summarize this, the Customs  
18 agreed that they wouldn't upset the practice that has been  
19 in effect for some 30 years, except of course if they are  
20 ordered by the courts. And I would like that to be included  
21 in some form of language directing them not to do that.

22 The Chairman. Can we hear from Customs?

23 Mr. Miller. We are in court on this matter. Let me  
24 defer to counsel and just ask him as to how we can comment  
25 on this thing.

1 The Chairman. We can put it in report language.

2 Senator Chafee. That would be satisfactory to me.

3 The Chairman. All right, let's do that.

4 Senator Chafee. But I just don't want Customs to be  
5 changing the procedure that they have had for some 30 years.  
6 And that's the understanding, that you will not. Is that  
7 correct? And that will be in the report language.

8 The Chairman. Right.

9 Senator Chafee. Thank you, Mr. Chairman.

10 The Chairman. I wanted to raise a question.  
11 Congressman Pepper called me recommending a significant  
12 increase in the Customs budget for its air interdiction  
13 program. The Administration requested \$17 million, and a  
14 reduction from the '84 appropriation of \$31 million. The  
15 House approved \$28 million, but specifically capped the  
16 program at that amount.

17 The Finance Committee in the past has not provided a  
18 line item for this program, so I think I need to address  
19 some questions.

20 Is it correct that the Administration requested only  
21 approximately \$17 million for the air interdiction program  
22 for Fiscal '85?

23 Mr. Miller. Yes, Senator.

24 The Chairman. Congressman Pepper believes that the  
25 level ought to be at least \$45 million for this program. The

1 approved 28. Do you think this increase over the  
2 Administration's request is sufficient to at least maintain  
3 current enforcement efforts?

4 Mr. Miller. Yes. Secretary Regan indicated that the  
5 Treasury Department would look at the budget request for the  
6 air program and I think has committed the Treasury  
7 Department to a funding level of \$28 million for the air  
8 program. I am not aware that a formal amendment has come up.  
9 They may very well find those funds elsewhere in Treasury.

10 The Chairman. Well, if there is not a line-item cap  
11 on the authorization for this program, will the Service be  
12 able to reprogram money into air interdiction if the need  
13 arises?

14 Mr. Miller. Should we request, and should the  
15 appropriate committees give us the okay on that, we should  
16 be able to do that.

17 The Chairman. In other words, if we request  
18 reprogramming? Not more money, but reprogramming?

19 Mr. Miller. If there is a line-item limit, we could not.  
20 It would be a separate appropriation.

21 The Chairman. Right.

22 Well, I think that addresses Congressman Pepper's  
23 concern, and I want that made part of the record so he will  
24 know that we followed through.

25 It might be well if someone, if one of you, would

1 contact Congressman Pepper to indicate that there is some  
2 flexibility.

3 Mr. Miller. We will communicate with Congressman Pepper.

4 The Chairman. Are there any other amendments to the  
5 Customs section?

6 Senator Heinz. Mr. Chairman?

7 The Chairman. Senator Heinz?

8 Senator Heinz. There are two amendments I would like  
9 to offer, dealing with the ability of the Customs Service to  
10 more successfully prosecute fraud cases.

11 We have two problems the amendments address:

12 The first is that at the present time, by the time the  
13 Customs attorneys are able to start a civil case, the  
14 statute of limitations, which is a 5-year statute, almost  
15 in every instance is running very, very close to running out.  
16 That is because the attorneys have to wait for the criminal  
17 proceedings to be very well along.

18 And secondly, the statute runs, under current law, from  
19 the date of the violation as opposed to the date of the  
20 discovery of the violation.

21 The first amendment would make the change that the  
22 statute of limitations would run from the date of the  
23 discovery of the violation rather than the violation itself.

24 The second would facilitate the access of Customs  
25 attorneys to evidence presented to a grand jury. The

1 problem currently is that access to the grand jury  
2 information which the Customs Service had previously in  
3 many instances been able to get has been made more difficult  
4 by two recent Supreme Court decisions: U.S. vs. Sells  
5 Engineering and U.S. vs. Baggett.

6 What happened there was that the court decided that  
7 before any grand jury information may be obtained by the  
8 Customs Service to pursue a civil action, that it can only  
9 be obtained as preliminary to a judicial proceeding, which  
10 of course is the purpose.

11 That, however, has proved to be a vague standard, and  
12 what the second amendment I propose does is to designate  
13 that the issuance of a prepenalty notice by the Customs  
14 Service satisfies the test of being an action preliminary  
15 to a judicial proceeding, thereby clarifying the ambiguity  
16 in the court's decision.

17 I would say further that we have discussed these  
18 amendments with the Customs Service. They have worked  
19 with us in developing these amendments.

20 I must also say, further, that we don't yet have an  
21 Administration position from "on high" here. But I do have  
22 a letter from Bill Von Raab, indicating that they are  
23 concerned about the problem, they believe the amendments  
24 address them, and that they are in the process of submitting  
25 their formal commitments to Treasury and OMB so the

1 Administration may give us their comments.

2 The Chairman. I am sympathetic with what you seek to  
3 do. I haven't looked at it.

4 Is there a chance the Administration can give us a  
5 positive -- ?

6 Mr. Miller. Insofar as Customs is concerned, we are  
7 aware of no objection; however, we cannot speak for the  
8 Administration with respect to this matter.

9 The Chairman. Well, I was thinking, if we could get  
10 that information by the time we go to the Senate floor and  
11 maybe offer the amendment there.

12 Mr. Miller. We will certainly pour that on.

13 The Chairman. You could help us do that?

14 Mr. Miller. We will make every effort. Yes, sir.

15 The Chairman. I haven't called on my judge to look  
16 at it either.

17 Senator Heinz. Does Judge Mitchell have any comments?

18 Senator Mitchell. Well, I don't understand enough  
19 about it really to raise a question. That's why I was  
20 going to ask that we be given an opportunity to look into  
21 it.

22 The Chairman. Is that all right, John?

23 Senator Heinz. Mr. Chairman, what you propose is more  
24 than fair. I think if we can get the position and then  
25 offer it on the floor, I think that everybody will be

1 satisfied. I hope so. I can't guarantee it, but what  
2 you propose is fair enough. I withdraw the amendments.

3 The Chairman. All right, let's do that, and maybe  
4 we can work with Senator Heinz and whoever you have to work  
5 with. Who else do you have to clear it with?

6 Mr. Miller. Well, Treasury, and of course OMB would  
7 make the ultimate decision here.

8 The Chairman. That shouldn't be any problem.

9 Mr. Miller. Well, the other agencies will have an input,  
10 Justice, as well.

11 Senator Heinz. This isn't your budget, but something  
12 else?

13 Mr. Miller. Right, another issue.

14 The Chairman. All right. I know of no other  
15 amendments. So then, without objection we will approve the  
16 package.

17 Next we will take up GSP, because Ambassador Brock is  
18 here. And then after GSP we will turn to disability.

19 Senator Baucus. Mr. Chairman, it is my understanding  
20 that the committee passed out the debt limit bill -- is  
21 that correct?

22 The Chairman. Yes.

23 Senator Baucus. I would like to be recorded as in  
24 opposition to that, please.

25 Senator Armstrong. Mr. Chairman, while



1 Ambassador Brock is coming up, I would like to say the  
2 same as Senator Baucus did. I am not aware of whether there  
3 was a roll-call vote on it, but if there had been I would  
4 have voted against it.

5 I understand that Senator Long mentioned that he and  
6 I may have an amendment that we wish to offer on the floor.  
7 There was some discussion to the fact that the amendment  
8 would not be within this committee's jurisdiction and for  
9 that reason it was not offered here.

10 The Chairman. Right. As I understand, it would  
11 be subject to a point of order if we adopted a committee  
12 amendment, but it would not be if it is offered on the  
13 floor.

14 Senator Baucus. That is my understanding, Mr. Chairman.  
15 I just wanted to say I was sorry I couldn't be here earlier;  
16 I was at another meeting.

17 But I do associate myself with Mr. Long's position.

18 The Chairman. All right.

19 Ambassador Brock, we are pleased to have you here, and  
20 I know you would like very much to have this next item,  
21 the extension of the generalized system of preferences,  
22 acted on this year. And it is my understanding a lot of  
23 progress has been made with various members who had  
24 questions.

25 Let's see -- do I have that information here, Ted?

1 (Pause)

2 The Chairman. Let's go ahead and start with the GSP.  
3 I understand that Senator Armstrong and Senator Danforth  
4 have an amendment which would condition GSP benefits in  
5 part on a country's protection of intellectual property.

6 As I understand, language has been worked out. Is that  
7 correct, Mr. Ambassador?

8 Ambassador Brock. I think so, Mr. Chairman.

9 The Chairman. Let me turn to Senator Armstrong.

10 Senator Armstrong. Mr. Chairman, thank you.

11 The amendment which I offer, and I do offer it on  
12 behalf of Senator Danforth and myself, addresses itself to  
13 a problem of horrible concern. There is a tidal wave of  
14 merchandise coming into this country and going around the  
15 world, which has been counterfeited or pirated.

16 I just want to show the committee a couple of the kinds  
17 of things. Steve, would you just hold those?

18 One of those is real, and one is counterfeit (showing  
19 items.) Bill, one of these is real, and one counterfeit.

20 (Laughter)

21 Senator Armstrong. I was shocked. These are a bunch  
22 of heads from golf clubs.

23 For anybody who is interested, come over and take a  
24 look at this. I have several sacks full of this stuff.

25 I happen to have a bunch of sports equipment, but the

1 problem is an enormous one. According to the International  
2 Trade Commission, we are talking about, in trademark  
3 counterfeiting -- here. Pass these down.

4 In fact, let me show one more thing that is kind of an  
5 irony. This is probably the most popular book of the year,  
6 "In Search of Excellence." This is a counterfeited copy,  
7 which was purchased recently in Hong Kong. I thought,  
8 "Well, I have shoes and cassette tapes, and a whole package  
9 full of stuff."

10 This matter first came to my attention about a year  
11 ago from a very important and reputable Colorado company  
12 that was having their merchandise counterfeited overseas,  
13 and of course, sold around the world, undercutting him.

14 The magnitude of it is this: In trademark counter-  
15 feiting alone, it is estimated that there is a loss to the  
16 U.S. economy in trademark counterfeiting alone of  
17 \$6-8 billion a year and 132,000 jobs. And that is just  
18 a fraction of this problem.

19 So tho' I am passing around are tennis shoes and  
20 basketballs and that kind of thing, the problem is a very  
21 very significant one. The way in which Senator Danforth  
22 and I wish to solve this problem -- and let me say again  
23 that most of the real staff work and leadership on this  
24 matter has come from Senator Danforth, who is unable to be  
25 here this morning because he is taking part in a funeral

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1 of a dear friend and could not be here for the markup. He  
2 asked me, therefore, to present the amendment on his behalf.

3 It simply does this: It adds to the present law a  
4 provision which will permit the President to take into  
5 account the theft of intellectual property by countries,  
6 developing countries, who would otherwise be eligible for  
7 favored treatment under the GSP.

8 Now, the kind of products we have in mind -- the  
9 amendment is not specific with respect to what kind of  
10 products. But the problem involves pesticides, auto  
11 accessories, aircraft parts, medical items such as pumps  
12 and drugs, popular movies, records, Levi's, watches, eye-  
13 glasses, sporting goods, luggage, and a lot of other  
14 things besides.

15 Now, the amendment simply says that the United States  
16 will not tolerate wholesale piracy and counterfeiting, and  
17 it gives the following specific direction:

18 First, clarification of mandatory but waiveable  
19 conditions involving expropriation; that is, where the  
20 government actually steals private property. At the present  
21 that is limited, at least by implication, to tangible  
22 property, and we add in our amendment "intangible  
23 property" -- patents, copyrights, and trademarks.

24 The second provision of this amendment is to add a new  
25 criterion under the discretionary power of the President, to

1 be considered in annual GSP product review; that is, the  
2 question of whether or not there has been intellectual  
3 theft within a country by private persons, and whether or  
4 not the countries which are seeking this favored status  
5 have been vigorous in trying to close down that kind of  
6 illegal operation.

7 Third, the amendment provides an instruction to the  
8 President that when considering waiving GSP competitive-need  
9 limits, special consideration is to be given to market-access  
10 criteria and intellectual property-rights criteria.

11 Finally, Mr. Chairman, this amendment contains a new  
12 reporting requirement, under which the President, three  
13 years after enactment, would report on GSP beneficiary  
14 compliance with all discretionary criteria, with  
15 particular emphasis on market access and protection of  
16 intellectual property rights.

17 So, Mr. Chairman, that is the amendment. The actual  
18 text of the amendment has been worked out by Susan Schwab  
19 of the committee staff and by a representative of the  
20 STR's office, I understand, and is supported by the  
21 Anti-Counterfeiting, which is a group of some 200  
22 corporations that have suffered under this, by the  
23 Publishers Association, by representatives of the recording  
24 industry, and others.

25 Senator Bradley. Would the Senator yield for a

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1 question?

2 Senator Armstrong. I will if the Senator will tell me  
3 which basketball was the counterfeit.

4 Senator Bradley. The one that was not as orange.

5 The criteria that you established had, for the report  
6 back in three years -- there was supposed to be a report  
7 back on counterfeiting, a report back on market access.

8 Senator Armstrong. On all criteria, with special  
9 emphasis on those.

10 Senator Bradley. So that performance requirements  
11 would also be a part of that report-back?

12 Senator Armstrong. It is my understanding that that  
13 will be the subject of an amendment to be offered by  
14 Senator Symms. Is that correct?

15 Senator Symms. I didn't get the question.

16 Senator Armstrong. That the performance criteria is  
17 to be the subject of an amendment to be offered by  
18 Senator Symms.

19 Senator Symms. That is correct. We are dealing with  
20 services and investments -- another Danforth amendment.

21 Mr. DeArment. Senator Bradley, I think you are correct.  
22 After Senator Symms has put in his amendment, the reporting  
23 requirement would apply to both.

24 Senator Bradley. It will apply to performance  
25 requirements? All right.

1 Senator Heinz. Mr. Chairman?

2 The Chairman. Senator Heinz?

3 Senator Heinz. I like the thrust of the Senator's  
4 amendment. I would like to ask either him or  
5 Ambassador Brock -- Ambassador, you support this amendment,  
6 as I understand it.

7 Ambassador Brock. I am delighted with the amendment,  
8 yes. It addresses a very serious concern.

9 Senator Heinz. And you are familiar with the details  
10 of the amendment?

11 Ambassador Brock. Yes, we are.

12 Senator Heinz. My one concern -- and I don't have a  
13 copy of the amendment here before me -- is that, like so  
14 many other things we try and do, the amendment, while it  
15 gives presumably and carrots and sticks so that you can  
16 negotiate with the Taiwanese, the Koreans, the people in  
17 Hong Kong who are the worst offenders in pirating  
18 intellectual property rights, a counterfeiting as we have  
19 just seen as presented by the Senator from Colorado, that  
20 the waiver provisions may not be tightly tied enough, and  
21 that you may end up getting put in the position by somebody  
22 else a little higher up, or by the people in the State  
23 Department, put you under pressure to waive for very minimal  
24 showings by the Koreans or the others, who make absolutely  
25 no effort to do much of anything.

1 Excuse me a second.

2 (Pause)

3 Senator Heinz. Now, as I understand where this  
4 amendment amends the legislation, these are the sections  
5 that have generally had to do with nationalizing or  
6 expropriating property, where governments have taken steps  
7 to repudiate or nullify existing contracts or agreements,  
8 where governments have imposed or enforced taxes on us.

9 Now, the reason that the incorporation of the Danforth  
10 amendment idea and the Armstrong amendment idea in here is,  
11 the real problem with these countries is not that they have  
12 passed laws to steal our copyrights, they have not passed  
13 laws to permit their people to counterfeit the basketballs  
14 or the tennis raquets. Indeed, they have passed laws, in  
15 the case of Taiwan, to my understanding, that say these  
16 things are bad.

17 The problem is, they don't do anything about enforcing  
18 their law. When the Korean Commerce Minister was here, I  
19 asked him about a number of problems involving piracy. He  
20 said, "Well, there is nothing we can do about it. We can't  
21 find those people; we don't know who they are. My goodness,  
22 what are we to do? These are little cottage industries,"  
23 doing maybe hundreds of thousands, maybe millions of dollars  
24 a year, and "Our heart is in the right place, Senator. We  
25 just can't do anything."



1           Now, how is the Danforth amendment or the Armstrong  
2 amendment, if you prefer, really going to work, since, as  
3 I read the language, a waiver is almost necessary unless  
4 you can say that the government has taken an overt step  
5 to do something bad, as opposed to having taken a positive  
6 step to do something good?

7           Ambassador Brock. We really don't read the amendment  
8 that way. I view it as a remarkably affirmative step to  
9 make.

10          Senator Heinz. Maybe it would help if we had a copy  
11 of the amendment.

12          Senator Armstrong. Senator, maybe I can clarify that.  
13 There are two parts to the amendment, and one addresses itself  
14 to expropriation, which would be something where the  
15 government of a country in question actually expropriated  
16 intellectual property. And there is already a legal  
17 prohibition on the expropriation of tangible property. But  
18 this simply adds intellectual property to that laundry list:  
19 patents, copyrights, and so on.

20          But there is another section of this amendment which  
21 addresses itself to the question of whether or not the  
22 country which is seeking favored status under GSP is  
23 vigorously enforcing the kinds of laws that are necessary  
24 to root out intellectual piracy by private persons, by what  
25 you have termed "cottage industries"; although in some cases

1 they are very substantial cottage industries.

2 I don't think this is perfect, but it does give the  
3 President some additional leverage to bring to bear on the  
4 government representatives of these countries to say, "Clean  
5 up your act at home." And in places like Singapore and  
6 Korea and the Philippines and Taiwan, and wherever this is  
7 occurring, at least we ought to convey to the representatives  
8 of our government that kind of extra leverage. I don't  
9 think it is perfect, but I do believe it will have a  
10 beneficial effect.

11 Senator Heinz. But you are referring to the fifth  
12 item that the President is supposed to take into considera-  
13 tion, the one the amendment adds, before designating a  
14 country a beneficiary under the GSP -- is that correct,  
15 Senator Armstrong?

16 Senator Armstrong. Yes, that is correct.

17 Senator Heinz. May I just ask Ambassador Brock: Bill,  
18 you have got four criteria that are supposed to be taken  
19 into account now. The words "taken into account" are pretty  
20 vague.

21 Ambassador Brock. Yes.

22 Senator Heinz. To what extent are the existing four  
23 really quite rigorously taken into account by this or  
24 presidents generally?

25 Ambassador Brock. I think to a very considerable degree.

1 I think the thing that is attractive about this, and it is  
2 a very nicely-drawn amendment, there is a lot of thought in  
3 it, because it does cover the various stages that we go  
4 through in looking at these applications, not just for GSP  
5 but for a waiver of competitive need; because when we change,  
6 as we propose, the competitive-need trigger down to  
7 25 million and 25 percent, we throw a whole new raft of  
8 products into that evaluation which must now take into  
9 consideration the intent and the efficacy of that host  
10 government's actions in dealing with the protection of  
11 intellectual property rights.

12 You know, we have been working, in my office, for some  
13 time on a fairly comprehensive look at all U.S. laws, to  
14 see whether or not they are adequate. In my judgment, they  
15 are not. And we are going to bring you, hopefully, some  
16 other suggestions to deal with this problem, because, as  
17 Senator Armstrong has said, this is a new problem, but it  
18 is really serious, and it is going to blow up in our face  
19 if we don't act fairly quickly.

20 Senator Heinz. I certainly concur with both you and  
21 Bill Armstrong on that point.

22 Let me just ask one last question of you on this.

23 Ambassador Brock. Sure.

24 Senator Heinz. Under the statute, would we be  
25 reviewing countries, and therefore subjecting them to this

1 additional criterion?

2 Ambassador Brock. Each year, as we conduct our  
3 annual review, frankly we are allowed to conduct a special  
4 review if we get severe complaints, which we could use if  
5 we wanted to do that. And we are required under the terms  
6 of the amendment to bring you a full report within three  
7 years on the program and its effect.

8 Senator Heinz. I commend Senator Armstrong for offering  
9 the amendment, commend Senator Danforth for his work on  
10 the amendment. I am going to support it, although I want  
11 to express some reservations about it.

12 I am not sure that it goes as far as it needs to go.  
13 It may.

14 Ambassador Brock. Well, we are not, either. And we  
15 would like to work with you on the thing, because we are  
16 seeking the same goal. We have no disagreement on the  
17 objective.

18 Senator Armstrong. Mr. Chairman, I do not think we  
19 need a great deal more discussion. I do not think this is  
20 controversial. But just within the last two or three minutes  
21 a particularly heinous example of this has come to my  
22 attention:

23 My staff yesterday called the United States Olympic  
24 Committee in Colorado and asked if they were in any way  
25 affected, and they have sent -- it just arrived by Federal

1 express this morning -- some examples of counterfeiting not  
2 involving the brand name of the product, which in this case  
3 is "Hanes," but, in addition, the pirating of the U.S.  
4 Olympic symbol. So it is sort of a double-barrelled  
5 intellectual theft in that case. (holding up shirt).

6 Senator Bradley. Could you show us that again,  
7 Senator?

8 (Laughter)

9 The Chairman. Senator Moynihan.

10 Senator Moynihan. This is just a technical question  
11 on the term "intellectual property rights." There is a  
12 long history of that in trade matters, and it has typically  
13 been associated with the pirating of books and things like  
14 that.

15 I once had a publisher sell 100,000 copies of a book  
16 of mine in a country that will be nameless, and I wrote him  
17 and asked, "Could I just get a copy for my own library?" He  
18 sent me a copy and sent me a bill, which was sort of special.

19 But aren't you basically talking about copyright, as  
20 against "intellectual property"?

21 Ambassador Brock. We were trying to use a term that  
22 covers all of it.

23 Really, we are running into a problem on copyrights, on  
24 patents, on the counterfeiting of trademarks and things of  
25 that sort.

1           Senator Moynihan. I am going to make the point, and  
2 I wonder if Senator Armstrong would want to think about this:  
3 There is a long history in trade law and litigation and  
4 exposition, of intellectual property rights. And they are  
5 associated basically with copyrights and the infringement  
6 of copyrights. And I think you are going to yet another  
7 comparable but different subject of the kind that I wouldn't  
8 want to see people evading the purposes of this amendment  
9 on the grounds that there is nothing intellectual about a  
10 basketball, or a tee shirt, that "that's not an intellectual  
11 property."

12           (Continued on next page)

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1           Senator Armstrong. But, Senator, I did not draft the  
2 amendment -- it was prepared by staff, of course -- but  
3 it refers to intellectual property, including patents,  
4 trademarks, and copyrights rights.

5           And the point is that we don't care if somebody wants  
6 to manufacture a basketball. What is reprehensible is when  
7 they steal the trademark of the U.S. company.

8           Senator Moynihan. I know. I am not trying to draft  
9 this for you, but I will bet you there is a better word --  
10 proprietarial, proprietary, or something like that.

11           And I am afraid you are going to run into the problem  
12 that the term intellectual property has a 50 year history  
13 of, you know -- the Russians printed a zillion copies of  
14 Jack London and didn't give him any royalties.

15           That was the first issue of intellectual property. And  
16 the League of Nations had a committee.

17           I think there is a better word for it.

18           Ambassador Brock. Senator, I appreciate your caution,  
19 and if you will permit me, what we will do is we will put  
20 our staff with yours, and we will look to see if there is  
21 a better term.

22           Senator Moynihan. Fine.

23           Ambassador Brock. I mean with Senator Danforth's staff  
24 to see if we can be more precise and more effective in what  
25 we want to say.

1 Senator Moynihan. Well, not so much more precise, but  
2 more encompassing.

3 Ambassador Brock. Encompassing. Fine. We want to be  
4 very sure that we accomplish what you seek to accomplish,  
5 and we will work to do that.

6 And if we have to modify the words, I think we can offer  
7 something by the time that we get to the floor.

8 The Chairman. All right, then. Without objection, we  
9 will agree to the counterfeiting amendment, with that  
10 reservation.

11 Then, as I understand, there is sort of a two-part  
12 proposal. Is that correct? Senator Symms has the other  
13 half?

14 Senator Symms. Yes, Mr. Chairman.

15 The Chairman. Is there anything else, Bill?

16 Ambassador Brock. No. Thank you, Mr. Chairman.

17 The Chairman. All right. Senator Symms?

18 Senator Symms. Mr. Chairman, the second amendment.  
19 I would like to say I have had a long interest in this and  
20 was the original sponsor of the reciprocal investment act  
21 whose provisions included the committee's Reciprocal Trade  
22 Investment Act, but this amendment -- which is the second  
23 Danforth amendment -- and I will just read it. It is very  
24 short. And then I will make a brief explanation of it.

25 It would add action to reduce trade distorting investment



1 practices and policies including export performance  
2 requirements to criteria to be considered by the President  
3 when determining whether to grant GSP benefits on certain  
4 products.

5 Section 2 would add the same criteria to the list of  
6 criteria being given special consideration in the President's  
7 report on compliance.

8 What this amendment simply would do would add as criteria  
9 services, and we are giving the Administration broad  
10 negotiating authority, and I believe the trade services  
11 should be added to the list of concerns -- what we are  
12 really talking about.

13 And the reason I say that is that the service sector  
14 has contributed significantly to the U.S economy, and the  
15 services currently account for about two-thirds of our GNP,  
16 and our service exports were so large as to yield over \$50  
17 billion services trade surplus.

18 Obviously, this is an area where we can be very  
19 competitive, and our economy is growing dramatically, and  
20 I think it should be included in the negotiating authorities,  
21 for example, for some of the problems -- and the Ambassador  
22 probably could state them better than I -- but there are  
23 no reciprocal investment rules.

24 There are some nations that won't allow us to invest.  
25 They have domestic content rules, and I think it would be

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1 very helpful to this package if we would add our services  
2 in the investment industry to it.

3 Senator Packwood. Bill?

4 Ambassador Brock. I welcome the amendment, Mr. Chairman.

5 Senator Bradley. Mr. Chairman, could I just clarify  
6 a little bit more what this would require? In other words,  
7 this would require you to report back to us after a certain  
8 period of time how you have done in reducing the, say, content  
9 requirements in a particular country, such as Brazil. If  
10 Brazil said you could only make computers if they are all  
11 made in this country, then you will report back to us at  
12 the end of this period of time saying how you reduced those  
13 local content requirements.

14 Is that not correct?

15 Ambassador Brock. That is correct. It would  
16 additionally require us to take into consideration their  
17 practices when we have applications for a product review  
18 from those countries in GSP.

19 Senator Bradley. Mr. Chairman, I think this is --

20 Senator Packwood. If there is no further discussion,  
21 then without objection, the amendment will be adopted.

22 Are there any other amendments?

23 John Chafee.

24 Senator Chafee. Mr. Chairman. Mr. Ambassador, I would  
25 like to gain from you some inkling as to how the nations are

1 selected for the GSP process.

2 It seems to me as I look over the list that they hardly  
3 qualify -- some of them -- for so-called developing countries  
4 and you know the countries we are talking about -- Hongkong,  
5 and even Taiwan, and Singapore, and others.

6 Could you give us some discussion on how you arrive at  
7 these countries, and indeed why are they there?

8 Ambassador Brock. The original GSP legislation gave us  
9 a list of excluded countries, and then subsequently we  
10 excluded the members of OPEC. All other nations can be  
11 considered as potentially eligible.

12 Senator Chafee. Oh, I appreciate that, and I see the  
13 list that you have here and that you cannot consider Soviet  
14 bloc countries and so forth -- the Communist countries --  
15 and so forth.

16 Senator Moynihan. May I make a correction? A Communist  
17 country unless that country is not dominated or controlled  
18 by international communism, if you follow that.

19 Senator Chafee. Okay. I assume that the word  
20 communist country is a term of art, but let's not get into  
21 that.

22 But why? I understand why those are excluded, but it is  
23 the included ones that I am concerned with.

24 For example, Hongkong. Is Hongkong an undeveloped  
25 country?

1 Ambassador Brock. It is considered a developing country,  
2 Senator.

3 Senator Chafee. What criteria do you use to determine  
4 that? That it is a developing country? Switzerland, I  
5 presume, is a developed country.

6 Ambassador Brock. We frankly took the original  
7 legislation in which you removed the Switzerlands of the  
8 world and the ones of that sort, and we simply have allowed  
9 any others to seek application.

10 And we consider them under the criteria of the law,  
11 whether or not they have arrived at a global competitive  
12 stature.

13 We do that not by country, but by product, which is the  
14 way we are supposed to judge these things.

15 In some cases, the country may have a competitive  
16 product that is excluded from GSP. The majority of products  
17 that are eligible for GSP are on the excluded list because  
18 they have reached competitive status.

19 Something less than half of the GSP eligible products  
20 come in with GSP treatment because they are not, in our  
21 judgment, at a global competitive circumstance.

22 Senator Chafee. Mr. Ambassador, I am not against the  
23 GSP system. I support it, and I think it is a worthwhile  
24 procedure and law.

25 I am just bothered by some of the countries that I see

1 on the list. I mean, are you suggesting that every country  
2 that is on the list is there except if they are specifically  
3 excluded by statute?

4 Ambassador Brock. We really have tried very carefully  
5 not to start coming down with decisions by country, because  
6 most countries are at different stages of development in  
7 different industrial sectors.

8 And what we try to do is to evaluate the specific product  
9 or industry, if you will, on that basis. And if it is in  
10 the developing stage, then we are asked to and can consider  
11 their application.

12 But if they are running up against our competitive need  
13 formulation, if they are up to 50 percent of U.S. imports,  
14 or \$57 million -- and we are asking you to reduce those  
15 trigger points in this legislation -- they are automatically  
16 removed.

17 If our evaluation demonstrates that they have reached  
18 a full competitive circumstance, they are removed.

19 Senator Chafee. Let me give you an illustration. Taiwan  
20 is on your list. Taiwan, I suppose, in some areas is  
21 undeveloped in certain products, but unquestionably in  
22 electronic products, they are developed.

23 Now, to say that Taiwan can only be considered a  
24 developed country in electronics if it has at least 50  
25 percent of the market -- the U.S. market -- in electronics

1 is really going very far, isn't it?

2 Ambassador Brock. I think we are considerably more  
3 careful than that.

4 That is an automatic exclusion.

5 Senator Chafee. Right.

6 Ambassador Brock. But we have excluded, as I say, about  
7 half of all the GSP eligible products on the basis that  
8 they have reached that competitive situation.

9 Senator Chafee. Even though they haven't reached that  
10 percentage in the import, it would automatically exclude that.

11 Ambassador Brock. Absolutely.

12 Senator Chafee. I see. I know others have questions  
13 in this line, so I might return to you in a minute.

14 Senator Moynihan. Could I raise two questions here?

15 Senator Packwood. Sure

16 Senator Moynihan. Mr. Ambassador, when you come before  
17 this committee, you know the respect and love we hold for  
18 you.

19 I am going to vote for this, but I wonder if you don't  
20 have an increasingly flawed mechanism, which is the mechanism  
21 of picking products as against economy.

22 Now, I look at your economy, and this may surprise you,  
23 but I would put the proposition that as a general line standard  
24 of living -- the standard of living in Singapore is higher  
25 than the standard of living in the United States -- most

1 cities in the United States -- let me put it that way.

2 I mean, just in terms of what you consume, how you live.  
3 I mean, there are things that Singapore doesn't have, like  
4 Kansas or the Rocky Mountains, but just in terms of what it  
5 is like to work in a cotton factory in Singapore.

6 People who work in cotton factories in Singapore have  
7 a higher standard of living than people who work in cotton  
8 mills in North Carolina.

9 Now, what is Singapore doing on this list?

10 Ambassador Brock. Senator, I am sympathetic to what  
11 you say, but let me give you one number, and then I will go  
12 to the more important point, which is not related to numbers.

13 Senator Moynihan. Sure.

14 Ambassador Brock. The number is their GNP per capita.  
15 The last count I saw was \$4,400. It may be --

16 Senator Moynihan. Well, we have it here in 1981 at  
17 \$5,160, which is not far from the American per capita.

18 Ambassador Brock. But it is less than half.

19 Senator Moynihan. Well, I guess per capita, yes.

20 Ambassador Brock. Right.

21 Senator Moynihan. But prices are different, and they  
22 don't have any heating costs.

23 (Laughter)

24 Ambassador Brock. I accept that you can live the good  
25 life in Singapore. It is a wonderful little country,

1 beautifully run, and staffed with a remarkable population  
2 that is very industrious.

3 I accept all of that, but one of the premises -- and I  
4 guess the most important premise of the GSP program -- that  
5 was internationally agreed to was that you shouldn't try to  
6 discriminate among countries.

7 You try to avoid that.

8 Senator Moynihan. That I know, and I am not going to  
9 argue with you, but I am just going to say you are a very  
10 special person in this Government. Will you start thinking  
11 about whether or not Raoul Prebisher's notion of what best  
12 to do in 1974 -- when I think this begins -- may not be what  
13 is best to do.

14 When you have a list of countries that are said to be  
15 the same that ranges from India with a per capita income of  
16 \$260.00 and Singapore with a per capital income 20 times  
17 that, you are not talking about the same place.

18 And I mean, Prebisher is Argentinian, and there are  
19 three countries on that list of ten that have twice the  
20 per capita income of Argentina, and Argentina comes in as  
21 a developing country or somehow a troubled country.

22 The famous remark of Paul Samuelson, 20 years ago,  
23 who referred to the miracle of economic nondevelopment in  
24 Argentina.

25 (Laughter)



1 Senator Moynihan. In the year 1900, Europeans looking  
2 at this part of the world wondered which would become the  
3 more prosperous country -- Argentina or the United States.

4 Ambassador Brock. That is right.

5 Senator Moynihan. And there were many best on Argentina.  
6 I just say that the product against the country issue is  
7 antiquated, and what it does is let competitors of the  
8 United States sell all their competitive goods through the  
9 normal system, and then get a preference from us on the  
10 ones they are building up to the competitive level.

11 And I am not sure it is an effective mechanism.

12 One last question, sir.

13 Ambassador Brock. May I say that I am worried about  
14 precisely this point? I am giving it a lot of thought, and  
15 I have had some conversations on this subject with some of  
16 the more thoughtful among my counterparts in the developing  
17 countries.

18 Senator Moynihan. In all truth, I look down this list  
19 and of the goods brought in, 87 percent under the GSP come  
20 from 15 countries, not one of which is Africa.

21 What are the Africans getting out of the generalized  
22 system of preference?

23 Ambassador Brock. Not much.

24 Senator Moynihan. Not much?

25 Ambassador Brock. But I will tell you this. One of the

1 problems is that there have been those that suggested that  
2 we remove the top 3, 5 or 10 beneficiaries. We have done  
3 some analysis of that.

4 Every time you remove benefits from one of the top five  
5 users of GSP, the benefits flow to Japan, not to Africa or  
6 other Latin or Asian countries.

7 Senator Moynihan. Yes. I wonder -- not pressing you  
8 because we never have to press you for anything -- you have  
9 been thinking about this. What do you say about writing a  
10 paper about it? Tell us some things like that.

11 Ambassador Brock. Can I do it after you have passed  
12 the bill?

13 (Laughter)

14 Senator Moynihan. Yes. Sure. Would you think about  
15 give us that?

16 Ambassador Brock. I would be delighted to. I really  
17 would. I am interested in the subject, and I think you are  
18 on the mark.

19 Senator Moynihan. Could I ask one last question?

20 Nicaragua is the beneficiary of the GSP. Do I take it  
21 that that is not a communist country under Section 502?

22 Ambassador Brock. Well, let me pull my lawyer into  
23 this here.

24 (Pause)

25 Senator Chafee. You might be interested, Senator --

1 while he is looking up that answer -- the United States is  
2 still the largest trading partner of Nicaragua.

3 Ambassador Brock. I am getting a couple of different  
4 answers, so you can take your pick.

5 One is that there has been some debate over the  
6 domination of international communism, but perhaps the more  
7 relevant question would go to whether or not the economy has  
8 become totally communist. In fact, it has not.

9 And it has been at least something of a premise of  
10 policy in this Administration to be cautious and not write  
11 it off totally, because there is still some hope.

12 And I think that would be my own personal attitude --  
13 that maybe we can offer some inducement for them to come  
14 back.

15 Senator Moynihan. Thank you, Mr. Ambassador.

16 Ambassador Brock. Thank you.

17 The Chairman. Are there other questions on this  
18 amendment?

19 Senator Symms. Mr. Chairman, I want to ask about this.  
20 I have a little different concern, Mr. Ambassador, than the  
21 questions that have been asked by my colleagues here.

22 My concern is -- if I understand it correctly -- we  
23 export 40 percent of all the goods exported that are exported  
24 by the United States to undeveloped countries, and we only  
25 bring in 3 percent of the goods from the GSP. Is that

1 correct?

2 Ambassador Brock. That is about right.

3 Senator Symms. Well, that sounds like a good deal for  
4 us, to me.

5 Ambassador Brock. It is a very good deal for us,  
6 Senator.

7 Senator Symms. Well, having said that, now I come from  
8 a State that is very interested in exporting to South Korea,  
9 Taiwan, and the Pacific rim -- Singapore -- and that is where  
10 our soft white wheat, that is where our peas and lentils are  
11 going, and some timber products.

12 And we are very concerned that you have got this bill  
13 written so that it reduces the GSP preference by 25 percent  
14 immediately two years out. Is that correct?

15 Ambassador Brock. Well, we have the right at that  
16 point to reduce it and to waive it -- either one -- depending  
17 upon our access to their markets at that point.

18 Senator Symms. Well, I am in favor of giving you the  
19 negotiating authority so that some of these questions that  
20 have been brought up here this morning, like counterfeiting  
21 and so forth, can have the United States Government go deal  
22 with the backing of the country to make a good proposition,  
23 but my concern is that, if this is reduced that rapidly, what  
24 happens, say in a country like Taiwan or South Korea, where  
25 they can't meet a two-year reduction, and we end up losing

1 those markets?

2 Ambassador Brock. Oh, they can meet this.

3 Senator Symms. Why don't we go to four years or five  
4 years, since it pays in at 5 percent, and not have such a  
5 radical shift in the way business has been done since 1974?

6 Ambassador Brock. I guess I could live with some  
7 slightly slower phase-in as long as it began very quickly,  
8 but I really don't think those countries are going to have  
9 any trouble living with this timetable.

10 Remember that all we are doing is we are taking this  
11 two years to do a complete product-by-product analysis,  
12 and what that implies in terms of any future application  
13 or waiver of the competitive need formula -- we are not  
14 touching the bulk of product. We are only touching the  
15 large-volume items, when we do this.

16 And the countries that are selling us \$50 million worth  
17 of product or have 50 percent penetration of our markets  
18 are, as Senator Chafee has pointed out -- they are getting  
19 to a fairly decent competitive circumstance.

20 They are prepared to have some serious talks about giving  
21 us access to our product, in exchange for waving that --

22 Senator Symms. Well, what would you think about the  
23 proposition I just tossed out here to the chairman and the  
24 members of the committee -- if I understand this correctly,  
25 two years out and then it goes to a 25 percent reduction.

1           There are some 3,000 products, so the consumers of this  
2 country benefit from those.

3           Ambassador Brock. No. It really isn't automatic. I  
4 think I may have misspoke myself and left a false impression  
5 there.

6           We make these decisions at the end of the two years  
7 ourselves on a product basis, and there has been nothing  
8 automatic.

9           We have analyzed each product to see if they are ready,  
10 and if they are, then yes, we can go down to the lower levels.

11          Senator Moynihan. Would my colleague yield here just  
12 for a moment?

13          Senator Symms. Yes.

14          Senator Moynihan. As he knows, there are groups which  
15 are very much opposed to this proposal, even as it is, and  
16 it is with no great pleasure that some of us are supporting  
17 the principle because we don't want to be in the position  
18 of opposing friends and other regards.

19          I think Ambassador Brock's notion of two years is a  
20 good one, and to extend it would almost make it too difficult  
21 for this to go forward.

22          I mean, they know what they are doing, and let me assure  
23 you that those countries that you are most thinking about --  
24 they will continue to eat well, no matter how many fake  
25 tennis rackets they are exporting.

1           Senator Symms. I guess my big reservation is about the  
2 sudden change. It seems like when we make a political  
3 decision, oftentimes it does affect such an important section  
4 of our country from a consumer's standpoint that get the  
5 benefit of these products, and from the exporter's standpoint  
6 from some of the northwestern States particularly that  
7 export heavily to the Pacific rim.

8           I just hate to see the change that sudden.

9           Ambassador Brock. But, Senator, that is why the study  
10 because we will take your concern into consideration. We  
11 will make that analysis very carefully.

12           Senator Symms. And I understand what Senator Moynihan  
13 is saying. We may not have the votes to extend it. I would  
14 like to see a phase-in in some way and stretch this out.

15           I would like to see you have instantly the negotiating  
16 power, but to see a phase-in of how much the GSP would be  
17 changed so that you would still have the clout.

18           Ambassador Brock. If there is a need for us to phase  
19 it in, we are getting in this bill as it is written the  
20 authority to do that, because we will take these up on the  
21 product-by-product studies, and we will take your concerns  
22 into consideration.

23           And we will not move them into something they can't live  
24 with. I think we can make that assurance to you.

25           Senator Symms. I appreciate that, and I have the highest

1 regard for the Ambassador.

2 So, I will take that, Mr. Chairman. I would still like  
3 to discuss that with some of the other Senators on the  
4 committee and possibly keep an option in there -- somehow  
5 I think there should be a good concern expressed here that,  
6 if we make these changes too soon, we don't want it to have  
7 a negative impact -- either from a consumer standpoint or  
8 as, like I say, in the long run the GSP has been a net plus  
9 for the United States.

10 We have been the big beneficiaries of it, and I don't  
11 think we should be overly concerned about what happens.

12 My concern simply is that what happens if the GSP is  
13 invoked too soon? Do they lose some of their foreign  
14 exchange? And then, they have to start restricting what  
15 they buy from the United States.

16 But I will accept what the Ambassador says, and maybe  
17 we will pursue this further on the floor. I don't know.

18 The Chairman. I think there is a rather fragile  
19 majority for this proposal in any event, and I had hoped that  
20 we might be able to work out something.

21 Senator Symms. I respect that, Mr. Chairman, and that  
22 is why I won't press the point any further.

23 Can we go ahead and agree to that amendment?

24 Senator Bradley. Which amendment, Mr. Chairman?

25 Senator Baucus. I didn't offer an amendment.



1           The Chairman. Oh, you didn't offer the second part of  
2 the Danforth?

3           Senator Baucus. No, that was agreed to.

4           The Chairman. Okay.

5           So, I think Senator Heinz has an amendment, and Senator  
6 Bradley has an amendment. Whoever wants to go first.

7           Senator Bradley. I would just like to discuss here  
8 the general part of the issue that Senator Symms raised.

9           Under the current law -- the current GSP law -- when  
10 a product gets to 50 percent of the import market or a little  
11 over \$50 million, it graduates for a year, and then we will  
12 see what happens and look at the next year.

13           Under this bill, and the point that Senator Symms was  
14 making, after two years you have the authority to reduce  
15 that graduation number to \$25 million roughly or 25 percent,  
16 which I think is a good way to go.

17           The concern I have is the flip side, which is the  
18 ability to waive that for a country so that that country  
19 can import unlimited amounts of goods into the United States.

20           And I think that, while I believe the USTR should have  
21 some discretion and should be able to offer something to  
22 a country that does cooperate on whatever the issue --  
23 counterfeiting, market access, performance requirements, or  
24 whatever -- I would prefer to keep that level -- or keep the  
25 carrot that can be provided to where it is now, which is a

1 \$50 million or 50 percent of our market.

2 Otherwise, I think we are saying that it is our policy  
3 to say that a country can come in and take 80 percent or  
4 90 percent or 65 percent of the tennis shoe market, for  
5 example. And I don't think we want to do that.

6 The second problem is that I think the general purpose  
7 of GSP was to kind of spread the benefits, so while country  
8 X might be cooperating with us and we want to give them  
9 some break -- which we could give them up to 50 percent,  
10 but the USTR figures we are going to give them 75 percent  
11 of our market -- that then gives them advantage over the  
12 other countries who are also competing with them -- other  
13 Third World countries.

14 So, my thought is that we could give the USTR the  
15 ability to give a carrot out there, but I would like to  
16 have the Congress set some cap on that, and I would suggest  
17 a cap that is current within the law, which is 50 percent  
18 or roughly \$50 million.

19 Ambassador Brock. Senator, may I just express a modest  
20 dissent? I think what you are trying to do is not illogical  
21 and if you were talking about a normal import program, which  
22 GSP is not.

23 It has very tight standards which require us to remove  
24 from consideration any product that is in the so-called  
25 import-sensitive category -- tennis shoes would be a very

1 good example of that -- any textile product and things like  
2 that.

3 They are not even considered in this program. I will  
4 give you an example of where I think we would run into trouble  
5 precisely, with the sort of approach that you have got,  
6 because it is where we have run into it already.

7 Bangladesh was selling us jute. There is not a great  
8 deal of jute being sold in the United States, but they ran  
9 into the competitive need, and there was no one else even  
10 selling it. Now, it really doesn't make sense to us to say  
11 to that little country that is desperately poor: You can't  
12 sell us all the jute you can make if we want to buy it.

13 You are not damaging any U.S. firms. You are simply  
14 making a product available to U.S. customers who want to  
15 buy it at a reasonable price -- not below market -- at  
16 market, but just without any duty on it.

17 And that is all the GSP does.

18 But it seems to me that the purpose of your amendment  
19 is already being met by the criteria of present law that we  
20 would maintain in the new bill, which says that you can't  
21 do this in any area that would damage us, or would create  
22 an import-sensitive circumstance.

23 Further, in the waiver, we have the right to say okay,  
24 maybe it is good for up to \$50 or \$75 million, but no more.

25 We can waive at any level, so I think the problem that

1 I have is that the very countries that we really are trying  
2 to help most might be the ones that get kicked out on some  
3 automatic mathematical formula.

4 Haiti. Bangladesh. Those are the countries that would  
5 be caught.

6 Senator Bradley. What would you do with Bangladesh  
7 under current law when that occurred?

8 Ambassador Brock. They are kicked out. They do not  
9 get GSP.

10 Senator Bradley. And again, what is the assurance that  
11 you think exists in the law to prevent tennis shoes from  
12 country X being given 70 percent of the market? Or 60  
13 percent of the market?

14 Ambassador Brock. Well, footwear is explicitly excluded,  
15 as are --

16 Senator Bradley. Well, don't take one of the explicit  
17 exemptions, because then we can't talk about the ones that  
18 aren't on the list.

19 Ambassador Brock. There is a fair list of electronic  
20 items, textiles, apparel, watches, steel articles, but then  
21 we have the general mandate to not provide this in an  
22 import-sensitive area, and that covers a whole range of  
23 items, but it changes from year to year.

24 In some cases you have import-sensitivity that you didn't  
25 have the previous year. So, we take that into account

1 because every year we review this entire product list, product  
2 by product, and make a determination whether or not the  
3 criteria are in fact being met.

4 Senator Bradley. Mr. Chairman, I would like to hear  
5 what other members of the committee think about this because  
6 I think, again, we want to give the USTR maximum flexibility,  
7 but at the same time that I don't doubt that the example of  
8 Bangladesh is a meritorious one, but I am concerned about  
9 the ones out there that we don't know about.

10 Senator Symms. Would you yield for a question?  
11 Wouldn't this remove flexibility in terms of his position,  
12 if you put that cap on?

13 Senator Bradley. Yes, it sure does. Congress originally  
14 said that we thought that no country, because of GSP, should  
15 be able to take over more than 50 percent of the market in  
16 the United States.

17 That is what we said, and that is why we put the 50  
18 percent in there.

19 The Chairman. Isn't there some other way that you could  
20 work out his concern and still give you--

21 We are not going to be able to finish this before 2:00.

22 Ambassador Brock. I don't disagree with the expression  
23 of concern. I think frankly -- I don't want to say it, but  
24 I think we can take care of the problem here -- but I don't  
25 know who is going to be next, and what you are trying to do

1 is write a law, regardless of who is administering it, and  
2 that is fair enough.

3 Two things I might suggest. One, the present law does  
4 exempt any articles subject to any action under 203 of  
5 this Act or 232 or 351. In other words, if you are seeking  
6 trade relief under those articles, that takes it out of our  
7 hands.

8 Secondly, if you wish, Senator, either in the language  
9 or in the report, if you want to tell us to go to the ITC  
10 to evaluate this waiver -- in terms of its impact on American  
11 industry -- so that we don't get into that situation, we  
12 would be happy to do that because that is an independent  
13 body, and you would get an independent evaluation.

14 Senator Bradley. So, you would subject the product and  
15 the country involved to an ITC investigation to determine if  
16 it was injuring or adversely affecting the domestic industry?

17 Ambassador Brock. I have been handed a suggested phrase  
18 which would read: "In exercising this authority, the  
19 President shall seek the advice of the International Trade  
20 Commission, pursuant to Section 503a."

21 If you want something like that --

22 Senator Symms. Well, can't they do that now?

23 Ambassador Brock. They can, but --

24 Senator Symms. I mean, I heard what Senator Bradley was  
25 saying, but if I understand it correctly, if a company thinks

1 they are being injured, they can file right now.

2 Ambassador Brock. Absolutely.

3 Senator Symms. But if there is nobody producing the  
4 item -- widgets or whatever it may be -- in the United States,  
5 it seems that his amendment might put a protection there  
6 where the United States consumer might not then be able to  
7 get the item, and the country then that needed the market  
8 worst of all -- like a Bangladesh or something -- couldn't  
9 get the market. If I understand what he is talking about  
10 correctly.

11 Senator Bradley. You don't find too many small firms  
12 filing injury claims with the ITC. I mean, that just usually  
13 doesn't happen.

14 Ambassador Brock. We are required to take them into  
15 consideration, whether they file complaints or not.

16 There are times when we have considered filing in their  
17 behalf because they didn't have the financial resources to  
18 do it. I think that is part of my job, and if you want us  
19 to adhere to that standard by writing some language, I  
20 wouldn't object to that, Senator.

21 I do worry about the dollar cap, but if you want to put  
22 certain ethical standards in the application of this program  
23 on it, then --

24 The Chairman. We are going to have to leave here in a  
25 few minutes. I wonder if I might suggest that we work on

1 that in the next two hours.

2 I know Senator Heinz has an amendment. I think there is  
3 some room for working that out, too. Maybe he could present  
4 that quickly.

5 Senator Heinz. Could I bring that up quickly?

6 Senator Symms. Mr. Chairman, could I ask one 30-second  
7 question to finish up?

8 The Chairman. Sure.

9 Senator Symms. I am not trying to be obstinate here,  
10 but if I understand it correctly, a small company -- as the  
11 case that Senator Bradley is talking about -- all they have  
12 to do to file a complaint is file up with your shop, and  
13 then you are required by present law to investigate it.

14 So, it isn't like going in with a full ITC --

15 Ambassador Brock. No, it can be very inexpensive.

16 Senator Symms. It can be very inexpensive for them to  
17 do it?

18 Ambassador Brock. That is right. They can just send  
19 somebody in or they can write us a letter, and we will take  
20 it into consideration.

21 Senator Symms. As one member of the committee, I hope  
22 you can work this out to your satisfaction without limiting  
23 the flexibility that we are trying to get at with this  
24 legislation.

25 Ambassador Brock. So do I.



1           Senator Symms. Thank you. I think I would be strongly  
2 opposed to what we are talking about here.

3           The Chairman. Senator Heinz?

4           Senator Heinz. Mr. Chairman, maybe I can be brief about  
5 this -- I hope.

6           My proposal is that we add to the list of exempted  
7 products from GSP -- leather-related products.

8           We did this essentially in the CBI. We agreed to do  
9 that. We do by administrative action do it now.

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2 Senator Heinz. And I would see to incorporate that  
3 list of products that is now exempted from the GSP by  
4 administrative action to the list of statutorily excluded  
5 items.

6 The reason for it is that we have got import penetra-  
7 tion in these industries ranging from 35 to 85 percent.  
8 We are talking about many, many thousands of jobs.

9 And what that really means is that imports of leather  
10 related products do not need preferential duty treatment to  
11 penetrate the U.S. market. They are being quite successful  
12 as it is.

13 And, further, most of the products we are talking about  
14 are not coming from the Bangledeshes of the world. Indeed,  
15 most of them are coming from the same countries that John  
16 Chafee talked about, that Pat Moynihan talked about. Eighty-five  
17 percent of the handbags come from the so-called three.

18 Eighty-two percent of the luggage imports, 73 percent  
19 of the leather wearing apparel imports and so forth come  
20 just from Taiwan, Korea and Hong Kong.

21 If it is argued that, well, this isn't a problem  
22 because Bill Brock has them on their administrative list right  
23 now, the answer is that this industry has had real  
24 difficulties until Bill came along getting on anybody's  
25 list.

There are items that occur periodically. It is very

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1 time consuming. It is very expensive to get on the list.  
2 And we are leaving this particular segment at some jeopardy  
3 by not statutorily incorporating them.

4 And I would hope, Mr. Chairman, that there is no  
5 objection to this.

6 Ambassador Brock. These items are not on the list now.

7 Senator Heinz. By administrative action.

8 Senator Moynihan. This is an industry that is just  
9 going to disappear. And these are the elemental of the  
10 workers that we have tried to look after. They don't have  
11 the standard of living of the people that they are competing  
12 within many cases.

13 Senator Heinz. These are really low wage people.

14 The Chairman. Maybe you have since changed it, but it  
15 suggested to me that we might accept the proposal -- the  
16 exclusion should be acceptable, but defined to encompass only  
17 those articles within his categories that are now excluded  
18 eligibility.

19 In other words, trying to --

20 Ambassador Brock. Well, obviously we couldn't object  
21 to that, Mr. Chairman. We already exclude them so that  
22 wouldn't bother us a bit.

23 We would prefer to take that.

24 The Chairman. I don't know if that is satisfactory to  
25 Senator Heinz.

1           Senator Heinz. As I understand it, we would exclude  
2 those things that are statutorily administratively excluded.  
3 That would suit me just fine, Mr. Chairman.

4           The Chairman. All right. You have got it.

5           Senator Heinz. We have got it.

6           The Chairman. Is that all right?

7           Senator Heinz. Mr. Chairman, I appreciate the unanimous  
8 support of the committee. Thank you.

9           The Chairman. Could we go back? I failed earlier in  
10 the ITC authorization. It's on a pork study. We didn't have  
11 any pig to bring in, but for Senator Grassley, Senator  
12 Jepsen and myself -- and I would just like to reopen that  
13 ITC authorization.

14           I think Senator Grassley would just like to offer an  
15 amendment for study.

16           Senator Grassley. My colleagues, I would like to add  
17 an amendment that just calls for a study by the ITC on the  
18 import of live hogs and pork from Canada into the United  
19 States.

20           I have got statistics here. I won't go into them. But  
21 just a dramatic increase in the last five or six years. And  
22 it just calls for a study.

23           And my interest in this, Senator Jepsen's interest,  
24 Senator from Kansas interest, is that in the midwest where  
25 most of the pork production is. In my state one out of three

1 hogs in the United States lives in my state. We have a --

2 (Laughter)

3 Senator Grassley. And we have a situation where these  
4 imports coming in are being slaughtered in my state as  
5 well, see. So from that standpoint. I couldn't bring in,  
6 like Senator Armstrong did, hogs to demonstrate to you to  
7 hold up to get your attention.

8 But this is a real problem that we don't have an answer  
9 for. And I'm not here to tell you that maybe the study will  
10 even show that it's not a problem.

11 But I think I have enough questions in my mind that it  
12 is a problem. The pork producers in my state do. The  
13 National Pork Producers Council does.

14 And so from that standpoint, I would like to have this  
15 study authorized by this committee.

16 The Chairman. I'm sorry I overlooked that earlier. I  
17 don't know of any objection. I think we could get the study  
18 without an amendment.

19 Mr. Kassinger. This is something that we have talked  
20 to the National Pork Council about. And on behalf of you and  
21 Senator Grassely.

22 We would just send a letter to the ITC asking them to do  
23 a study under Section 332 on this problem.

24 Senator Grassley. I won't object to that procedure if  
25 it accomplishes the goal. But once or twice we have asked

1 the Treasury Department through this committee to make a  
2 study, and then we have put off the amendment. And they say  
3 they will do the study, and they don't always do the study.

4 Mr. Kassinger. The ITC is required by statute to do  
5 any investigation like this that you ask them to do. And  
6 they have consistently done it.

7 Senator Grassley. Well, then, you are saying we don't  
8 need an amendment. Is that your thought?

9 The Chairman. As I understand the law, they are  
10 required to do the study if we request it.

11 Mr. Kassinger. We just need a letter from the committee.

12 The Chairman. We will draft a letter, and we can sign  
13 that letter.

14 Senator Grassley. All right. Thank you.

15 Senator Symms. Mr. Chairman, while I stepped out  
16 of the room, Senator Heinz, I understand, passed an  
17 amendment.

18 The Chairman. Well, it was modified.

19 Senator Symms. I'm not sure exactly -- it dealt  
20 with the leather goods coming into the country. And I just  
21 want to have it clarified for me to be sure that that would  
22 have no negative effect of the exporting of hides.

23 We sell a lot of cattle hides in this country. We  
24 export them overseas.

25 Mr. Kassinger. Senator Symms, I don't believe it could

1 have that effect, because the articles that would be  
2 statutorially excluded are already excluded by administrative  
3 action so there would be no change in the items that do not  
4 now come in under GNP.

5 Senator Symms. I apologize to drag the committee back  
6 over this, but exactly what does the modified amendment do?

7 Mr. Kassinger. The modified amendment would exclude  
8 from GSP eligibility any product of leather wearing apparel,  
9 luggage, flat goods, footwear and work gloves that are  
10 already excluded from GSP by administrative action.

11 The Chairman. This puts them in the statute, right?

12 Senator Symms. Well, at least I would like to be  
13 recorded as opposed to that because you never know when you  
14 want to put it back on the list. And if you put it in the  
15 law, it makes it more difficult. If the committee has  
16 accepted the amendment, maybe it's too late for me to oppose  
17 it, but I think that's a mistake, is what I would say.

18 Senator Chafee. Well, Mr. Chairman, I just want to say  
19 that I think Senator Symms has a pretty good point. I think  
20 this business of listing these things as under the law, if  
21 some people get on the law, why not others? And I had a  
22 couple I might suggest myself.

23 What qualifies some to be entitled to be ineligible?  
24 I mean if we are getting into this, I might suggest jewelry.

25 The Chairman. Let's wait until the Ambassador gets

1 back. He's over there negotiating.

2 (Pause)

3 The Chairman. Senator Chafee is ready to question  
4 Mr. Ambassador. Maybe you can respond.

5 Senator Chafee. Mr. Ambassador, my question was that  
6 I demonstrated some unease at the fact that some things are  
7 listed in law as being exempt from eligibility, and on  
8 Page 4 of your sheet here it says "textile and apparel  
9 articles, watches, import sensitive electronic steel,  
10 certain footwear articles," and then zing we seem to have  
11 added or are in the process of adding leather goods.

12 And I have some trouble with that. Why should some  
13 things be permanently on under the law, and other things not?

14 And if we are going to get into adding things under the  
15 law, I had a couple myself I was thinking about.

16 Ambassador Brock. Well, Senator Moynihan, Senator  
17 Heinz both made a fairly strong point, Senator, that we are  
18 at a level of penetration in this particular field that runs  
19 anywhere from 30 to 65, 70 percent.

20 And there is no question whatsoever about the import  
21 sensitivity of this particular category. So much so, that  
22 we really haven't even considered any of these items for  
23 inclusion on GSP for the last three years.

24 I mean it hasn't even been a point of debate.

25 Senator Chafee. But it seems to me, Mr. Ambassador,



1 there ought to be a system for this, as I understand there is  
2 a system. That if it is import sensitive, then it is not  
3 eligible for GSP.

4 And leather goods qualify.

5 Ambassador Brock. That is correct.

6 Senator Chafee. But to incorporate article A, B or C  
7 or leather goods or whatever it is in the law, then why have  
8 the import sensitive eligibility of the discretion that is  
9 currently given to you? Why don't we all step up with what  
10 we think is import sensitive and put it into law?

11 Ambassador Brock. I would be much, much happier to have  
12 no product exclusions at all, and just leaves the imports  
13 sensitivity criteria.

14 But I think what your colleagues have said is that they  
15 don't know who the USTR is going to be or who the president  
16 is going to be at some point in the future, and they want  
17 these items that are clearly import sensitive now and have  
18 every prospect of remaining in that category to be listed in  
19 the law, in the statute.

20 And they want to remove the flexibility. I personally  
21 would be much happier with a law that didn't have any  
22 product exclusions at all.

23 Senator Chafee. But if we are all going to be protected  
24 that way, what about jewelry, what about gold chain?

25 Ambassador Brock. We have been trying to take care of

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1 that problem for you, Senator.

2 Senator Chafee. Sure we would take care of it if we  
3 made it ineligible, wouldn't we?

4 Ambassador Brock. Yes, we would.

5 Senator Chafee. I want to look after my people too.  
6 Let's put gold chain in there.

7 I'm not sure that this is a good way of doing business.  
8 But if that is the way we are going to play it around here,  
9 I don't want to be left out.

10 Senator Heinz. Would the Senator yield?

11 Senator Chafee. Sure.

12 Senator Heinz. Are the items that the Senator  
13 mentioned already being excluded from the GSP list?

14 Senator Chafee. Yes, in some instances, they are.

15 Senator Heinz. In some instances.

16 Senator Chafee. Yes.

17 Senator Heinz. Most or a few?

18 Senator Chafee. Well, I haven't come to the end of my  
19 list here. I've got to quickly put in a call and see what  
20 else I can come up with.

21 Senator Heinz. Well, the Senator makes the point  
22 about -- I'm just asking some questions. If the Senator  
23 doesn't choose to respond, that's his business.

24 But, seriously, you mentioned two items -- jewelry and  
25 gold chain -- are they or are they not on the exceptions

1 list, administrative list?

2 Senator Chafee. Well, not all of them, no. Not  
3 everything under jewelry. I haven't included jewelry.  
4 Gold chain is in some instances.

5 Senator Heinz. Were either of those items included in  
6 the CDI list, statutory CDI list?

7 Senator Chafee. No, because there is no gold chain  
8 coming from the Caribben.

9 Senator Heinz. All right. Do those items principally  
10 come from Hong Kong, Korea and Taiwan?

11 Senator Chafee. No. What has that got to do with  
12 this?

13 Senator Heinz. Exactly this. I suggest that contrary  
14 to what perhaps the Senator has suggested, there is no  
15 system here, that there is a system. The first thing we  
16 really aren't doing by statutizing the items involved is to  
17 conform it to another statute; namely, the Caribbean Basin  
18 initiative statute, which did exclude virtually all these  
19 products that the Heinz amendment just dealt with.

20 Secondly, the rationale for then as now is that these  
21 are low wage, import sensitive areas that are already on the  
22 administrative list. And, thirdly, that they tend to come,  
23 very high proportions of them, from the very well to do  
24 LCDs, to which I would only add one last thought, which is  
25 that there is an assumption here that staying on the

1 administrative list costs nothing. That list is reviewed,  
2 and Ambassador Brock will correct me if I am wrong -- it is  
3 reviewed every year. And all these very small manufacturers  
4 have to hire Washington counsel, Washington lawyers who have  
5 to go down to make sure that they are put back on the list  
6 each year.

7 And it is great business for Washington lawyers.. It is  
8 great business for trade association people here in D.C. But  
9 it is a needless cost in this instance, in this senator's  
10 judgment.

11 Senator Chafee. Well, look that fancy high powered  
12 trade associations that come down here and carry the ball --  
13 Mr. Chairman, I think we are here on a philosophical point;  
14 not a specific point of whether leather goods should or  
15 shouldn't be on the list.

16 But if the system is going to work, that a Senator  
17 steps up here and wants his item included, then let's open  
18 the floodgates and let everybody else in.

19 As I say from the beginning, I think it's bad business.  
20 The way to do it is to have at the discretion -- responding  
21 to certain criteria which is the import sensitive within the  
22 USTR's power.

23 But if we are going to say, well, be on the list  
24 anyway, so, therefore, make it under the law, I just don't  
25 think that's a good way of doing business.

1           The Chairman. Why don't we do this? If Senator  
2 Chafee has some specific items, maybe we can bring it up  
3 at 2:00. I thought in this case since they were pretty much  
4 disposed of in any event, that was the reason the  
5 administration or Ambassador Brock had no objection.

6           But if there is, it is not consistent with what  
7 Senator Chafee has indicated, maybe we should consider it.

8           Senator Symms. I just want to say one thing. That  
9 as one member of the committee that I was sorry I was out  
10 of the room when the amendment passed, but I would like to  
11 say that I think it's a bad precedent to set with the whole  
12 trading system.

13           And I, of course, am afraid when you start talking about  
14 leather that we are going to have some kind of export  
15 control on hides will be next. And I know that's not the  
16 intent of the author, but I --

17           It is just a point though that all kind of goes hand  
18 and glove with the mentality of protectionism that I am  
19 totally opposed to. And I think the maximum flexibility for  
20 the USTR is a better way to have it than start passing a  
21 law on it.

22           Then you have got it on the books. Then you have got to  
23 go through the process.

24           And I know Senator Heinz's point about all the trade  
25 associations lobbying, but then they will have to try to pass

1 a bill to get suitcases off or something some day. And I  
2 would rather not get it involved in the law.

3 It just seems like it is so easy just to whoop and  
4 pretty soon it is written into the statutes. And then it is  
5 hard to get it into the statutes, if sometime down the road  
6 we feel like a mistake was made.

7 And I would rather leave it in the flexible hands of  
8 the Executive Branch to put it on the list or take it off  
9 if the situation changes.

10 And so for one vote I would like to have recorded as  
11 no.

12 The Chairman. As I understand, there is an agreement --  
13 Senator Baucus has a brief question he wants to ask,  
14 Ambassador. And then I understand Senator Bradley has  
15 worked out something on his amendment.

16 Max, why don't you go ahead.

17 Senator Baucus. Thank you, Mr. Chairman.

18 I would just like to ask Ambassador Brock a question  
19 about Section 504 and how the administration is going to  
20 approach the Section 504 waivers.

21 Bill, I'm just wondering if the President is going to  
22 consider foreign export practices as well as foreign import  
23 practices when making a Section 504 waiver decision.

24 Ambassador Brock. The President may consider the  
25 extent to which a beneficiary country engages in inequitable

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1 or unreasonable export and import practices which burden or  
2 restrict U.S. commerce.

3 Senator Baucus. Which is to say if a country, for  
4 example, like Chile engages in government directed market  
5 flooding arrangements which hurt the American copper industry,  
6 that that kind of government directed flooding practices by  
7 the country of Chile would also be considered by the  
8 President in determining whether to exercise a Section 504  
9 waiver?

10 Ambassador Brock. Yes, it would.

11 Senator Baucus. Could you send the committee a letter  
12 indicating the factors which you and your office will  
13 utilize in determining whether to exercise a Section 504?

14 Ambassador Brock. I would be delighted to.

15 Senator Baucus. Thank you very much. Appreciate it.

16 The Chairman. Senator Bradley.

17 Senator Bradley. Mr. Chairman, I think that we have  
18 language here that we can live with. Essentially in  
19 exercising the authority that we were talking about, which  
20 was the right to waive, in exercising this authority the  
21 President shall seek the advice of the International Trade  
22 Commission on whether an industry is likely to be materially  
23 injured by reason of the waiver, and the ITC shall submit  
24 their report to the USTR, and it will be available to  
25 whomever wants to look at it.

1 Ambassador Brock. Mr. Chairman, we would be happy to  
2 accept this amendment from the administration's point of  
3 view, and comply with it fully. I appreciate the intent.

4 Senator Bradley. So, Mr. Chairman, I guess that takes  
5 care of that amendment.

6 The Chairman. Without objection, we will agree to  
7 that.

8 Ambassador Brock. All right.

9 The Chairman. Let me suggest that Senator Long has an  
10 amendment. There may be other amendments. And we want to  
11 stand in recess now until 2:00.

12 And following the disposition of any other amendments  
13 on the GSP, we will move to disability.

14 Senator Moynihan. Mr. Chairman?

15 The Chairman. Yes.

16 Senator Moynihan. Mr. Chairman, I, for one, have got to  
17 be at the intelligence committee this afternoon. It will come  
18 over here as soon as we are finished, if we are finished.

19 But there are some matters. Senator Pickel's bill in  
20 the House has been introduced into the Senate. I introduced  
21 it last fall.

22 Senator Symms. I thought the Senator resigned off that  
23 committee.

24 Senator Moynihan. By unanimous request of the committee,  
25 I stayed.



1           So I have sort of an involvement in the disability  
2 issue. And I would hope that if there are some specific  
3 things that do come up and that I would have some very deep  
4 troubles with because they are at variance from our  
5 legislation, I might be able to raise them when we finally  
6 get back.

7           The Chairman. In fact, I would just say that we are  
8 under some mandate or at least we have agreed that we will  
9 try to report a bill on the 7th. Now I assume if we don't  
10 complete it by the 7th, we can report it on the 8th.

11           But we are operating in good faith. We have had  
12 daily sessions at the staff level, as you know.

13           Senator Moynihan. Sure.

14           The Chairman. We are going to stay in until about  
15 4:00 this afternoon. I think there are a number of areas we  
16 can agree on. But, obviously, if there is any contentious  
17 areas, we will certainly notify the members who have a  
18 direct interest.

19           Senator Symms. What's the thought on that situation?  
20 I'm still back on this other point about leather goods.

21           The Chairman. We are coming back on that at 2:00.

22           Senator Symms. On that?

23           The Chairman. On the bill, and anything you want to  
24 bring up.

25           Senator Symms. Just from a parliamentary point of

1 view, Senator Chafee is talking about bringing a list back.  
2 And I prefer rather than to allow that situation that we have  
3 a vote on the Heinz amendment and then we can go on. If  
4 we don't then I will shut up.

5 The Chairman. We will discuss that at 2:00.

6 Senator Symms. What is the parliamentary procedure?

7 Mr. DeArment. There was a motion made, and it was  
8 agreed by unanimous consent of those present that we would  
9 accept the amendment. And then Senator Chafee, not being  
10 present, reopened it.

11 So I guess we will have to take it out or add other  
12 items.

13 Senator Heinz. Mr. Chairman, on disability, as the  
14 chairman knows, I have quite an interest in that subject.  
15 Unfortunately, we have an Export Administration Act  
16 conference at 3:00 this afternoon.

17 I was the manager of the bill, and I have got to be there  
18 for that. I will try and be here as shortly after 2:00, but  
19 I'm sure we can't dispose of all the controversial elements.  
20 And I'm embarrassed. I have got to be here for the con-  
21 troversy. I'm willing to stay as late tonight as the  
22 committee wants, but if you are going to adjourn at 4:00,  
23 it's not going to --

24 The Chairman. I assume we will be working on this on  
25 Monday so that may cause some problems too, or maybe agree to

1 report it on Tuesday. But we will work it out.

2 Obviously, Senator Heinz, Senator Moynihan and others  
3 have a lot of interest in whatever we do on disability.

4 Senator Heinz. Mr. Chairman, if we don't finish  
5 disability this afternoon, could we work on it Monday  
6 afternoon?

7 The Chairman. Oh, yes. We intend to work on it Monday.  
8 That's the day we agreed.

9 Mr. DeArment. Monday afternoon we have a hearing  
10 scheduled. We have Monday morning free.

11 The Chairman. What hearing is it?

12 Mr. DeArment. The hearing is Senator Danforth's  
13 subcommittee on non-market economies, I believe.

14 Senator Chafee. Mr. Chairman, I have got the same  
15 problem as Senator Moynihan. I'm going to this intelligence  
16 committee at 2:00.

17 If Ambassador Brock is prepared to put gold chain in  
18 his permanent list, I would think that was splendid. And  
19 that would end my concerns about this measure.

20 Ambassador Brock. And then you won't raise it in any  
21 further conversations in our negotiations with Israel?

22 Senator Chafee. No, no, no. I'm not excluding myself  
23 from --

24 (Laughter)

25 Senator Chafee. -- if we go into a new kind of

1 arrangement.

2 What do you say about making it one of the legally  
3 permanent ones?

4 Ambassador Brock. Senator, you know my attitude on  
5 product exclusions. I don't like any of them. And I,  
6 frankly, was trying to expedite the process by accepting one,  
7 which appeared to be supported by the majority and which we  
8 have excluded for our own reasons because it is sensitive.

9 But I really can't start going down that list of  
10 product exclusions.

11 Senator Chafee. Well, unfortunately, you started.  
12 That's the problem.

13 Ambassador Brock. I'm going to try to stop.

14 Senator Symms. If the Senator from Rhode Island would  
15 yield to me, I would move to reconsider the vote on the  
16 Heinz amendment because I'm very much sympathetic with the  
17 Senator from Rhode Island in what he is trying to do.

18 And I think we just moved too fast. And I guess if the  
19 amendment was adopted by a voice vote, that would make any  
20 member eligible to move to reconsider the vote.

21 I would like to have a roll call and see if the members  
22 of the committee really wish to put these things on a list.  
23 And I think it would be a tragic mistake for us to start  
24 doing that.

25 The Chairman. We have already done it. I think that's

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1 the problem.

2 Senator Symms. Well, then I move to reconsider the  
3 vote.

4 The Chairman. Textiles for obvious reasons, steel for  
5 obvious reasons and now leather goods for obvious reasons.  
6 Maybe gold chain. What else is on the statutory list?

7 Mr. DeArment. Watches, certain electronic and steel  
8 products that are import sensitive.

9 The Chairman. It's not that we have broken new ground.  
10 We have just gotten a little deeper.

11 Senator Chafee. Just chewed it up a little more.

12 Well, I'm not going to press mine, but I will support  
13 the Senator from Idaho, his motion to reconsider. Have  
14 we got enough people here to vote?

15 The Chairman. What do we need, Rod, to vote?

16 We have got one, two, three --

17 Mr. DeArment. We need five to do business, having  
18 established a quorum.

19 The Chairman. All right.

20 Mr. DeArment. The vote will be inclusive at this point  
21 because presumably the majority is not present. But we will  
22 poll the absent members on that point before reporting the  
23 bill out.

24 The Chairman. Do you move to reconsider? Senator  
25 Heinz asked for the ayes and nays.

1 Senator Heinz. Let's try a voice vote and see if that  
2 works.

3 The Chairman. All right.

4 All in favor of the motion to reconsider, signify by  
5 saying "aye."

6 (Chorus of ayes)

7 The Chairman. All opposed, no.

8 (Chorus of nos)

9 (Laughter)

10 The Chairman. It's four to two.

11 (Laughter)

12 Senator Symms. It sounded like the ayes had it.

13 Senator Heinz. We may as well have a recorded vote,  
14 Senator Heinz.

15 The Chairman. Are you satisfied with that disposition?

16 Senator Symms. Well, Mr. Chairman, I'm not satisfied,  
17 and I apologize to the committee that I did step out of the  
18 room, and I should have voiced by objection first. And then  
19 we could have had a recorded vote.

20 The Chairman. We noted your stepping out of the room.

21 (Laughter)

22 Senator Symms. But I just think we are starting down  
23 a path we shouldn't start down. It's very hard to pass a  
24 law, but once you get it passed, it's harder to repeal it.

25 And so if we slip this in the bill, I think we will

1 regret it.

2 Senator Heinz. Let's have a roll call vote.

3 The Chairman. All right.

4 Mr. DeArment. This would be Senator Symms' motion to  
5 strike the leather goods exception.

6 Senator Heinz. To reconsider.

7 Mr. DeArment. All right. Reconsider.

8 Senator Packwood?

9 (No response)

10 Mr. DeArment. Senator Roth?

11 (No response)

12 Mr. DeArment. Senator Danforth?

13 Senator Danforth. No.

14 Mr. DeArment. Senator Chafee?

15 Senator Chafee. Aye.

16 Mr. DeArment. Senator Heinz?

17 Senator Heinz. No.

18 Mr. DeArment. Senator Wallop?

19 (No response)

20 Mr. DeArment. Senator Durenberger?

21 (No response)

22 Mr. DeArment. Senator Armstrong?

23 (No response)

24 Mr. DeArment. Senator Symms?

25 Senator Symms. Aye.

1 Mr. DeArment. Senator Grassley?

2 (No response)

3 Mr. DeArment. Senator Long?

4 (No response)

5 Mr. DeArment. Senator Bentsen?

6 (No response)

7 Mr. DeArment. Senator Matsunaga?

8 (No response)

9 Mr. DeArment. Senator Moynihan?

10 Senator Moynihan. No.

11 Mr. DeArment. Senator Baucus?

12 (No response)

13 Mr. DeArment. Senator Boren?

14 (No response)

15 Mr. DeArment. Senator Bradley?

16 Senator Heinz. Senator Bradley votes no by proxy.

17 Mr. DeArment. Senator Mitchell?

18 (No response)

19 Mr. DeArment. Senator Pryor?

20 (No response)

21 Mr. DeArment. Mr. Chairman?

22 The Chairman. No.

23 I guess it's five to two, then. It's five nays, two  
24 yeas, and the absentees will be recorded. Is that right?

25 Mr. DeArment. That's correct.

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1           The Chairman. We will come back at 2:00. Senator Long  
2 has an amendment. Maybe you could discuss that, or somebody  
3 on your staff, with Mr. Lang to see if there is some way to  
4 work that out.

5           Thank you.

6           (Whereupon, at 12:39 p.m., the mark-up session was  
7 recessed.)

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AFTERNOON SESSION

(2:22 p.m.)

1  
2  
3 The Chairman. Now, as I understand, when we recessed  
4 this morning, we had completed all the pending amendments,  
5 except as I indicated, Senator Long had an amendment that  
6 he wanted to discuss.

7 As I understand, he has had informal discussions with  
8 Ambassador Brock. I know of no other amendments.

9 Now, I will yield to Senator Long.

10 Senator Long. Mr. Chairman, I discussed my amendment  
11 with Ambassador Brock. He tells me that he would find it  
12 necessary to oppose the amendment, and I don't think we can  
13 work it out at this time, and therefore I am not going to  
14 open the amendment.

15 I thank you, Mr. Chairman, for offering me the opportu-  
16 nity, but due to my discussion with Ambassador Brock, I don't  
17 think we can work it out at this time.

18 The Chairman. Mr. Lang, do you know of any other  
19 amendments?

20 Mr. Lang. No.

21 The Chairman. I think there are technical amendments.  
22 Are those purely technical amendments?

23 Mr. Kassinger. That is correct, Mr. Chairman. There  
24 are some language difficulties.

25 The Chairman. Anything else that you can think of?

1 Mr. Kassinger. No.

2 The Chairman. I would hope then that we could conclude  
3 action, and that we could without objection report out this  
4 bill. Would that be an "S" numbered bill?

5 Mr. DeArment. Yes, we could report out the original  
6 bill, that was S.1718, as modified, before we could report  
7 out a clean "S" numbered bill.

8 The Chairman. Senator Long?

9 Senator Long. Mr. Chairman, although Senator Pryor  
10 could not be here today, he was expecting a report on the  
11 debt limit. He was going to vote against it. He wanted  
12 it known that he was definitely against it.

13 The Chairman. All right, then. Without objection, we  
14 will poll the committee on this.

15 Mr. DeArment. We will poll the committee. You may also  
16 want to ask the committee to have authority to offer this  
17 as an amendment on an appropriate vehicle.

18 The Chairman. Yes, we can do that. I want to thank  
19 the USTR staff and the Ambassador and the staff on each  
20 side. I didn't think that there was any way we could pass  
21 this provision, but I know the staff has been very busy  
22 talking with other members, and we have been able to work  
23 it out.

24 Senator Danforth. Mr. Chairman?

25 The Chairman. Yes.

1           Senator Danforth. I take it that before determining  
2 what the appropriate vehicle might be, we would ask in  
3 advance. I mean, this would not be given blanket authority  
4 to put this on any vehicle, which some might think  
5 appropriate and others might not.

6           The Chairman. No, just any appropriate vehicle.

7           (Laughter)

8           The Chairman. Like reciprocity.

9           (Laughter)

10          The Chairman. No. Obviously, we will take it up with  
11 Senator Long and the Trade Committee chairman.

12          Ambassador Brock. Thank you, Mr. Chairman.

13          The Chairman. Thank you very much.

14          Now, as I understand, Rod, the matters we have left are  
15 the disability and the Dickman case.

16          Mr. DeArment. You may take up that one nomination  
17 that we could clear, too, and report that out at an  
18 appropriate time.

19          The Chairman. That is the Tax Court nomination?

20          Mr. DeArment. Yes, Joel Gerber's nomination.

21          The Chairman. And the other fellow needs to visit with  
22 Mike?

23          Mr. DeArment. That is correct.

24          The Chairman. If there is no objection to reporting  
25 that Tax Court nominee out, we can do that.

1           And after Mr. Stern has had an opportunity to meet with  
2 Mr. Dennin, if there is no objection, then we could report  
3 that one out, too.

4           I think he was here earlier, but he may have gotten  
5 away.

6           What does that leave? Does that leave just disability  
7 and the Dickman case?

8           Mr. DeArment. Yes.

9           The Chairman. Let's move the disability -- are we ready  
10 to do that?

11          Mr. DeArment. Yes, we should be.

12          (Pause)

13          The Chairman. Do you have anything there, Sheila?

14          (No response)

15          (Pause)

16          The Chairman. Now, it had been my intention at this  
17 point to bring up the disability matter. We have got a  
18 little problem here in that some of the key players --  
19 Senator Pryor, Senator Moynihan, and Senator Heinz -- can't  
20 be here.

21          And so, I think what we might do to try to help this  
22 along, rather than sit here with just the three of us, and  
23 maybe four a few minutes from now, and then maybe five or  
24 six at 3:30, is to not present it to the committee today.

25          As I understand, Carolyn, there have been staff

1 negotiations going on, and I want to keep my word to those  
2 we made on the Senate floor to try to report this bill out  
3 on May 7th, which is on a Monday.

4 It is pretty difficult when the key players are not  
5 in the committee room and can't be here for a half hour  
6 to an hour.

7 Are there things that you can do at the staff level?  
8 Are there some things you have not been able to resolve  
9 and still need to clarify?

10 Ms. Weaver. I think we have made real progress on a  
11 number of the items that are relatively noncontroversial.

12 There are a couple of major provisions in the bill with  
13 major cost impact which in the last couple of weeks we have  
14 been working intensively with a variety of people,  
15 representing broad interests.

16 And I think we have come a long way in terms of trying  
17 to reach a compromise proposal.

18 There are some significant items, and the details have  
19 yet to be worked out.

20 And we are working on that today. We have been working  
21 on it around the clock.

22 I think we can make some real progress at a staff level.

23 The Chairman. I might ask Senator Danforth and Senator  
24 Long if they agree or disagree, but with the three of us  
25 here we can't decide anything.

1 If it is controversial, we will have to sit here and  
2 wait for others to show up.

3 Senator Long. Mr. Chairman, this is one of those  
4 occasions where I think that I would be willing just to  
5 accept the chairman's judgment and let him be the majority  
6 for the committee in saying what we are going to report out  
7 because my guess is that he would be about as fair a  
8 moderator as anyone I could pick on this issue because I  
9 am at odds with some of the other members on the committee.

10 But in fairness to them, I don't think we ought to  
11 act without them here. We don't have a quorum, and I am  
12 not trying to quarrel about a quorum.

13 But there are senators who are not here who are  
14 certainly going to want to be more generous toward this  
15 matter than my instincts tell me I should be.

16 They ought to be here. This is an afternoon session,  
17 and ordinarily we don't meet in the afternoon with the Senate  
18 in session.

19 I was willing to meet this afternoon, but really there  
20 is a fairly important matter on the Senate floor.

21 I believe your judgement is that we shouldn't act in  
22 the absence of those other Senators, and I think that is  
23 probably correct.

24 The Chairman. If there is no objection from the three  
25 of us here, then what I would do now is not take the bill up

1 formally, but I would like to do now is meet with Carolyn  
2 and other interested staff people in my office for the next  
3 30 minutes. Would that be all right?

4 Senator Long. Sure.

5 The Chairman. All right.

6 Mr. DeArment. Mr. Chairman, in terms of fixing a date  
7 when we would come back --

8 The Chairman. Monday, May 7th.

9 Mr. DeArment. Monday, in the morning, I guess, is  
10 bad for some of the members because they won't have returned  
11 yet from the weekend.

12 And in the afternoon, we would have to cancel a hearing  
13 that Senator Danforth has scheduled.

14 The Chairman. No, they have already got that scheduled.

15 I think we are just going to have to try and meet  
16 somehow on Monday.

17 How long will your meeting last?

18 Mr. DeArment. This is a nonmarket economy hearing.

19 Senator Danforth. Yes. A couple of hours, or possibly  
20 just 1½ hours.

21 The Chairman. Maybe we will just have to get permission  
22 to meet after that.

23 We have got to meet to vote on some of these issues,  
24 because some of them have to be voted on.

25 I don't see any chance of resolving every issue in this



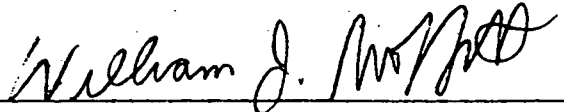
1 rather complicated area.

2 So, we are going to try to do it Monday afternoon,  
3 following the hearing.

4 (Whereupon, at 2:33 p.m., the meeting was adjourned.)  
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C E R T I F I C A T E

This is to certify that the foregoing proceedings of  
an Executive Meeting of the Committee on Finance, held  
on May 3, 1984, in re: Various Items of Business, were  
held as herein appears and that this is the original  
transcript thereof.



WILLIAM J. MOFFITT  
Official Reporter

My Commission expires April 14, 1989.

DOLE AUTHORIZATIONS AMENDMENT

I propose to strip H.R. 5188 of its House-passed content, and substitute instead the following:

- (1) An authorization for the USTR of \$14,179,000, with up to \$80,000 available for entertainment and representation expenses;
- (2) An authorization for the ITC of \$28,410,000, with up to \$2,500 for entertainment and representation expenses;
- (3) An authorization for the Customs Service of \$662,239,000;
- (4) The House-passed provision requiring public disclosure of certain import manifest information;
- (5) The Baucus provision requiring 6-months notice prior to major organizational changes within Customs; and
- (6) A Humphrey bill (S. 2495) allowing the Customs Service to establish user's fees for a few airports that otherwise would not have Customs services.

## Limitation of Dickman Decision

In Dickman v. Commissioner, the Supreme Court held that the Federal gift tax applies to the value of forgone interest on an interest-free demand loan. The decision resolved a judicial conflict on the treatment of interest-free demand loans. The decision did not deal with interest-free term loans, which the Tax Court has held to be subject to gift tax.

It has been suggested that legislation should limit the impact of the Supreme Court decision to apply only on a prospective basis.

The following is a brief description of the treatment of interest-free loans and similar transfers under current law.

### Assignments of Income

Investment income is taxed to the owner of the income producing property, even if the owner of the property makes a gift of the right to receive the income prior to its actual receipt. The underlying rationale for this rule is that the owner of the property realizes the income upon the exercise of control over its disposition under Helvering v. Horst, 311 U.S. 112 (1940). Further, an assignment is a taxable gift by the assignor to the assignee which occurs at the time of the assignment. In such case, the amount of the gift is the value of the amount received by the donee.

For example, if a cash method taxpayer detaches coupons from a bond and gives them to his son, without receiving fair value in exchange, and the son receives the interest represented by the coupons, the interest income would be included in income by the parent donor under the principles of Horst. In addition, the donor would be treated for gift tax purposes as having made a gift to the son in an amount equal to the value of the interest income to be received by the son.

### Demand or term loans to family members

The Supreme Court's decision in Dickman v. Commissioner held that an interest-free or below-market interest rate loan from one family member to another results in a gift from the lender to the borrower for Federal tax purposes. Dickman v. Commissioner, U.S. (1984), 52 U.S.L.W. 4222 (U.S. Feb. 22, 1984). In the case of demand loans, the Internal Revenue Service has taken the position since 1973 that the amount of the gift is the value of the right to the use of the money for "such portion of the year as the (lender) in fact allows the (borrower) the use of the money." Rev. Rul. 73-61, 1973-2 C.B. 408. Under this approach, the

amount of the gift is calculable as of the last day of each calendar year during which the loan is outstanding.

In the case of a term loan several courts have held that the amount of the gift is the excess, at the time the money and note are exchanged, of the amount of money borrowed over the present value of the principal and interest payments required to be made under the terms of the loan. See Rev. Rul. 73-61, supra; Rev. Rul. 81-286, 81-2 C.B. 176; Blackburn v. Commissioner, 20 T.C. 204 (1953); Mason v. United States, 365 F. Supp. 670, aff'd 513 F.2d 25 (1975); Berkman v. Commissioner, 38 T.C.M. (CCH 183 1979).

### Transfers of income-producing property to trusts

In general, the income of a trust is taxed to the trust to the extent that it is retained by the trust, or is taxed to the trust's beneficiaries to the extent that the trust's income is distributed to its beneficiaries. However, under Code sections 671 through 679, a transferor of property to a trust (a "grantor") is treated as the owner of the transferred property for Federal income tax purposes if he retains certain powers over, or interests in, the trust. In such event, income, deductions and credits of the trust are attributed directly to the grantor.

Under section 676, a grantor is treated as the owner of a revocable trust. In addition, under section 673(a) a grantor is treated as the owner of all or a portion of a trust in which he has a reversionary interest in either corpus or income if, as of the inception of that portion of the trust, the grantor's interest will, or may reasonably be expected, to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust. For example, if a grantor were to transfer \$50,000 to a trust, and the trust agreement were to provide that (1) the income would be distributed annually to the grantor's son, (2) the trust would terminate after eight years, and (3) at termination, the trust corpus would be returned to the grantor, the grantor would be treated as the owner of the trust and the income generated by it would be taxed to the grantor.

For gift tax purposes, a transfer of property to a trust is a taxable gift from the grantor of the trust to the trust's beneficiaries in the amount of the value of the beneficiaries' interests in the trust. A transfer to a trust results in a taxable gift to the extent of the value of the beneficiaries' interest in the trust regardless of whether the grantor is treated as the owner of the trust under the grantor trust rules. In the example set forth above, the grantor would be treated as

having made a taxable gift to his or her son in an amount equal to the value, determined at the time of the transfer to the trust, of the right to the use of \$50,000 for a period eight years.

Attachment

Increase in the Public Debt Limit

Prepared by the Staff of the  
Committee on Finance

The Reagan administration has requested an increase in the public debt ceiling to cover anticipated financing needs of the Federal Government through September 30, 1984, and through September 30, 1985. The present ceiling on the public debt is \$1,490 billion. The administration anticipates that the present ceiling on the public debt will be exceeded by mid-to late May.

The Treasury Department testified on April 12 that an increase of in the debt limit of \$99 billion for a total debt limit of \$1,589 billion, would be sufficient to cover the Government's financing needs through the end of fiscal year 1984. Treasury would prefer that Congress enact a limit of \$1,829 billion (an increase of \$339 billion), which they anticipate would cover the Government's financing needs through the end of fiscal year 1985.

The budget resolution for fiscal year 1985 passed by the House of Representatives recommends a debt limit of \$1,596 billion to cover through the end of fiscal year 1984, and a debt limit of \$1,834 billion to cover through the end of fiscal year 1985.

The Treasury on April 12 also requested an increase in its authority to issue long-term bonds without regard to the statutory 4 1/4 percent interest rate. Under present law Treasury can issue up to \$150 billion in such bonds without regard to the statutory ceiling, and the administration expects to exhaust this authority by early 1985. Treasury would like a \$50 billion increase in this long-term bond authority.

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# United States Senate

COMMITTEE ON FINANCE  
 WASHINGTON, D.C. 20510

RODERICK A. DEARMENT, CHIEF COUNSEL AND STAFF DIRECTOR  
 MICHAEL STERN, MINORITY STAFF DIRECTOR

April 27, 1984

TO: MEMBERS, COMMITTEE ON FINANCE

FROM: FINANCE COMMITTEE TRADE STAFF

SUBJECT: MARKUP OF BUDGET AUTHORIZATIONS FOR THE OFFICE OF THE U.S. TRADE REPRESENTATIVE, THE INTERNATIONAL TRADE COMMISSION, AND THE U.S. CUSTOMS SERVICE

On Thursday, May 3, the Committee will markup the requests by three agencies for authorizations of appropriations for fiscal year 1985. The agencies are the Office of the U.S. Trade Representative, the U.S. International Trade Commission, and the U.S. Customs Service. A hearing was held on these authorizations on March 12, 1984.

On May 17, 1983, the Committee reported S. 1295, a bill to authorize appropriations for the three agencies for fiscal year 1984. The Senate has not acted on the bill.

## USTR

Section 141 of the 1974 Trade Act establishes the Office of the U.S. Trade Representative and its responsibilities, which include representing the United States in trade negotiations and administering the trade agreements program; advising the President and the Congress on trade matters, including commodity and investment-related trade issues; and chairing the Trade Policy Committee of the Executive Branch. Subsection 141(f) authorized appropriations through 1980 "in such amounts as may be necessary." The Congress last renewed this authority for fiscal year 1983, for an amount of \$11,000,000.

The Committee last year approved an authorization of \$12,237,000 for fiscal year 1984. Of this amount, up to \$100,000 was approved for entertainment and representation expenses. The Committee also included sums of \$200,000 for training and \$140,000 for word-processing equipment.

The Senate did not act on the proposed authorization. The Congress, however, appropriated \$11,371,000. In addition, USTR has made two FY84 supplemental requests: (1) \$128,000 for a pay supplemental; and (2) \$511,000 for initiation of activities



necessary for the United States to adopt the Harmonized Code System (HCS), an international commodity classification scheme that is scheduled to replace the current Tariff Schedules of the United States in 1987.

For FY85 USTR requests \$14.179 million, an increase of \$2.68 million over FY84's appropriation, including the expected pay supplemental. This amount is principally intended to maintain existing operating levels (with an increase of one permanent position, for a total of 138). \$1.534 million of the increase is attributable to work required to conclude establishment of the HCS.

The HCS is a new tariff structure that will be implemented by an international convention. Conversion to the HCS will entail determining in what category articles would be classified under the new nomenclature, compared to the current categories and associated tariff rates. Changes in nomenclature may result in products being subject to different tariff rates than is currently the case. Tariff negotiations will be required to equalize the burdens and benefits of these changes. Additional staff, and the relocation of personnel to Geneva, will be required to conduct the review of U.S. tariff schedules and the negotiations necessary to adopt the convention.

The following chart outlines the proposed USTR authorization.

OFFICE OF THE U.S. TRADE REPRESENTATIVE--FY85 PROPOSED AUTHORIZATION

The following is a comparison of the FY 1984 appropriation with FY 1985 estimates.  
 (Dollar amount in thousands)

<u>Account Title</u>	FY 1984		FY 1985 Estimate		Inc. (+) or Dec. (-) Work
	<u>Years*/FTP**</u>	<u>Amount</u>	<u>Years/FTP</u>	<u>Amount</u>	
Appropriation					
Currently Available					
Work					
Salaries and Expenses	137/121	\$11,499***	138/122	\$14,179****	+1/4 +\$2,680

The budget request for FY 1985 is \$14.179 million, an increase of \$2.680 million over FY 1984. The following reflects these changes by object class:

Increases for: full-time permanent salaries and within-grade increases (+\$466); other personal compensation (+\$65); special personal service payments (+\$51); personnel benefits (+\$281); travel and transportation of persons (+\$280); transportation of things (+\$111); standard level user charges (+\$446); communications, utilities and other rent (+\$325); printing and reproduction (+\$180); other services (+\$492); equipment (+\$174).....	\$2,871
Decreases for other than full-time permanent (-\$308); supplies and materials (-\$11).....	(319)
<u>Net "Real" Increase</u> .....	\$2,552

FY 1984 Pay Supplemental Allowances

Increases for full-time permanent salaries (+\$81); positions other than full-time permanent (+\$11); overtime (+\$1); special personal services payments (+\$16); personnel benefits (+\$19); .....	128
<u>Total Increases over FY 1984 base</u> .....	\$2,680

\*Full Time Equivalency  
 \*\*Full Time Permanent Positions  
 \*\*\*Includes \$128,000 for pay supplemental, does not include \$511,000 program supplemental request for Harmonized Code System.  
 \*\*\*\*Includes \$1,534,000 Harmonized Code System requirements

## U.S. International Trade Commission

Section 330(e) of the Tariff Act of 1930 requires that an authorization of appropriations for the ITC be enacted for each fiscal year. Appropriations requested by the ITC must be included in the President's budget without revision.

The USITC is an independent fact-finding agency charged with performing important functions in the administration of U.S. trade laws and in the conduct of U.S. trade policy. The Commission holds administrative hearings, and carries out economic investigations at the request of Congress, the President, or on its own initiative and reports its findings to the Congress and to the Executive Branch as either technical advice or as specific, quasi-judicial determinations in cases brought under the trade laws. Some of the laws that the Commission administers include:

- (1) The import relief provisions of the Trade Act of 1974. The Commission determines whether fairly traded imports are injuring a domestic industry and recommends to the President relief for injured industries.
- (2) The antidumping laws and countervailing duty laws. The Commission determines whether or not dumped or subsidized imports are injuring a domestic industry.
- (3) The unfair import practice law involving mostly cases of alleged patent or copyright violations.

Last year, the Committee approved an authorization of \$21,241,000, although the Senate did not act on the bill. The Congress, however, approved an appropriation of \$20,774,000. A pay supplemental, if approved, would bring this total to \$21,233,000. In addition, the Commission is seeking a program supplemental for FY84 of \$300,000 in order to accommodate its increased workload.

For FY85, the ITC seeks an authorization of \$23,410,000. Besides built-in increases, this amount includes a 10 percent increase in staff (\$1.45 million) and expenses associated with relocation of ITC to a different building (\$3.5 million).

The staff increase is sought because of a 19 percent rise in cases in FY83, compared to FY82 (excluding the 155 carbon steel investigations conducted in FY82). In addition to the expanding case load, there has been a significant increase in the number and scope of Congressional and Executive Branch requests for advice. Thirty-eight of the 44 new positions sought will be assigned direct case-handling responsibilities. (The agency currently has an authorized strength of 438 positions.)

Last year the Committee urged the General Services Administration to make necessary repairs to the ITC building immediately and to find a permanent solution to the ITC's housing problems. GSA has completed a prospectus for a move to suitable new quarters. Fifty-five percent of the ITC's proposed funding increase (\$3.522 million) is associated with relocation.

The following chart outlines the proposed ITC authorization.

U. S. INTERNATIONAL TRADE COMMISSION--FY85 PROPOSED AUTHORIZATION

Summary of Requirements

(Thousands of dollars)

\$21,230

FY 1984 appropriation, assuming enactment of supplemental for pay-increase costs	\$21,230
Adjustments to base and built-in changes:	
Full-year cost of January 1984 pay increases	\$598
FY 1984 supplemental appropriation requested	<u>(464)</u>
Annualization of January 1984 pay increases	134
Cost due to additional FICA coverage	180
Other built-in increases:	
Within-grade step increases and reclassifications	416
Annualization for full staffing	400
Related increase in employee benefits	120
Increase in workers compensation benefits	17
Estimated impact of inflation on costs of travel and transportation	
(26), rent and communications (143), printing and reproduction	371
(26), other services (106), and supplies and materials (70)	<u>423</u>
Adjustment to allow for GSA space rental increase	
Subtotal, adjustments to base and built-in increases	<u>2,141</u>

Built-in decreases:  
 Contractual services for TSUSA computerization/photocomposition (200)

1,941

Net adjustments to base \_\_\_\_\_

23,179

FY 1985 base \_\_\_\_\_

Other increases:  
 Estimated costs for Commission relocation \_\_\_\_\_ 3,672  
 Less: Space design costs approved for FY 1984 \_\_\_\_\_ (150)  
 Additional 44 positions requested \_\_\_\_\_ 3,522  
 \_\_\_\_\_ 1,451

4,973

Subtotal, other increases \_\_\_\_\_

\$28,152

Appropriation requested for FY 1985 \_\_\_\_\_

## United States Customs Service

Section 301 of the Customs Procedural Reform and Simplification Act of 1978 requires an annual authorization of appropriations for the U.S. Customs Service. The Customs Service is primarily responsible for the collection of customs duties. It also has responsibility for administering over 400 laws and regulations relating to the importation and the exportation of products. These laws range from agricultural inspection laws and copyright and patent laws to certain aspects of the Internal Revenue Code.

Last year, the Committee approved an authorization of \$611,749,000 for Customs. This was an amount sufficient to prevent the reduction-in-force of 2,000 positions that the Service sought. The Congress appropriated \$615,943,000 for FY84 to the Service, which has also requested a supplemental pay increase of \$9,961,000. The Service's personnel level was reduced by 400 positions in the appropriations process.

For FY85 the Service requests an authorization of \$602,495,000. Besides sums necessary to maintain current operating levels, this amount includes new program increases of \$16,994,000, and program reductions of \$75,627,000. The latter are largely attributable to a proposed reduction in personnel of 923 positions.

The Service states that the personnel reductions will be achieved largely through attrition. The positions will become expendable because of "productivity increases, streamlined operations, consolidation of duplicative or related functions, efficiencies achieved in commercial and enforcement programs, and through the anticipated implementation of automated systems and other new approaches." The following describes the reductions by function.

In its "inspection and control" function Customs is charged with enforcing laws relating to carriers, cargo, and persons entering or departing the country through ports of entry. These responsibilities includes duty collection, enforcement of quotas and other trade restraint agreements, and interception of contraband, including drugs. The Service proposes to reduce current staffing levels by 581 positions for this function, representing a savings of \$14,673,000. The Service argues that these reductions are possible through greater use of automated processing systems and inspection selectivity techniques.

Under its "Tariff and Trade" function the Service is responsible for enforcing the Tarrif Act of 1930, which principally means appraising, classifying, and collecting normal duties and monitoring trade flows. The Service proposes to reduce this function by 310 positions, again through greater

automation, centralization of services, and selectivity. This reduction in personnel would mean a savings of \$10,905,000.

The third Customs function is "tactical interdiction." Programs under this function are aimed principally at countering narcotics and contraband smuggling. The Service plans to eliminate 32 patrol positions relating to this function that are assigned to regional offices in Boston and New Orleans. These offices are slated to be closed. Elimination of the positions represents a cost reduction of \$1,126,000. In addition, function costs are expected to be reduced by \$16,793,000 from FY84 levels through increased Defense Department support and nonrecurring costs.

The last Customs function is "investigations". Under this program Customs investigates violations of laws relating to import fraud, cargo theft, smuggling, and illegal exports of critical technology. The Service proposes no position cuts in this function, although it expects funding reductions of \$5,142,000.

The following charts outline the proposed Customs Service authorization.

Consolidated Appropriation, United States Customs Services

February 1, 1984

ANALYSIS OF AUTHORIZED LEVEL (OR FISCAL YEAR 1984)  
(Dollars in Thousands)

	Term. Pos.	Avg. Pos.	Amount
1984 Appropriation Enacted by Congress.....	13,370	13,323	615,943
Adjustments:			
1) Pay Increase.....	—	—	9,961
Proposed Authorized Level for 1984.....	13,370	13,323	625,904
Estimate, 1985.....	12,447	12,369	602,405

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES FISCAL YEAR 1985

	Appropriation FY 1983		Authorized Level FY 1984		Budget Estimate FY 1985		Total Changes		Increase or Decrease (-) for FY 1985			
	Av. Pos. Amount	Av. Pos. Amount	Av. Pos. Amount	Av. Pos. Amount	Av. Pos. Amount	Av. Pos. Amount	Av. Pos. Amount	Av. Pos. Amount	Av. Pos. Amount	Av. Pos. Amount		
1. Salaries and Expenses Unhighlighted Balance	12,898	570,967	13,323	594,904	12,369	585,335	-954	-9,569	—	16,994	-954	-26,563
2. Operations and Maintenance, Air Interdiction Program	—	3,750	—	31,000	—	17,070	—	-13,930	—	—	—	-13,930
Total appropriation, and authorized level, and budget estimate	12,898	575,067	13,323	625,904	12,369	602,405	-954	-23,499	—	16,994	-954	-40,493
Permanent positions established	13,570		13,370		12,447		-923		—		-923	



Consolidated Appropriation, United States Customs Service

SUMMARY EXPLANATION OF CHANGES REQUESTED FOR FISCAL YEAR 1985 ---NEW PROGRAMS  
(Dollars in Thousands)

Salaries and Expenses			Operation and Maintenance			Total		
Pos.	Ave. Pos.	Amt.	Pos.	Ave. Pos.	Amt.	Pos.	Ave. Pos.	Amt.
—	—	8,800	—	—	—	—	—	8,800
—	—	2,500	—	—	—	—	—	2,500
—	—	5,694	—	—	—	—	—	5,694
—	—	16,994	—	—	—	—	—	16,994

Program Changes:

1. Automated Commercial System
2. Integrated Data Telecommunications Network
3. Radio Voice Privacy

Total, Program Changes

Consolidated Appropriation, United States Customs Service

SUMMARY EXPLANATION OF CHANGES REQUESTED FOR FISCAL YEAR 1985  
(Dollars in thousands)

	Salaries and Expenses		Operation and Maintenance		Total	
	Pos.	Ave. Pos. Amt.	Pos.	Ave. Pos. Amt.	Pos.	Ave. Pos. Amt.
Other Changes:						
A. Increases necessary to maintain current levels:						
1. Net cost of within grade salary increases		3,160				3,160
2. Grade-to-grade promotions		1,934				1,934
3. Unemployment Compensation Fund		200				200
4. Health benefits		740				740
5. Travel and transportation costs		2,081				2,081
6. Permanent change of station moves		819				819
7. Federal Building Fund		10,715				10,715
8. Equipment leasing and maintenance costs		91				91
9. Cost of outside contracts		429				429
10. Cost of supplies		553				553
11. Payment to Social Security Trust Fund		1,105				1,105
12. Extra Day in FY 1985		1,703				1,703
13. Annualization, FY 1984 Pay Increase		8,741				8,741
14. Annualization of current year approved increases		—		2,863		2,863
Subtotal, Other Increases	—	32,271	—	2,863	—	35,134

**PROGRAM REDUCTIONS**

SALARIES AND EXPENSES, UNITED STATES CUSTOMS SERVICE

**SUMMARY EXPLANATION OF CHANGES REQUESTED FOR FISCAL YEAR 1985**  
(Dollars in Thousands)

	Inspection and Control		Tariff and Trade		Tactical Interdiction		Investigations		Total		
	Pos.	Ave. Pos. Amt.	Pos.	Ave. Pos. Amt.	Pos.	Ave. Pos. Amt.	Pos.	Ave. Pos. Amt.	Pos.	Ave. Pos. Amt.	
<b>B. Reductions, nonrecurring cost, and savings:</b>											
<b>1. Program reductions:</b>											
a. Amend Airport and Airways Development Act		-7,000									-7,000
b. Marine Program/Special Operations						-640					-640
c. EXODUS									-5,000		-5,000
d. Centralize Appraisalment and Selectivity			-210	-7,388						-210	-7,388
e. Laboratory/International Activities			-25	-879						-25	-879
f. Organizational Realignments	-124	-4,362	-75	-2,638	-32	-1,126				-231	-8,126
g. Inspection and Control Selectivity	-415	-14,673								-415	-14,673
h. Marine Officers	-42	-1,477								-42	-1,477
<b>2. Other Reductions</b>											
a. Nonrecurring costs		-31							-10,000		-10,031
<b>Subtotal, Reductions</b>	-581	-31,163	-310	-10,905	-32	-1,766			-15,000	-923	-58,834
<b>Total, Other Changes</b>	-581	-13,988	-310	-2,348	-32	-1,234			-11,461	-923	-26,563
<b>Total, Increase or Decrease 1985 Compared with Proposed Authorized Level</b>	-581	-13,363	-310	7,077	-32	-1,859			-5,142	-923	-9,569

Salaries and Expenses, United States Customs Service

SUMMARY OF EMPLOYMENT  
(Number of Average Positions)

Principal Categories	Actual	Estimated	Increases/Decreases for 1985	
	1983	1984	Total	Program Other
Customs Programs:				
Inspectors	4,122	4,289	-452	- 452
Import Specialists	1,027	1,042	-167	- 167
Stenographers, Typists and Secretaries	589	641	- 22	- 22
Other Clerks	505	547	- 41	- 41
Customs Aids	1,307	1,015	- 22	- 22
Laboratory employees	139	140	- 10	- 10
Customs Patrol Officers	1,134	1,246	-	-
Other Regional and District Employees	1,564	1,589	-179	- 179
Customs Agents	701	932	-	-
Other Investigations Employees	115	145	-	-
Internal Affairs Employees	154	161	-	-
Regional Counsel Employees	76	78	-	-
Headquarters Employees	1,063	1,057	- 25	- 25
Subtotal	12,496	12,882	-918	- 918
Part-time and Temporary Average Positions	402	441	- 36	- 36
Total Average Positions	12,898	13,323	-954	-954

COMPARISON OF H.R. 3755 AND S. 476\*,  
SOCIAL SECURITY DISABILITY LEGISLATION

\*As amended on March 14, 1984

Prepared by Finance Committee Staff

Medical Improvement

(Sec. 101 of H.R. 3755,  
Sec. 3 of S. 476)

Present Law

There is no distinction in the law between how eligibility for disability benefits is to be determined for people newly applying for benefits and those being reviewed to assess their continuing eligibility. Eligibility or ineligibility is based on the standards of disability (in the law, regulations, and Commissioner's rulings) in effect at the time of the most recent decision.

Under the law, disability means inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to end in death or has lasted or can be expected to last for a continuous period of at least 12 months.

Prior to the Secretary's announcement, on April 13, 1984, of a temporary, nationwide moratorium on periodic reviews, 9 States were operating under a court-ordered medical improvement standard, and 9 States had suspended reviews pending implementation of a court-ordered medical improvement standard or pending action by circuit court.

H.R. 3755S. 476

Provides that an individual may not be terminated from DI rolls unless there is substantial evidence of:

Same

- (1) medical improvement so that the individual can engage in substantial gainful activity (SGA); or
- (2) new medical evidence and new assessment of individual's residual functional capacity (RFC) demonstrate individual is beneficiary of advances in medical or vocational therapy or technology which results in ability to perform SGA; or
- (3) the individual has undergone vocational therapy which results in ability to perform SGA; or
- (4) new or improved diagnostic techniques or evaluations demonstrate the impairment(s) are not as disabling as considered originally so now able to engage in SGA; or
- (5) clear error in initial decision; or
- (6) fraud; or
- (7) engaging in SGA.

Effective for cases pending in HHS or in court on the date of enactment, or initiated on or after such date.

Pain

(Sec. 102 of H.R. 3755,  
Sec. 5 of S. 476)

Present Law

Under the law, an individual's disability (whether mental or physical) must be medically determinable, expected to end in death or last for 12 continuous months, and must prevent any substantial gainful activity. There is no specific statement in the law as to how pain is to be evaluated. The law does provide that eligibility must be based on "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

SSA's policy on how pain is to be evaluated is contained in regulations (since August 1980). By regulation, symptoms of impairments, such as pain, cannot alone be evidence of disability. There must be medical signs or other findings which show there is a medical condition that could be reasonably expected to produce those symptoms.



Requires the Secretary to study, in conjunction with the National Academy of Sciences, the question of using subjective evidence of pain in determining disability. Report due to Congress April 1, 1985.

Same.

In addition, would establish in the law how pain is to be considered in the determination of disability: allegations of pain would not be conclusive evidence of disability; however, findings (established by medically acceptable clinical or laboratory diagnostic techniques) which demonstrate the pain and which would lead to the finding of disability would be suitable evidence.

Multiple Impairments

(Sec. 103 of H.R. 3755,  
Sec. 7 of S. 476)

Present Law

In determining whether an individual is disabled, a sequential evaluation is followed: current work activity, duration and severity of impairment, residual functional capacity, and vocational factors are considered in that order. Medical considerations alone can justify a finding of ineligibility where the impairment(s) is not severe. An impairment is nonsevere if it does not significantly limit the individual's physical or mental capacity to perform basic work-related functions.

By regulation, the combined effects of unrelated impairments are considered only if all are severe (and expected to last 12 months). As elaborated in rulings, "inasmuch as a nonsevere impairment is one which does not significantly limit basic work-related functions, neither will a combination of two or more such impairments significantly restrict the basic work-related functions needed to do most jobs."

H.R. 3755

Requires the Secretary, in determining the ability of an individual to work, to evaluate the combined effect of all of the individual's impairments, without regard to whether any one impairment by itself would be considered severe.

S. 476

Same, but effective for determinations made on or after January 1, 1985.

Moratorium on Mental  
Impairment Reviews

(Sec. 201 of H.R. 3755,  
Sec. 8 of S. 476)

Present law

Under the Disability Amendments of 1980, all DI beneficiaries with non-permanent impairments must be reviewed every 3 years to assess their continuing eligibility for benefits. Individuals with permanent impairments may be reviewed less frequently. Presently, there is no distinction in the law between the rate of review for individuals with physical and mental impairments.

Under an Administration initiative (of June 7, 1983), periodic eligibility reviews have been suspended for those mental impairment cases involving functional psychotic disorders, pending a revision, with outside mental health experts, of the criteria used for determining disability.

Under a subsequent Administration action (announced April 13, 1984), all periodic eligibility reviews have been suspended temporarily.

H.R. 3755

Would impose moratorium on eligibility reviews of all mentally impaired individuals, pending revision of eligibility criteria. Such revision would be made (within 9 months after enactment) in consultation with advisory panel.

Would require SSA to redetermine eligibility in the case of unfavorable decisions (for new applicants and reviewed beneficiaries) rendered between date of enactment and issuance of revised criteria.

Similar to Senate-passed amendment to 1983 Supplemental Appropriations Bill.

S. 476

Similar.

Pre-Termination Notice  
and Right to Personal  
Appearance

(Sec. 202 of H.R. 3755,  
Secs. 2 & 15 of S. 476)

Present Law

A person whose initial claim for disability benefits is denied or who is determined after review to be no longer disabled, may request a reconsideration of that decision within 60 days. In the past, reconsideration has been a paper review of the evidentiary record including any new evidence submitted by the claimant, conducted by the State agency.

Under a provision of P.L. 97-455, enacted January 12, 1983, disability beneficiaries found ineligible for benefits must be given opportunity for a face-to-face evidentiary hearing at reconsideration. Such hearings may be provided by the State agency or by the Secretary.

Individuals found ineligible for benefits at reconsideration may, within 60 days, request a hearing before an administrative law judge. The next level of appeal is to SSA's Appeals Council (within 60 days), and finally, to a Federal court.

H.R. 3755

In the case of unfavorable review decisions, would eliminate reconsideration and modify the initial stage of decisionmaking in the following way: The State agency's initial unfavorable decision would be preliminary. Individuals would then be provided 30 days within which to request a face-to-face evidentiary hearing before the State agency. The initial denial decision would become final only after opportunity for such hearing.

Effective no later than January 1, 1985.

In addition, would require the Secretary to conduct 5-State demonstration project using same procedure for initial disability cases. Report to Congress by April 1, 1985.

S. 476

Would require the Secretary to notify individuals upon initiating periodic eligibility review that review could result in termination of benefits and that medical evidence may be submitted.

In addition, would require 5-State demonstration project in which personal appearance is provided prior to determination of ineligibility in lieu of face-to-face hearing at reconsideration (for periodic review cases only). Report due to Congress April 1, 1985.

Continued Payments  
During Appeal

(Sec. 203 of H.R. 3755,  
Sec. 14 of Sec. 476)

Present Law

Disability benefits are automatically payable for 3 months after the beneficiary is notified of ineligibility. Benefits do not generally continue during appeal.

Previously, under a temporary provision in P.L. 97-455 (as modified by P.L. 98-118), individuals notified of a termination decision could elect to have DI benefits and Medicare coverage continued during appeal--through the month preceding the month of the ALJ hearing decision. These additional DI benefits are subject to recovery as overpayments if the initial termination decision is upheld. This provision expired in the case of terminations after December 7, 1983.



H.R. 3755

Would make permanent the payment of DI benefits pending appeal through the ALJ hearing.

Also, would require Secretary to report to Congress by July 1, 1986, on impact of this provision on trust funds and appeal rate.

S. 476

Would extend payments pending appeal until June 1, 1986 (with no payments made after January 1987).

Qualified Medical  
Professionals

(Sec. 204 of H.R. 3755,  
Sec. 12 of S. 476)

Present Law

By regulation, the State review team making disability determinations must consist of a State agency medical consultant (physician) and a State agency disability examiner. Under SSA operating instructions, both must sign the disability determination.

H.R. 3755S. 476

In mental impairment cases in which a decision unfavorable to the beneficiary is made, a qualified psychiatrist or psychologist must complete any medical evaluation or assessment of residual functional capacity.

Same

Consultative Exams/  
Medical Evidence

(Sec. 205 of H.R. 3755,  
Sec. 4 of S. 476)

Present Law

Consultative exams (CEs) are medical exams purchased by the State agency from physicians outside the agency. By regulation, CEs may be sought to secure additional information necessary to make a disability determination or to check conflicting information. Evidence obtained through a CE is to be considered in conjunction with all other medical and nonmedical evidence submitted in connection with a disability claim.

H.R. 3755

Requires the Secretary to prescribe by regulation standards for when a CE should be obtained and the type of referrals to be made, as well as procedures for monitoring CEs and the CE referral process.

S. 476

Requires the Secretary to make every reasonable effort to obtain necessary medical evidence from treating physicians prior to seeking CE.

In addition, requires the Secretary to develop a complete medical history (for individuals applying for benefits or undergoing review) over at least the preceding 12 months. (Similar to provision approved by Finance Committee in 1982.)

Administrative Procedure and  
Uniform Standards

Sec. 301 of H.R. 3755  
Sec. 6 of S. 476

Present law

The guidelines for making social security disability determinations are contained in regulations, social security rulings and the POMS (the Program Operating Manual System):

- o Regulations, or substantive rules, have the force and effect of law and are therefore binding on all levels of adjudication--state agencies, administrative law judges, SSAs Appeals Council, and the Federal Courts.

On a voluntary basis, SSA issues its regulations in accordance with the public notice and comment rulemaking requirements of the Administrative Procedure Act (APA). The APA requirements do not, however, apply to social security programs because of a general exception for benefit programs.

- o Rulings consist of interpretative policy statements issued by the Commissioner and other interpretations of law and regulations, selected decisions of the Federal courts and ALJs, and selected opinions of the General Counsel. Rulings often provide detailed elaboration of the regulations helpful for public understanding. By regulation, the rulings are binding on all levels of adjudication.
- o The POMS is a compilation of detailed policy instructions and step-by-step procedures for the use of State agency personnel in developing and adjudicating claims. The POMS are not binding on the Administrative Law Judges, Appeals Council or Courts.

H.R. 3755

Would make SSA subject to the rulemaking requirements of the APA for "all matters relating to benefits" in the OASI, DI, and SSI programs.

Committee report language further states that "the agency should also have sufficient flexibility to respond to changes in conditions quickly, and to issue administrative guidance to State agencies on a timely basis. There is clearly an appropriate role for issuance of informal policy clarification through rulings or other informal vehicles, and the committee has no wish to deprive the Social Security Administration of this ability."

S. 476

Would make SSA subject to the rulemaking requirements of the APA on matters relating to the determination of disability and the payment of DI benefits under Sec. 216(i) and Sec. 223(d) of the Social Security Act.

Compliance with Court Orders

(Sec. 302 of H.R. 3755,  
Sec. 13 of S. 476)

Present Law

The Social Security Administration (SSA) abides by all final judgments of Federal courts with respect to the individuals in particular suits, but does not consider itself bound with respect to nonlitigants. In the infrequent case that a circuit court decision is contrary to the Secretary's interpretation of the Social Security Act and regulations, SSA issues a ruling stating it will not adopt the court's decision as agency policy.

There are now 8 rulings of nonacquiescence.

H.R. 3755

Would require the Department of Health and Human Services to follow--on a circuit-wide basis--those U.S. Court of Appeals decisions with which it disagrees but which are not appealed to the Supreme Court.

S. 476

In the case of U.S. Court of Appeals decisions affecting the Social Security Act or regulations, would require the Secretary, within 60 days, to send to the Committees on Finance and Ways and Means, and publish in the Federal Register, a statement of the Secretary's decision to acquiesce or not acquiesce in such court decision, and the specific facts and reasons in support of the Secretary's decision.



Vocational Rehabilitation

(Sec. 303 of H.R. 3755,  
Sec. 11 of S. 476)

Present Law

Presently, States are reimbursed for VR services provided to DI beneficiaries which result in their performance of substantial gainful activity (SGA) for at least 9 months. For such individuals, services are reimbursable for as long as they are in VR and receiving cash benefits. If the individual is reviewed and found to have medically recovered while in VR, cash benefits may continue (under Section 225(b) of the Social Security Act, a work-incentive provision enacted in 1980), but the VR services may or may not be reimbursable--depending on whether or not the beneficiary is returned to SGA for 9 months.

H.R. 3755

Would allow for reimbursement of VR services provided to individuals receiving disability benefits under Section 225(b) who medically recover while in VR. Reimbursable services would be those provided prior to his or her working at SGA for 9 months, or prior to the month benefit entitlement ends, whichever is earlier. (Would also provide for reimbursement in cases where the individual refuses without good cause to accept VR or where there is non-cooperation.)

S. 476

Same.

Advisory Council

(Sec. 304 of H.R. 3755,  
Sec. 9 of S. 476)

Present Law

Sec. 706 of the Social Security Act provides for the appointment of a 13-member quadrennial advisory council on social security. It is responsible for studying all aspects of the OASI, DI, HI and SMI programs. The councils are to be comprised of members of the public.

The next advisory council is scheduled to be appointed in 1985 and to make its final report by December 31, 1986.

There are no requirements in the law pertaining to the creation of advisory councils to deal specifically with disability matters.

H.R. 3755

Would require a 10-member advisory council on the medical aspects of disability (that would expire December 31, 1985) be appointed by the Secretary within 60 days after enactment. The council, to be composed of independent medical and vocational experts and the Commissioner of SSA ex officio, would provide advice and recommendations to the Secretary on disability policies, standards, and procedures. Any recommendations would be published in the Secretary's annual reports.

In addition, Section 307 of the bill would require the Advisory Council to study alternative approaches to work evaluation for SSI applicants and recipients and the effectiveness of VR services for SSI recipients.

S. 476

Same, except council expires on December 31, 1986.

Qualifying Experience for  
Staff Attorneys

(Sec. 305 of H.R. 3755)

Present Law

Qualifications for administrative law judge (ALJ) positions are set by the Office of Personnel Management (OPM). To qualify for SSA's GS-15 ALJ position, an applicant must have at least 1 year of qualifying experience at or comparable to the GS-14 grade level in Federal service. Staff attorneys in SSA's Office of Hearings and Appeals (OHA) have the appropriate type of qualifying experience. However, there are no GS-14 positions as OHA staff attorneys; GS-13 is the highest staff attorney position. Therefore, staff attorneys do not have qualifying experience at the necessary GS-14 grade level.

H.R. 3755

Requires the Secretary of HHS to establish, within 6 months, a sufficient number of Attorney Advisor positions at the GS-13 and GS-14 levels to enable OHA staff attorneys to advance to higher grades and achieve the experience necessary to qualify for ALJ positions. Within 3 months of enactment, the Secretary would also be required to submit an interim report to the Committee on Ways and Means and Finance on the progress in meeting these requirements and, within 6 months, a final report to those committees setting forth the manner and extent to which the requirements have been complied with.

S. 476

No provision.

Special SSI Payments

(Sec. 306 of H.R. 3755,  
Sec. 10 of S. 476)

Present Law

Under the SSI program, an individual who is able to engage in substantial gainful activity (SGA) cannot become eligible for SSI disability payments. Prior to the enactment of a provision in 1980, a disabled SSI recipient generally ceased to be eligible for SSI when his or her earnings exceeded the level which demonstrates SGA--\$300 monthly.

Under Section 1619 of the Social Security Act, enacted in the Disability Amendments of 1980, disabled SSI recipients who work and earn more than SGA (\$300 monthly) may receive a special SSI payment and maintain medicaid coverage and social services. The amount of the special payment is equal to the SSI benefit they would have been entitled to receive under the regular SSI program were it not for the SGA eligibility cut-off. Special benefit status is thus terminated when the individual's earnings exceed the amount which would cause the Federal SSI payment to be reduced to zero (i.e., when countable monthly earnings exceed \$713). Medicaid and social services may continue, however.

Section 1619 expired on December 31, 1983. It is being continued administratively, however, during 1984.

H.R. 3755

Extends Section 1619 through  
June 30, 1986.

In addition, mandates an  
out-reach program by requiring  
the Secretaries of HHS and  
Education to: establish  
training programs for staff  
personnel in SSA district  
offices and State VR agencies,  
and disseminate information to  
SSI applicants, recipients,  
and potentially interested public  
and private organizations.

S. 476

Extends Section 1619 through  
June 30, 1987.

Same



Frequency of Periodic Reviews

(Sec. 16 of S. 476)

Present Law

Under a provision enacted in 1980, all DI beneficiaries, except those with permanent impairments, must generally be reviewed to assess their continuing eligibility at least once every 3 years.

Under a provision enacted in 1983 (P.L. 97-455), the Secretary is provided the authority to waive this 3-year review requirement on a state-by-state basis. The appropriate number of cases for review is to be based on the backlog of pending cases, the number of applications for benefits, and staffing levels.

On April 13, 1984, Secretary Heckler announced a temporary, nationwide moratorium on periodic eligibility reviews.

H.R. 3755

No provision .. .

S. 476

Would require the Secretary to issue regulations (within 90 days) establishing the standards to be used in determining the frequency of periodic eligibility reviews. Pending issuance of such regulations, no individual could be reviewed more than once.

Secretarial Review of  
ALJ Decisions-

(Sec. 17 of S. 476)

Present Law

Under a provision in the 1980 Disability Amendments (Sec. 304(g)), the Secretary is directed to implement a program of reviewing, on his own motion, decisions made by ALJs. A progress report was due (and provided) to Congress by January 1982.

The conference report stated: "The variance in reversal rates among ALJ's and the high overall ALJ reversal of determinations made at the prehearing level indicate that there is need for such review."

H.R. 3755

No Provision.

S. 476

Repeals Sec. 304(g) of the  
1980 Disability Amendments.

U.S. TRADE REPRESENTATIVE, U.S. INTERNATIONAL TRADE COMMISSION, AND CUSTOMS SERVICE

AUTHORIZATION REQUESTS FOR FY85 (in thousands of dollars)

AGENCY	FY84 APPROPRIATION	FY85 REQUEST	HOUSE OF REPRESENTATIVES	DOLE
USTR	Base 11,371 Pay Supplemental +128 <hr/> TOTAL FY84 11,499	Base 11,499 Maintain operating levels +1,146 <hr/> 12,645  Implementation of Harmonized Code System of Tariff Classification +1,534 <hr/> TOTAL FY85 request 14,179	Approves Administration request.  Approves up to \$68,000 within total for entertainment and representation expenses.	Approves Administration request with up to \$80,000 for entertainment and representation expenses.
ITC	Base 20,774 Pay Supplemental +464 <hr/> TOTAL FY84 21,238	Base 21,238 Maintain operating levels +2,026 <hr/> Subtotal 23,264 Increase of 44 new positions +1,709 <hr/> Subtotal 24,973 Relocation costs +3,522 <hr/> TOTAL 28,495	Approves authorization of \$28.410 million.  Up to \$2,500 may be used for entertainment and representation expenses.	Same as House bill.

## AGENCY

FY84 APPROPRIATION

FY85 REQUEST

HOUSE OF REPRESENTATIVES

DOLE

H.R. 5188

CUSTOMS  
SERVICE

Base	615,943
Pay Supplemental	+9,961
<u>TOTAL</u>	<u>625,904</u>

Base	625,904
Maintain operating levels	+35,134
<u>Subtotal</u>	<u>661,038</u>
Program increases	+16,994
<u>Subtotal</u>	<u>678,032</u>
Program reductions*	-75,627
<u>TOTAL</u>	<u>602,405</u>

\*Proposed program reductions include:

- 1) a reduction-in-force of 954 positions, saving \$36.194 million;
- 2) \$7 million in savings from a proposed user fee that will require legislation;
- 3) A \$15 million cut-back in funding for Operation Exodus, including \$10 million in nonrecurring costs;
- 4) \$5.793 million in non-recurring costs for the air program; and
- 5) a proposed agreement with the Defense Department for shared maintenance of aircraft, saving \$11 million.

Approved an authorization of \$686,339. This amount will fund 650 new positions, in addition to maintaining current basic program levels.

Also approved three substantive provisions:

- 1) A \$25,000 cap on overtime pay for Customs inspectors;
- 2) A 90-day period of delay after publication of a proposed rule eliminating sureties on customs bonds; and
- 3) A requirement of public disclosure of certain import manifest information.

Base	625,904
Maintain operating levels	+35,134
<u>Subtotal</u>	<u>661,038</u>
Program increases	+16,994
<u>Subtotal</u>	<u>678,032</u>
Program reductions*	-15,793
<u>TOTAL</u>	<u>662,239</u>

\*The reductions represent the \$10 million in non-recurring costs for Operation Exodus, and \$5.793 million of non-recurring costs for the air program.