

1 EXECUTIVE SESSION ON THE MARK-UP OF THE DEFICIT REDUCTION  
2 PROPOSALS  
3 WEDNESDAY, MARCH 7, 1984  
4 U.S. Senate  
5 The Committee on Finance  
6 Washington, D.C.

7 The committee met, pursuant to recess, at 12:05 p.m.,  
8 in session, in room SD-215, Dirksen Senate Office Building,  
9 Senator Robert J. Dole (chairman) presiding.

10 Senators Dole, Packwood, Roth, Danforth, Chafee, Heinz,  
11 Wallop, Durenberger, Armstrong, Symms, Grassley, Long,  
12 Bentsen, Matsunaga, Moynihan, Baucus, Boren, Bradley,  
13 Mitchell and Pryor.

14 Also present: Mr. Robert Lighthizer, Deputy United  
15 States Trade Representative; Mr. John Chapoton, Assistant  
16 Secretary for Tax Policy, Department of the Treasury; Mr.  
17 Ronald Pearlman, Deputy Assistant Secretary for Tax Policy,  
18 Department of the Treasury.

19 Also present: Roderick, DeArment, Esquire; Michael  
20 Stern, Esquire; David Hardee, Esquire; Mr. James Wetzler;  
21 Mr. David Brockway; Mr. Richard Belas; Mr. Harry Graham;  
22 and Mr. Leonard Santor.

23  
24  
25

1 Senator Heinz. If we are going to do that, there is  
2 an amendment I have to FSC. Is this the time to offer it?

3 The Chairman. Yes.

4 Senator Heinz. The problem that we have with FSC  
5 that I am concerned about is vis-a-vis the export trading  
6 company legislation that we passed in 1982. I didn't realize  
7 we were going to do that, so I have got to find some notes.

8 The Chairman. I wonder if I might suggest this if it  
9 is all right with Senator Danforth? Let's go ahead and  
10 adopt the factoring of trade receivables and withhold action  
11 on the amendment. I think there are going to be some other  
12 questions. There have been three questions, and maybe we  
13 can resolve those between now and 2:00. Is that all right?

14 Senator Heinz. So, withhold on FSC for now, Mr.  
15 Chairman?

16 The Chairman. Or we can hold on the whole thing.

17 Senator Heinz. On that particular item?

18 The Chairman. Yes.

19 Senator Heinz. All right.

20 Senator Grassley. Mr. Chairman, you are including in  
21 those three the one that I raised?

22 The Chairman. Right. I have already mentioned that  
23 publicly. Okay. Let's do it that way because I think that  
24 was not fully understand.

25 All right. Is there any need for a roll call on item

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1 number three? If not, without objection it will be agreed  
2 to.

3 Number four -- the three-year base for income averaging.  
4 Is there any further discussion? Senator Armstrong?

5 Senator Armstrong. Mr. Chairman, I don't care about a  
6 roll call, but I am personally skeptical of this for the  
7 reasons that have been stated earlier.

8 Senator Grassley. Yes. And has there been any  
9 conclusion or does anybody else join in with the objections  
10 that Senator Durenberger and I had raised on this, so that  
11 we can moderate it?

12 We are talking about \$1.6 billion more than what we  
13 had previously agreed to in this committee. I know that is  
14 a significant amount of money, and I am not sure that I want  
15 to be responsible for eliminating \$1.6 billion, but I think  
16 that we ought to at least leave it hang and see what can be  
17 worked out, particularly as it deals with the agricultural  
18 economy.

19 The Chairman. Okay. I am willing to pass it until  
20 later today, but we want to see if there are any real  
21 problems that might be able to be worked out during the noon  
22 hour.

23 All right. Number five -- multiple trust and trust  
24 distribution.

25 Senator Armstrong. Mr. Chairman, I don't understand

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1 this, but Senator Symms asked me to report that he has got  
2 some concerns about this that he wishes to raise. He was  
3 here earlier, as you recall, and had to leave for another  
4 meeting. So, I am just reporting that he has some  
5 reservations.

6 The Chairman. Okay. We will postpone it until 2:00,  
7 and then we will act on it.

8 Number six -- postponed financing leased rules until  
9 1988. Again, there is some indication that there should  
10 be further discussion or at least a record vote on this.

11 Senator Long. Mr. Chairman, it is all right with me  
12 if you agree on that. I just want my reservations and my  
13 doubts about this matter noted, and reserve my rights if I  
14 want to pursue the matter at some future point, but I am  
15 willing to go along with it.

16 The Chairman. I understand, Senator Durenberger, that  
17 it was \$3 billion, and it is now \$2.6 because they tried to  
18 address some of the concerns that you and Senator Heinz had.  
19 Is that correct, Dave?

20 Mr. DeArment. That is correct. We dealt with the  
21 farming situation and some transition rules, some involving  
22 some --

23 Mr. Brockway. The original proposal would have raised  
24 \$3 billion and it is down to \$2.6 because of transitional  
25 relief for --

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1 The Chairman. Would that deal with the specific  
2 concerns of Senator Heinz and Senator Durenberger?

3 Mr. Brockway. I am not sure which the specific concerns  
4 are.

5 Senator Durenberger. The first was price residuals.  
6 Was that taken care of?

7 The fixed price residual -- the 10 percent?

8 Mr. Brockway. That is what is being, in effect,  
9 frozen.

10 What the transitional rule says is that -- as of, I  
11 guess, November -- if you had a binding contract, you would  
12 not be subject to the freeze. You could still get a  
13 financed lease.

14 Senator Durenberger. That is the second part. I want  
15 to preserve the 10 percent of the original cost -- the fixed  
16 price residuals, all the way through.

17 Mr. Brockway. Senator Durenberger, that is basically  
18 where all the revenue is, and so that is basically saying  
19 don't have the proposal because that is what is being frozen  
20 in effect.

21 Senator Durenberger. Then I haven't agreed to it.

22 Senator Heinz. Mr. Chairman, the answer to your is  
23 has staff addressed satisfactorily my problems -- the answer  
24 is absolutely not. No. It is nice that they have a  
25 transitional rule that protects existing contracts. That is

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1 not the problem. The problem is the substance of the  
2 proposal, and I associate myself with Senator Long's comments,  
3 and I oppose this item.

4 Senator Moynihan. Mr. Chairman, I guess this was my  
5 proposal, and I understand exactly or generally why there  
6 are reservations, but this is revenue that we can raise and  
7 that is what our exercise here is about. And we are only  
8 postponing. We are not eliminating for the three-year  
9 period, and I hope we can do it.

10 Senator Heinz. Mr. Chairman, we are going to get into  
11 a debate on it. Let's lay it out on the table what we are  
12 doing -- what we are doing is we are further disadvantaging  
13 companies that are in the least competitive position to be  
14 disadvantaged. You know, companies that have profits take  
15 advantage of the investment tax credit by going out and  
16 buying an asset and claiming a tax credit, and getting it  
17 off their taxes.

18 The finance leasing rules, which represent our reform  
19 of safe harbor are designed to give not nearly that good a  
20 tax break, but nonetheless some kind of comparable treatment  
21 to companies that do not have the cash and the profitability  
22 to fully take advantage of the investment tax credit, and  
23 we changed the rules on them once, and there are some of us  
24 -- Senator Durenberger and myself -- who think that in giving  
25 up \$8 billion of revenue in this one area in 1982, that was

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1 a fairly substantial contribution, and here we are coming  
2 right back -- just two years later -- to get another \$2 or  
3 \$3 billion.

4 Now, maybe we are going to do that to-- There is an  
5 insurance provision in this legislation where we are asking  
6 the insurance companies to put up \$2.9 -- Senator Bentsen  
7 and Senator Chafee's bill -- \$2.9 or \$3.1 billion. Now,  
8 maybe what we are going to do is we are just going to get  
9 some more money out of those insurance companies before  
10 the end of this markup.

11 There are lots of proposals floating around for them  
12 to come up with more money. Why should we just talk about  
13 this? If we are going to get more revenues from people,  
14 let's get it from everybody, particularly when we increased  
15 taxes on them -- \$7 or \$8 billion -- just two years ago.

16 Put me down in the negative column.

17 (Laughter)

18 The Chairman. Shall we vote on it?

19 Mr. Chafee. Yes, let's vote on it.

20 The Chairman. Let's have a roll call.

21 Senator Chafee. The vote is up or down for these  
22 provisions?

23 The Chairman. Right.

24 Senator Chafee. Number six?

25 The Chairman. Number six.

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1 Mr. DeArment. Mr. Packwood?

2 Senator Packwood. Aye.

3 Mr. DeArment. Mr. Roth?

4 Senator Roth. (No response)

5 Mr. DeArment. Mr. Danforth?

6 Senator Danforth. Aye.

7 Mr. DeArment. Mr. Chafee?

8 Senator Chafee. Aye.

9 Mr. DeArment. Mr. Heinz?

10 Senator Heinz. No.

11 Mr. DeArment. Mr. Wallop?

12 Senator Wallop. (Senator Dole says aye for Senator  
13 Wallop.)

14 Mr. DeArment. Mr. Durenberger?

15 Senator Durenberger. No.

16 Mr. DeArment. Mr. Armstrong?

17 Senator Armstrong. Aye.

18 Mr. DeArment. Mr. Symms?

19 Senator Symms. (No response)

20 Mr. DeArment. Mr. Grassley?

21 Senator Grassley. Aye.

22 Mr. DeArment. Mr. Long?

23 Senator Long. No.

24 Mr. DeArment. Mr. Bentsen?

25 Senator Bentsen. Aye.

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1 Mr. DeArment. Mr. Matsunaga?

2 Senator Matsunaga. Aye.

3 Mr. DeArment. Mr. Moynihan?

4 Senator Moynihan. Aye.

5 Mr. DeArment. Mr. Baucus?

6 Senator Baucus. (No response)

7 Mr. DeArment. Mr. Boren?

8 Senator Boren. Aye.

9 Mr. DeArment. Mr. Bradley?

10 Senator Bradley. Aye.

11 Mr. DeArment. Mr. Mitchell?

12 Senator Mitchell. (No response)

13 Mr. DeArment. Mr. Pryor?

14 Senator Pryor. Aye.

15 Mr. DeArment. Mr. Chairman?

16 The Chairman. Pass.

17 The ayes are 12, the nays are 3. The Chairman votes  
18 aye. All right. Number seven.

19 Senator Bentsen. Mr. Chairman, if I might comment on  
20 that. I think the original proposal has been considerably  
21 improved, but frankly, I think some other problems have come  
22 along the way, and that you really just trap appreciated  
23 property incorporation. And that you will not raise the  
24 revenue that you anticipate, and it is akin somewhat to the  
25 carried forward basis.

1 But I seem to be about the only one that is showing  
2 any serious concern about it, and I would just like to  
3 express my reservations and let it go at that.

4 The Chairman. Senator Boren?

5 Senator Boren. Mr. Chairman, I have some reservations  
6 about it, too, but I wonder. I think on the House side  
7 they addressed this, and they did write some transitional  
8 rules, but I wonder if --

9 The Chairman. We have the same ones.

10 Senator Boren. There is the notion of one having  
11 transitional rules for any transaction that is under way  
12 and also there is a rule that would carve out where it is  
13 a closely held business and distribution to individual  
14 shareholders. That was in the House bill, and that is  
15 proposed here also.

16 Mr. Chairman, I understand that while the House bill  
17 may have taken care of one or two situations, that there  
18 may be others that we have not anticipated, and I would hope  
19 that at least we might look at the transition rules to make  
20 sure they are written generically to take care of -- because  
21 there may be a lot of situations like this.

22 Mr. Brockway. Yes. I think the desire would be to have  
23 a rule that if there was a target company, that any potential  
24 acquirer would get that benefit. And also, if there is any  
25 transaction under way at all, that there might be --

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1           Senator Boren. There might be several other smaller  
2 companies that we don't know about that are in the process  
3 of doing the same thing. And I think Senator Bentsen is  
4 right. I have a concern that we are just going to trap a  
5 lot of assets that would otherwise perhaps, for very good  
6 reasons, need to be taken out of corporations, and that  
7 wouldn't recoup the revenue.

8           The Chairman. Why don't we go ahead and tentatively  
9 accept the proposal and see if we can work out some of  
10 those areas that Senator Bentsen, Senator Boren, and others  
11 probably have concerns about.

12           Senator Armstrong. Mr. Chairman, I just want to be  
13 sure I understand. We are talking here only about the issue  
14 of whether or not this is a taxable event to the  
15 corporation involved.

16           Mr. Brockway. That is correct.

17           Senator Armstrong. It is a taxable event to the  
18 stockholder in either case.

19           The Chairman. That is correct.

20           Mr. Brockway. That is correct.

21           Senator Armstrong. At present, it is not a taxable  
22 event to the corporation, and this proposal makes it  
23 taxable?

24           The Chairman. That is correct.

25           Mr. Brockway. That is correct.

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1           Senator Armstrong. I don't think you need my vote,  
2 but based on what little I know about it, I am against it.

3           The Chairman. Okay. Number nine. Unless there is a  
4 request for a record vote -- number nine?

5           Mr. DeArment. Number eight, sir.

6           The Chairman. Oh, number eight. Excuse me. Number  
7 eight?

8           Mr. Brockway. Number eight is the proposal dealing  
9 with free opening expenditures requiring that the  
10 amortization be mandatory over the five-year period.

11          The Chairman. Any objection? If not, that will be  
12 passed.

13          Number nine?

14          Mr. DeArment. Mr. Chairman, number nine was one that  
15 Senator Baucus had an interest in.

16          The Chairman. Then we will pass that until 2:00.

17          Number ten?

18          Senator Packwood. Mr. Chairman, you know I have  
19 interest in number ten.

20          The Chairman. That is the VEBAs?

21          Senator Packwood. Yes, the VEBAs. I have got letters  
22 here from the Child Welfare League and from the Children's  
23 Defense Fund, but their letters last year relating to  
24 efforts in the House to levy taxes on day care. This is  
25 not a VEBA issue. My hunch is that by this afternoon I can

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1 have letters from these same organizations that have some  
2 strong feelings about the VEBAs, where they are either  
3 collectively bargained or employer sponsored, because some  
4 of them are not collectively bargained, but the benefits  
5 that are provided in the form of day care or other benefits  
6 are identical to those that are collectively bargained.

7 It is just that the employers are not unionized, are  
8 not organized. They provide the same benefits -- they just  
9 don't fall into the definition of the term "collectively  
10 bargained."

11 And we indicated earlier, I think, that we had not heard  
12 of a single abuse from an employer sponsored or collectively  
13 bargained plan. And I am perfectly willing, Mr. Chairman,  
14 as chairman of the Tax Subcommittee to hold a day or two  
15 days of hearings on the whole subject of fringe benefits,  
16 but if we are going to go ahead on this attempted so-called  
17 reform of VEBAs -- a plan that I have only seen as of this  
18 morning -- and no hearings at all -- then I am going to  
19 ask for a roll call, and I am going to do what I can to  
20 generate such opposition as I can until we have to go to  
21 the floor with it.

22 Senator Danforth. Let me ask, Mr. Chairman, if I might  
23 -- if I might ask Rich or Randy -- if the Children's Defense  
24 League and so forth have cause to be concerned about the  
25 proposed change?

1 Mr. Belas. Senator, there is no attempt to change any  
2 major type of benefit provided through VEBA today other than  
3 trying to conform under the time value of money concepts  
4 the ability of an employer to, in fact, pay deferred  
5 compensation indistinguishable from a qualified pension  
6 benefit in a form that gets around the Section 415 qualified  
7 pension benefit limitations.

8 Senator Danforth. This proposal, then, goes to deferred  
9 compensation arrangements?

10 Mr. Belas. That is correct.

11 Senator Danforth. It goes to the situation in which a  
12 business sets up what amounts to a reserve for severance  
13 pay? And it makes a deduction at the time that it creates  
14 the fund and also insofar as the fund earns money that is  
15 tax exempt income? Under the present law.

16 Mr. Belas. That is correct.

17 Senator Packwood. Mr. Chairman?

18 The Chairman. Senator Packwood?

19 Senator Packwood. Again, I indicate that I have seen  
20 this proposal only this morning. I did have a phone call  
21 from the lawyer that represents most of the AFL-CIO unions  
22 on collectively bargained employee benefits plans. To the  
23 best of my knowledge, he has no particular representation  
24 involving unique or limited plans for highly paid executives.  
25 He is opposed to this. He knows nothing more about it than

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1 I know, but I am going to ask for a roll call because I  
2 think we are starting down an area that we are fully  
3 unfamiliar with.

4 Senator Moynihan. Mr. Chairman, we had a good morning,  
5 and we have gone through a long list of things in which we  
6 have found not just a majority but a genuine concensus.

7 This is a subject which is new to many of us here. It  
8 obviously wouldn't be presented by Senator Danforth if it  
9 wasn't serious. The staff obviously supports it. Senator  
10 Packwood is concerned about it.

11 We aren't going to report this bill out for quite some  
12 time. Now, can't we put this aside to have hearings?

13 Senator Packwood. I would be happy to hold hearings.

14 Senator Moynihan. Because we are coming along pretty  
15 good here, I think, and I would hate to --

16 The Chairman. If you would like. I am not trying to  
17 crowd anyone, but we would like to sort of complete what  
18 our assignment is, or at least what we hope our assignment  
19 will be, and then say, okay, we have finished. If we report  
20 this bill out and see what other committees do, I am afraid  
21 that the longer we keep it open, the more change there is  
22 going to be.

23 And maybe there should be some change. This is in the  
24 House bill, so it is going to be in conference in any event,  
25 if we ever go to conference.

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1           Mr. Belas. Mr. Chairman, one possibility that you  
2 might think of here is one issue that I gather the  
3 collectively bargained plans are concerned about and that  
4 is the provision of supplemental unemployment compensation  
5 under these plans.

6           And you might just want to think of carving that  
7 particular type of benefit out of this VEBA proposal.

8           Senator Packwood. Mr. Chairman, I can assure you they  
9 are not quite sure what they are concerned with. They  
10 haven't seen this before, but VEBAs have been in existence  
11 since 1928, and I will say again, that to the best of my  
12 knowledge, there has been no allegation of abuses. They  
13 have a variety of benefits that they cover. One is the  
14 supplemental unemployment benefit. Day care is one that is  
15 growing.

16           And I would prefer to follow Senator Moynihan's  
17 suggestion. If you don't want to put it aside, I at least  
18 want a vote on it.

19           The Chairman. Why don't we do this? Why don't we,  
20 at least, between now and 2:00, see if there are some of  
21 the concerns raised by Senator Moynihan and Senator Packwood  
22 that can be addressed.

23           As I understand it -- and I am not the expert on it  
24 but -- many of these concerns that have been raised have  
25 been eliminated. Is that correct?

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1 Mr. Belas. That is correct.

2 The Chairman. So, we can do that. And if there are  
3 some abuses, we ought to correct the abuses. I don't want  
4 to raise anybody's taxes until we have corrected all the  
5 abuses that are existing. If that is all right, we will  
6 see what happens during the noon hour.

7 The only other matter that is still open is the so-  
8 called real estate compromise, which is still in the process  
9 of being worked out. I don't think we want to vote on  
10 something until we know what the compromise is, but  
11 hopefully, we will have that before us this afternoon.

12 So, we can take action on the trust matter, the  
13 three-year base for income averaging, and see what happens  
14 on VEBAs and the real estate compromise, and then we have  
15 about 25 or 30 additions that I would like to dispose of.  
16 I don't think they are much on the revenue side.

17 The insurance matter is still up in the air, if we can't  
18 get an agreement on it. Then, we can wait until next year  
19 to take care of that.

20 So, we will see you at 2:00 p.m.

21 (Whereupon, at 12:24 p.m., the hearing was recessed,  
22 to reconvene this same day at 2:00 p.m., Wednesday,  
23 March 7, 1984.)

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A F T E R N O O N   S E S S I O N

(2:38 p.m.)

1           The Chairman. Mike, do we have the list of the things  
2  
3 we were working on this morning? I thought while we are  
4 waiting for other members to come, I would explain that  
5 this morning we talked about number two -- the Factoring  
6 of Trade Receivables -- which is a provision of FSC. When  
7 we raised that, Senator Danforth offered an amendment which  
8 would have made FSC a part of this package.  
9

10           We tentatively agreed to that, but then Senator Heinz  
11 said he had an amendment. So, I suggested that we back off  
12 and bring it up again at 2:30 this afternoon.

13           I know many senators aren't here who have an interest,  
14 and I am not even certain that I know what Senator Heinz'  
15 concern is. Does anybody else know?

16           Maybe Mr. Lighthizer could discuss that. I hate to  
17 waste time here if we can make some headway.

18           Let me also say with reference to insurance that there  
19 is a lot of misinformation floating around about insurance  
20 -- about who may be holding up the package and all that  
21 garbage. If we can get some agreement on insurance, we  
22 will bring it up. If we can't, we are not going to bring it  
23 up.

24           We can always go to conference with any bill at all in  
25 our package on insurance, and I would suggest those who have

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1 an interest in seeing something happen on insurance, they  
2 could help us work out some of the problems.

3 Are we aware of what Senator Heinz' concern was? I  
4 know Senator Chafee also had a question on FSC. Do you  
5 want to raise that now? Mr. Lighthizer is here.

6 Mr. Santor. Senator, we are waiting for Pat Oglesby  
7 from the Joint Committee. He will be able to explain in  
8 further detail what Senator Heinz has in mind.

9 Senator Bradley. Mr. Chairman, I have a question.

10 The Chairman. Senator Bradley?

11 Senator Bradley. As I understand it, under the FSC  
12 legislation, the DISKS are treated one way but what DISKS  
13 replace -- the EICs -- are treated essentially differently.  
14 And what I wondered is shouldn't the EICs be treated the  
15 same as DISCs, and there are only a small number of EICs  
16 in the country, as I understand it.

17 The Chairman. Is somebody here to represent the  
18 Administration? I don't think that ought to be a judgment  
19 made by staff.

20 Senator Bradley. I am sorry. That is ETCs, not EICs..

21 The Chairman. Yes. ETCs.

22 Senator Bradley. As distinct from the-- They are  
23 export trading companies, but they are not export trading  
24 companies pursuant to the law that was passed last year.

25 The Chairman. Mr. Lighthizer, do you have any comments?

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1 Are you here to represent STR?

2 Mr. Lighthizer. Yes, Mr. Chairman, but this is really  
3 a Treasury issue.

4 The Chairman. Is anybody here from Treasury?

5 I know they are in the other room trying to work out  
6 a problem.

7 Senator Bradley. Essentially, what the issue is is  
8 that in the present FSC proposal that DISCs are forgiven  
9 for all past deferred taxes, but the ETCs, which DISCs  
10 replaced, aren't mentioned. And it seemed to me that they  
11 should fall under the same kind of treatment.

12 Mr. Santor. Senator, if I may, there are about  
13 something like 10 export trade corporations that still exist  
14 that preceded DISCs, and their deferrals are like the DISC  
15 deferrals. And I am not aware that there is any particular  
16 reason not to forgive their deferrals.

17 I believe Treasury's position is sort of indifferent  
18 on this. I think they are perfectly prepared to see --

19 The Chairman. Is that a problem?

20 Mr. Lighthizer. No. They will be treated the same as  
21 DISCs.

22 The Chairman. All right. Without objection, we will  
23 do that. Senator Chafee raised a question this morning, but  
24 I don't know that we can address that one because it involved  
25 receivables.

1 Senator Chafee. No, I was talking about services, but  
2 frankly, Mr. Chairman, as much as I am interested in it,  
3 I just see the cost to it. Now, whose jurisdiction does  
4 that fall in? Is that yours, Bob? In DISC?

5 Mr. Lighthizer. The GATT side of it is ours, but there  
6 really are no GATT problems with covering services.

7 Senator Chafee. I presume that the whole FSC thing  
8 is that there are no GATT problems with anything with FSC.  
9 Isn't that how we are doing it?

10 Mr. Lighthizer. That is correct.

11 Senator Chafee. From the Treasury point of view, then,  
12 I think -- including services -- it is so darned expensive,  
13 Mr. Chairman, that I think it approaches \$1 billion, doesn't  
14 it?

15 Mr. Pearlman. It is very substantial. I think the  
16 Joint Committee's number is \$1 billion. To include services,  
17 Senator Chafee, makes this bill clearly a revenue loser.

18 Senator Chafee. Yes, but there doesn't seem to be  
19 much other restraint on this committee when it comes to  
20 putting in revenue losers, but nonetheless I won't press it.

21 The Chairman. Thank you, Senator Chafee.

22 Senator Chafee. But could it be used as sort of a model  
23 for some of the other members?

24 The Chairman. Right. We are hoping that this may  
25 establish a precedent that will sweep the committee.

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1 Senator Chafee. Even some of those present here today?

2 The Chairman. Even some of those present here, unless  
3 they are negligible.

4 Senator Chafee. There is one other point, Mr. Chairman,  
5 on that. And that is with the software. Now, that software  
6 is a far less expensive item. And it is my understanding,  
7 Mr. Pearlman, that on software Treasury is prepared to rule  
8 that software is available for FSC -- what, if it is bonded  
9 to the hardware in some way?

10 Mr. Pearlman. Yes. They say if the software is  
11 marketed as a package -- sold as a package -- with the  
12 hardware, then under current law there is no question that  
13 that software is eligible for DISC treatment.

14 But software that is sold separate and apart from the  
15 hardware -- just marketed software -- is an issue that is  
16 presently under consideration by the service and the law  
17 there is simply developing at this point.

18 Senator Chafee. What would that cost, if we did that?

19 The point I am trying to make, Mr. Chairman, is that  
20 what I am really trying to do is draw attention to the fact  
21 that goods and services or services are a substantial part  
22 of our foreign trade, and we do things like FSC or DISC and  
23 other things -- well, really XM for manufactured goods, but  
24 less and less are manufactured goods the key thing in our  
25 exports.

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1 But I recognize the fiscal realities.

2 Mr. Pearlman. Senator, I am not able to give you any  
3 information on the software.

4 The Chairman. When we started our hearings, I gave  
5 Treasury a letter that Senator Metzenbaum had sent to me  
6 under the franc, asking about all the \$13 billion that this  
7 was going to cost. Have you had time to analyze that?

8 Mr. Pearlman. Yes. In the revenue estimate that we  
9 did, Mr. Chairman, we did take into consideration the  
10 deferred tax on current DISC, and in the analysis the reason  
11 that that so-called \$13 billion number does not show up as  
12 a revenue loss is that it is deferred effectively on a  
13 permanent basis.

14 There is very little of that that comes back into  
15 income on a current basis. There is just a miniscule amount  
16 of that, and therefore, to say that that is relieved really  
17 is not relieving something that realistically is going to  
18 be brought back into the income under current law.

19 Corporations simply continue to defer that income under  
20 the current DISC provisions and, therefore, it is really  
21 not revenue that otherwise would be picked up.

22 The Chairman. How many companies really benefit from  
23 this program? Not many.

24 Mr. Pearlman. I am told that there are over 9,000  
25 active DISCs.

1           The Chairman. Yes, but don't most of the benefits go  
2 to about 30 companies -- 30 or 40 big corporations? About  
3 90 percent of the benefits?

4           Mr. Pearlman. A very large percentage goes to roughly  
5 the number of companies you mentioned. Yes.

6           Mr. Lighthizer. That is true of our exports generally,  
7 I might say though. About 200 companies account for about  
8 90 percent of all our exports from this country.

9           The Chairman. Are we aware of what Senator Heinz'  
10 problem was? If not, maybe we can adopt this amendment,  
11 subject to addressing that amendment.

12           Glen, do you know?

13           Mr. Santor. Yes, Senator Pat Oglesby -- we asked him  
14 to come in and explain it. Pat?

15           The Chairman. Will he explain?

16           Senator Oglesby. Mr. Chairman, as we understand it,  
17 Senator Heinz' problem deals with export-related managerial  
18 services. Today you can get DISC benefits from managed  
19 export-related managerial services provided to your own  
20 DISC or in connection with your own exports. He would like  
21 to enable people to provide managerial services for  
22 unrelated parties through their FSCs.

23           The Chairman. Is that a revenue problem, or does  
24 Administration have a position? Treasury? STR?

25           (Pause)



1 Mr. Gordon. Mr. Chairman, we are trying to figure out  
2 what the revenue impact of that would be.

3 The Chairman. Let's go through this little list here.  
4 Is there a revenue impact?

5 Mr. Pearlman. Yes. I would expect that there is a  
6 revenue impact. We simply don't know what that revenue  
7 impact is.

8 The Chairman. Does Senator Heinz know what it is?

9 Mr. Gordon. No.

10 (Pause)

11 The Chairman. Why don't we do this? While you are  
12 trying to figure out what the impact is, if any, I don't  
13 think Senator Heinz would object to our going ahead and  
14 adopting what we tentatively adopted this morning, subject  
15 to final action on his amendment.

16 So, without objection, we will do that. That makes  
17 the revenue -- you don't pick up 1.5 as I understand it,  
18 and that makes it revenue neutral.

19 Mr. DeArment. Senator, as I understand it, the  
20 factoring of revenue receivables is a separate number that  
21 doesn't affect the revenue effect.

22 In other words, we will pick up 1.5.

23 The Chairman. Len, you called my attention to something  
24 that we ought to raise in conjunction with FSC.

25 Mr. Santor. Yes, sir.

1 The Chairman. You might do that now.

2 Mr. Santor. All right, Senator. Treasury has noted  
3 that, as the proposal now stands, there is a danger that  
4 FSCs would be established in tax havens, and the proposal  
5 is to limit the bill so that parties -- foreign sales  
6 corporations -- could be established in jurisdictions that  
7 are party to an exchange of information agreement that  
8 meets the standards of the Caribbean Basin legislation,  
9 or alternatively, that there is an income tax treaty partner  
10 of the United States, and the Secretary of the Treasury  
11 certifies that the exchange of information program with  
12 that country under the treaty is satisfactory.

13 The purpose of this is essentially to ensure --

14 The Chairman. This is Treasury's proposal?

15 Mr. Pearlman. Yes, very much so, Senator.

16 The Chairman. I don't want anybody to object to it.

17 We are just trying to prevent some tax haven being  
18 established. Is that correct?

19 Mr. Pearlman. Right.

20 The Chairman. Mr. Pearlman?

21 Mr. Pearlman. Mr. Chairman, I am moving to another  
22 point.

23 The Chairman. All right.

24 Mr. Pearlman. In our testimony, we indicated that the  
25 provision that is in the FSC bill dealing with agricultural

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1 coops is a provision that we had-- It was in the bill as  
2 it was sent to Congress. It was a provision that we had to  
3 reevaluate after the bill was submitted and concluded that  
4 it should not remain in the final FSC proposal, and so I  
5 simply want to make you aware of the fact that the current  
6 bill that presumably the committee acted on this morning  
7 has a provision that includes agricultural coops.

8 That was part of the Administration recommendation.  
9 We did that at a time when we believed that would have no  
10 revenue impact on the bill. After the bill was introduced,  
11 we had a chance to take a look at that more carefully, and  
12 we found that it would have a significant revenue impact  
13 on the bill to the tune of \$300 million over a three-year  
14 period -- \$100 million a year.

15 In addition to that, it became apparent that it created  
16 discrimination among agricultural products that were  
17 marketed through coops and agricultural products that were  
18 not.

19 Current law -- under the DISC rules -- there is no  
20 provision for agricultural coops, and so we would hope the  
21 committee would give some consideration to our  
22 recommendation that you delete the provision that broadens  
23 the current DISC benefits through the FSC for agricultural  
24 coops.

25 The Chairman. I think we adopted the FSC proposal. Was

1 that in it or not in it?

2 Mr. Santor. It was in it, Senator.

3 Mr. Gordon. The problem, Mr. Chairman, is it was in  
4 the bill as introduced and as originally proposed by the  
5 Administration, but the revenue loss from the coops was  
6 not taken into account in doing the revenue estimates.

7 And I think it is a loss of about \$100 million a year.

8 Mr. Pearlman. That is correct.

9 The Chairman. If there is no objection, we might  
10 temporarily withdraw that provision, but I think maybe we  
11 can work on it. It is important, and then hopefully before  
12 we complete final action, we can either restore it or some  
13 version of it.

14 Mr. Pearlman. All right. Thank you.

15 The Chairman. Does STR have any comments?

16 Mr. Lighthizer. No, Mr. Chairman.

17 The Chairman. All right.

18 Mr. DeArment. Mr. Chairman, did we approve the tax  
19 haven provision?

20 The Chairman. Yes. If there is no objection to the tax  
21 haven provision --

22 Mr. DeArment. Senator Boren, I know, has a small  
23 business item, and he is supposed to be on his way.

24 The Chairman. All right.

25 Senator Bradley. Of the 10 items, or 11 items, how

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1 many do we now have?

2 The Chairman. How many have not been enacted upon,  
3 Rod? Three? Four?

4 Mr. DeArment. Let's see. I think four of them. The  
5 ones we still have open are income averaging, the multiple  
6 trust and trust distributions --

7 Senator Matsunaga. Give them by the numbers so that  
8 we can follow you.

9 Mr. DeArment. Number four. Number five. Number  
10 nine. Number ten. And number eleven.

11 Senator Matsunaga. All the others have been voted or  
12 adopted?

13 The Chairman. Right.

14 Senator Bradley. Did we agree on the VEBAs?

15 The Chairman. Let's go to number four.

16 (Pause)

17 The Chairman. Is there any need for a record vote on  
18 number four?

19 (No response)

20 The Chairman. Senator Grassley?

21 Senator Grassley. Mr. Chairman, I am sorry.

22 The Chairman. Okay. Let's go on to number five then.  
23 I think you had some questions on number five.

24 Senator Grassley. What does this do to our stepped-  
25 up basis?

1 Mr. Gordon. Number five is the provision dealing with  
2 the distribution of appreciated property out of trust. It  
3 would not affect stepped-up basis of debt so that the trust  
4 or the State would get the full stepped-up basis of debt.

5 The only thing that this would affect is property  
6 that appreciated after death or property that was in a  
7 trust that appreciated, and it is only that gain that if  
8 a trust sold it, the trust would be subject to tax, and  
9 that is all it is affecting.

10 So, all of the stepped-up basis provided for in the  
11 law right now at death would be retained.

12 Senator Grassley. Then, one other general question.  
13 Are we pursuing this point as an example of abusive tax law,  
14 or are we pursuing this from the standpoint of just raising  
15 revenue? Not meaning that the two can't be connected but if  
16 this is abused, then I would like to have some evidence of  
17 abuse.

18 Mr. Gordon. I think, Mr. Grassley, that this happens  
19 sort of on an ongoing basis because the present law and  
20 rules really aren't working very well -- that the effect  
21 of having appreciated property in a trust and making the  
22 distribution -- the way the rules work is that you get a  
23 tax free step-up in basis on the distribution, so it is  
24 in the nature of trying to correct a rule in the present law  
25 that really doesn't work very well, and it happens also to

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1 raise \$700 million over that period.

2 But it is a device used by people in planning right now.

3 Mr. Chapotan. Yes, Senator Grassley. I just echo that.

4 It is clearly a hole now that if you plan correctly and  
5 are going to have the distribution to a beneficiary, you  
6 certainly ought to select appreciated property because, if  
7 you select appreciated property, the tax is going to fall  
8 on the beneficiary, whether you use cash or not, but if you  
9 use appreciated property, the gain -- unrealized gain -- in  
10 the property will escape taxation forever.

11 It has a low basis in the trust, and it receives a  
12 new basis in the beneficiary and the step-up is simply dropped  
13 through the cracks.

14 Senator Grassley. As a practical matter, if we change  
15 this legislation, will this lead to the more early  
16 distribution of property in estates, or not necessarily?

17 Mr. Chapotan. It shouldn't affect it either way. The  
18 tax should be simply neutral, whether you make a distribution  
19 of cash or property.

20 Senator Grassley. Okay.

21 The Chairman. Is there any objection to this provision?  
22 If not, it will be agreed to. I see Senator Baucus isn't  
23 here. Okay, let's go on to VEBAS.

24 Mr. Gordon. Mr. Chairman, I think that Senator Baucus  
25 may not object to the changes made on number nine. David

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1 Hardee has a comment.

2 The Chairman. All right. Mr. Hardee?

3 Mr. Hardee. Senator Baucus will be right up. He is  
4 agreeable to -- as three-year property the 6 percent  
5 investment tax credit, and exempting out --

6 The Chairman. That is essentially what we do.

7 Mr. DeArment. We would give them the same treatment  
8 as we gave the movies and the public property leasing  
9 provisions.

10 The Chairman. Right. Okay, then, without objection,  
11 we will agree to that, and if he has any question, we can  
12 always reopen it.

13 Now, let us go onto VEBAs. As I understand it, there  
14 may be some modifications.

15 Senator Packwood. Mr. Chairman?

16 The Chairman. Yes, Senator Packwood?

17 Senator Packwood. I would like to read a letter. I  
18 indicated this morning that I thought I could find some,  
19 and here is one written today that is from Ed Davey, the  
20 Association of Private Pension and Welfare Plans, which is  
21 a well-known association. I will read the letter as follows:

22 "On behalf of the Association of Private Pension and  
23 Welfare Plans, I urge you and your colleagues this afternoon  
24 to put off consideration of any legislation of changes to  
25 voluntary employee benefit associations more commonly

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1 referred to as VEBAs or 501C9 trusts. The Association of  
2 Private Pension and Welfare Plans represents over 450  
3 corporate members on a wide range of employee benefit  
4 issues. We recognize that documented cases of abuse exist  
5 in the areas of VEBAs, especially with respect to certain  
6 severance pay benefits and recreational facilities.

7 "Unfortunately, the House bill goes beyond dealing with  
8 such abuses and would preclude employers from following  
9 the well-recognized and established practice of funding  
10 benefits such as long-term disability and post-retirement  
11 health and life insurance policies on an actuarially sound  
12 basis.

13 "The House bill which does not permit an employer to  
14 set aside reserves adequate to fund long-term disability  
15 and post-retirement health and life insurance would subject  
16 employees to the risk that they will lose coverage under  
17 those welfare benefit plans.

18 "In addition, the failure to prevent prefunding of  
19 post-separation benefits is inconsistent with well-  
20 established accounting principles which recognize the  
21 cost of such post-separation benefits as current costs.

22 "We therefore urge you and your colleagues not to pass  
23 any legislation in this area until there is an adequate  
24 hearing on the ramifications to the millions of employees  
25 who are retirees receiving benefits under VEBAs and other

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1 welfare plans.

2 "Sincerely."

3 Mr. Chairman, as I said before, we have had no  
4 hearings. I understand some of the abuses that exist and  
5 have grown up since TEFRA, but I will say again that I  
6 think the animous in this is driven by a group of people  
7 who want no untaxed fringe benefits, and they are trying  
8 to use those abuses to absolutely bring to a halt all  
9 legitimate fringe benefit plans.

10 The Chairman. I understand that during the noon hour  
11 the Joint Committee and Treasury and others -- I am not  
12 going to characterize their views on fringe benefits but  
13 they -- did try to address some of the questions that  
14 Senator Packwood raised early this morning.

15 Who would like to address that?

16 Mr. Weiss. There were some discussions between the  
17 various staffs and representatives of plans that are  
18 provided under collective bargaining contracts. And there  
19 were some proposed modifications in the specifications  
20 that seemed to accommodate the immediate concerns of these  
21 groups.

22 Specifically, changes in the effective date of the  
23 proposal and also ability of the Treasury to provide to  
24 regulatory authority reserves that would accommodate the  
25 historical experience of particular industries under

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1 collective bargaining contracts.

2 Senator Packwood. Who did you meet with?

3 Mr. Weiss. Who did we meet with?

4 Senator Packwood. Yes.

5 Mr. Weiss. Paul Berger.

6 Senator Packwood. Tell me what Mr. Berger said. I  
7 have what he suggests here in front of me, and that isn't  
8 what he suggested.

9 Mr. Weiss. He suggested that collective bargaining  
10 contracts be totally exempted from the proposal.

11 Senator Packwood. I just don't want you to  
12 misrepresent what --

13 Mr. Weiss. No.

14 Senator Packwood. I have talked with him since your  
15 meeting.

16 Mr. Weiss. I didn't say that he approved of this.

17 Senator Packwood. Right.

18 Mr. Weiss. Senator Packwood, I did not say that.

19 Senator Packwood. Mr. Chairman, I object. I want a  
20 vote because they are trying to lead us down a path. They  
21 just tried to mislead you with the principal spokesman  
22 for the collective bargaining agreement said they tried  
23 to give the impression that Paul Berger had a position other  
24 than what he had, and you know it.

25 The Chairman. What about the Treasury? Is Treasury

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1 involved in that?

2 Mr. Chapotan. No, I wasn't involved in that meeting,  
3 Mr. Chairman. We have serious concerns about the use of  
4 VEBAs. We think there are good uses of VEBAs, and I think  
5 the concern we have principally is the use of VEBAs to  
6 fund current benefits.

7 Senator Packwood. You have an entirely different  
8 concern than what other people are saying. Your concern  
9 is funding current benefits?

10 Mr. Chapotan. Current benefits is a problem, and  
11 overfunding of benefits for post-retirement welfare-type  
12 benefits, and the nondiscrimination. I guess those would  
13 be our three concerns.

14 Senator Packwood. Well, that is all there is. If  
15 your problems are nondiscrimination, current benefits,  
16 and overfunding of post-retirement benefits, what else  
17 do VEBAs do?

18 Mr. Chapotan. If you have a nondiscrimination  
19 requirement --

20 Senator Packwood. We will agree to the nondiscrimination  
21 requirement.

22 Mr. Chapotan. And if you have limited funding or  
23 not unreasonable funding of post-retirement benefits, that  
24 still allows VEBAs.

25 Senator Packwood. What about the current?

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1 Mr. Chapotan. The current benefits we do not see the  
2 need for VEBA in funding current benefits. In other words,  
3 the current benefits, Senator, would remain tax exempt.

4 It is a question of how you pay for it. The current  
5 benefit would remain tax exempt if it is otherwise entitled  
6 to tax exemption, but you simply could not accelerate the  
7 deduction in excess of the current expenditure.

8 Senator Packwood. In other words, you wouldn't even  
9 be satisfied if we adopted the same kind of  
10 nondiscrimination that we have already in day care or  
11 prepaid legal, where we very severely limit the amount of  
12 benefits that can go under a VEBA to ownership or to  
13 highly paid employees. That still wouldn't make it  
14 acceptable from your standpoint because you don't like  
15 funding current benefits for existing employees.

16 Mr. Chapotan. I think there are two separate problems.

17 Senator Packwood. They are, but even if we cure the  
18 one about the highly paid employees, you still don't like  
19 it.

20 Mr. Chapotan. I think there is another problem.  
21 But, Senator, I want to emphasize that we are not undermining  
22 the nontaxability of those fringe benefits. I mean, they  
23 can still be provided. They will not be taxable to the  
24 employee. You understand that?

25 Senator Packwood. Yes.. You just don't like the VEBAs

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1 period.

2 Mr. Chapotan. It is an additional timing difference,  
3 timing value to the employer and no additional benefit to  
4 the employee.

5 Senator Packwood. Although any money that is left over  
6 at the end of the year that is rebated as cash is taxable  
7 to the employee. If they haven't used up all the benefits  
8 in their VEBA.

9 Mr. Chapotan. It would reduce their future payments  
10 into the VEBA, just like that is taken into account in the  
11 funding in the next contribution.

12 The Chairman. Jack, we have been holding VEBA for you.

13 (Laughter)

14 The Chairman. And then we would like to vote on it.

15 (Pause)

16 Mr. Chapotan. Senator Packwood, let me make one further  
17 point in case I didn't make it clear. I think we are not  
18 in disagreement on prefunding of post-retirement welfare  
19 benefits. You understand that. We are concerned that  
20 there not be overfunding, but I think we see eye to eye  
21 on that point.

22 Senator Packwood. What do you mean by overfunding?

23 Mr. Chapotan. That the amount put aside will not be  
24 in excess of the amount necessary to put aside now to grow  
25 to a sufficient extent to pay for the estimated future cost

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1 of the post-retirement benefits.

2 Senator Packwood. That is no problem to correct if that  
3 is your fear, and there is no problem on writing in the  
4 normal nondiscrimination provisions that we have in other  
5 insurance coverage. But if your real objection is the  
6 current benefits --

7 Mr. Chapotan. I think that is just a third problem.  
8 I don't think that is dictated necessarily by the other two.  
9 We have a problem with that, but it is independent.

10 Senator Packwood. Let me ask you this. You are  
11 familiar with the provisions that we have in both the day  
12 care and the prepaid legal plans where, and I am quoting  
13 here:

14 "No more than 25 percent of the benefits may go to  
15 key people." And you define what the benefits are and  
16 you define what the key people are, and that, as far as  
17 I know, in terms of day care or prepaid legal, has cured  
18 any abuse. I haven't heard of any abuses in those areas.

19 (Pause)

20 Senator Packwood. As it reads, we would propose that  
21 the VEBA restrictions would apply to VEBAs where more than  
22 25 percent of the benefits go to persons who own more than  
23 5 percent of the stock, which is the same provision we have  
24 in prepaid legal and day care.

25 Mr. Chapotan. Excuse me just one moment, Senator.

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1 Senator Bradley. Mr. Chairman?

2 The Chairman. Bill?

3 Senator Bradley. Does the Joint Tax Committee know  
4 what the revenue loss from VEBAs are?

5 Mr. Weiss. This proposal is estimated to raise about  
6 \$600 million over the next three years.

7 Senator Bradley. \$600 million over the next three  
8 years, but annually, what is the revenue loss due to the  
9 existence of VEBAs?

10 Mr. Weiss. Do you mean if there were no VEBAs?

11 Senator Bradley. Right. Do we know what that is?

12 Mr. Weiss. No, I don't. I am sorry, Senator.

13 The Chairman. With the modifications, does that \$600  
14 change to a smaller number?

15 Mr. Weiss. The \$600 million applies to this proposal.

16 The Chairman. But you had some discussions during  
17 the noon break, just to define what the proposal is now  
18 that gets you \$600 million.

19 Mr. Weiss. Yes.

20 The Chairman. Could you define that quickly for us?

21 Mr. Weiss. Yes. The proposal generally would say  
22 that an employer's deduction for a benefit contribution to  
23 a fund is available when the benefit is paid to the employee  
24 rather than when the contribution is made to the fund, and  
25 the proposal would allow for specific reserve deductions in

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1 addition to that general rule.

2 Senator Packwood. Now, you are saying that that  
3 proposal is neither Mr. Berger's proposal representing the  
4 AFL-CIO collective bargain plans nor is that the proposal  
5 of the Association of Private Pension and Welfare Plans?

6 Mr. Weiss. No, I am referring to this sheet that I  
7 believe was handed out.

8 Senator Danforth. Mr. Chairman?

9 The Chairman. Senator Danforth?

10 Senator Danforth. I know that there are a variety of  
11 views on fringe benefits that are taken by members of this  
12 committee. My own view is that fringe benefits should not  
13 be just totally unlimited and that we probably have gone  
14 too far in letting businesses and their employees more or  
15 less write their own tax bill.

16 But I don't think that this issue of VEBAs goes to  
17 that question. I think this goes to another embellishment  
18 on the fringe benefit issue, and the embellishment is that  
19 not only are we going to have fringe benefits, but we are  
20 going to have a system set up whereby businesses can put  
21 money into a fund for future fringe benefits and get an  
22 immediate deduction for putting the money in and also get  
23 any income from that fund tax free -- that it can just stay  
24 in there tax free.

25 And that seems to me to be a little bit farfetched and

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1 especially farfetched when what we are really getting at  
2 here is deferred compensation, not something that is  
3 bargained for -- collective bargaining arrangements -- but  
4 to the contrary, essentially severance pay.

5 Senator Packwood. Yes, but what you are hitting at is  
6 also long-term disability and post-retirement health  
7 benefits. I mean, you are striking at the whole area.  
8 If you want to strike at just the abuse, then there is  
9 the possibility of working something out.

10 But that is not the only thing that is bothering Buck  
11 and it is not the only thing that is bothering the Joint  
12 Committee. Buck has misgivings about current refunded  
13 benefits, received in the same year that you make the  
14 payments.

15 Mr. Chapotan. Senator, I am worried about prefunding  
16 of current benefits. I think you and I are together on  
17 funding -- current funding -- of future post-retirement  
18 welfare benefits.

19 And if there is a concern, I think we are completely  
20 together on that. And if there is a concern that this  
21 doesn't allow sufficient funding, current funding for  
22 post-retirement benefits, then that could be looked at.

23 But I am also concerned about prefunding of current  
24 benefits -- current benefits being -- in my definition --  
25 benefits during employment. That is, I think, where you and

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1 I are apart, but as far as prefunding of post-retirement  
2 benefits, I think we are not.

3 Senator Packwood. That seems to be what Senator  
4 Danforth is objecting to -- the prefunding of future benefits.

5 Senator Danforth. I think that there is a difference  
6 between a qualified pension plan, on one hand, and just  
7 setting up a fund -- I mean, all of this is future benefits.

8 Mr. Chapotan. We don't want -- the thing we have  
9 been trying to avoid and maybe I might be confusing more  
10 than helping the issue -- but when I say post-retirement  
11 benefits, we should exclude retirement benefits, because  
12 that is under qualified retirement plans.

13 We should not use the welfare -- the VEBA -- to avoid  
14 the Section 415 limits that we worked on in 1982.

15 Senator Packwood. I am willing to set down with Buck,  
16 Mr. Chairman, and try to work out a respectable limitation  
17 on abuses, but so long as we understand we are aiming at  
18 abuses and not at legitimate post-retirement policies on  
19 a nondiscriminatory basis for health or insurance for all  
20 of the employees or for long-term disability or for day  
21 care or for other what I think -- most people would say --  
22 are perfectly legitimate fringe benefits.

23 If we can agree as to what we are trying to drive at,  
24 that is fine, but I don't want to be negotiating with  
25 people who are secretly trying to do in fringe benefits.

1           Senator Bradley. If I could, Bob. You don't take the  
2 position that prepayment of current benefits is something  
3 that should continue to exist but only prepayment of  
4 post-retirement benefits?

5           Senator Packwood. No, there is even some prepayment  
6 of -- let's say that you are funding health benefits --  
7 nondiscriminatory health benefits for retired employees.  
8 The UAW has an extraordinary package for retired employees,  
9 and those are prefunded. I mean, you pay on the policy and  
10 you may or may not get sick, and so the benefit comes later.

11           You don't pay the premium, or the employer doesn't  
12 take the deduction simultaneously with the illness of the  
13 retired employee. I guess in that sense all fringe benefits  
14 are prefunded.

15           Normally, people use prefunding as a tax dodge where  
16 you put in immense amounts of money now and take out benefits  
17 later when you are in a different tax status.

18           Senator Bradley. Or when your children reach the age  
19 to go to college.

20           Senator Packwood. Or something like that although I  
21 am not offended by that. I am not even offended by that  
22 kind of a benefit although there are very few plans that  
23 exist like that, but I think the key is -- because I have  
24 no grief for those who are trying to abuse it -- I think the  
25 key is that you want to make it nondiscriminatory, and then

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1 if some companies have got 200 employees and they want to  
2 fund a very extraordinary plan for all 200 employees  
3 -- whether you are the \$15,000 a year janitor or the \$100,000  
4 a year president -- and the company wants to do that -- I  
5 mean, that is a very expensive plan for the company.

6 I just don't want it limited to those who make \$50,000  
7 and over on some kind of a boondoggle on retirement.

8 And I will sit down with Buck, and I think on that I  
9 can work something out.

10 Senator Danforth. May I ask? Isn't this also used,  
11 for example, for dentists or doctors who incorporate?

12 Mr. Belas. Certainly.

13 Senator Danforth. That would not be discriminatory,  
14 but it would be very lush.

15 Mr. Belas. Now, a parradine example would be a plan  
16 that provides long-term disability coverage for a group of  
17 a professional corporation of three doctors.

18 Senator Packwood. A special corporation of what?

19 Mr. Belas. Of three doctors, for instance. And the  
20 doctors would set up a long-term disability plan. They  
21 would get an actuary to give them an aggressive number as  
22 to how much must be set aside today to pay for the  
23 possibility of long-term disability for any one of the  
24 members of the group during their working years.

25 They would then, say at age 50 or age 45, set aside a

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1 fair amount of -- a large amount of -- money which would  
2 stay in the fund in addition to their qualified pension plan  
3 until they reached retirement age.

4 And lo and behold, at age 62 or 65, they decide to  
5 retire and none of them became disabled, under 51C9 the  
6 benefits must accrue on innure only to the benefit of the  
7 employees, not to the corporation.

8 So, they would then terminate the 51C9 benefit and  
9 would have the amount of money that was set aside on a  
10 tax-free basis for the 15 or 20 years that it was in  
11 existence.

12 Senator Packwood. Why isn't that abuse cured if we  
13 adopt a provision either in the present day care or prepaid  
14 legal where no more than 25 percent of the benefits can go  
15 to persons who own over 5 percent of the stock. You are  
16 talking about a corporation with three doctors.

17 We have that provision in the law now.

18 Mr. Belas. You can have a hypothetical where you make  
19 it nondiscriminatory --

20 Senator Packwood: And your hypothetical is feigned  
21 disability. The doctor gets to 63, and the other doctor  
22 says, gee, you are disabled. I think that is what you are  
23 saying.

24 Mr. Belas. No, I am saying that in fact, no one  
25 becomes disabled. If they had become disabled, it would have

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1 been fine, it would have been a disability program, and I  
2 don't think anyone would have complained.

3 But the problem with it is that people are selling these  
4 two professional corporations as retirement plans to get  
5 around the qualified pension plan limitations.

6 The Chairman. I suggest that maybe Senator Packwood  
7 and the Treasury get together on this and see if we can't  
8 hammer this out.

9 The only other item we haven't acted on, as I understand  
10 it, is the real estate. Is that correct?

11 Senator Chafee. Mr. Chairman, could I say something  
12 about the VEBAs again?

13 The Chairman. Yes.

14 Senator Chafee. I wouldn't want this to terminate  
15 with the feeling that there aren't some nondiscriminatory  
16 benefit packages that some of us find should not be  
17 permitted. I mean, Senator Packwood -- I know that we all  
18 know his views. As long as it is nondiscriminatory, anything  
19 goes, and there are many of us on this committee that don't  
20 feel that way.

21 So, the mere fact that it is nondiscriminatory isn't  
22 adequate for at least some of us. And so, if negotiations  
23 with Mr. Chapotan are solely on what Senator Packwood  
24 defines as abuses, I don't think I, for one, would find that  
25 satisfactory.

1           Now, he has his views and we recognize and respect  
2 them, and we all know them well over many years. But I  
3 would hope that Mr. Chapotan would come back to us -- if  
4 these negotiations seem to go beyond what Treasury thinks  
5 is a fair deal for the Treasury.

6           The Chairman. That was understood, I ass-med, that  
7 we can't negotiate so that my view prevails or Packwood's  
8 unless it should prevail.

9           Mr. Chapotan. Yes, I certainly understand that.

10          The Chairman. Treasury will have its usual objective  
11 manner.

12          Senator Boren, did you have a question?

13          Senator Boren. Yes, Mr. Chairman. A minute ago, I  
14 understand -- when I was on my way over -- you took up the  
15 FSC proposal and --

16          The Chairman. Oh, that's right. You had an amendment.

17          Senator Boren. We had an amendment, on behalf of  
18 myself and Senator Baucus. I think one question may have  
19 already been solved. Maybe Mr. Lighthizer can answer that  
20 -- on the technical change that I understand there was no  
21 problem with from either you or Treasury on the export  
22 trade corporations -- the ETCs -- to make sure that they  
23 received equal treatment with the DISCs since we were  
24 permanently deferring or exempting that income, that we  
25 would do the same thing in terms of ETCs. They would be

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1 allowed to transfer their assets to a foreign sales  
2 corporation free of current U.S. tax and that they be  
3 treated the same on amounts previously included in gross  
4 income of U.S. shareholders.

5 Is that pretty well worked out?

6 Mr. Pearlman. Foreign trade corporations, Senator, is  
7 that correct?

8 Senator Boren. Yes.

9 Mr. Pearlman. As far as we are concerned, that is  
10 acceptable.

11 Senator Boren. For foreign trade corporations, yes.  
12 Okay.

13 And the second amendment, Mr. Chairman, which I think  
14 there is some controversy about, but I hope maybe we can  
15 work it out is offered on behalf of myself and Senator  
16 Baucus. And that would be to change the exemption for  
17 small businesses now \$2.5 billion on the bill to the \$5  
18 million in gross receipts, phasing down from \$10 over a  
19 four-year period, down to \$5 with the transition side,  
20 leaving it at \$5 permanently.

21 (Continued on the next page)

22  
23  
24  
25

1 Mr. Chairman, we have literally thousands of small  
2 businesses in this country that potentially could utilize  
3 DSC, now FSC, but because of the foreign-presence  
4 requirements the small entity is just not able to comply  
5 with it.

6 Not only do small business groups who strongly support  
7 FSC join in supporting our amendment, but the U.S. Chamber,  
8 the American Business Conference, the NAM and others  
9 associated with larger business enterprises. The  
10 Agricultural Export Group and others all recently signed a  
11 letter indicating their feeling that we should try to make  
12 this change.

13 It would be my hope that it would have minimal  
14 enough impact that we could argue the case forcefully with  
15 GATT.

16 I just think very often, Mr. Chairman, in our actions  
17 we are not sensitive enough to the problems of small  
18 business, and we are really serious about getting our export  
19 effort going. That is the area, probably, where we have the  
20 greatest potential possibility of growth.

21 We need to plant in the minds of small business  
22 enterprises across this country that they need to consider  
23 the international as well as just the domestic market.

24 So I am hoping that maybe Mr. Lighthizer and Treasury --  
25 I don't think there is much impact from Treasury's point of

1 view; there may be more impact from the point of view of  
2 the policy of GATT. I am hoping maybe we could agree to  
3 this kind of an amendment.

4 The Chairman. Bob, do you want to address that?

5 Mr. Lighthizer. Yes, Mr. Chairman.

6 This amendment does create major problems for us.

7 This is to change the small business exemption from  
8 \$2.5 million up to \$10 million, and then to phase it down  
9 to \$5 million over five years.

10 We are quite sympathetic to the interests of small  
11 business to get more into exporting; both USTR and the  
12 Commerce Department have programs to pursue that. That is  
13 why we created an exemption for small business that sell  
14 less than \$2.5 million in export receipt or have less than  
15 \$2.5 million in exports receipts annually. We think that  
16 that number takes care of small business, and indeed it  
17 should take care of -- that \$2.5 million figure, Mr. Chairman,  
18 takes care of about 45 percent of all the DSCs in the  
19 country who would be exempt. And between 2 and 3 percent  
20 of the tax-deferred income would also be excluded from  
21 having to go into this new form, as a result of the  
22 exemption that we created.

23 Now, our argument in Geneva will be that this is a kind  
24 of de minimus rule, that this is a de minimus exception,  
25 that these are very small businesses, and they don't create

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1 any real problems for our trading partners.

2 If you raised it to \$10 million, the first year, for  
3 example, you are talking about 85 percent of all the DSCs  
4 being excluded from the new system, and almost 13 percent  
5 of the tax-deferred income would not have to be subject to  
6 the new system. We think that that would be very difficult  
7 to argue as a de minimus rule.

8 Senator Boren. Mr. Chairman, I realize we can use  
9 statistics, but Mr. Lighthizer has just been using the  
10 number of returns, not gross receipts.

11 If we look at gross receipts, those \$10 million and  
12 under are only -- let's see -- it would be about 8.4 percent  
13 of all receipts, and I'm sure by the time we got down to the  
14 \$5 million figure, that we are dealing with probably 4 or 5  
15 percent. You have only eight-tenths of one percent under  
16 \$1 million in terms of gross receipts, and we have 7.6  
17 percent between \$1 million and \$10 million.

18 So I think it is not as major as the 85 percent, if  
19 we are talking about numbers; but a lot of those are very  
20 small indeed, and in terms of receipts, that is a very small  
21 number.

22 Senator Baucus may want to comment.

23 The Chairman. Max?

24 Senator Baucus. Mr. Chairman, I just want to underline  
25 the point Senator Boren made. It seems to me that if

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1 \$2.5 million falls under the de minimus theory because, if  
2 as I understood you, Bob, you say 2 percent of gross  
3 receipts, and our goal is to \$5 million, and I don't know,  
4 I guess that is about 4 or 5 percent of gross receipts, that  
5 still is de minimus. I mean, I don't see much difference  
6 between say 2 or 3 percent, if that is the correct figure,  
7 the gross receipts that are \$2.5 million, and we go to 5  
8 and that amounts to say 4 or 5 percent. That is about in  
9 the same ballpark.

10 But beyond that, it seems to me that as Americans we  
11 have to stand up for American business. I don't think it  
12 violates GATT, I think what we are doing still falls within  
13 the de minimus theory; but let's us do what we think is  
14 best for American business and let other countries then  
15 worry about themselves.

16 I still think it is de minimus, so let's protect  
17 America.

18 Senator Packwood. Further comments?

19 Senator Danforth. Yes.

20 Senator Packwood. Jack?

21 Senator Danforth. I think that really the issue is,  
22 are we going to be able to salvage something from DSC and  
23 not be retaliated against? And that's what the whole  
24 proposal is.

25 I suppose it would be true that anything that was done

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1 by way of drafting new legislation, people would say, "Well,  
2 this doesn't go far enough, it should be better."

3 Some of the witnesses who came in said that we should  
4 do a better job of clarifying exactly what is required of  
5 these operations abroad; but it seems to me that we have a  
6 package now which has been put together after very careful  
7 consideration, and it has been flyspecked by USTR, and  
8 they think that it is something which can be defended.

9 My view would be to take the package as it has been  
10 presented to us, and pass it.

11 Senator Boren. Well, Mr. Chairman, Senator Danforth  
12 knows that I am certainly appreciative of his efforts in  
13 this area, and I have tried to work with him closely. We  
14 have been in agreement on 99.9 percent of what has ended up  
15 in the package.

16 I appreciate also the good work of USTR, and as Bob  
17 well knows, there is no more enthusiastic person about his  
18 work there than I am.

19 But I really think that we are not talking here in terms  
20 of a major difference, if we go from 2.5 to 5. I can see  
21 how maybe the transition rule would be a problem if we  
22 started at 10. I don't know, it is hard to know where to  
23 draw the line. You are talking about only 8 percent of the  
24 receipts. If you get it down to 4 or 5 percent, or back in  
25 the de minimus range, when 8 isn't, I don't know.

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1 But in the spirit of compromise, let me ask  
2 Mr. Lighthizer, and otherwise we can just go to a vote on it:  
3 Do you think if we went to 5 and maybe just had a very short  
4 transition rule and started at something like 7 and got to  
5 5 in two years and kept it at 5, didn't start as high as 10,  
6 that that would be helpful?

7 Mr. Lighthizer. The suggestion, I guess, Senator, is  
8 to have it be a \$7-million limit in 1984 and into 5  
9 in 1985 and thereafter?

10 Senator Boren. Yes.

11 Mr. Lighthizer. I would like to run it and just see  
12 how the numbers come out on that, Senator, if that is all  
13 right, and get back to you in a couple of minutes.

14 Senator Boren. All right.

15 Senator Packwood. Further comments?

16 Senator Danforth. Where do we stand, then? Can we  
17 agree to include FSC in the package with the proviso that  
18 this be kept open?

19 Senator Boren. Maybe if we can know very, very  
20 quickly here --

21 Mr. DeArment. Senator Danforth, I think the committee  
22 previously agreed to put FSC in.

23 Senator Boren. Subject to the possibility of the  
24 amendment.

25 Mr. DeArment. Subject to the amendment.

1 Senator Boren. I will want to ask for a role call if  
2 we don't reach some accommodation.

3 Senator Heinz. Mr. Chairman?

4 Senator Packwood. John?

5 Senator Heinz. Mr. Chairman, on FSC, there is a problem  
6 I alluded to earlier today, involving export trading  
7 companies.

8 Briefly, the problem is, of course, that FSCs have to  
9 be offshore. Export trading companies by law have to be  
10 onshore, and there is a problem for export trading companies  
11 that specialize in services, which I assume we want to  
12 encourage, that they will be disadvantaged if the FSC bill  
13 passes without amendment.

14 The reason they will be disadvantaged is that there will  
15 be a tax advantage to providing services offshore that would  
16 be prohibited to an export trading company providing those  
17 services, if domiciled as they must be onshore.

18 Richard Gordon has been doing some work on this for us  
19 and is going to explain the problem better than I, and  
20 hopefully explain the solution which the committee can decide  
21 on.

22 Mr. Gordon. I think, Senator Heinz, that you have  
23 explained the problem precisely as it is. I am not sure  
24 that we have more to say on that.

25 The additional problem is the potential cost to the

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1 Treasury from expanding this.

2 As we understand it, today you can get DSC benefits for  
3 providing certain services which are related to exports,  
4 such as doing marketing services, arranging for shipping, and  
5 the like. But a DSC can only get those benefits for  
6 providing those services to unrelated DSCs, provided that  
7 the service-provider has 50 percent of its income from  
8 exports of goods, basically.

9 As we understand it, a number of ETCs are being set up  
10 that will provide only export-related services; they will  
11 not actually be involved in taking title to goods and  
12 passing title.

13 Senator Heinz. The key is that they won't actually  
14 take title.

15 Mr. Gordon. That is correct.

16 Senator Heinz. Because they will be involved in the  
17 goods, but they won't own them themselves.

18 Mr. Gordon. That is correct. That is absolutely  
19 correct. They will not take title, but they are providing  
20 export-related services, and they would like to be able to  
21 set up a FSC and provide those services, and get the FSC  
22 benefits.

23 So what you are really talking about is removing the  
24 50-percent gross income requirement, at least for ETCs.  
25 The problem with that from a revenue point of view is

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1 simply that you are expanding the universe of people who  
2 will qualify for FSC benefits as compared to those who  
3 qualify for DSC today.

4 Senator Heinz. What would be the first-year cost of  
5 that?

6 Mr. Gordon. Well, that is what we are trying to figure  
7 out, and we have not been able to measure that yet. We  
8 are working on that.

9 The Chairman. They are some figures back there,  
10 10 million.

11 Senator Boren. Mr. Chairman, we have had further  
12 discussions with Mr. Lighthizer, and I had suggested a  
13 minute ago we might try to compromise at 7 with a  
14 transition down to 5.

15 He still has concerns about whether the 7 might be --  
16 whether or not that might get us beyond the de minimus range.  
17 Five, we think, if we just went without a transition and went  
18 straight to 5 on the exemption, that that I think would be  
19 secure for us.

20 So, in order to reach an agreement I would be willing  
21 to propose that, to move it to 5 without a transition rule.

22 The Chairman. All right, then, whatever 5 refers to.

23 Senator Boren. The \$5 million gross receipts, foreign  
24 sales.

25 The Chairman. We have just raised \$5 billion, is that

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1 it?

2 Senator Boren. Well, I wish I could tell you we had.

3 The Chairman. No, I think I am in sympathy with  
4 Senator Boren's position on it. We have had some concerns.

5 Mr. Lighthizer. If that is the case, then I'm glad  
6 we came to agreement, Mr. Chairman.

7 Senator Boren. Mr. Chairman, if I had known that a  
8 while ago, I might have bargained a little longer.

9 (Laughter)

10 Senator Boren. But I think this is a fair agreement,  
11 and I appreciate Mr. Lighthizer's consideration.

12 The Chairman. I had to leave the room because some  
13 co-op people wanted to see me about taking them out of FSC.  
14 And I said, "It's only temporary." Right?

15 Mr. Pearlman. We heard you, Mr. Chairman.

16 (Laughter)

17 Mr. Pearlman. We are working on that now, and  
18 hopefully we will be able to come back to you with something  
19 that will permit you to put it back in.

20 The Chairman. And I don't see any problem with  
21 Senator Heinz' amendment, but we ought to try to get the  
22 revenue figures.

23 Senator Heinz. Mr. Chairman, I am told that from a  
24 policy standpoint no one disagrees, that it is a good idea  
25 to guard against disadvantaging export trading companies.

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1 The only concern is a Treasury concern that the amount of  
2 revenue -- and I have heard a \$10 million first-year figure,  
3 too -- that it is the only real reason.

4 The Chairman. All right. So we are just waiting to  
5 get those figures?

6 Senator Heinz. That is correct, Mr. Chairman.

7 The Chairman. Now, as I understand, then, there were  
8 no other questions in that area.

9 Was this an amendment, John?

10 Senator Chafee. No.

11 The Chairman. When we talked during the recess this  
12 morning, Buck, we talked some about the minimum tax. We  
13 are down to that real estate compromise, and I think we are  
14 going to reach a common ground.

15 Senator Chafee. Mr. Chairman, I have a little  
16 amendment to tack on there, and that's my "golden parachute"  
17 or "anti-golden parachute provision."

18 I talked briefly with Treasury on this, and the problem  
19 would come up with the definitions. If Treasury thinks  
20 that they can get the agreeable definitions, I would like to  
21 go ahead with it. I don't know whether they have had a  
22 chance to look over that legislation.

23 Mr. Chapoton. Senator, we have had a chance to look  
24 over it. It is a difficult thing to do, as I have mentioned,  
25 under the tax law. The only tax principle involved here is

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1 whether you have excessive compensation under the facts of  
2 the particular case. That is the law today, and I think we  
3 are reluctant to proceed with a tax rule that would attempt  
4 to get it, which might be a securities problem or a problem  
5 vis-a-vis the shareholders more than it is a tax problem.

6 Senator Chafee. Well, I don't agree with you. I  
7 think it is a matter that can be defined. It is not just  
8 straight compensation; it is compensation contingent on  
9 certain circumstances taking place, and it has a label.  
10 Sometimes it is hard to define, but it is like pornography:  
11 when you see it, you know it.

12 I just would hope that instead of brushing this off --  
13 I am prepared to wait; I am not prepared to press it now.  
14 But this isn't a revenue-raiser, it is an equity matter. It  
15 might raise a little revenue.

16 The Chairman. Well, why doesn't Treasury, before you  
17 bail out, take a look at it.

18 (Laughter)

19 Mr. Chapoton. Senator, you always have to concern  
20 yourself with whether you are covering severance pay.  
21 Severance pay is often in excess of current compensation,  
22 as it is for past compensation. But that is an inherently  
23 factual situation. If you had one that was clearly  
24 excessive, it would be no problem just to disallow the  
25 deduction. That would probably do it, by the way.

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1 Senator Chafee. Well, this isn't the last day we  
2 are going to be on this bill, I take it.

3 The Chairman. Well, I had hoped it would, but it  
4 looks like we will have one more day. So maybe we can take  
5 another look at it.

6 Senator Chafee. Well, I will bring it up at the  
7 appropriate time, Mr. Chairman. And I am not going to try  
8 to tack it on to this FSC.

9 Thank you.

10 The Chairman. Earlier today, I think during the  
11 lunch hour, Mr. Chapoton, you mentioned something in the  
12 minimum tax area. Would that be a part of the so-called  
13 "compromise"?

14 Mr. Chapoton. No, sir. I think we have not had an  
15 agreement on any minimum tax proposal. We have talked about  
16 the real estate, and I can discuss that, but I think we have  
17 not done anything on the minimum tax.

18 The Chairman. It was my hope that we might conclude  
19 the action on this list. But the one item that I don't  
20 believe we can include today is the so-called "real estate  
21 compromise."

22 There is a sincere effort on the part of the industry  
23 to come together with a responsible proposal, and they have  
24 made that proposal, but we don't have the numbers.

25 I know Treasury has a proposal that you might want to

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1 discuss briefly, but I am fearful we are going to have to  
2 come back tomorrow morning and take final action on two  
3 or three items.

4 Mr. Chapoton. Well, let me just mention, as I think I  
5 have mentioned before, our primary concern in the real  
6 estate area has been on churning, and we therefore think  
7 that the recapture rules should be tightened on real estate.

8 Some of the industry groups have proposed a lengthening  
9 of lives, and the staff has considered a lengthening of the  
10 15-year life to 20 years, and that has been discussed with  
11 some of the real estate groups.

12 I think we would think a better approach would be maybe  
13 a shorter lengthening of lives to 18 years, or so, but with  
14 a tightening of recapture; and specifically we would tighten  
15 recapture in the installment sale area, so that if a  
16 property were sold on the installment basis, that,  
17 notwithstanding otherwise being able to report the gain when  
18 cash is received -- when the seller receives the cash --  
19 in recognition of the fact that the buyer will start a new  
20 depreciation over a new ACRS period, that the seller should  
21 pick up immediately -- notwithstanding the installment basis,  
22 that he is reporting on the installment basis -- should pick  
23 up recapture, should pick up his prior depreciation. That  
24 would be one rule.

25 The other rule would simply be to strengthen recapture.

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1 on a sale. In the first case, the installment sale case, I  
2 think we should talk about dispositions after the date of  
3 enactment. Any other strengthening of recapture I think  
4 should be only with respect to property acquired after the  
5 date of enactment, but then we would simply say that if  
6 straight line depreciation is used -- now there is no  
7 recapture -- we think there should be recapture. We are  
8 suggesting on commercial that the recapture be a 12-50  
9 recapture, that is, accelerated over straight line, but  
10 assuming a 35-year life of the property, which is the  
11 earnings-and-profits life we use for commercial real estate.

12 Now, that would significantly strengthen the recapture  
13 rule for commercial real estate.

14 The Chairman. Senator Bentsen?

15 Senator Bentsen. Well, I think some of what  
16 Mr. Chapoton says makes some sense, insofar as the deferral  
17 and in the installment sale.

18 But I am deeply concerned about the at-risk feature  
19 that was brought into this before. I have been through that  
20 fight a number of times in this committee, several years  
21 ago in fact, with the predecessor of Senator Armstrong,  
22 when they tried to put at-risk on real estate, and Treasury  
23 was supporting it at that time. This committee chose not to  
24 do that.

25 I would hope, since it was my amendment to extend the

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1 depreciation period out to 20 years from 15, when previously  
2 it was 40 and 50 years, I felt strongly we had gone too  
3 far in getting to 15 and should have stopped at 20.

4 But if we are working out a compromise, and I understand  
5 the realtors are working very hard to do that, I hope we  
6 can come up with something that we can all agree to.

7 But I would hope that we would also look at the rest  
8 of the package, because I am concerned about the at-risk  
9 feature. Do I understand you to say that that is not a part  
10 of the compromise that we are trying to work out?

11 Mr. Chapoton. The package I was describing is a  
12 package with respect to depreciation of real estate. You  
13 are perfectly correct; the minimum tax as suggested by  
14 Senator Moynihan does have a direct impact on real estate  
15 and does have a direct impact on the at-risk concept.  
16 Therefore, I am not saying it shouldn't be considered as a  
17 part of the package; I am simply saying that what I described  
18 was quite independent of that.

19 I think the rules I have described are needed for  
20 real estate generally, and then you just ought to decide,  
21 with those rules in place, what you want to do in the  
22 minimum tax area.

23 The Chairman. I have discussed this with Senator  
24 Moynihan. I think there is some concern. My own view is  
25 that we ought to try to package this and bring it out here,

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- 1 and get an agreement on it. And I think we are very close.
- 2 Senator Moynihan? I don't think you have any quarrel
- 3 with what Senator Bentsen just said, do you?
- 4 Senator Moynihan. Not in the least.
- 5 Let me just ask Secretary Chapoton: In the arrangement
- 6 we have on the minimum tax, the at-risk provision in real
- 7 estate is abrogated "for purposes of those persons seeking
- 8 to pay less than the minimum tax in consequence of losses
- 9 elsewhere." We say you can only deduct a real loss.
- 10 Mr. Chapoton. Correct.
- 11 Senator Moynihan. But the at-risk provisions with
- 12 respect to real estate generally in the Tax Code, which is
- 13 to say for purposes of the regular income tax, is not
- 14 affected in any way.
- 15 Mr. Chapoton. That is correct.
- 16 Senator Moynihan. And I think, Mr. Chairman, if we
- 17 could make clear what I think would be clear, that this
- 18 committee doesn't in any way intend to affect the at-risk
- 19 provisions for real estate transactions with respect to the
- 20 regular income tax, that there would be a measure of
- 21 equanimity or less a measure of alarm.
- 22 Senator Long. Well, my thought about that is that you
- 23 really need to see on a blackboard, or somewhere in writing,
- 24 a whole list of illustrative situations, to see what would
- 25 happen in a hypothetical set of facts, because if what you

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1 are talking about is just that you are going to collect a  
2 minimal amount of taxes and not a large amount, perhaps  
3 10-15 percent of a person's economic income in taxes, then  
4 I would have little sympathy for the person who says he is  
5 adversely affected, but if you expect to see a great deal  
6 more than that, then I think we ought to take a careful  
7 look at it.

8 Senator Armstrong. Mr. Chairman, if I could hitch-hike  
9 on the thought which Senator Long has expressed, I think we  
10 need a great deal more than just seeing something written  
11 on a blackboard, in some meeting off the floor or in the  
12 back room here.

13 I think we need an extensive hearing on this. We are  
14 fiddling around with some very important interests of this  
15 country.

16 I don't want to be presumptuous and say that if the  
17 Treasury Department and a bunch of the lobbyists and two or  
18 three members of the committee work out a compromise, that  
19 we might go off the rails; but I have an uneasy feeling that  
20 everybody that is affected doesn't even know we are thinking  
21 about this subject.

22 Now, I have just heard ticked off three or four things  
23 which, as far as I know, there has been no hearing on, which  
24 have been proposed as a substitute for another measure which  
25 the committee almost adopted a week ago, on which there was

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1 also no hearing.

2 Now, personally, my own predisposition is to think that  
3 some change in the recapture rule is a good idea. And I  
4 recognize there is some churning going on, and maybe that  
5 the installment sale change is a good idea. All of this  
6 may be wonderful, but I hope, Mr. Chairman, that we will not  
7 be asked to vote upon some kind of a prepackaged deal that  
8 is put together out in the hallway out here, and to do so  
9 without the benefit of adequate notice to people who are  
10 affected by this or who might be, and an extensive hearing.  
11 And not just involving real estate people, too. I think  
12 there are some other interests that, if they knew we were  
13 working on this, would want to be heard.

14 Senator Bentsen. I would like to also say to the  
15 Secretary: I want to be satisfied that we have been able  
16 to stop some of the abuses, and that we have the regulations  
17 or the law that will stop the abuses on using historic  
18 buildings as a real tax loophole.

19 You know, I have been a big supporter of that  
20 particular provision, and I continue to; but, again, I don't  
21 want a 50-story building built behind some two-story historic  
22 site, and then have them charge the whole thing off in five  
23 years.

24 Mr. Chapoton. We are looking at that, Senator. The  
25 five-year provision is not available any more, so it is the

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1 credit that I think you are addressing. And as I described  
2 earlier, I think the law would prevent the case you have  
3 described. But we want to make certain that it is not open  
4 enough that someone could claim it even though we think the  
5 law prevents it.

6 The Chairman. I understand they have the revenue  
7 estimates. Senator Heinz, could you announce those, or  
8 reveal those, disclose those, whatever?

9 Mr. Gordon. Mr. Chairman, the preliminary estimate is  
10 approximately \$10 million a year for Senator Heinz'  
11 proposal. We are going to have to do a little more work  
12 on it.

13 Senator Heinz. Mr. Chairman, if it turns out that those  
14 numbers are completely out of the ballpark, that they have  
15 dropped a decimal point on the wrong side, we could certainly  
16 reconsider this on the floor. But if they are in the  
17 ballpark generally, I would hope we could adopt this.

18 The Chairman. Well, I have no objection. You will  
19 have more definitive figures in the morning, I assume.

20 Mr. Gordon. We hope so.

21 The Chairman. Right. We can do it on that basis.

22 Well, in any event, I have a farm meeting at 4:00 --  
23 we are trying to work out a farm bill that is rather  
24 important.

25 How many will be gone tomorrow? Everybody will be here

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1 morning, right?

2 I think we will meet tomorrow at 10:00. We would like  
3 to take up truck taxes in the morning.

4 Senator Mitchell. Mr. Chairman?

5 The Chairman. Senator Mitchell?

6 Senator Mitchell. Could I just bring up two matters --  
7 one on which I think there is an agreement, and one on which  
8 I think there may be one? I had better wait until  
9 Mr. Chapoton's attention is with us.

10 The first is the nuclear plant decommissioning costs.  
11 I understand, Mr. Chapoton, that an agreement has been worked  
12 out that is satisfactory to Treasury.

13 Mr. Chapoton. That is correct.

14 Senator Mitchell. Right.

15 Mr. Chairman, I just wanted to note that, so that that  
16 could be included in the package.

17 The other item I would like to inquire about is the  
18 charitable contributions of appreciated property, to find out  
19 what the penalty situation is.

20 Mr. Chapoton. Right. I understand the concern. I  
21 think Senator Moynihan has expressed a similar concern, and  
22 I believe Senator Danforth, also. So we are looking at that  
23 further.

24 I understood it was suggested that maybe this rule could  
25 apply just to contributions within the three-year period.

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1 That would give us a good deal of concern. We think the  
2 original rule that was part of the original package, that  
3 no deduction for appreciation on non-traded property, if  
4 given within the first three years, would be allowed. We  
5 think that rule took care of the basic problem we were trying  
6 to address. But we have no gone away from that into this  
7 other rule, which is rather stringent.

8 It says, if you overvalue by more than 150 percent of  
9 true value, then no deduction at all. For some types of  
10 property, we understand that could be a problem.

11 So, let us work inhouse some more, then we will work  
12 with your staffs and see if there is any refinement of that  
13 that we might suggest.

14 Senator Moynihan. Mr. Chairman, could we leave it just  
15 that way, in that Senator Mitchell and I and others who are  
16 interested will meet with Mr. Chapoton when he is ready to  
17 talk? I think we are very close to an agreement here,  
18 don't you?

19 Senator Symms. Mr. Chairman, could I ask a question?

20 Buck, have you had any contact with the land-grant  
21 colleges?

22 Mr. Chapoton. We have had the colleges represented in  
23 the discussions with the President's Council on Arts and  
24 Humanities. We haven't met independently with the land  
25 grant colleges, no.

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1        Senator Symms. I have been told that the land grant  
2 colleges have some problems. I would ask you to look at  
3 that with the rule that we adopted last week, that they have  
4 not been part of the abuse, and that they have got some  
5 problems. I don't know what is, I would have to find out.

6        Mr. Chapoton. The approach adopted last week goes  
7 further, deals with the whole problem of the valuation  
8 question, and it deals with it in a pretty strong way.

9        We will take a look at that further.

10       The Chairman. All right, then. We will meet at  
11 10:00. If it is possible, if we could all be here about  
12 10:00, maybe we could conclude what we are doing on the  
13 revenue side.

14       Then, I understand that Senator Wallop, who has a  
15 direct in the truck matter, and Senator Symms will both be  
16 gone tomorrow, so we may not be able to do that tomorrow.  
17 Maybe we can go to the R&D credit after we finish the  
18 other matters.

19       Then, we are still hoping to get to insurance this year,  
20 if the insurance people will let us.

21       Senator Symms. Mr. Chairman, in all seriousness, I will  
22 be here tomorrow morning. I want to leave tomorrow  
23 afternoon. But I'm afraid Senator Wallop won't be here  
24 tomorrow.

25       The Chairman. All right. Well, we will be flexible on

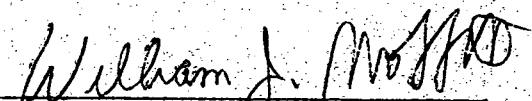


1 that. Thank you.

2 (Whereupon, at 3:57 p.m., the markup session was  
3 recessed, to resume at 10:00 a.m., Thursday, March 8, 1984.)  
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C E R T I F I C A T E

1  
 2 This is to certify that the foregoing proceedings of a  
 3 markup session of the Committee on Finance, held on  
 4 March 7, 1984, in re: Deficit Reduction Proposals, were  
 5 held as herein appears and that this is the original  
 6 transcript thereof.

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 11 WILLIAM J. MOFFITT

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 13 My Commission expires April 14, 1984.  
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