

*Merril*

BERRY

1-54

1 EXECUTIVE SESSION  
 2 TUESDAY, APRIL 2, 1985  
 3 U.S. Senate  
 4 Committee on Finance  
 5 Washington, D.C.

6 The committee met, pursuant to notice, at 10:06 a.m. in  
 7 room SD-215, Dirksen Senate Office Building, the Honorable  
 8 Robert Packwood (chairman) presiding.

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

13 Also Present: Senator James Abdnor.

14 Also Present: The Honorable Ronald A. Pearlman,  
 15 Assistant Secretary of the Treasury, accompanied by Mr. Kent  
 16 Mason, Attorney Advisor; Ms. Carolyn Golding and Mr. James  
 17 VanErden, U.S. Department of Labor; Mr. John Colvin, Chief  
 18 Counsel; Mr. Michael Stern, Minority Counsel; Mr. William J.  
 19 Wilkins, Minority Tax Counsel; Mr. Harry Graham, Tax  
 20 Attorney, Mr. Richard H. Ruge, Joint Tax Committee; Mr.  
 21 Randy Weiss, Joint Committee on Tax; Mr. Ted Kassinger and  
 22 Mr. Don Santos, International Trade; Mr. Joseph Humphrey,  
 23 Minority Staff; Ms. Sydney Olson and Mr. Jeff Lang,  
 24 professional staff members.

25 (The press release announcing the hearing follows:)

1           The Chairman. The Committee will come to order,  
2 please.

3           I am sure we are going to have a quorum before we are  
4 done with the three items that we have on the agenda.

5           I'd like to start with the Federal Supplementary  
6 Compensation Unemployment Program. And my goal this morning  
7 is to get the best arrangement I can that is acceptable, if  
8 it will be not vetoed, the best arrangement I can to protect  
9 those who are currently collecting benefits, and about 5,000  
10 of those are in Oregon.

11           I have talked with the Administration. They have made  
12 it very clear that they don't like any extension of any  
13 kind. Not an extension for those who are present  
14 beneficiaries. Not a general three month, two month, six  
15 month or any other extension.

16           And I cannot guarantee that we can even have and get  
17 through the President a bill that simply extends the  
18 benefits for those under the Federal Supplementary Program  
19 who are currently receiving them.

20           Anything beyond that, will be vetoed, even that might  
21 be vetoed.

22           I have some unfortunate news. As of last night, the  
23 Department of Labor admitted that they had made a mistake  
24 in the estimates of the cost of the program, both the  
25 program that has been passed by the House and the extension

1 of the benefits for those who are currently on them.

2 We had been operating under the assumption, based upon  
3 information from both OMB and the Department of Labor, that  
4 to extend the benefits for those that were currently on them  
5 would cost \$95 to \$100 million until the program ran out.

6 The estimates now, Sydney -- and correct me if I am  
7 wrong -- are roughly \$190 million.

8 Ms. Olson. Hundred and sixty to a hundred and eighty  
9 million.

10 The Chairman. Hundred sixty to a hundred and eighty  
11 million.

12 Unfortunately, however, for the House bill that they  
13 passed, the estimates were initially \$270 million and  
14 those estimates now are how much, Sydney?

15 Ms. Olson. Between \$420 and \$440 million.

16 The Chairman. There is no question that that bill would  
17 have been vetoed at a cost of \$270 million. It will clearly  
18 be vetoed at its present cost.

19 And I'm not here to argue or to try to explain why both  
20 OMB and the Department of Labor were wrong on their  
21 estimates. They indicated they thought we were talking  
22 about a 50 percent extension rather than a full extension.  
23 This has been discussed for a number of weeks. We've been  
24 operating under their figures for a number of weeks, and  
25 last night they, in essence, have just about doubled the

1 estimates of what we were talking about for all of the  
2 programs.

3 I'll say again, if we want to get anything passed this  
4 week -- and those who are on benefits expire at the end --  
5 they don't expire. The benefits expire at the end of this  
6 week. Some of them may expire when the benefits expire.

7 If there is going to be any bill, the only bill that  
8 can conceivably be signed by the President is an extension.  
9 And no promise that that will. Anything beyond that will be  
10 vetoed; we'll be in recess and we'll be back here after the  
11 April recess. And I have no idea at that stage what might  
12 happen.

13 Senator Heinz. Mr. Chairman, when you are through.

14 The Chairman. Yes.

15 Senator Heinz. Mr. Chairman, you may or may not be  
16 right about the final disposition of anything more than what  
17 you have proposed. I'm delighted you are proposing some-  
18 thing. That's certainly better than nothing.

19 But I must say that in states such as mine,  
20 Pennsylvania, we have had very serious enduring unemploy-  
21 ment problems. And some of those problems have been  
22 awaiting resolution by the Federal Government.

23 Let me give you one example. Back in September, the  
24 President announced that he would have a plan -- he would  
25 implement a plan to limit steel imports. Now that plan was

1 pursuant to a case, a 201, which the industry filed. It was  
2 found that there was massive unfair trade in steel around  
3 the world, and the President promised to significantly  
4 roll back steel imports to a level of around 18.5 percent.  
5 That compares to about a 28 to 30 percent level at the time.

6 Now Bob Lighthizer, the Deputy USTR, has been working  
7 on that program for the last several months. But he has only  
8 succeeded, if my memory serves me correctly, in negotiating  
9 about six voluntary restraint agreements with the several  
10 dozen countries that export steel into the United States.

11 Now it is now April 2nd. It is six months since the  
12 President made his commitment pursuant to an industry  
13 petition, which was filed back at the beginning of 1984.  
14 In other words, more than a year has passed.

15 A lot of steel workers who had hoped to be called back  
16 to their jobs have been waiting, therefore, for more than a  
17 year for effective Government action pursuant to a petition  
18 filed over a year ago, which the industry won, which would  
19 benefit the steel workers, but which benefits they are yet  
20 to realize because the Government has not done what it said  
21 it would do.

22 We may end up doing it, but if we allow the program  
23 to be phased out as you propose, many individuals who  
24 genuinely need these benefits will not have them. I don't  
25 know what will become of them. These are people who have

1 almost no money right now anyway. They have been out of work  
2 for a considerable period of time.

3 If what little we provide them in the way of  
4 unemployment compensation is no longer available to them,  
5 it's not just a question of losing their homes. It's a  
6 question of seeing entire communities, Mr. Chairman, go out  
7 of business. And I don't mean the shopkeepers. They'll go  
8 out of business, too. But you will have 20 and 30 percent  
9 unemployment as we do today in many of these communities  
10 without any means of support of any of those people.

11 Now it seems to me that -- and I know there are other  
12 industries with other problems, but I talk about steel  
13 because it is our steel communities where this problem is  
14 worse -- it is grossly unfair to have tens of thousands of  
15 my constituents awaiting Government action on unfair trade  
16 practices by others -- and nobody disagrees that there have  
17 been unfair trade practices. And the President says he's  
18 trying to do something about it -- and at the same time as  
19 we say, all right, just hang on; we're going to solve the  
20 problem, but in the meantime we are going to force you  
21 either onto welfare or to leave the state and maybe go to  
22 some sunbelt state, if you can find a job there. You know,  
23 too bad, we're just a little off on our timing.

24 Well, Mr. Chairman, I just don't think that's right.  
25 We've cut back on trade adjustment assistance. It was

1 supposed to do that job. Unemployment compensation now does  
2 the job, rightly or wrongly, of trade adjustment assistance.

3 And if we are worrying a little bit about protectionism  
4 in the United States, maybe one of the reasons it is so  
5 rampant as evidenced by some of the actions of this  
6 Committee last week and other actions we may take today is  
7 we are not treating our people right.

8 So I'm going to offer at the appropriate time, Mr.  
9 Chairman, a three month extension of the legislation,  
10 substantially similar to, if not identical to, the House  
11 bill.

12 The Chairman. All I can say to the Senator from  
13 Pennsylvania is this: There are six states that under the  
14 existing plan are eligible for 14 weeks and that is if they  
15 have the worst rates of unemployment. Pennsylvania is one.  
16 Oregon is one. Idaho is one.

17 The only states that exceed Oregon in terms of  
18 unemployment, insured rate of unemployment, are Idaho and  
19 Alaska. We're worse off than Pennsylvania in terms of the  
20 insured rate. I've got the same problems you do. I've got  
21 Canadians dumping lumber in this country. I've got an  
22 inability to sell our beef and our wood products in Japan.

23 But all I'm telling you is if you want anything at all,  
24 rather than an issue, all the Administration will sign, if  
25 they will sign anything, is an extension of the benefits for

1 those who are currently on them. If you want to go beyond  
2 that, want to pass something, have it vetoed and come back  
3 here in mid-April after the benefits have run out for some  
4 people and extended for none and see where we end up,  
5 that's what we can do.

6 Senator Heinz. Mr. Chairman, I understand all that,  
7 but I think we ought to just leave it up -- I think every  
8 member of the Committee that has heard your opening state-  
9 ment has heard that argument, and I'm sure that they will  
10 make a judgment on that and be guided by it. I'm just  
11 speaking for myself. That while what you've proposed is  
12 better than nothing, it really doesn't do the job as far as  
13 my home state is concerned, and it's where many of the  
14 people who've suffered lengthy, difficult periods of  
15 unemployment are concerned.

16 I don't say that in any way, Mr. Chairman, to be  
17 critical of what the Chairman is doing. I'm convinced the  
18 Chairman is doing what he thinks is best for the  
19 unemployed. And he's trying to do what he thinks is  
20 possible for the unemployed.

21 And were I in his position, I suppose I might be making  
22 his same speech. But I'm not in his position, your position,  
23 Mr. Chairman, and I have a responsibility to work very hard  
24 for my constituents because they right now are getting the  
25 short end of the stick.



1 The Chairman. Further comments?

2 Senator Moynihan. Mr. Chairman?

3 The Chairman. The Senator from New York.

4 Senator Moynihan. I associate myself with Senator

5 Heinz in this matter, and particularly in the point he made,  
6 which has been made many times in this Committee and will be  
7 again, that with regard to trade adjustment assistance, we  
8 have not kept our commitment to the trade union movement  
9 that came in here in support of a new round of trade  
10 agreements with a clear understanding that this would be  
11 part of the arrangement, if it were going to be Federal  
12 policy to give up certain kinds of employment in this  
13 country, then there ought to be Federal policy to help  
14 those whose jobs were given up.

15 We haven't kept those agreements. And in some  
16 measures, supplementary employment has made up for what we  
17 haven't done. But I know the Chairman thinks that and  
18 thinks it is so, but I wanted to say so.

19 The Chairman. Further discussion?

20 Senator Chafee. Mr. Chairman.

21 The Chairman. The Senator from Rhode Island.

22 Senator Chafee. Do we have any statistics on various  
23 phase-down proposals?

24 The Chairman. You means costs, or what?

25 Senator Chafee. Yes. For example, as I understood what

1 you said, the House bill would now cost between \$420 and  
2 \$440 million. And as I understand, that's a three month  
3 extension in which the workers would get eight weeks. Is  
4 that right?

5 Ms. Olson. Four weeks in some states, eight weeks in  
6 states with insured unemployment rates above 5 percent.

7 Senator Chafee. All right.

8 Ms. Olson. It would be about six states at the eight  
9 week level.

10 Senator Chafee. All right. And the others at four?

11 Ms. Olson. At four weeks.

12 Senator Chafee. Now what would happen if you had a --  
13 for example, if you gave everyone who's on the program now  
14 four more weeks? And by on the program now, I mean on the  
15 program now through the end of this week. And that includes  
16 those who have already been on it. Let's say -- as I  
17 understand it, if you are on the program now, and you were  
18 eligible for 12 weeks and you've had two weeks, you get  
19 nothing more -- is that right? -- as of April 6th?

20 Ms. Olson. If you are on benefits at the end of the  
21 program, you would get the remaining number of weeks that  
22 you are entitled to under the program in your state. So if  
23 you were in a 14 week state and had collected two weeks,  
24 you would continue to collect benefits for 12 more weeks.

25 Senator Heinz. Is that under the Committee proposal?

1 Senator Heinz. Not under current law.

2 Senator Chafee. No, I'm asking about the current law.

3 Ms. Olson. Under current law, your benefits would end  
4 with the check you received this week no matter what your  
5 remaining entitlement.

6 Senator Chafee. So if we do nothing, nobody will get a  
7 benefit after --

8 The Chairman. Beyond this Saturday.

9 Senator Chafee. Beyond this Saturday.

10 Ms. Olson. Yes, Senator.

11 Senator Chafee. Now what I'm asking is: What would a  
12 program cost if you let those who are on the program or  
13 those who came on the program by this week have four weeks?  
14 And then, let's say -- I'll give you another one beyond  
15 that -- if you left it open for another month and let  
16 anybody who is on now or came on in that ensuing month have  
17 four weeks from the end of the month, end of the next month?

18 In other words, I'm trying to get some alternatives  
19 here.

20 The Chairman. I'm a little lost as to what you are  
21 suggesting.

22 Senator Chafee. Well, the House has a program that is  
23 a three month extension. In other words, anybody cannot  
24 come on in the next three months.

25 The Chairman. Right.

1 Senator Chafee. And during that time, anybody can get  
2 up to eight weeks. Isn't that right? That's the House  
3 program.

4 The Chairman. No. Oh, in the House program.

5 Senator Chafee. Yes.

6 The Chairman. Not anybody. You would have to be in  
7 certain states.

8 Senator Chafee. Yes, I appreciate that. To be  
9 eligible.

10 Now what I'm trying to figure out is some alternatives.  
11 That clearly is veto bait, the House program. It's over  
12 \$400 million.

13 What I'm trying to do is to get some alternatives. And  
14 one of them I asked about was terminate the program, but  
15 everybody -- no new claimants can come on, but everybody  
16 who is on or will come on by the end of this week can get  
17 four weeks.

18 Ms. Olson. Senator, could I ask one question? If you  
19 are in your 13th week of a 14 week state, would you intend  
20 that individual to receive four more weeks or just the  
21 entitlement under the earlier program?

22 Senator Chafee. No. He would just be entitled to  
23 what the program provided.

24 Ms. Olson. All right.

25 Senator Chafee. The maximum of the program.

1           The Chairman. Sydney, my guess would be, then -- as I  
2 recall, the average benefits lasted for seven weeks if you  
3 averaged them all out, aren't they?

4           Ms. Olson. Yes.

5           The Chairman. And Senator Chafee is talking about a  
6 four week extension. I would assume it would bring the cost  
7 of the program down if the only people eligible were present  
8 beneficiaries.

9           Senator Chafee. That's just a question I'm asking.

10          In other words, Mr. Chairman, I think it would be  
11 helpful for us to have kind of a variety of proposals before  
12 us and the cost. Is there a Committee proposal?

13          The Chairman. There is no Committee proposal.

14          Senator Chafee. Or a staff proposal?

15          Ms. Olson. There is a proposal before you, Senator,  
16 on a separate sheet of paper, as Senator Packwood describes,  
17 which allows people to receive all of their entitlements  
18 if they are receiving benefits this week.

19          Senator Bentsen. Is this a product of a word processor  
20 or is someone claiming it? The one that's before us.

21          (Laughter)

22          The Chairman. I am claiming it. What it would mean  
23 is if you are in a state where you would be eligible for  
24 14 weeks and you are in week eight, you would get six more  
25 weeks.

1 Senator Chafee. If you are in week one --

2 The Chairman. Assuming that you are in the state where  
3 you got 14 weeks, you'd get 13 more weeks. The average for  
4 the nation is about seven weeks -- averaging states that  
5 have lesser unemployment -- and correct me if I'm wrong on  
6 this -- lesser unemployment and, therefore, lesser  
7 eligibility.

8 Bill Armstrong.

9 Senator Armstrong. Mr. Chairman, I want to ask a  
10 question.

11 I understand very well the concern that motivates both  
12 your proposal and that which Senator Heinz suggested;  
13 particularly, since your states have high persistent  
14 unemployment.

15 My own state does not have, in general, that kind of a  
16 problem. But some areas of Colorado do. I think of  
17 particularly western Colorado which is suffering enormously  
18 from the problem of long-term unemployment. The same is  
19 true in Pueblo, although Pueblo is finally coming out of it.

20 But, you know, the question that I'm sitting here  
21 wondering about -- and maybe this has been discussed at  
22 some other time -- is whether or not this really is the  
23 answer to it.

24 The theory of extended benefits under unemployment  
25 compensation, as I understand it, is to tide people over

1 through a temporary kind of unemployment. We are now in the  
2 third year of an economic recovery and it appears to me that  
3 in areas like Oregon where they've got a lumber problem or  
4 an export problem or Pennsylvania where they've got a  
5 structural problem with the steel industry or Pueblo where  
6 we have the same problem in the same industry or western  
7 Colorado where we've got a problem resulting from oil shale  
8 unemployment, I just don't think this is the answer.

9 And I'm not so much concerned about the money as I am  
10 the fact that we're really just shoveling smoke here. Whether  
11 we give two more weeks or four more weeks or 14 more weeks,  
12 what assurance is there in those local areas where people are  
13 still employed, in the third year now of a pretty strong  
14 broad based, vigorous economic recovery, what assurance is  
15 there that the situation is going to be any different 14  
16 weeks from now or three weeks from now or some other time?

17 I wonder if we shouldn't try to focus on the under-  
18 lying problem rather than adapt the unemployment compensation  
19 program to a task for which it is fundamentally ill-suited.

20 The Chairman. I think your question is a valid  
21 question. We are sitting here, however, on a Tuesday with  
22 the program running out. And I know your views about the  
23 debt ceiling about waiting until we were up against the  
24 deadline and then acting.

25 All I can say at this stage is if we try to restructure

1 the program or some people want to target it within the  
2 states to Congressional districts, or target it to counties,  
3 or target it to some other basis -- because if we start to  
4 get into that, the Administration has indicated they will  
5 veto that also.

6 Further discussion?

7 Ms. Olson. Mr. Chairman, I believe the actuary has an  
8 answer to Senator Chafee's question.

9 The Chairman. All right.

10 Mr. VanErden. Senator Chafee, I think your proposal, as  
11 I understand it, would be slightly more liberal than the  
12 50 percent phase-out, which we costed out at \$99 million.

13 The Chairman. Would cost how much?

14 Mr. VanErden. The original phase-out, the 50 percent  
15 phase-out, was \$99 million.

16 The Chairman. All right.

17 Mr. VanErden. Senator Chafee's proposal, I believe,  
18 would be slightly more liberal, costing slightly more,  
19 probably from \$110 to \$120 million.

20 Senator Chafee. I'm mixed up here. The Finance  
21 Committee proposal, the staff, which would let everybody,  
22 as I understand it -- would just let everybody on continue  
23 for the length of time they have remaining.

24 Ms. Olson. That's right.

25 The Chairman. Hundred and sixty to a hundred and eighty



1 million dollars.

2 Senator Chafee. Oh, that's a new figure, isn't it?

3 The Chairman. I don't know if you were here when I  
4 was explaining it.

5 Senator Chafee. Yes.

6 The Chairman. What happened is that through a mistake,  
7 either the Department of Labor or the Office of Management and  
8 Budget, simply gave us the wrong figures. And up until last  
9 night at 6:00, we had assumed a phase-out for everybody who  
10 was on was \$95 to \$100 million. That is wrong.

11 It is \$160 to \$180 million.

12 Senator Chafee. And the proposal I suggested would be  
13 about a hundred --

14 Mr. VanErden. Hundred and ten to a hundred and twenty,  
15 Senator.

16 Senator Armstrong. Mr. Chairman, I don't want to be  
17 insistent, but if your proposal passes, what is your  
18 intention on April 6th? Extend it for two more weeks or  
19 is that the end of it?

20 The Chairman. No. That's the end of it as far as I'm  
21 concerned.

22 Senator Armstrong. And what is Senator Heinz's proposal?  
23 That at the end of -- roughly at the end of three months, as  
24 I understand it -- is it his intention that it would then  
25 expire as well?

1           Senator Heinz. I can't tell the Senator -- if we make  
2 substantial progress in lowering unemployment, that might be  
3 appropriate. I don't know if the Senator was here when I  
4 described the wait that we've had for the steel industry to  
5 get its appropriate relief.

6           Senator Armstrong. I was, indeed, Senator.

7           Senator Heinz. Then I won't repeat that.

8           Senator Armstrong. That's why I made the point that in  
9 Colorado we've got exactly the same problem arising from  
10 exactly the same reason. The major employer in southern  
11 Colorado happens to be the steel industry. And we face that  
12 problem.

13           But, John, I'm just not convinced that this is going to  
14 be helpful. It appears to me that we are really -- whether we  
15 add two weeks or 14 weeks or don't do anything and let it  
16 expire Saturday night, at some point we face the question of  
17 are we just going to continue this? Is this going to be a  
18 permanent, long-term approach? Are people just going to be  
19 on this for two years, three years, five years, 10 years?

20           We are now in the 30th month of a recovery which is if  
21 not the best recovery the country has ever seen, it's  
22 certainly a powerful broad based recovery and it appears to  
23 me that we are really not addressing the problem.

24           My disposition is to either support the Chairman or  
25 to let the whole thing quit and solve the problem in some more

1 direct way rather than sort of pretending that unemployment  
2 compensation is the answer.

3 Senator Heinz. If the Senator will yield.

4 Senator Armstrong. Sure.

5 Senator Heinz. First, to answer one of his questions,  
6 the legislation that I'm going to offer as a substitute,  
7 it's substantially identical to the House bill. It contains  
8 a phase-out so that if it's the will of the Committee and the  
9 Congress to let it die, we won't be coming back for a Bob  
10 Packwood phase-out, if that is the final judgment. People  
11 will get their 14 weeks or their 12 weeks -- excuse me. I  
12 guess their eight weeks or their four weeks -- excuse me --  
13 under the proposal.

14 The only other comment I could make is you said people  
15 will be on unemployment compensation for one year, three  
16 years, five years. Individuals are only on this program for  
17 a limited number of weeks.

18 Under the present law, which is expiring now as we sit  
19 here, 14 weeks. Under what I propose, eight weeks. Not a  
20 matter of years. I just wanted everybody to be clear on  
21 that.

22 This is a very temporary transitional period that we  
23 are giving them.

24 I thank the Senator for yielding.

25 The Chairman. Bill, the difference in mine is that out

1 of a sense of fairness, I'm going to allow those who are  
2 currently on the benefits to run out what they thought would  
3 be their number of weeks. I'm not bringing any new  
4 claimants on. If they are not on now, as far as those  
5 people are concerned, the program is over.

6 Senator Armstrong. Well, Mr. Chairman, I've had my  
7 say. I'm going to vote with you simply because that seems to  
8 me to be the practical way to bring it to a conclusion in the  
9 fairest manner.

10 But I'm really troubled by it. I'm sorry for the  
11 people who are unemployed, but I do not think we are being  
12 helpful to them to hold out the prospect that this might be  
13 continued beyond the 6th of April or whatever date we now  
14 set.

15 The Chairman. Senator Dole.

16 Senator Dole. Could I just ask Mr. VanErden. Don't  
17 under some states you have supplementary benefits --  
18 Maryland, Oregon?

19 Mr. VanErden. Yes, sir. Several states have their  
20 own supplemental programs.

21 Senator Dole. A number of states with surpluses are  
22 talking about big tax cuts. I guess they can go ahead and --

23 Mr. VanErden. Yes, sir. The states have that problem.

24 The Chairman. Let me assure you Oregon is not one of  
25 the states talking about a tax cut.

1 Senator Dole. Are there other states?

2 Mr. VanErden. Maryland, as you mentioned, does have  
3 a special program also, sir.

4 The Chairman. Further comments?

5 Senator Moynihan. Mr. Chairman, just as a general  
6 point, you have been very generous about the thought that  
7 there are a lot of questions that need a good look at as we  
8 start a new Presidential term, a new chairman of the  
9 Committee. A number of us have legislation in on this  
10 question and as it connects with the question of trade.

11 Could we think of having hearings further on down  
12 when we aren't under the immediate pressure of the  
13 legislative deadline that faces us today?

14 The Chairman. I would be happy to have hearings. And  
15 I share the same philosophy that the Senator from Colorado  
16 does. I would like to have hearings and see if there is a  
17 way that somehow a program could be structured.

18 Senator Moynihan. I think the Senator from Colorado  
19 raised a good question.

20 The Chairman. I do, too.

21 Senator Moynihan. Thank you.

22 The Chairman. Further discussions?

23 (No response)

24 The Chairman. If not, I will move that the amendment of  
25 mine before you that the present program be extended until

1 those beneficiaries who are currently collecting run out  
2 their benefits under the existing law.

3 Senator Heinz. Mr. Chairman, a parliamentary inquiry.

4 The Chairman. Yes.

5 Senator Heinz. If I'm proposing mine as a substitute or  
6 an amendment to yours, do we vote on mine first and then  
7 yours?

8 The Chairman. That's correct.

9 Senator Heinz. Very well.

10 The Chairman. And yours is an extension of three  
11 months.

12 Senator Heinz. That's right.

13 Senator Chafee. I second yours, Mr. Chairman.

14 The Chairman. Any further discussion on the amendment  
15 of the Senator from Pennsylvania?

16 (No response)

17 The Chairman. If not, we will vote.

18 Senator Bentsen. What is the extension?

19 The Chairman. A three month extension.

20 Ms. Olson. Senator, this is the House Ways and Means  
21 Subcommittee proposal?

22 Senator Heinz. Substantially, yes.

23 Mr. VanErden. Our latest estimate of the House  
24 proposal is \$415 to \$480 million.

25 The Chairman. And mine is \$160 to \$180 million?

1 Mr. VanErden. Yes, sir.

2 The Chairman. The Clerk will call the roll on the  
3 amendment of the Senator from Pennsylvania.

4 The Clerk. Mr. Dole?

5 Senator Dole. No.

6 The Clerk. Mr. Roth?

7 Senator Roth. No.

8 The Clerk. Mr. Danforth?

9 (No response)

10 The Clerk. Mr. Chafee?

11 Senator Chafee. No.

12 The Clerk. Mr. Heinz?

13 Senator Heinz. Aye.

14 The Clerk. Mr. Walliop?

15 (No response)

16 The Clerk. Mr. Durenberger?

17 The Chairman. No, by proxy.

18 The Clerk. Mr. Armstrong?

19 Senator Armstrong. No.

20 The Clerk. Mr. Symms?

21 Senator Symms. No.

22 The Clerk. Mr. Grassley?

23 The Chairman. No, by proxy.

24 The Clerk. Mr. Long?

25 (No response)

1 The Clerk. Mr. Bentsen?

2 Senator Bentsen. No.

3 The Clerk. Mr. Matsunaga?

4 Senator Matsunaga. No.

5 The Clerk. Mr. Moynihan?

6 Senator Moynihan. Aye.

7 The Clerk. Mr. Baucus?

8 (No response)

9 The Clerk. Mr. Boren?

10 (No response)

11 The Clerk. Mr. Bradley?

12 (No response)

13 The Clerk. Mr. Mitchell?

14 Senator Mitchell. No.

15 The Clerk. Mr. Pryor?

16 Senator Pryor. No.

17 The Clerk. Two yeahs, 11 nays.

18 The Chairman. The amendment fails.

19 The Senator from Montana.

20 Senator Baucus. No.

21 The Chairman. The amendment fails. Is there further  
22 discussion on my proposal?

23 (No response)

24 The Chairman. If not, the Clerk will call the roll on  
25 extending the benefits for those who are currently on them



1 The Clerk. Mr. Dole?  
2 Senator Dole. Aye.  
3 The Clerk. Mr. Roth?  
4 Senator Roth. Aye.  
5 The Clerk. Mr. Danforth?  
6 Senator Danforth. Aye.  
7 The Clerk. Mr. Chafee?  
8 Senator Chafee. Aye.  
9 The Clerk. Mr. Heinz?  
10 Senator Heinz. Aye.  
11 The Clerk. Mr. Wallop?  
12 (No response)  
13 The Clerk. Mr. Durenberger?  
14 The Chairman. Aye, by proxy.  
15 The Clerk. Mr. Armstrong?  
16 Senator Armstrong. Aye.  
17 The Clerk. Mr. Symms?  
18 Senator Symms. Aye.  
19 The Clerk. Mr. Grassley.  
20 The Chairman. Aye, by proxy.  
21 The Clerk. Mr. Long?  
22 Senator Long. Aye.  
23 The Clerk. Mr. Bentsen?  
24 Senator Bentsen. Aye.  
25 The Clerk. Mr. Matsunaga?

1 Senator Matsunaga. Aye.

2 The Clerk. Mr. Moynihan?

3 Senator Moynihan. Aye.

4 The Clerk. Mr. Baucus?

5 Senator Baucus. Aye.

6 The Clerk. Mr. Boren?

7 Senator Boren. Aye.

8 The Clerk. Mr. Bradley?

9 (No response)

10 The Clerk. Mr. Mitchell?

11 Senator Mitchell. Aye.

12 The Clerk. Mr. Pryor?

13 Senator Pryor. Aye.

14 The Chairman. Senator Danforth is aye by proxy.

15 The Clerk. Mr. Chairman?

16 The Chairman. Aye.

17 The Clerk. Sixteen yeas.

18 The Chairman. The amendment is reported.

19 I would like to move on now to record keeping, a subject  
20 of mine of interest and to one or two members on the  
21 Committee.

22 I'd like to call on John Colvin.

23 We will let the room clear out just a moment of those  
24 who have interest only in the unemployment subject.

25 (Pause)

1           The Chairman. I'd like to ask John Colvin to go  
2 through, if he would, the issue on record keeping and a  
3 little bit of the history of what was the law prior to the  
4 tax bill last year, what the IRS has done, and what our  
5 options are now.

6           John.

7           Mr. Colvin. Thank you, Mr. Chairman.

8           This issue is also --

9           The Chairman. Could we have order, please?

10          Mr. Colvin. This issue is also on the Ways and Means  
11 agenda this morning. And our staff materials are the same  
12 as the Ways and Means material with two exceptions, which  
13 I will get to.

14          You have three items in front of you on this issue.  
15 The first is a three paged summary. The second is a more  
16 detailed explanation, which is nine pages. And the third is  
17 a joint committee explanation, which is singled spaced,  
18 which is three pages.

19          I will work from the nine paged item. But before I  
20 start, I would like to make sure that you do have that in  
21 front of you.

22          The Chairman. Go through that again.

23          Mr. Colvin. I --

24          The Chairman. What have we got?

25          Mr. Colvin. I would like for you to have in front of

1 you the nine paged Finance Committee staff materials, which  
2 looks like this.

3 The Chairman. All right. Automobile requirements,  
4 areas for Finance Committee decisions. Nine pages.

5 Mr. Colvin. This outline covers the issues which are  
6 on the agenda for this morning.

7 The first issue is the contemporaneous record keeping  
8 requirement.

9 The Chairman. Talk a little louder, John. Pull the  
10 mike up.

11 Mr. Colvin. The first issue is the contemporaneous  
12 record keeping requirement. Near the top of Page 1, you  
13 see a statement of old law before 1984. Under old law,  
14 you would have been required to substantiate these deductions  
15 by having either adequate records or sufficient evidence  
16 corroborating the taxpayer's statement.

17 At the top of Page 2, you see the change made by the  
18 Tax Reform Act of 1984. Its standard was changed to require  
19 substantiation by adequate contemporaneous records.

20 The Chairman. In other words, the law before was that  
21 they didn't have to be contemporaneous. Did they have to be  
22 in writing or could you substantiate them in any way that  
23 satisfied the IRS?

24 Mr. Colvin. It was not specifically required to be in  
25 writing.

1 Mr. Weiss. There were some cases that -- for example,  
2 in the tax court -- that did allow oral statements at the  
3 time of the expert case.

4 The Chairman. So the change is contemporaneous.

5 Mr. Colvin. Yes, sir.

6 The Chairman. All right.

7 Mr. Colvin. On Page 3 are outlined some ideas for  
8 changing this area which are the same as those that are  
9 before the Ways and Means Committee this morning.

10 The first change would be to drop the word  
11 "contemporaneous" from the statute. And also to repeal all  
12 IRS regulations interpreting that word.

13 The second change would be to reinstate the pre-1984  
14 standard, which is restated there in the middle of Page 3.

15 At point C, down at the bottom -- I'll skip over the  
16 options for just a moment -- point C at the bottom would  
17 call for adding some yes or no questions to the applicable  
18 tax forms to improve the likelihood of compliance in this  
19 area in lieu of a contemporaneous standard. This follows  
20 a couple of questions that are currently on the business  
21 expense form, from 2106, but it expands those somewhat.

22 So those three changes would be made as shown on Page  
23 3.

24 Now I'd like to talk a minute about the option. The  
25 option is contained in the Ways and Means material this

1 morning.

2 The Chairman. What page are you on now, John?

3 Mr. Colvin. I'm near the bottom of Page 3.

4 The Chairman. All right. Where it says "option."

5 All right.

6 Mr. Colvin. Yes, sir.

7 And let me put this in perspective. If you do not  
8 include the option, the revenue effect of this package is  
9 a revenue loss of about \$150 million a year. If you do  
10 include the option, the revenue loss of the package is about  
11 \$75 million a year.

12 The option would call for strengthening the pre-1974  
13 standard to require that the evidence be in writing, which  
14 corroborates the taxpayer's statement. In other words, it  
15 would be a requirement that the evidence be in writing.

16 The Chairman. But it wouldn't have to be  
17 contemporaneous.

18 Senator Symms. Pre-1984, John.

19 Mr. Colvin. Yes, sir, Senator Symms.

20 And so if you wanted to see how that would read, look  
21 in the middle of Page 3 and you see the old law. The way  
22 it would read under the option would be "adequate records  
23 or sufficient written evidence corroborating the taxpayer's  
24 own statement."

25 The Chairman. I want to welcome Senator Abdnor here

1 because it is his bill that was first introduced on this  
2 subject. And I appreciate very much him being the first  
3 one to alert us to this problem. It didn't take very long  
4 for the rest of us to become quite aware of it, but his  
5 was the first bill.

6 Mr. Colvin. Mr. Chairman, would you like me to  
7 continue through the outline or would you like to discuss  
8 the contemporaneous record keeping issue first?

9 The Chairman. Well, first, I want to go on the  
10 contemporaneous issue.

11 By adding the word "written," the estimates of saving  
12 are from \$150 million loss to a \$75 million loss?

13 Mr. Colvin. That would be the average over the first  
14 four years.

15 The Chairman. Just by adding "writing." And  
16 writing, again, it doesn't mean contemporaneous. It means  
17 at the end of the year the taxpayer says in writing I used  
18 this car this year 27,000 miles of which 18,000 of it were  
19 for business purposes and here is where I went and what I  
20 did. And that's in writing. And you hope that satisfies  
21 the IRS.

22 Mr. Weiss. Well, I think it would be somewhat -- the  
23 idea, I think, is written documentary evidence. So, for  
24 example, if you had a salesman who was claiming X percent was  
25 business use, there would be written receipts showing that he

1 had gone and actually made sales trips. So it would not  
2 be any -- it would be very different from an actual log.  
3 It would simply be some piece of paper to point to...  
4 Gasoline receipts, that kind of thing.

5 The Chairman. He had jolly well better at least get  
6 his records contemporaneously then. At the end of the year,  
7 he's going to have to go through and say here is my credit  
8 card receipts for gasoline, here are the hotels I stayed  
9 at, here are the receipts. He's got to have all that  
10 information.

11 Mr. Weiss. He would had to have kept the written  
12 piece of papers that he may have accumulated during the  
13 course of his business so that if the IRS came in and said  
14 do you have anything at all to show that this is a  
15 reasonable statement of your business use, he could say,  
16 yes, I have some receipts.

17 The Chairman. The Senator from Pennsylvania and then  
18 the Senator from Maine.

19 Senator Heinz. Just a question. This sounds a little  
20 bit to me like contemporaneous record keeping being kicked  
21 out the front door and going around to the back of the  
22 house and getting into the kitchen here.

23 Does the Internal Revenue Service favor this particular  
24 option?

25 Mr. Pearlman. I'm not from the Internal Revenue Service,



1 but I'll try to answer that, Senator.

2 Let me make an observation.

3 Senator Heinz. The Treasury Department.

4 Mr. Pearlman. And I do think, Senator, that there is --  
5 that the Committee is going to be confronted with the  
6 problem of what is viewed as contemporaneous and what, in  
7 fact, is Congress doing when it changes the law under this  
8 suggestion.

9 And I do have a slight variance on that that might be  
10 helpful.

11 It seems to me that we all have to recognize that it's  
12 helpful and important for people to have written records.  
13 It's best if people have contemporaneous records. They are  
14 obviously the best evidence of an expense. All records,  
15 obviously, will not be contemporaneous. That doesn't mean  
16 the records are bad or unreliable. That just means they  
17 are less reliable than contemporaneous records.

18 What I'm concerned about -- and what I think we are  
19 concerned about -- is that a requirement of written records  
20 that makes clear that they don't have to be contemporaneous,  
21 which my guess is will ultimately be the case; that is,  
22 that one of the pressures, obviously, on this legislation  
23 has been the requirement of the records needing to be  
24 contemporaneous. That's not the only pressure, but certainly  
25 one of them.

1           The Chairman. Sure looks to me like you've got to keep  
2 all of your receipts in a shoe box. And at the end of the  
3 year, they had better be the equivalent of contemporaneous.

4           Mr. Pearlman. The concern that I have, Mr. Chairman,  
5 is with the person that doesn't do that or doesn't have  
6 receipts. And it's my judgment that we should not create  
7 a statutory standard that conditions deductibility on  
8 written records and encourages people, because they have  
9 no option, because they don't have the shoe box of receipts,  
10 to create written documents at the end of the year that we  
11 would conclude are improper.

12           And that I would suggest that the better approach for  
13 the Committee to consider would be to recognize that there  
14 is a variety of evidence -- and there is precedence for  
15 this. There is precedence in regulations under Section  
16 274(d) that have been in existence for a number of years.

17           And let me say I think that if we were to go this  
18 approach, we certainly want to make sure that the staffs  
19 have a chance to look at those regulations and make sure  
20 that they don't go too far, they don't overreach.

21           But the spirit of those regulations is to recognize  
22 that there's a variety of evidence that is relevant in  
23 establishing a deduction. And written evidence is important.  
24 And evidence that is closer to the event is more reliable  
25 evidence than evidence that is not closer to the event. But

1 that oral evidence is also acceptable. And statements by  
2 the taxpayer is acceptable. In other words, that you look  
3 at whatever a taxpayer has available. It could be receipts.  
4 It can be a calendar. It can be an expense account. Or if  
5 the taxpayer doesn't have that information, then he can  
6 rely on third party records. He can rely on his own oral  
7 statement.

8 That all of those things are important in establishing  
9 a deduction.

10 Senator Heinz. Mr. Chairman, if I understand Mr.  
11 Pearlman's statement, then, the Treasury Department is  
12 opposed to the option we were discussing, the one requiring  
13 sufficient written evidence. And as I understand what he  
14 is saying, they favor the repeal of the contemporaneous  
15 record keeping requirement, and they ask that we reinstate  
16 the pre-1984 Act standards.

17 Mr. Pearlman. Well, Senator, I don't think it's  
18 quite what I said.

19 Senator Heinz. I'm not trying to put words in your  
20 mouth.

21 Mr. Pearlman. No, I understand. Let me make sure  
22 that my suggestion is understood.

23 In the real world, I think we all recognize the need to  
24 change the 1984 Act. We felt strongly the contemporaneous  
25 record keeping rule was a good rule. I happen to believe it

1 is a good rule. And that it could be designed in a way that  
2 people could live with it, but that's water over the dam.

3 So we just assume that we are going to have to do  
4 something with the contemporaneous record keeping requirement.

5 I happen to believe that written records are important,  
6 but I don't want to see a statutory standard that forces  
7 people to manufacture written records. And for that  
8 reason, I think it is better to have a standard -- and it  
9 is not prior law as has been described here. It's not the  
10 adequate record standard. It's the regulations under  
11 Section 274.

12 Senator Heinz. Could I clarify this? Again, I'm not  
13 trying to put words in your mouth.

14 You are saying if it's Congress' will to repeal the  
15 contemporaneous record keeping requirements, which you may  
16 or may not disagree with personally, the way to do it is  
17 reinstate the 1984 Act, but don't use the word "written."

18 The Chairman. You mean reinstate the pre-1984 --

19 Senator Heinz. Pre-1984 Act, excuse me.

20 Is that what you are saying?

21 Mr. Pearlman. What I would like to do is see us use  
22 statutory language that gets us to the rules that apply to  
23 overnight travel before the 1984 Act. And that raises the  
24 level of documentation in the way I have just described to  
25 you.

1           It does recognize that written records are of higher  
2 weight in the examination process than oral records. It  
3 recognizes that records that are created at or near the  
4 event are of a higher quality than records created down the  
5 road.

6           But it doesn't say one kind of record is acceptable and  
7 one kind is not. And my judgment is that that would put less  
8 pressure on the manufacturing of records, and that's  
9 frankly what we are concerned about.

10          The Chairman. The Senator from Maine and then the  
11 Senator from Idaho.

12          Senator Mitchell. Mr. Chairman, I just want to support  
13 in what Mr. Pearlman said. It's an interesting commentary  
14 on a society that we have a fascination with documents as  
15 though they impart a greater weight to evidence than  
16 otherwise.

17          It's interesting that we decide the most important  
18 events in individual's lives on the basis of oral testimony.  
19 No murder trial has ever been decided on the basis of a  
20 written document, or a rape trial.

21          People are sent to prison for life or to death on the  
22 basis of oral testimony. And yet here this option presumes  
23 that because something is in writing it is of greater  
24 significance in weight than something orally, when, in fact,  
25 the opposite is usually true.

1           The relevant fact, Mr. Pearlman, is timing. Not  
2 whether it's oral or written. An oral statement at the time  
3 an event occurs is ordinarily far more reliable than a  
4 written document prepared some period of months after the  
5 event occurred.

6           And so I think that we ought to go back to the old  
7 law. What's wrong with the old law?

8           Mr. Pearlman. Again, the thing I don't want to do is  
9 leave a misimpression about what we all mean as old law.  
10 What people have tended to say in terms of old law when this  
11 issue has come up over the last six months is the old law  
12 that applied to the use of automobiles, sort of everyday  
13 operation.

14           I'm talking about a different old law. I'm talking  
15 about the law that is in effect for use of property,  
16 including vehicles for overnight. And that is a higher  
17 standard under old law.

18           The Chairman. I'm confused about his answer now.

19           Senator Mitchell. Mr. Chairman, let me just read from  
20 the document that Mr. Colvin just presented to us. And if  
21 this is incorrect then, Mr. Pearlman, I think you should  
22 tell us that.

23           Mr. Pearlman. Okay.

24           Senator Mitchell. This document says -- and it was  
25 used by the Ways and Means Committee according to what Mr.

1 Colvin said -- that the pre-1984 Act standards provide that  
2 taxpayers could be required to substantiate deductions for  
3 automobiles or other areas listed above with either adequate  
4 records or sufficient evidence corroborating the taxpayer's  
5 own statement.

6 So my question is: What's wrong with that?

7 Mr. Pearlman. As amplified by the regulations, I  
8 think there is nothing wrong with that. Amplified by the  
9 old regulation.

10 Senator Mitchell. What we are talking now about is  
11 the provision of law which changed this to provide for  
12 contemporaneous written records and the regulations that  
13 were promulgated pursuant to that change in law.

14 So I think, Mr. Chairman, he agrees, obviously. I  
15 think there is no sentiment in the world, so why don't we  
16 just repeal that provision and the regulations that were  
17 promulgated pursuant to that. And then if there is a  
18 separate problem, we ought to go into that. But that's a  
19 different action than repealing that provision and the  
20 regulations that way.

21 The Chairman. George, as you always do, you were  
22 very judicial and you stated it exactly. There are some  
23 other issues in terms of valuation and what's an airplane  
24 flight worth and police cars and things of that nature.

25 That's a different issue from record keeping.

1 Senator Mitchell. Right.

2 The Chairman. And I've got a feeling other people  
3 have some concerns on those other issues. But for the  
4 moment, I would like to stick to the record keeping issue  
5 and see if we can resolve that and then we will go on to the  
6 others.

7 Senator Mitchell. At the appropriate time, Mr.  
8 Chairman, I move its repeal and the regulations promulgated  
9 pursuant to it.

10 The Chairman. The Senator from --

11 Senator Baucus. Well, Mr. Chairman, I want to --  
12 Mr. Chairman, is your amendment pending now to repeal the  
13 record keeping? I have the Wallop amendment prepared which  
14 does address the same question the Senator from Maine is  
15 talking about.

16 The Chairman. John, the amendment pending we have --

17 Mr. Colvin. Speaks to the contemporaneous requirement.

18 The Chairman. Is this Senator Abdnor's amendment?

19 Mr. Colvin. Yes, sir.

20 Senator Symms. This repeals it, the pre-1984 law.

21 Mr. Colvin. Yes, sir.

22 The Chairman. Wait a minute. You mean the pre-1984 --

23 Mr. Colvin. No.

24 The Chairman. The repeal of the 1984 law?

25 Mr. Colvin. It repeals the 1984 change.



1 Senator Symms. We're back where we were before the  
2 1984 law.

3 Mr. VanErden. If I understand the amendment correctly, it  
4 does retain the standards that were just described --  
5 sufficient evidence corroborating the taxpayer's own  
6 statement insofar as that would be a standard for auto-  
7 mobile expenses.

8 The source of the confusion -- let me just explain.

9 Senator Symms. Well, my question is: The amendment  
10 that I have prepared to offer speaks to the valuation  
11 question as a part of -- the Chairman may want to offer  
12 these in separate --

13 The Chairman. I would like to offer them in separate.  
14 I would like to stick, if we can, for the moment to the  
15 record keeping issue because there are some valuation issues  
16 that we want to get to.

17 Senator Symms. Do we have an amendment pending now  
18 then that would take us to pre-1984 law on record keeping?

19 Mr. VanErden. I think that's not exactly --

20 The Chairman. John.

21 Mr. Colvin. Let me see if I can clarify this. It  
22 sounds like there is disagreement in this area, and I don't  
23 believe that there is.

24 The 1984 changes really did two things. They added a  
25 contemporaneous requirement and they added an additional

1 group of subjects that they applied to, which are termed  
2 "listed property."

3 The Chairman. Termed what?

4 Mr. Colvin. Listed property.

5 The items of listed property are listed on Page 2 of  
6 this document.

7 What is proposed this morning in this hand-out is that  
8 the contemporaneous standard be dropped but that the areas  
9 of listed property would still be subject to substantiation  
10 requirement. That is what has been proposed by the bills  
11 that have been introduced, what Ron Pearlman was saying.

12 And, Senator Mitchell, I believe it speaks to the  
13 point you were raising also.

14 The Chairman. Well, the listed property of passenger  
15 automobiles and any other property used for transportation,  
16 property used for entertainment, amusement or recreation,  
17 computers, and peripheral equipment and any other property  
18 specified by the Secretary.

19 Mr. Colvin. Yes, sir. And the effect of this package  
20 is to drop the contemporaneous requirement for them, but  
21 to leave them subject to the substantiation rules.

22 Senator Mitchell. Mr. Chairman, a parliamentary  
23 inquiry. He mischaracterized my statement.

24 I am for repealing, period, what we did in 1984.

25 The Chairman. Including the listed property.

1 Senator Mitchell. Everything. And then if there is a  
2 separate problem, we should deal with that in separate  
3 distinct steps that we all understand what's happening.

4 The problem we have now is nobody understood what was  
5 going on when this thing was enacted. And we act without  
6 any understanding of the implications of our actions.

7 I think we should take it one step at a time. And the  
8 first step, which I move, is that we repeal what we did in  
9 1984, period.

10 Senator Heinz. Mr. Chairman, a parliamentary inquiry.

11 The Chairman. Yes.

12 Senator Heinz. Are we not, in effect, considering  
13 Senator Abdnor's bill, S, 245?

14 The Chairman. That's correct.

15 Senator Heinz. Is that not the vehicle before us?

16 The Chairman. Correct. Subject to amendment.

17 Senator Heinz. Would it be helpful if counsel  
18 indicated whether or not 245 did what Senator Mitchell  
19 wants to do?

20 The Chairman. John.

21 Mr. Colvin. Senator Heinz, it does not. It drops the  
22 contemporaneous standard but not the listed property.

23 Senator Heinz. So what Senator Mitchell wants to do is  
24 amend 245 to drop the listed property?

25 Mr. Colvin. Yes, sir.

1 Senator Heinz. Thank you.

2 The Chairman. Let me ask -- and then I'm going to  
3 recognize Senator Pryor -- let me ask Treasury if they know  
4 what the revenue loss would be if you both go back to the  
5 standard of proof and drop the listed property.

6 Mr. Pearlman. No, I do not have a revenue estimate.

7 The Chairman. I assume it would have to be somewhat  
8 greater than \$150 million just going back to the standard  
9 of proof, which was \$150 million.

10 Mr. Pearlman. Clearly.

11 The enumerated items include automobiles where we  
12 assume that automobiles would be covered anyway. Other means  
13 of transportation -- entertainment, recreation, amusement,  
14 and computers, those are the enumerated items.

15 Frankly, we have not heard -- I mean we think there is  
16 a need for record keeping -- some kind of record keeping --  
17 with respect to those items, whether it's oral assertions  
18 or written. And I don't think we've heard any criticisms  
19 about the need to at least substantiate the deduction for  
20 those items.

21 Senator Pryor. Mr. Chairman.

22 The Chairman. Senator Pryor was next.

23 Senator Pryor. Yes, Mr. Chairman. First, I'm having  
24 a very difficult time hearing the witness. There seems to be  
25 a lot of commotion in the room. Maybe we could get everyone

1 to remain a little quieter, if we might.

2 But every once in a while we do something that sets  
3 off a firestorm. And this is an issue that has set off a  
4 firestorm in America. And I have gotten 100 to 1 more  
5 letters on this particular issue than I ever got on a vote  
6 on the MX missiles. So that will give us a little idea of  
7 how far-reaching this is.

8 I would like to join with Senator Mitchell and like to  
9 talk just one second about the word "written." Because I  
10 think if we have anything in our proposal today that we  
11 adopt that implies or calls for a written contemporaneous  
12 report or record keeping, what we are really doing is saying  
13 we are going to be back here in a few months after the IRS  
14 adopts what has to be written in those regulations pursuant  
15 to it.

16 So I think we should repeal the law.

17 The second thing -- we have talked about the loss if  
18 option 3 or 4 or whatever the options were were not accepted.  
19 And my question to Mr. Colvin is! What does it cost the  
20 Government to implement the IRS regulations of a written  
21 nature? We've talked about the loss if we don't adopt  
22 some sort of a system. What are we talking about the cost  
23 of the IRS and to the taxpayers to implement this proposal  
24 if we add to the legislation before 1984?

25 Mr. Colvin. I don't know, Senator Pryor.

1 Senator Pryor. Thank you. I will join Senator Mitchell  
2 and others in seeking repeal.

3 The Chairman. Senator Roth and then Senator Chafee.

4 Senator Roth. Well, Mr. Chairman, I share the same  
5 concern that has been expressed by Dave Pryor. I've never  
6 had such an outrage at home as I have over this piece of  
7 legislation. Maybe it was the same thing with TRU and OSHA  
8 when they wanted to have the farmers, I think, bring about  
9 the privvie so many yards. I think we had the same kind of  
10 reaction to that that we do to these rules.

11 So I strongly agree that we ought to go all the way  
12 back to where we were before the 1984 legislation.

13 But let me just ask one question of Mr. Pearlman.  
14 Because I think there ought to be some consistency as to  
15 what we do in Government as well as outside of Government.  
16 And, of course, a number of cars are made available to  
17 members of the Executive Branch, the Congress, the Supreme  
18 Court Justices.

19 Would you propose that the same kind of record keeping  
20 be maintained within Government as it's done in the private  
21 sector? Or do you think the rules should be consistent?

22 For example, should we permit portal to portal  
23 transportation within Government, but call that a private  
24 use in the private sector?

25 Mr. Pearlman. Senator, we don't view the rules as

1 either under prior law or any changes as applying  
2 differently to within Government or out of Government.

3 I think there are questions concerning transportation,  
4 if you are talking about automobile transportation, that  
5 are going to come up both in the public and private sector.  
6 The most common one is what is the relevance of the need  
7 for security in transportation as to the valuation, for  
8 example, of --

9 Senator Roth. I think you make a valid point, but I  
10 suppose if you say the question is security, then there  
11 should be total transportation for those involved within  
12 Government.

13 Mr. Pearlman. It may be a valuation issue. It may be  
14 a question of whether there is any --

15 Senator Roth. You're not suggesting that all that have  
16 cars made available within Government is done because of  
17 security.

18 Mr. Pearlman. No. Let me say it again. I think that  
19 the rules -- we view the rules as equally applicable to  
20 automobiles used in Government as outside of Government, but  
21 there are issues that are going to come up with respect to  
22 that.

23 Senator Roth. How do you handle portal to portal  
24 within Government as far as income tax is concerned?

25 Mr. Pearlman. Well, I presume the Department -- I

1 simply don't know how the departments handle that.

2 The Chairman. All you are suggesting is that Govern-  
3 ment and non-Government be treated the same?

4 Mr. Pearlman. Yes.

5 The Chairman. And, indeed, you have some security  
6 exceptions in private employment where people are  
7 chauffeured because of security reasons and that does not  
8 count as income.

9 Mr. Pearlman. Correct. We think it's a valuation  
10 issue. I don't think it's a no income versus income issue.  
11 I think it's a valuation issue. But it seems to me the  
12 rules should be the same whether it's Government or non-  
13 Government.

14 Senator Roth. But you don't know what the rules are  
15 as to Government utilization?

16 Mr. Pearlman. Well, I think what you are really asking  
17 me is what do the various departments and agencies do in  
18 fact, and I simply can't answer you. I don't know.

19 The Chairman. Senator Chafee.

20 Senator Chafee. Well, Mr. Chairman, I'm disturbed over  
21 the drift of this procedure here today. We're talking some  
22 tough measures in this Government now. We're talking even  
23 suggesting skipping Social Security COLAS. We're talking of  
24 freezing education, freezing health. And now we have got a  
25 compliance problem here. And the latest statistics that I



1 have available in Mr. Edgar's testimony before the Ways and  
2 Means Committee, he said that taxpayers claim well over  
3 \$3 billion in excess tax benefits in this particular area.

4 Now the suggestion seems to be that we go back to where  
5 the situation in 1984 was -- pre-1984. Well, I want to  
6 say include me out as far as that goes.

7 The Chairman. Well, now wait. He didn't say that there  
8 are \$3 billion in benefits being claimed wrongly, did he?  
9 He was just saying that's what is being claimed.

10 Mr. Pearlman. Yes.

11 Senator Chafee. In excess, that what it means. Excess  
12 tax benefits. That's correct.

13 And so while we are trying to do something about these  
14 deficits and some draconian proposals that have come before  
15 this Congress, and indeed we will have to act on -- everybody  
16 has seen the Administration's proposals and nobody seems to  
17 have much better ones. And I haven't seen anybody in this  
18 Congress that doesn't give a really tough talk on compliance.

19 Now I think that what happened to the regulations in  
20 this matter were excessive. And we've all gotten mail. But  
21 I'm not, for one, wanting to beat a retreat to where we were  
22 before.

23 As I understand the proposals here, it's a little  
24 confusing exactly what is on the table. I'll confess I'm  
25 not clear what Senator Mitchell has proposed.

1 Senator Mitchell. If I may --

2 Senator Chafee. Let me just finish, if I might.

3 But as I understand what Mr. Pearlman is saying, that  
4 he wants to have the Section 274(d) regs in which are a  
5 higher standard than the old proposals.

6 And I'm not saying we've got to stick with what we did  
7 in 1984 or the pursuant regs because I think they went too  
8 far, but I think if we go back to where we were completely,  
9 we've just thrown in the towel here.

10 And I think that's a bad procedure. It may be  
11 politically popular. There is a lot of jazz to that. There's  
12 no question.

13 The Chairman. I think I can restate what you are going  
14 to do, but I want to ask him a question on cost.

15 What George is suggesting is we go literally back to the  
16 pre-1984 standard both as to record keeping and as to  
17 properties covered.

18 What Senator Abdnor's proposal related to was just the  
19 record keeping, but it did not relate to the properties  
20 covered.

21 But I want to know about this \$3 billion figure versus  
22 the \$150 million figure that was thrown around earlier in  
23 this testimony. Is it the statement or Treasury or IRS  
24 that prior to 1984 roughly \$3 billion in revenue was being  
25 lost because of cheating on transportation? What is the

1 figure?

2 Mr. Pearlman. I'm looking at the Commissioner's  
3 testimony before the Ways and Means Committee on March 5th,  
4 Mr. Chairman. And in that testimony -- it's 1979, which is  
5 the year they looked at because I guess probably  
6 that was the most recent data.

7 And the Commissioner said, and I'm quoting him: "To  
8 summarize the schedule C in Form 2106, 2106 being the  
9 automobile expense form, we estimate that approximately  
10 50 percent of the 11.3 million returns claiming these  
11 expenses would be subject to adjustment. While we do not  
12 have current estimates of lost revenue resulting from the  
13 overstatement of expenses, our data indicates that tax-  
14 payers claimed well over \$3 billion in excess tax benefits."

15 Now that's different than talking about a revenue loss,  
16 a tax loss. In addition, it's different than talking about  
17 what the 1984 Act would do to that number. They went back  
18 and looked at returns in a certain year based on their  
19 review; estimated that there was excess deductions claimed  
20 of \$3 billion.

21 The Chairman. Now what's the \$150 million figure?

22 Mr. VanErden. The \$150 million is essentially an  
23 estimate of change in compliance that could be -- it's  
24 estimated would occur if there had to be written  
25 documentary evidence to back up --

1 The Chairman. Written contemporaneous?

2 Mr. VanErden. No, no, no. Documentary of some sort.

3 The way that the IRS interpreted contemporaneous was that  
4 the taxpayer affirmatively had to create a new document, i.e.,  
5 a log that would not have otherwise been created.

6 The proposal that was estimated was the \$150 million  
7 figure assumes that the taxpayer would not have to create  
8 any new documents, but would simply have to have teeth or  
9 whatever that ordinarily would exist from the normal course  
10 of business in order to document their statement on the  
11 tax return.

12 The Chairman. I'm confused.

13 The Senator from Texas.

14 Senator Bentsen. Let me get back to the \$3 billion  
15 figure, again. Because the very nature of that problem is  
16 very difficult to say how much that really is. You always  
17 worry that they might have just reached out and got  
18 themselves a number.

19 Now the other point that has to be made is if that was  
20 a true number, that still doesn't mean anything like that in  
21 the way of loss to the Treasury because that would depend  
22 on what the tax rate that particular individual was paying.  
23 So that cuts that figure down.

24 Even with that, of course, it's an enormous figure, but  
25 nothing like the \$3 billion. Isn't that correct?

1 Mr. Pearlman. Senator, I think you are right. And I  
2 think those items go into the explanation as to why on the  
3 one hand Commissioner Eggar talked about \$3 billion and on  
4 the other hand why Mr. Weiss has mentioned a \$150 million  
5 tax number.

6 There will be overstatement of deductions no matter  
7 what the rules are. And, in addition to that, when you look  
8 at a particular year, you can't generalize beyond that as  
9 to --

10 And, obviously, this is a deduction number; not a  
11 revenue item.

12 So I would suggest for the Committee's purpose while  
13 the Commissioner's testimony illustrates the significance  
14 of the problem and it was for that reason we were  
15 supportive of the Congress' efforts last year -- and there  
16 is a problem. I think everyone has to understand. It is a  
17 serious problem. That it is better to rely on the revenue  
18 estimates that have been done in terms of going forward.

19 Senator Bentsen. Mr. Chairman, if I might. I think  
20 the big problem is not so much having written records,  
21 documents, that back you up, it's the problem of the daily  
22 log that really bugs people. And if you will indulge me  
23 for just a minute, this is one of the letters I received.

24 He says: "I'm writing of a problem most serious and  
25 grave, one with which I deal with each day to which my time

1 is a slave. Was lunch completely business? Did I enjoy  
2 my business deal? If so, was it then pleasure and not  
3 deductible for real? If on the way to work this morning  
4 I checked the construction job I have, did the mileage  
5 count for full or was it commuting and then just half?  
6 God forbid I should lose the book where I keep these detailed  
7 notes. The cost would be enormous. The Feds would make me  
8 broke.

9 "The stupid rule is more than pain. It's onerous and  
10 bad. If you want to increase taxes, just raise the rates a  
11 tad.

12 "I know your budget is not balanced, your finances are  
13 a mess, but please don't try to reign on me with rules  
14 that can't be met. Cut the budget, bite the bullet, do  
15 something with Defense. Eliminate expenses, programs or  
16 entitlements without end. Cut the fat, fry the pork barrels,  
17 stop junkets to and fro. Nullify the subsidies, let not the  
18 budget grow.

19 "Yes, do these things and others till your problems  
20 have been licked, but please don't require mileage laws,  
21 the work time wasted makes me sick."

22 (Laughter)

23 (CONTINUED ON NEXT PAGE)

24

25

1           Senator Mitchell. I just would point out first that  
2 nothing better illustrates the need to repeal this than the  
3 confusion that exists here. We who write the tax laws and the  
4 experts who advise us obviously are in a state of confusion.

5           Secondly, I want to make clear to Senator Chafee, I do  
6 not rule out changing what existed prior to '84. What I am  
7 saying is, if there is a case to be made for that, it ought  
8 to be made, separately.

9           I say take the first step, get us back to where we were,  
10 and then let those who advocate making a change do so and make  
11 the case for it. But to now go back part way and not part way  
12 in a way that none of us fully understand it, I think is  
13 exactly what's wrong, and we'll repeat the problem that we  
14 created then. So I think we should repeal it and then take  
15 the next step. If you want to offer an amendment to do  
16 something about it, I may well support you.

17           The Chairman. Let me state what is now before us so the  
18 committee is clear. We have Senator Abdnor's amendment, which  
19 repeals the requirement for written contemporaneous records.  
20 It does not repeal the so-called other use of the listed  
21 properties, but Senator Mitchell's amendment would get rid of  
22 the listed properties and would put us exactly in the  
23 situation we were in prior to the passage of the 1984 Law.

24           Senator Symms. Mr. Chairman?

25           The Chairman. The Senator from Idaho.

1           Senator Symms. I would like to support what the Senator  
2 from Maine is advocating. I have a prepared amendment that is  
3 a part of this problem that is Senator Wallop's amendment that  
4 Senator Moynihan, Boren, and myself are cosponsors of, but if  
5 we pass the Mitchell amendment then that would take care of  
6 the entire problem.

7           I just want to make one more inquiry. We have an example  
8 of a sheriff, for example, who's paid less than \$20,000 a  
9 year in an Idaho county. And if he drives his vehicle home,  
10 the IRS is telling him he has to impute \$4 a day income. Now  
11 that would take care of that also, wouldn't it?

12           Senator Heinz. Mr. Chairman, on Senator Symm's point,  
13 as I understand Senator Wallop's amendment it deals with a  
14 different issue than the issue of recordkeeping. We are  
15 talking about the extent to which we need to keep written or  
16 contemporaneous records.

17           Senator Symms. The Wallop amendment takes care of  
18 capital exclusion.

19           Senator Heinz. Well, let me try to see if I understand  
20 Wallop amendment; maybe I don't. We are talking about record-  
21 keeping. Now, Senator Wallop's amendment, as I understand it,  
22 doesn't deal with recordkeeping, it deals with the rules under  
23 which income, once you have recognized the fact that you have  
24 had the benefit of personal use of a company-owned vehicle, is  
25 calculated -- he is dealing with counting rules as opposed to



1 recording rules.

2 Senator Symms. The Senator is correct, but that is not  
3 what Senator Mitchell said. If I understand what Senator  
4 Mitchell said, we are going to take this back to where we were  
5 pre-1984 on the whole question, then we will start over on it.  
6 And that's what I want to do.

7 Senator Heinz. But that doesn't touch, as I understand  
8 it, and maybe Counsel can illuminate this, that doesn't touch  
9 the counting rules.

10 Senator Symms. Senator Mitchell thinks it does.

11 Senator Mitchell. My message is very simple.

12 Senator Heinz. It is very simple, and that's what we all  
13 want.

14 Senator Mitchell. Repeal what we did, and go back to  
15 where we were, and then invite changes by anybody who thinks  
16 it ought to be changed to correct anything that is wrong. So  
17 let's go back to square-one. That is my message.

18 Senator Symms. In the entire use of vehicles, trans-  
19 portation? Are you including airplane transportation also?

20 The Chairman. If it was not a listed property before, it  
21 would not be a listed property now, is what you are saying?

22 Senator Mitchell. That is absolutely right, and if some  
23 one wants to add to listed properties, if there is a good case  
24 for it, as I said to Senator Chafee, I may well vote for it.

25 The Chairman. If the Abdnor bill as amended by Senator

1 Mitchell were adopted, what is the expected revenue loss?

2 Mr. VanErden. If I understand what Senator Mitchell is  
3 saying, he is talking about not just the recordkeeping  
4 requirements but also the rules on valuation of personal use  
5 of automobiles and airplanes. Is that correct?

6 The Chairman. He is talking about going back. Assuming  
7 the law was as it existed prior to the passage of the '84 Law.  
8 Am I right, George?

9 Senator Mitchell. That is exactly right.

10 Mr. VanErden. The law in the recordkeeping area alone?

11 The Chairman. Well, I think that is what he is talking  
12 about. Yes.

13 Mr. VanErden. All right.

14 Senator Heinz. I don't know that he means that. I want  
15 to pursue that question further.

16 Senator Mitchell. Can't we even define what was in the  
17 Law?

18 Senator Heinz. It was a very large tax bill, and there  
19 was a lot in it.

20 Senator Symms. Well, I want to pursue the question  
21 further, because if I understand the Mitchell amendment, the  
22 question that Senator Roth asked, which is a good question, is  
23 what's good for the goose is good for the gander. Now, I've  
24 written every one of the agency cabinet officers and said,  
25 "How are you going to implement this with people using

1 government vehicles going to and from work? Are they going  
2 to have to impute interest also?" And I have yet to get any  
3 answers back from any cabinet officers, as I am not surprised.

4 But I would take it that we are going to put this whole  
5 thing back so all the confusion is removed that we have beset  
6 upon us since July of 1984, and then if we want to address this  
7 question again we'll start over with it.

8 Mr. Colvin. Could I raise a point of clarification,  
9 Mr. Chairman?

10 The Chairman. Yes.

11 Mr. Colvin. And, Senator Mitchell, if I could ask a  
12 question?

13 You could divide the 1984 changes into two areas, in terms  
14 of the discussion you are having right now. The first is the  
15 recordkeeping area. The second is, when employees are taxed  
16 on personal use of company cars. And it is somewhat broader  
17 than that.

18 The first is a recordkeeping issue, and the second is a  
19 question of tax liability. In your amendment, do you mean to  
20 be dealing with both of those, or just with recordkeeping?

21 Senator Mitchell. Well, I am looking here at a document  
22 provided to us by the Joint Committee on Taxation, three  
23 pages, a big "B" on the front of it, which says "Auto-log  
24 Recordkeeping Requirements." Do you have that?

25 Mr. Colvin. Yes, sir, Senator Mitchell. That refers to

1 the recordkeeping part of the 1984 changes.

2 Senator Mitchell. And subheading 2 says, "Changes Made  
3 by the 1984 Act."

4 Mr. Colvin. Yes, sir. That is the recordkeeping part of  
5 the 1984 changes.

6 Senator Mitchell. That is what I am proposing to repeal.

7 Mr. Colvin. Thank you.

8 Senator Symms. Wait. Say that again, now?

9 The Chairman. I understand now that you are not talking  
10 about changing anything but the recordkeeping on the  
11 automobiles.

12 Senator Mitchell. No.

13 Senator Symms. What about the valuation? I see we are  
14 at a state now where the speakers do not understand what they  
15 are saying, let alone the listeners.

16 Senator Mitchell. I understand that there were basically  
17 two parts to it. One is, as Mr. Weiss described earlier, one  
18 dealing with contemporaneous written records. And the other  
19 with the additional items to be included in the list. Now,  
20 are those what you understand to fall in the category of  
21 "recordkeeping changes made by the 1984 Act"?

22 Mr. Colvin. Yes, sir.

23 Senator Mitchell. All right. And that is what I meant.

24 Now, if somebody wants to point out to me why that's  
25 wrong, or it should be improved, obviously I'm willing to

1 listen. But what I intend to do is to go back to where we  
2 were before we changed the law and start from scratch.

3 The Chairman. It is both the recordkeeping and the listed  
4 properties that were added.

5 John, is that clear?

6 Mr. Colvin. Yes, sir.

7 The Chairman. All right.

8 Now, did I get an answer on the revenue loss?

9 Mr. VanErden. A hundred and fifty million dollar -- just  
10 to link this to what I said before. The \$150 million revenue  
11 loss figure assumed that there would have been still some  
12 additional substantiation requirements applicable to  
13 automobiles. If there were not additional substantiation  
14 requirements applicable to automobiles so that you did both  
15 your recordkeeping change and the listed property change, the  
16 revenue loss would probably be somewhat higher, probably in  
17 the neighborhood of \$175-200 million a year, although we have  
18 not specifically estimated that option.

19 The Chairman. Further discussion? Senator Chafee?

20 Senator Chafee. One quick question: If the Mitchell  
21 amendment is adopted, does that apply to airplanes as well?

22 Mr. Colvin. Yes, sir.

23 Senator Chafee. No contemporaneous records for airplanes  
24 either?

25 Mr. Colvin. That is correct, Senator, because airplanes

1 are listed property, as any other property used for  
2 transportation. That is shown on page 2.

3 Senator Chafee. Well, Mr. Chairman, I have a little  
4 trouble with this. We are going to make cuts all over the  
5 place, and some poor fellow has to ride a bus, and he can't  
6 collect for that. Some fellow drives back and forth to the  
7 factory, and he can't charge off his travel expenses. And  
8 suddenly we are taking care of people with their corporate  
9 jets and everything else. I don't know where we are going  
10 here.

11 The Chairman. Well, I'll tell you what I'm going to do,  
12 John. I am going to vote against George's amendment. I like  
13 the idea of getting rid of the contemporaneous written  
14 recordkeeping, but I agree with you: When we start going to  
15 a variety of other properties, the complaints we have had  
16 have been, by and large, from those who have got to keep  
17 written records on their automobiles. And I think we ought  
18 to address that, and I am reluctant to go beyond that.

19 Senator Mitchell. Well, Mr. Chairman --

20 Senator Moynihan. Would the Senator yield?

21 The Chairman. The Senator from New York.

22 Senator Moynihan. Would Senator Mitchell accept a  
23 proposal that that reversion that he proposes to change back  
24 be limited to automobiles?

25 It is characteristic of most of these other properties

1 that they are filled with recordkeeping. No one gets into an  
2 airplane and flies around without a number of records.

3 Senator Mitchell. Mr. Chairman, May I just say that it  
4 is a complete mischaracterization of my amendment to suggest  
5 that it is intended to take care of those with corporate  
6 jets, as the Senator from Rhode Island suggested. It is  
7 obviously not the intention nor the effect. And I  
8 specifically made it clear that if there is a valid case to  
9 be made in any change, and there may well be, I will support  
10 it.

11 But the way we do this is what creates the problem.  
12 Nobody understands what we are doing, and that's why we are  
13 where we are now, why we have wasted an hour at this.

14 So what I am saying is, let's go back to scratch, and  
15 then if you think, Senator Chafee, that we ought to not take  
16 care of corporate jets, you explain how we should go about it,  
17 why we should do it, and I'm sure we'll all vote for you. But  
18 I am saying let's go back to scratch right now, and anybody  
19 who wants to change the law as it was before 1984, make the  
20 case for it.

21 The Chairman. I would say, as far as airplanes are  
22 concerned, don't confuse valuation, which is an issue, with  
23 records. I don't know anybody who flies anybody else that  
24 doesn't file who they've got in the plane, when they left,  
25 and how long they flew and where they came to.

1 The Senator from Pennsylvania.

2 Senator Heinz. Mr. Chairman, I am going to very strongly  
3 oppose Senator Mitchell's amendment. I am not going to  
4 characterize it as a giveaway to corporations or to people  
5 who want to have business computers at home, or to use boats,  
6 all that kind of thing. I think you are vulnerable to that  
7 charge, but I don't think that is why you are suggesting it.

8 But what bothers me is that, were we to adopt Senator  
9 Mitchell's amendment, we would have a lesser standard for  
10 airplanes, computers and boats, the listed property, than  
11 we would have assuming repeal as proposed by Senator Abdnor  
12 and going back to the pre-1984 law. We would have a lesser  
13 standard for corporations and all these fancy pieces of  
14 equipment than we would for automobiles that the average  
15 person would be using. And that just doesn't make any sense  
16 to me; it fails the test of equity.

17 I am delighted that the committee realizes that in trying  
18 to impose the contemporaneous-recordkeeping requirement on  
19 everybody, somewhere along the line we made a terrible  
20 mistake, and we are doing what we often do when we find that  
21 there are some problems -- we make all the innocent people pay  
22 for the sins of a few guilty people.

23 No one so far has calculated just the paper use that  
24 would be required if we didn't repeal contemporaneous  
25 recordkeeping, or the time, and it's up in the billions of



1 dollars. I hear people talking about revenue loss of \$75  
2 or \$150 million, and here my friend and I, Germane from  
3 Arkansas, agree. You know, get \$75 or \$150 million worth of  
4 revenue, and impose costs on everybody else of \$2-3-4 billion.  
5 It takes just 15 minutes a day for the 11 million vehicle  
6 users that you mentioned use these vehicles, 15 minutes a  
7 day and you value that at \$4 an hour. That's \$2 billion in  
8 costs, if you believe that the average person is worth 50  
9 cents more than minimum wage.

10 So we have two issues. I really think we ought to take  
11 care of the little guys and raise the big guys by not  
12 adopting George's amendment to the same standard that we have  
13 the little guys.

14 Senator Symms. Mr. Chairman, before we vote on that, I  
15 think that the Senator from Pennsylvania has not quite  
16 explained what the situation is. For exzmples, we have four or  
17 five major corporations who fly out of the same hangar in  
18 Boise, Idaho, with their company airplanes. One of them, in  
19 fact, is a company you are very well familiar with, I might say  
20 to the Senator from Pennsylvania. And let's say they have an  
21 airplane, Company-A, that is going to Chicago. And they have  
22 five people going on it, and it will hold six. And one of the  
23 other companies has an executive who wants to go to Chicago.  
24 They very frequently trade rides.

25 Now, we are talking about imposing some kind of an

1 unnecessary transfer of actual dollars back and forth between  
2 these companies to make those airplanes less efficient. This  
3 is not something like your allowing the big corporate tycoon  
4 to have a big break. We ought to treat them all alike. This  
5 is ridiculous, what is in this law.

6 The Chairman. You are talking about, though, Steve,  
7 there, an evaluation problem and not a recordkeeping problem,  
8 because when they fly back and forth, they know who they've  
9 got in the plane.

10 Senator Symms. They keep those records already.

11 The Chairman. I know they do.

12 Senator Symms. I agree with that. They already keep  
13 the records. But I think we ought to take a serious look at  
14 going back on what we did in that law in 1984, because what  
15 you are doing now is forcing them to be less efficient with  
16 the use of those airplanes.

17 The Chairman. Well, I wonder if we might vote on the  
18 amendment of the Senator from Maine to the bill introduced  
19 by the Senator from South Dakota. Does everyone understand  
20 what the amendment from the Senator from Maine is?

21 (No response)

22 The Chairman. So the Clerk will call the roll.

23 The Clerk. Mr. Dole?

24 Senator Dole. No.

25 The Clerk. Mr. Roth?

1 Senator Roth. No.  
2 The Clerk. Mr. Danforth?  
3 Senator Danforth. No.  
4 The Clerk. Mr. Chafee?  
5 Senator Chafee. No.  
6 The Clerk. Mr. Heinz?  
7 Senator Heinz. No.  
8 The Clerk. Mr. Wallop?  
9 (No response)  
10 The Clerk. Mr. Durenberger?  
11 The Chairman. No, by proxy.  
12 The Clerk. Mr. Armstrong?  
13 Senator Armstrong. No.  
14 The Clerk. Mr. Symms?  
15 Senator Symms. Aye.  
16 The Clerk. Mr. Grassley?  
17 (No response)  
18 The Clerk. Mr. Long?  
19 Senator Long. Aye.  
20 The Clerk. Mr. Bentsen?  
21 Senator Bentsen. Aye.  
22 The Clerk. Mr. Matsunaga?  
23 Senator Matsunaga. Aye.  
24 The Clerk. Mr. Moynihan?  
25 Senator Moynihan. No.

1 The Clerk. Mr. Baucus?

2 Senator Baucus. Aye.

3 The Clerk. Mr. Boren?

4 (No response)

5 The Clerk. Mr. Bradley?

6 (No response)

7 The Clerk. Mr. Mitchell?

8 Senator Mitchell. Aye.

9 The Clerk. Mr. Pryor?

10 Senator Pryor. Aye.

11 The Clerk. Mr. Chairman?

12 The Chairman. No.

13 The Clerk. Seven Yeas, 9 Nays.

14 The Chairman. The amendment is defeated.

15 The Senator from Arkansas?

16 Senator Pryor. I presume now that we are going to vote  
17 on the Abdnor amendment?

18 The Chairman. That is correct.

19 Senator Pryor. I have an amendment to Senator Abdnor's  
20 amendment relating to the present special rule included in  
21 Temporary Treasury Regulations published January the 7th of  
22 this year, which would impute \$3 per day to those individuals  
23 driving police cars, fire vehicles, ambulances, school buses,  
24 dump trucks, cement mixers, refrigerated trucks, tractors and  
25 utility trucks, and my amendment would be to have report

1 language instructing the IRS to exclude these specific  
2 vehicles from the imputation of the \$3-per-day benefit.

3 The Chairman. I appreciate the fact that you are  
4 willing to make it report language, because I am reluctant to  
5 get into a variety of valuation problems on what I hope will  
6 be limited to a recordkeeping bill. And you are doubly  
7 generous, because I think most of us feel it is foolish that  
8 policemen or policewomen have to, when they take home a marked  
9 police car or an emergency vehicle that you use in your  
10 utility work or something like that, and frequently go from  
11 there to the job, that you have to count it.

12 But I would agree with you if we can limit it to our  
13 conference language.

14 Mr. Colvin. Mr. Chairman, may I raise a point of  
15 clarification? Item E on page 7 of the committee materials --

16 The Chairman. Yes.

17 Mr. Colvin. -- is the proposal that you described,  
18 Senator Pryor.

19 Senator Pryor. That is correct.

20 Mr. Colvin. It does deal with the problem of the  
21 taxation of police officers who drive police cars home every  
22 night, and the proposal it to tell Treasury that you intend  
23 this type of vehicle use cannot be taxable. But as described  
24 in the committee materials, it includes several other types  
25 of vehicles, and they are listed on page 8.

1 Senator Pryor. That was the list that I read.

2 Mr. Colvin. Yes, sir. So, marked police and fire  
3 vehicles, ambulances, school buses, dump trucks, cement  
4 mixers, refrigerated trucks, tractors -- those are examples  
5 of the types of vehicles that would be described in the  
6 report language.

7 Senator Pryor. That is correct.

8 And a further clarification -- there has been some issue  
9 raised as to the substance of the Wallop amendment. And it is  
10 my understanding that the Wallop amendment only relates to  
11 the marked police and fire vehicles and to the ambulances and  
12 not to the remaining vehicles. Am I wrong on that?

13 Mr. Colvin. Sir, the Wallop proposal is limited to  
14 public service emergency vehicles. No, I misspoke; Senator  
15 Wallop's bill covers agricultural vehicles, emergency  
16 vehicles, and a category of vehicles where business use is  
17 at least 70 percent.

18 The Chairman. That amendment is not before us at the  
19 moment.

20 Senator Symms. If we offered the Wallop amendment, and  
21 if it passes, then I think the Senator from Arkansas would be  
22 satisfied with that report language.

23 The Chairman. I would prefer that we would not. I will  
24 vote against it if it is offered, but I prefer that we limit  
25 ourselves, if we can, to our recordkeeping issue at the

1 moment.

2 But I would agree with the Senator from Arkansas that  
3 we will have report language.

4 Senator Pryor. Well, let me ask this, if I might:

5 Under the January the 7th order of the IRS, are  
6 agriculture vehicles being imputed at \$3 a day?

7 Mr. Pearlman. Senator, I think the answer to that  
8 question is No, although I want to make it clear that as far  
9 as we are concerned we would of course follow this kind of  
10 report language. But I think that what the regulations do  
11 have been unfairly characterized.

12 Those regulations were designed to simply indicate that  
13 in those instances in which the using of a vehicle to commute  
14 was income, which is a factual question which would have to  
15 be determined on a case-by-case basis, then if the taxpayer  
16 chose, he or she could use a safe harbor of \$3 a day. But it  
17 does not seek to say that if you commute in a cement mixer  
18 that you have a \$3 a day income. That is a factual issue and  
19 needs to be resolved.

20 But to get that issue behind us, because people are  
21 confused, I think this is a very constructive way to handle  
22 it, and we will be happy to cooperate with the committee.

23 The Chairman. I thank the Treasury.

24 Senator Dole?

25 Senator Dole. Mr. Chairman, first let me indicate that,

1 if it is the Chairman's strong desire not to offer any  
2 additional amendments, I understand the problems the Chairman  
3 has. But we do have a very real problem, not with corporate  
4 jets but with valuation of employees who ride on airplanes,  
5 whether it is a corporate jet or a Piper Cub, on how they  
6 are valued. And it is a fringe benefit question, and it is  
7 one that Treasury has been working on.

8 I think Mr. Pearlman has probably had dozens of meetings  
9 with the airline industry -- we happen to make airplanes in  
10 our State. They are in deep depression, and I think there is  
11 a lot of confusion about this particular provision.

12 It would seem to me, and we have explored some on the  
13 House side to see if this limited amendment might be  
14 acceptable, and I think it may be. Let me quickly explain  
15 what it does and then see if there is any consensus on the  
16 committee.

17 It is the question of valuation of flight on employer-  
18 provided aircraft by employees. And what I have tried to do  
19 is to get together -- it didn't go as far as some in the  
20 industry wanted to go -- to work out a reasonable amendment.

21 "The Temporary Treasury Regulations for determining the  
22 value of a personal flight on a business aircraft have two  
23 principal defects: First, the values are too high, as a  
24 general matter; and secondly, the regulations do not  
25 distinguish between the larger, faster, and more luxurious



1 planes, and less comfortable and less convenient small planes."

2 Let me address teh value in general -- and this is another  
3 IRS regulation, and I know that Treasury has a problem, IRS  
4 has a problem. But last year Congress decided that the fair  
5 market value of fringe benefits such as personal travel on a  
6 business plane should be included in income of employees.  
7 However, the Temporary Regulations define "fair market value"  
8 to be "as much as three times first class airline fare, or  
9 in some cases even a charter fare cost," which I don't think  
10 we ever intended. It is another case where Congress intended  
11 one thing, the regulations came up with something else.

12 In addition, "There is no distinction between the types  
13 of aircraft, whether it is a luxurious corporate jet or  
14 whether it is a two-engine or single-engine airplane that  
15 travels 100 miles an hour."

16 And about all this proposal would do would be to take  
17 account of the differences among the luxurious corporate  
18 jets and largest turbo-props, remaining turbo-props, and other  
19 complex twin-engine planes, and the smaller twins and single-  
20 engine planes.

21 And we have set forth in this exhibit what the Temporary  
22 Regulations are now, and then on the second page what we would  
23 propose.

24 There would be a distinction based on the purpose of  
25 flight -- there ought to be, whether it is a business purpose

1 or a nonbusiness purpose. And there would be a distinction  
2 based on the kind of an airplane you are in -- whether it is  
3 a jet, or whether it is a Piper Cub, or whatever it might be.

4 And I don't believe that these changes -- I think these  
5 changes might be acceptable. I haven't discussed this with  
6 Mr. Pearlman, but I must say I spent a lot of time on  
7 contemporaneous recordkeeping, to no avail. And hopefully  
8 we might find some support for this effort.

9 The Chairman. I would say again that I would be happy  
10 in report language to address the problem. And all of us  
11 have been called on it. But I am reluctant to put it in the  
12 bill where we are talking about just recordkeeping. Perhaps  
13 Mr. Pearlman could respond as to his views on the subject.

14 Senator Dole. I guess the question is, can we do it  
15 without changing the law? I would be perfectly happy with  
16 report language.

17 Mr. Pearlman. Mr. Chairman, I think Senator Dole's  
18 suggestions are very constructive ones. I think there are  
19 some problems with the suggestion when you get to the  
20 specifics, but the idea of reexamining value -- and we have  
21 made it very clear to the industry that we wanted them to  
22 come in and help us determine what the proper values are.

23 I met with them most recently I think it was February  
24 17th, and they have not come back to us with any specific  
25 recommendations. This is the first time, frankly, that we

1 have seen a specific recommendation.

2 I think the idea of classifying aircraft by weight is a  
3 very good idea and, frankly, one that I would hope we could  
4 adopt in the regulations.

5 Just to give you an illustration of the kind of thing  
6 that I think we should all focus on, everyone has told us  
7 what they want here is certainty and clarity, and clearly  
8 there will be a problem with the definition of "control"  
9 under this approach. So I would hope we would have an  
10 opportunity to work with the industry and make it work, so  
11 we don't get into fights between taxpayers and the Revenue  
12 Service every time there is a claim of deduction or a claim  
13 of income on planes.

14 But in general I would say that the suggestion the  
15 Senator has made, if we can not be pinned to every specific  
16 word on this page, is very constructive. And we hope we  
17 could work along that line.

*Change income rules!*

18 Senator Dole. I guess my question is, can it be done  
19 without changing the law?

20 Mr. Pearlman. I think it can be done without changing  
21 the law. Yes, sir.

22 Senator Dole. So we could include report language which  
23 would give you a certain timeframe? I mean, not to be  
24 unreasonable. That would incorporate this language or this  
25 suggestion.

1           But I guess it is always a question of fact on who  
2 controls, and whether it is a business purpose or a nonbusiness  
3 purpose. We don't attempt to change that. There isn't any  
4 way. You talk about clarity -- I guess there isn't any way  
5 on that particular issue.

6           Mr. Pearlman. Well, again, only having had an  
7 opportunity to react to it this morning, I can't react to it  
8 very intelligently.

9           Senator Dole. Well, I think, based on that, if the  
10 Chairman would permit, I would ask that my statement be made  
11 a part of the record and that we do include report language.  
12 I will introduce a bill today, but I think it is a problem  
13 that a lot of people have had called to their attention. It  
14 is trying to distinguish between the different classes of  
15 airplanes; it is not a corporate jet amendment. And I think  
16 it is one that also would resolve some of the questions that  
17 the Senator from Idaho raised.

18           (Senator Dole's written statement follows:)

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1 STATEMENT OF ROBERT J. DOLE, UNITED STATES SENATOR FROM THE  
2 STATE OF KANSAS

3 VALUATION OF FLIGHTS ON EMPLOYER - PROVIDED AIRCRAFT

4 o The temporary Treasury Regulations for determining the  
5 value of a personal flight on a business aircraft have two  
6 principal defects: First, the values are too high as a  
7 general matter. Second, the regulations do not distinguish  
8 between the larger, faster and more luxurious planes and less  
9 comfortable and less convenient smaller planes.

10 Value In General

11 o Congress decided last year that the fair market value of  
12 fringe benefits such as personal travel on a business plane  
13 should be included in the income of employees who receive the  
14 benefits.

15 o However, the temporary regulations define fair market  
16 value to be as much as three times first class airline fare or  
17 even charter rate in certain circumstances.

18 o This view conflicts with long-established case law that  
19 flatly states that value must be discounted when there are  
20 restrictions on use such as not being able to cash in the trip  
21 or transfer the benefit to someone else.

22 Distinction Between Different Aircraft

23 o The Treasury regulations also fail to distinguish between  
24 a four seat, single engine plane with a maximum speed of  
25 barely 100 miles an hour and the most luxurious corporate jet.

1 o Anyone who has ever flown in a small plane will tell you  
2 that it is not anywhere near as comfortable as flying first  
3 class in a commercial airliner. But an employee could still  
4 find himself charged with income equal to three times first  
5 class fare. That just does not make sense.

6 o My proposal would take account of the differences among  
7 the luxurious corporate jets and largest turbo-props, the  
8 remaining turbo-props and other complex twin-engined planes,  
9 and the smaller twins and single-engined planes.

10 Key Employees

11 o The maximum amount of income that could be imputed to an  
12 employee who controls the use of the aircraft would be equal  
13 to a comparable first class commercial flight. The amount  
14 imputed for the middle category would be coach fare. For the  
15 smaller planes the amount imputed would be half commercial  
16 coach fare.

17 Other Employees

18 o For employees who do not control the use of a plane, the  
19 amount imputed will be based upon the amount imputed to the  
20 parent of an airline employee.

21 o The temporary regulations now value trips by parents of  
22 commercial airline employees at half the value of an  
23 unrestricted coach seat.

24 o Thus, the proposal would tax employees who exercise no  
25 control over the flight of a corporate jet the same as the

1 commercial airline employee's parent.

2 o Flights on other turbo-props and complex twin-engined  
3 aircraft would be taxed at three-quarters of that amount and  
4 flights on smaller aircraft would be imputed at half the rate  
5 imputed to airline employee parents.

6 Additional Points

7 o The categories are based on aircraft weight because that  
8 was the simplest way to account for comfort, convenience, and  
9 speed which should enter into valuation of the benefit.

10 o The proposal has the benefit of avoiding the compliance  
11 problem of deciding whether the flight was primarily for  
12 business, only partly for business, or solely for pleasure.

13 The only issues are what weight category the plane is in and  
14 whether or not the employee who is flying for pleasure  
15 controlled the use of the plane.

VALUATION OF PERSONAL FLIGHTS ON

EMPLOYER-PROVIDED AIRCRAFT

A. TEMPORARY REGULATIONS

a. 5 Percent Owner

b. Officer

c. Person Who Controls

Use of Aircraft for

<u>Reason for Flight</u>	<u>Trip</u>	<u>Other Employees</u>
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Primary Business

Purpose

Coach Fare\*

Coach Fare\*

Non-Primary Business

Purpose

3 Times First Class

Coach Fare\*

Fare\*

No Business Purpose

Charter Rate

Coach Fare\*

\* Expressed as a formula based on Standard Industry Fare Level Rates.



1 B. PROPOSAL

2 There would be no distinction based on the purpose of the  
 3 flight. The distinctions would be based on (1) the weight of  
 4 the aircraft (to reflect comfort, speed and convenience) and  
 5 (2) whether the employee controls the use of the aircraft for  
 6 the trip (e.g., destination and time of departure).

7 As under the temporary regulations, the rates would be  
 8 safe harbors. The employee could elect to prove that fair  
 9 market value of the flight is less.

<u>Weight of Aircraft</u>	<u>Value if in control of use of the air- craft for trip</u>	<u>Value to employee without control of aircraft usage</u>
More than 10,000 pounds	First Class Fare	Value imputed to parent of airline employee**
More than 6,000 pounds but not	Coach Fare	3/4 value imputed to parent of air- line employee
more than 10,000 pounds		
6,000 pounds or less	1/2 Coach Fare	1/2 value imputed to parent of air- line employee

25 \*\* Under the temporary Treasury regulations, the amount

1 imputed to the parent of an airline employee is 50 percent of  
2 the carrier's highest unrestricted coach fare. A general rule  
3 uch as SIFL or industry average would be necessary for non-  
4 commercial airline travel.

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1 Senator Bentsen. Would the Senator yield?

2 Senator Dole. Yes.

3 Senator Bentsen. Mr. Pearlman, do I understand the  
4 temporary regulations, under "C" in the middle there, to list  
5 either/or by saying "person who controls use of aircraft for  
6 trip"?

7 Mr. Pearlman. No. Senator, we defined --

8 Senator Bentsen. Whose temporary regulations are they?

9 Mr. Pearlman. These are our temporary regulations.

10 Senator Bentsen. Well, you have already listed, "Person  
11 who controls use for aircraft for trips."

12 Mr. Pearlman. You are correct, but we also include in  
13 the definition of key employee, "Officers and key share-  
14 holders." So you don't -- in other words, it just cuts down  
15 the number of times that you have to address that issue.

16 If you had two officers on a plane, one going purely for  
17 personal reasons and one going for business purposes, you are  
18 going to have to make that determination under the Senator's  
19 approach; whereas, under the temporary regulations you would  
20 not. And I am not putting a value judgment on whether you  
21 should or not; I am just saying it's a bit more subjective.

22 Senator Bentsen. But you are using that as one of the  
23 criteria.

24 Mr. Pearlman. It is one of the criteria, correct.

25 Senator Dole. Could I just ask one follow-up question?

1 I guess it will get down to the question of, we intend  
2 to incorporate in the report, if it is satisfactory to the  
3 Chairman and others, the value as to the control of the use  
4 of the aircraft for the trip, whether it is First Class Fare,  
5 Coach Fare, or One-half Coach Fare. And I understand that is  
6 an area that disturbe Treasury some. Does it?

7 Mr. Pearlman. Well, I have to be frank with you. Yes,  
8 we are concerned about the rates you have selected for those  
9 people who are in control.

10 Our judgment is that when you are talking about -- let's  
11 talk about the luxury jet, the over-the-10,000-pound jet. We  
12 think first-class fare does not fairly represent the value of  
13 that aircraft to people who are in control of that aircraft  
14 and not using it for business purposes. But again, if it is  
15 the committee's judgment to seek to set the value in the  
16 committee report, we are going to try to follow the committee  
17 report.

18 The Chairman. The Senator from Colorado, then the  
19 Senator from Idaho.

20 Senator Armstrong. Mr. Chairman, I have a concern that  
21 is in a sense quite similar to that suggested by the Senator  
22 from Kansas, and it may be a matter tha members of the  
23 committee are very familiar with. It goes to this question of  
24 who gets to use airline passes on commercial airlines.

25 Last year we clarified that Congress did not intend to

1 tax the value of transportation provided to airline employees  
2 and their spouses and dependent children, provided that the  
3 transportation was provided without any additional cost to  
4 the airline. In other words, if they have an empty seat  
5 which would not otherwise be sold, traditionally we let  
6 employees and some members of their families use those empty  
7 spaces without being taxed. In fact, that is a custom that  
8 even predates the airline industry; it goes back I think to  
9 the heydays of passenger railroad service at the turn of the  
10 century.

11 Well, in the process of doing it, we have somehow carved  
12 out the parents of these employees, very much to their  
13 disadvantage and very much to the aggravation of airline  
14 employees.

15 I think there is a pretty strong case that we ought to  
16 put back in, either by report language if it is possible or  
17 if not by a statutory change, the parents. And I say so for  
18 a couple of reasons: First, because it is traditional;  
19 second, because it seems to me to be fair; third, because we  
20 are talking about a service which is provided without any  
21 cost to the airline in question, and the airline industry is  
22 a business that has really gone through the wringer here in  
23 the last few years. And in many airlines the employees have  
24 actually taken pay cuts.

25 So it doesn't seem to me that we ought to go out of our

1 way to cause an unnecessary problem.

2 And the revenue impact is described by the Joint Tax  
3 Committee as negligible. And so what we have done is stirred  
4 up a problem that affects not a huge number of people,  
5 although it is not an inconsequential number, really to no  
6 good purpose. In other words, we are not going to raise any  
7 money on it, and it is an inconvenience. Really, I think it  
8 is an injustice to a number of people.

9 The reason why there is no revenue impact, or at least  
10 what the committee describes as "negligible," Mr. Chairman, is  
11 this: The way the regulation reads, the employee is to be  
12 taxed at one-half of the value of the regular coach fare on  
13 the day that the trip occurs. And of course, in many cases,  
14 that is the value that is higher than a promotional discount  
15 fare that would otherwise be available.

16 Bear in mind, too, that the real value of a trip when  
17 you are a stand-by passenger and can get bumped even on short  
18 notice is not the same as that of a regular coach.

19 So for all kinds of reasons and particularly in  
20 consideration of the fact that it doesn't have any real  
21 revenue impact, I would hope that we could put that back in.  
22 I think it is pretty much the same kind of issue that  
23 Senator Dole has raised.

24 The Chairman. Bill, much as I sympathize with what you  
25 are saying, on this one what we did last summer was not done

1 by mistake; we knew what we were doing. And Secretary  
2 Pearlman was part of that arrangement when Mr. Chapoton was  
3 there, as were the airlines, and as were the airline unions  
4 that were represented. All of them weren't represented, but  
5 for those that were represented it was part of a package  
6 deal relating to the taxability or nontaxability of fringe  
7 benefits.

8 And the reason that the parents of airline employees  
9 were left out was, we could not find any other situation  
10 where employee benefits were extended to parents -- not in  
11 retail discounts at department stores, not in health  
12 benefits. And it was an unusual extension, and they were left  
13 out with deliberation. The committee may want to change, but  
14 indeed we understood what we were doing, and the parties  
15 involved who were represented agreed to it.

16 Senator Armstrong. Well, Mr. Chairman, I don't believe  
17 that I asserted and I certainly didn't intend to assert that  
18 it was something that just happened accidentally. I am just  
19 saying what's the point of it? What is the point of doing  
20 something that really isn't going to bring in any extra  
21 revenue and that is just going to cause a hardship?

22 Now, as to whether or not it happens in other industries,  
23 I don't think the situation is exactly comparable, because  
24 you can't provide say additional health care to somebody's  
25 parents without incurring an extra cost. And what we are

1 talking about here per se are seats which are available on  
2 flights which are leaving, which are given to the use of  
3 airline employees and their dependents, and if my proposal  
4 should be adopted, to their parents, which would not other-  
5 wise be used.

6 In other words, it really doesn't change the economics  
7 of the airline business.

8 I am really not arguing for this on any deep,  
9 philosophical basis, but just on the simple fact that a lot  
10 of airlines around this country have had to go to their  
11 employees and said, "Look, you have to take some pay cuts" and  
12 what not in order to keep these airlines afloat, and to also  
13 take away from them a benefit which has been traditional.

14 It may not be traditional in other industries for the  
15 reason I have just mentioned, but it has in the airline  
16 industry. If we are talking about some significant or even  
17 measurable impact on the Treasury, then I would say, "Well,  
18 fine, maybe if we are going to have to cut back on the farm  
19 program and are going to have to hold the line on education  
20 and if everybody is going to have to bear the burden of doing  
21 this, then it would be different."

22 But that isn't the case. I think this is just a case  
23 where, if we insist upon this point of view, it is almost  
24 taking a dog-in-the-manger attitude, because it is not  
25 going to produce any money for the Treasury, because nobody



1 will elect to be handled in this way.

2 Mr. Chairman, I don't particularly have to offer it at  
3 this moment, but maybe I could just inquire: Is this  
4 something, in the opinion of the Treasury, which could be  
5 handled by report language, or does it require a statutory  
6 change?

7 Mr. Pearlman. No, Senator, it would require a statutory  
8 change.

9 Senator Armstrong. Well, that is my opinion as well, and  
10 I would be guided by the Chairman's desire. I will be happy  
11 to offer it as an amendment, or I will be happy to withhold  
12 it and offer it on the floor, or take it up another time. But  
13 it is an injustice, in my opinion, that I would like to  
14 correct.

15 The Chairman. What I would like to do is this: I would  
16 appreciate it if you would withhold it, because I am  
17 reasonably assured that if this becomes a divisive issue  
18 between the House and the Senate we are not going to pass the  
19 change in the recordkeeping at all this week, and I would like  
20 to pass it this week if we can, so that when we all go home  
21 next week we can tell them we have changed it.

22 I would be very appreciative if the Senator would  
23 withhold on this until we can consider it, because we are  
24 going to be considering the whole issue again of the taxation  
25 of employee benefits.

1 Senator Armstrong. Well, Mr. Chairman, I will be happy  
2 to do that, but I am glad to have a chance to direct the  
3 attention to the members of the problem.

4 Could I just ask that, as members travel over the  
5 recess, that they ask the flight attendants and others they  
6 come in contact with --

7 (Laughter)

8 The Chairman. I have discovered you don't have to ask  
9 them.

10 (Laughter)

11 Senator Armstrong. Well, let me just make the point that  
12 if this costs something, that I would be the first one to say  
13 let's weigh the cost against the benefit, and let's see  
14 whether or not the inequity is really worth the money.

15 But this is one which, at least so I am advised, really  
16 isn't helping anybody and is only hurting a group of people  
17 who are already under pressure from other directions.

18 The Chairman. I appreciate very much the Senator  
19 withholding.

20 Senator Symms, and then Senator Long, and then  
21 Senator Moynihan.

22 Senator Symms. Thank you, Mr. Chairman.

23 Now, do I understand that the Dole suggestion is going  
24 to be report language? Is that correct?

25 The Chairman. That's correct.

1 Senator Symms. I just want to make one comment about  
2 that, and then I want to bring up another question to the  
3 Chairman.

4 I want to make the point here. Mr. Chairman, that I think  
5 in the zeal the Congress had last summer to somehow plug up  
6 these loopholes in the Tax Code, that we are missing a point  
7 -- and I think Senator Armstrong touches on it -- in the case  
8 of business aviation. For example, I had a constituent call  
9 me just yesterday who went to California on business. His  
10 pilots wanted to return back to Portland, Oregon. The  
11 constituent actually was flying from Portland -- his airplane  
12 is based there -- to California. He wanted to stay down there  
13 on business for two or three days. His pilots were able to  
14 hitch a ride in another business plane back to Portland and  
15 then hitch a ride back to Los Angeles to fly him back after  
16 the three or four day meeting was completed. And he was  
17 complaining to me that the way the current tax law is, that  
18 those pilots will have to pay imputed income to hitch an  
19 empty seat on a plane that was going anyway.

20 I think that, whenever the right time is. I would like  
21 to get that straightened out with respect to general aviation  
22 and business aviation, because the same thing is true. If  
23 these airplanes are going someplace for a business purpose  
24 that the IRS in fact rules is a legitimate reason, I have a  
25 little bit of a problem wondering just what business it is of

1 the IRS as to who rides in the empty seats anyway, and how  
2 we would think we have the right to go in and -- I guess what  
3 it is is that we are taxing the American Dream so there won't  
4 be so much left of it.

5 But we try to encourage people to get in a position where  
6 maybe they can get up to the top of the corporate ladder, and  
7 then we turn around and if they want to take somebody with  
8 them in a play that is going anyway, we try to tax that value.

9 I think we have gone way, way over our bounds.

10 That is the end of that comment. I take it from  
11 Senator Armstrong that the Chairman would rather we wait, so  
12 I will wait on that. But I think the committee should address  
13 that point.

14 The Chairman. I can assure you we are going to address  
15 that and a variety of others this year on that subject.

16 Senator Symms. All right.

17 Number two, on this tax exclusion for agriculture and  
18 emergency vehicles, Senator Wallop has an amendment which I  
19 have agreed to offer today, and the Chairman is giving me the  
20 signal that he doesn't want it offered.

21 But there are two points to this contention that we have  
22 received in the mail from our constituents. One point is the  
23 recordkeeping; the other point is the imputed income that we  
24 are trying to impute against people who have to drive vehicles  
25 home, for whatever reason, and then drive them on to the

1 work place or, if they are on call, with the case of  
2 emergency vehicles, mechanics, and other people.

3 The Wallop amendment addresses that program, and it also  
4 addresses the income tax exclusion for any vehicle that is  
5 used more than 70 percent of the time, if it is not a luxury  
6 car definition, and, oh, general utility trucks, if an  
7 employer requires the employee to commute to and from work  
8 for bona fide business reasons.

9 Now, is the Chairman saying you don't want this  
10 amendment now?

11 The Chairman. What I would like very much, Steve, is to  
12 keep this bill clean so we can pass it this week.

13 I have talked to the Chairman of the Ways and Means  
14 Committee. If we add what he regards as perfectly debatable  
15 -- he doesn't mean right or wrong -- fringe-benefit issues,  
16 valuation issues, then we are not going to get it passed this  
17 week. And I think it is important while the iron is hot that  
18 we strike on the recordkeeping, which has been the issue  
19 that has bothered folks in his bills. I would say it is  
20 90 percent of the bother in this bill, in this subject.

21 Senator Danforth. Mr. Chairman, may I make a  
22 parliamentary inquiry?

23 The Chairman. Yes.

24 Senator Danforth. Mr. Chairman, I think we are getting  
25 to the edge of a quorum, and I know it is your intention to

1 attempt to vote this matter out relating to automobile  
2 recordkeeping. Also we have on the agenda the Trade Bill.

3 I wonder if it would be possible to set a time-certain  
4 for voting on those two measures?

5 The Chairman. Well, let me ask. If the Senator from  
6 Idaho is willing to withhold, I believe the only other issue  
7 is one that you want to raise.

8 Is there any other amendment on this?

9 Senator Symms. Well, Mr. Chairman, if we withhold it,  
10 could we keep the slot at least up for discussion for the  
11 floor with the Senator from Wyoming? I think he is going to  
12 be very disappointed that the amendment is not offered this  
13 morning; I certainly am disappointed.

14 I think it ought to be part of the same package.

15 The Chairman. I would be happy to do that, but what I  
16 would like to do is to talk to the Chairman of the Ways and  
17 Means Committee and see what they have offered this morning.  
18 But, as I understand it, his bill is coming clean.

19 Senator Symms. I thank the Chairman.

20 The Chairman. I thank the Senator from Idaho.

21 The Senator from New York.

22 Senator Moynihan. Thank you, Mr. Chairman.

23 This is a matter which has been before the committee  
24 before. It has to do with Section 531 of the Tax Reform  
25 Act last year, in which we established the so-called "line

1 of business rule" for employee fringe benefits.

2 It happens that a group of workers in the Pan-American  
3 system fell on the other side of this. They were, in the main  
4 persons who worked for the U.S. military bases, installations,  
5 and things like that, who are not technically airline  
6 employees but who in their careers have received the fringe  
7 benefits of other Pan-American Airline employees.

8 When it became clear that this would have this effect on  
9 these people, last October 11 as we were passing the  
10 legislation, in a colloquoy on the floor, I was going to  
11 offer an amendment that the then-Chairman Dole asked if I  
12 would not do, and that we could bring this matter up early in  
13 the coming Congress. And it's a matter of equity.

14 It only refers to a limited number of persons who have  
15 entered into their career with this understanding.

16 Senator Bentsen and Senator Durenberger are cosponsors,  
17 and Senator Symms is a cosponsor. I gather you don't want  
18 any additional things.

19 The Chairman. I know exactly what this issue is. I met  
20 with the president of Pan American the other day. Their  
21 situation really is unique. You have lots of subsidiary  
22 corporations, but you had a situation with Pan American where  
23 the people were moving back and forth between the corporation.

24 United Airlines has a somewhat similar situation; they  
25 bought Western Hotels years ago, but they have not had a lot

1 of intermixing back and forth.

2 I told the president of Pan American that I thought there  
3 was merit in their position, and if the House added it I would  
4 have no objection to our adding it, and I would be willing to  
5 add it on the floor if it's in the House bill. And that  
6 seemed to satisfy him.

7 I will know at the end of today what is in the House  
8 bill, but I am reluctant to add it here.

9 Senator Moynihan. All right, sir.

10 Mr. Bentsen?

11 Senator Bentsen. Yes. If I might comment on that, I  
12 think the problem would be, if we did add it here, is we are  
13 going to overlook some others that we would rather not. And  
14 I think if we have a hearing on it we can get to this point.  
15 We've got the problem, as you stated, with American Airlines,  
16 with Skyshafts, and we have the problem with Continental's  
17 affiliate CCS Automated Systems.

18 I don't think we intended to take away benefits that were  
19 in being; I think we wanted to codify those and add  
20 certainty to them. And I am certainly very supportive and  
21 a cosponsor of your amendment, and I hope we can handle that  
22 in the hearings.

23 The Chairman. As a matter of fact, as I recall,  
24 Pan American even said they would grandfather it and that it  
25 would apply only to those employees who --



1 Senator Moynihan. Exactly our purpose.

2 And Mr. Chairman, if it does not end up on the House  
3 bill today -- and I will not offer it on the floor -- we  
4 will have hearings and occasion to consider the matter, and  
5 so forth.

6 The Chairman. We will.

7 Are there further amendments?

8 (No response)

9 The Chairman. Now can the Clerk call the roll?

10 Senator Heinz. Mr. Chairman, I have one brief comment.

11 The Chairman. Yes?

12 Senator Heinz. A number of the members of the committee,  
13 Senator Long and some others, have asked me about S. 260,  
14 which is another contemporaneous recordkeeping bill. Thirteen  
15 members of the Senate Finance Committee are cosponsors of  
16 S. 260, as indeed are 60 members of the Senate.

17 For the benefit of all members of the Finance Committee  
18 who are cosponsors of my bill, Senator Abdnor's bill  
19 includes every provision of S. 260, and goes slightly farther  
20 with respect to the listed property.

21 I didn't originally include the listed property --  
22 airplanes, computers, boats -- because, frankly, contempor-  
23 aneous records are kept for airplanes, computers are pretty  
24 easy to program that way, and for the most part they do, and  
25 boats have always been subject to much more strict

1 recordkeeping requirements because of the potential for abuse.

2 But I think on balance Senator Abdnor's bill is not only  
3 good but it probably is, on balance, better than S. 260. So  
4 I just want to make it clear to all colleagues that in voting  
5 for Senator Abdnor's bill, S. 245, that they are also  
6 supporting S. 260.

7 The Chairman. Senator Chafee?

8 Senator Chafee. A quick question, Mr. Chairman.

9 In the Abdnor bill, what is the standard that we go back  
10 to? It is not the former standard, if I understand it, but  
11 it is the standard that applied to travel away from home. Is  
12 that your 274-D standard?

13 Mr. Pearlman. That is correct, Senator Chafee.

14 Senator Chafee. So when we vote for Abdnor, we are  
15 voting for that travel away from home standard?

16 Mr. Pearlman. Yes, sir.

17 The Chairman. Will the Clerk call the roll on the  
18 Abdnor bill?

19 The Clerk. Mr. Dole?

20 Senator Dole. Aye.

21 The Clerk. Mr. Roth?

22 The Chairman. Bill will Aye.

23 The Clerk. Mr. Danforth?

24 Senator Danforth. Aye.

25 The Clerk. Mr. Chafee?

1 Senator Chafee. Aye.  
2 The Clerk. Mr. Heinz?  
3 Senator Heinz. Aye.  
4 The Clerk. Mr. Wallop?  
5 The Chairman. Aye, by proxy.  
6 The Clerk. Mr. Durenberger?  
7 The Chairman. Aye, by proxy.  
8 The Clerk. Mr. Armstrong?  
9 Senator Armstrong. Pass.  
10 The Clerk. Mr. Symms?  
11 Senator Symms. Aye.  
12 The Clerk. Mr. Grassley?  
13 The Chairman. Aye, by proxy.  
14 The Clerk. Mr. Long?  
15 Senator Long. Aye.  
16 The Clerk. Mr. Bentsen?  
17 Senator Bentsen. Aye.  
18 The Clerk. Mr. Matsunaga?  
19 Senator Matsunaga. Aye.  
20 The Clerk. Mr. Moynihan?  
21 Senator Baucus. Aye, by proxy.  
22 The Clerk. Mr. Baucus?  
23 Senator Baucus. Aye.  
24 The Clerk. Mr. Boren?  
25 Senator Boren. Aye.

1 The Clerk. Mr. Bradley?

2 (No response)

3 The Clerk. Mr. Mitchell?

4 (No response)

5 The Clerk. Mr. Pryor?

6 Senator Pryor. Aye.

7 The Clerk. Mr. Chairman?

8 The Chairman. Aye.

9 The bill is reported.

10 Will you keep the record open, Susan, in case other  
11 members want to record themselves?

12 Senator Long. I would like to be recorded as Aye on the  
13 Federal Supplemental Bill.

14 The Chairman. Report Senator Long as Aye on the Federal  
15 Supplemental Unemployment Bill.

16 The bill is reported out. We will now move on to  
17 Senator Danforth.

18 Mr. Colvin. Mr. Chairman, a point of clarification, if  
19 I may, before you proceed.

20 Paragraphs B and C describe two related issues, and I  
21 want to just clarify that you intend that those two will also  
22 be included. Paragraph B repeals some restrictions on tax  
23 preparers relating to the contemporaneous recordkeeping  
24 standard, and paragraph C repeals the special penalty relating  
25 to the contemporaneous recordkeeping requirement. I just want

1 to confirm that you want those repealed also. That is  
2 consistent with the House approach this morning.

3 The Chairman. That is correct, then.

4 My report is that the Ways and Means Committee reported  
5 out the phase-out of the unemployment compensation identical  
6 to the way ours was reported out this morning, so it will be  
7 on the suspension calendar in the House.

8 Senator Danforth, Japan Trade Relations.

9 Senator Danforth. Mr. Chairman, the suggestion was made  
10 last Thursday, or whenever it was last week when we marked  
11 up --

12 The Chairman. Can those who are leaving move out  
13 quickly? Because this is an important bill, and I want  
14 Senator Danforth to be well heard.

15 Jack, can you wait just about 30 seconds while they  
16 clear out?

17 (Pause)

18 The Chairman. All right, Senator Danforth, go ahead.

19 Senator Danforth. Mr. Chairman, last week when we marked  
20 up the resolution relating to trade with Japan, the point was  
21 made by Senator Baucus and Senator Bentsen that perhaps what  
22 we were doing should be in bill form, not in resolution form,  
23 sense-of-the-Senate form.

24 What we have before us right now is a bill which is  
25 virtually identical. I think there is one change which

1 Len Santos will describe to us. It is virtually identical to  
2 the resolution that was voted on unanimously by the Senate  
3 last week.

4 I have just a couple of brief comments which I would like  
5 to make.

6 The first comment is that, in reading about the  
7 resolution in the press, it has been described as protec-  
8 tionist, it has been described as a resolution designed to  
9 trigger retaliation. It is certainly not intended to be a  
10 protectionist provision, and the bill is not intended to be  
11 protectionist. Rather, it is intended to be the enforcement  
12 by the United States of the trade laws as they exist.

13 Frankly, I think we are going to get nowhere as a country  
14 if we don't enforce the law. If we don't enforce the law, all  
15 we are left with is arguing, complaining, griping, raising  
16 the level of rhetoric. And I think that is bad for overall  
17 Japanese-American relations.

18 So, the point of this is not protectionism and it is not  
19 retaliation; the point of it is to open up the Japanese  
20 market. And I would like that to be made clear in the  
21 legislative history of the bill.

22 Secondly, insofar as retaliation is necessary to redress  
23 unfair trade practices and to open up the Japanese market, I  
24 think it is important to emphasize that it be used in a way  
25 which minimizes the impact on U.S. consumers, and that the

1 design would be, hopefully, by the Administration that it  
2 would be used against those imports for which there are  
3 alternatives and competitive sources, both domestic and  
4 foreign.

5 Now, Mr. Chairman, Senator Mitchell, who had to leave,  
6 has asked that one amendment be offered on his behalf, and it  
7 is on page 2 of the bill, paragraph 5. He would amend the  
8 fourth line of that paragraph by inserting the words "semi-  
9 conductors and" -- so it would read, "The United States  
10 exporters lack access to the Japanese market for a wide range  
11 of exports in which the United States has a comparative  
12 advantage, including manufactured goods such as semi-conductors  
13 and telecommunications equipment" and so on. So that  
14 amendment is satisfactory to me if it is to the rest of the  
15 committee.

16 The Chairman. Without objection, that amendment will be  
17 accepted.

18 The Senator from Montana?

19 Senator Baucus. Mr. Chairman, I want to follow up on the  
20 point Senator Danforth made.

21 I think it is interesting to note what has happened  
22 since we passed the resolution last week. Our goal here is  
23 to open up Japanese markets. That is the goal. Our goal is  
24 not to somehow vindicate our manhood by Japan-bashing. That is  
25 not our goal. Our goal is to open up Japanese markets.

1           The consequence of the resolution that we passed last  
2 week -- what has been Japan's response? It has not been  
3 further closing of Japanese markets; it has been an  
4 imperceptible, slight opening of Japanese markets. Japan has  
5 now said that very graciously it will allow one Japanese  
6 citizen who is a member of a U.S. firm to be on the Standard-  
7 setting Committee -- a group of 20 on that committee, as the  
8 Chairman now reminds me. Well, that doesn't amount to very  
9 much; in fact, it amounts to practically nothing at all. But  
10 it is a slight step in the right direction.

11           So the point here is, with this bill, to keep moving  
12 Japan in the right direction, which is to open up its  
13 markets.

14           This bill mandates that the President take certain action  
15 if Japan does not open up its markets to telecommunications,  
16 to forest products, to pharmaceuticals, electronics, and now  
17 semiconductors with this new amendment.

18           So I strongly encourage us to keep moving in that  
19 direction. What I am saying is that we should not succumb  
20 to the temptation of adding on surcharges which have the tone  
21 and tendency to invite Japanese retaliation.

22           The resolution we passed, and the bill which I think  
23 we will pass today, is a kind of measured response whose sole  
24 goal is to open up Japanese markets, and we should continue  
25 that.



1           Second, we should not so amend this bill as to make it  
2 un-doable, unrealistic. That is, we shouldn't add a higher  
3 figure, as higher as the amount of the DRA, so high that it is  
4 unrealistic, un-doable.

5           I think we should keep our response, keep the tone  
6 correct, which is to stand up for our rights, stand up for  
7 what we know is correct -- that is, opening up Japanese  
8 markets -- but not go too far, not try to slap a surcharge on  
9 Japan at this moment, which invites Japanese retaliation, is  
10 negative in tone, and will have negative consequences, and  
11 also not amend this so that it is unrealistic, but rather keep  
12 a firm measured response that keeps our eye on the ball, which  
13 is to open up markets in Japan, which I think will set the  
14 right tone for other trade negotiations with other countries  
15 as well.

16           So I urge us to keep that in mind, to keep our response  
17 bare and measured. Keep pushing -- we got Japan to open up  
18 a little bit, a very, very small amount. But let's keep  
19 pushing so they open as far as they should.

20           The Chairman. Senator Bentsen?

21           Senator Bentsen. Mr. Chairman, this is a tough one to  
22 handle -- as a free trader and a member who has opposed  
23 domestic content.

24           And what we are trying to do is just what the Senator  
25 from Missouri says, and what Senator Baucus says. We are

1 trying to open up and get back to something that resembles  
2 free trade.

3 The problem you are running into is that Japan is  
4 becoming the role model for South Korea, for Taiwan, for  
5 Singapore, for Malaysia. The idea that they can put up  
6 barriers to protect burgeoning industries until they develop  
7 market shares, and then begin to take those barriers down,  
8 they are not following the so-called "free trade model" of  
9 the United States. So I think it is important that we act  
10 affirmatively in these things and take this kind of action.

11 There is some risk, and that is a narrow road that we  
12 are trying to follow, to not let them destroy the manufac-  
13 turing base and the diversification of that base in this  
14 country, and at the same time not tilt over into their  
15 Smoot-Hawley.

16 The objective, we all understand, is to try to open up  
17 these markets so that this country and those other countries  
18 can grow -- grow through trade. But we are seeing more and  
19 more limitations on that trade. So hopefully that will do  
20 that.

21 But the thing that concerns me is what I saw last  
22 Friday when our representatives over there said that what had  
23 been offered thus far was just not satisfactory. But on  
24 Monday they turned around and said, "Well, maybe it is  
25 satisfactory," and really didn't see any serious change in

1 what had been offered.

2 I don't want to see us just declare victory and go home.  
3 I think it is important that we take some affirmative and some  
4 very positive action.

5 I have here a draft that portrays what has happened  
6 in our negotiations thus far, and in each one of these  
7 meetings we have where we declare victory and come home, after-  
8 ward you see the trade imbalance increase. This is the chart  
9 showing how it goes.

10 Back in '82, about a 20-million deficit. And then we  
11 have the fourth package, "The President Visits Tokyo," and  
12 down it goes some more; NTT Renewed, the fifth package,  
13 "Vice President Visits Tokyo, Second Summit, January '85" and  
14 now we've got it down to 35 million.

15 So what Senator Danforth has said is correct: The  
16 President has the authority to do this, and this committee  
17 did that last year -- he was a sponsor, I was a cosponsor,  
18 some of the others were -- under section 301.

19 I think it is time that we mandated and direct that  
20 kind of action, and I am very supportive of what we are  
21 trying to do here. And I appreciate the Senator coming back  
22 after the comments that I made last time, and Senator Baucus  
23 and others, about the resolution by itself not being enough.

24 The Chairman. Senator Chafee?

25 Senator Chafee. Mr. Chairman, I am disturbed over the

1 proposal by Senator Danforth.

2 It seems to me that what we are concentrating on here is  
3 an imbalance of trade between Japan and the United States.

4 And I just don't think that is the point.

5 As Senator Baucus said, the point is access to their  
6 markets. Now, if we have access to their markets and we are  
7 not able to sell our goods because they are inferior, or for  
8 some reason, or if they have access to our markets and they  
9 can sell their goods, as they are able to because of the  
10 quality, workmanship, the mileage, for example, on their  
11 automobiles, that's fine. And to concentrate or even to  
12 mention the imbalance of trade between them and the United  
13 states I think errs from the point.

14 Mr. Chairman, at the proper time I have a substitute --  
15 well, I will offer it now -- to Senator Danforth's measure.

16 The Chairman. An amendment is in order.

17 Senator Chafee. And in this I go to the problem that is  
18 now before us, namely the telecommunications. As everybody  
19 knows, on April 1st the deregulation came about in Japan of  
20 the NTT. And what I say in my amendment is that no  
21 telecommunications products produced -- I believe everybody  
22 has a copy of that, do they not? At least it was  
23 distributed.

24 "No telecommunication products produced or manufactured  
25 in whole or in part in Japan may come into the United States

1 during a period which begins June 1st, 1985, and continues  
2 thereafter until we have a written statement from the  
3 Secretary of Commerce and the STR certifying that our  
4 products have equal access to the markets of Japan."

5 I believe that that is the way we should pursue this.  
6 I don't think anybody wants to get into a situation where  
7 there are battles between us and Japan over trade imbalances  
8 per se; I think the objective is access.

9 Frankly, even though we all talk about access, and indeed  
10 the Senator from Montana mentioned that several times, and I  
11 know that is his objective, I find these statements, for  
12 example on page 5 of the bill that is submitted by Senator  
13 Danforth, on line 5 it takes the "actions by the President  
14 shall be calculated to offset the cumulative impact that the  
15 elimination of the voluntary restraints on Japanese auto-  
16 mobile exports to the United States will have on the  
17 merchandise balance of trade between the United States and  
18 Japan." To me that is not the point. And I believe we are  
19 straying from what is good procedure and indeed what is under  
20 GATT, to say that we are going to retaliate because there is  
21 an imbalance of trade.

22 Mr. Chairman, as you all know, we had a heavy imbalance  
23 of trade with the European Common Market for years.

24 Senator Danforth. Mr. Chairman, if the Senator would  
25 yield, that is just not what this bill says. It does not say

1 that we are going to retaliate against a trade imbalance; it  
2 says that we are going to enforce the trade laws. There is  
3 nothing in the bill that asks the Administration or instructs  
4 the Administration to violate the General Agreement on  
5 Tariffs and Trade or to violate the law.

6 What the bill does is to say to the Administration, "We  
7 expect you to enforce the law." Right now the law is not  
8 being enforced. Right now, the position of the Administration  
9 is, where there are unfair trade practices used against the  
10 United States, as described in Section 301 of the Trade Act,  
11 the Administration will never retaliate; the Administration  
12 will not take specific action to offset those unfair trade  
13 practices.

14 Instead we are left with a purely rhetorical way of  
15 handling a very real problem. And I would argue that, to the  
16 extent we are thrown on rhetoric alone, we have the same sort  
17 of verbal excesses that we are all too familiar with.

18 We should view the Japanese as an ally and as a valued  
19 friend, and our relations with Japan should be on a business-  
20 like basis, pursuant to law. But when legal tools are  
21 removed from the hands of our government by an Administration  
22 which takes the position that it will not enforce the law,  
23 then all that is left is rhetoric.

24 So this is not designed to create a trade balance with  
25 Japan -- I wish we had one. But that is not the point. The

1 point is to say that unfair trade practices are part of the  
2 problem, and that even if we get away from the problem of the  
3 exchange rate, which granted is serious, we are still going  
4 to have serious trade problems with Japan as the rest of the  
5 world does now, because of unfair trade practices used by the  
6 Japanese to shut off their market.

7 To me, to say that shutting off a market to imports from  
8 the rest of the world should be redressed pursuant to the law  
9 is to say that reason should prevail rather than simply  
10 temper, or rhetoric, which is now the case.

11 Senator Chafee. Well, Mr. Chairman, I was in full  
12 flight when I was cut off there.

13 The Chairman. Continue flying.

14 Senator Chafee. I will approach my landing. But I  
15 do want to say that what the Senator from Missouri has  
16 presented on line 5 I will read: "Actions taken by the  
17 President under subsection" so forth "shall be calculated  
18 to offset the cumulative impact that the elimination or  
19 relaxation of the voluntary restraints on Japanese automobile  
20 exports to the United States will have on the merchandise  
21 balance of trade between Japan and the United States."

22 What I am saying, Mr. Chairman, is that this should have  
23 nothing to do with that -- nothing to do with a relaxation  
24 of the voluntary restraints, nor should it have anything to  
25 do with the merchandise balance of trade imbalance between

1 Japan and the United States.

2 What we are seeking is access to markets, and that is  
3 what the amendment htat I have presented deals with, and it  
4 deals with a specific subject, a subject that clearly is the  
5 equities are on our side -- there is no question.

6 No one will deny that our telecommunication products are  
7 superior to those of Japan and would sell in Japan if we had  
8 access.

9 So, Mr. Chairman, I will present my amendment now, but  
10 I don't want to interrrupt your discussion.

11 The Chairman. I think the statement of the Senator from  
12 Missouri is more a statement of affirmative action, rather  
13 than a quota, if I might phrase it in that term.

14 The Senator from Wyoming, and then the Senator from  
15 Texas.

16 Senator Wallop. Mr. Chairman, I echo and share some of  
17 Senator Chafee's reservations about the approach that  
18 Senator Danforth has undertaken -- not with the goal of  
19 opening markets, but I have a bad feeling about this  
20 countering the cumulative effect, as though that and that  
21 along is the problem that exists between our two countries.

22 I call the members attention to a column in this  
23 morning's Wall Street Journal by Murray Wiedenbaum, about the  
24 things we are doing to ourselves to eliminate any chance of  
25 redressing the balance of trade, such as the export of



1 Alaskan oil, such as the export of timber, such as the  
2 Foreign Corrupt Practices Act, and such as some of the  
3 provisions under the Technology Transfer Regulations that are  
4 just used to cut our own throat and do nothing about national  
5 defense.

6 You know, there is great fun in Japan-bashing and calling  
7 it reasonableness and saying that it is not. But we con-  
8 sistently narrow the options of both countries by going to a  
9 statement a statutory statement, such as the one that the  
10 Senator from Missouri proposes, which calls for a  
11 retaliation -- I think no other word will do, it is  
12 retaliation -- to address the cumulative effects of the trade  
13 balance.

14 Now, that narrows our options, because the President is  
15 under a statutory obligation under this, and it narrows their  
16 options. They have constituent problems, we have constituent  
17 problems. And I am as frustrated as anybody here by the  
18 obstinancy of the Japanese Government.

19 I was talking with a man in Texas last night whose  
20 company makes some telephone parts that are not particularly  
21 a part of the telecommunications argument, but their  
22 frustration is that they are permitted to advertise in Japan  
23 but only in English.

24 (Laughter)

25 Senator Wallop. Maybe one of the things we ought to do

1 is to say that the Japanese can advertise in America but only  
2 in Japanese, and no translations allowed. There are probably  
3 more Japanese who speak English than there are Americans who  
4 speak Japanese, and we would probably be a little better off  
5 in that exchange.

6 But all jesting aside, I really am worried about the  
7 concept of having to deal with, as Senator Danforth states it,  
8 the cumulative effect as the underlying criteria by which  
9 the President must make a judgment.

10 And that has to be, as I read the bill, redressed in its  
11 entirety, and I don't see that that gives any elbow room at  
12 all for some of the other problems that we cause ourselves in  
13 this process.

14 The Chairman. Senator Bentsen, then Senator Boren, then  
15 Senator Roth, then Senator Moynihan.

16 Senator Bentsen. Well, you know, I think you both make  
17 a good point, Senator Chafee and Senator Danforth. First, I  
18 would rather that offsetting of the cumulative effect of the  
19 relaxation of the voluntary restraints in automobiles was not  
20 in this resolution.

21 By the same token, I sure do not want to limit it to  
22 what Senator Chafee is talking about, just on telecommunica-  
23 tions; the problem is much broader than that.

24 The problem is one not just of Japan; it is the  
25 European Common Market, it is all of these countries that are

1 putting more and more nontariff barriers in.

2 GATT itself is diminished in its value as to those things  
3 it affects. We all know that; it is down to about 30 percent  
4 now rather than where it was before -- about a third of its  
5 effectiveness. And when it is being observed, that is the  
6 exception rather than what we would normally expect of that  
7 procedure.

8 But what does disturb me is for us to have a role model  
9 of Japan doing this type of thing, when we can see what is  
10 happening in Asia. That is the exploding area; that is really  
11 the area of growth that is taking place. Today we do as much  
12 trade with the five nations of Asia as we do with the whole  
13 European Common Market.

14 In five more years, it is estimated, if you extrapolate  
15 what is happening, we will do twice as much trade with those  
16 nations as we do with the entire European Common Market.

17 What we can't have, I don't believe, is a situation where  
18 you duplicate over and over this role model with these other  
19 nations -- Japan, Korea, Taiwan, and the rest of them -- where  
20 they can put up those kinds of barriers and bar free trade,  
21 really keep our products out, and say that's the way to  
22 succeed.

23 We are seeing the same thing happening to us in Latin  
24 America and in South America. The biggest switch in trade,  
25 actually, is taking place in places like Mexico. And we can

1 even see the same type of situation down in South America.

2 So what we ought to be doing is forcing those markets  
3 open, and we will not get that kind of attention from them  
4 just with conversation; we are going to have to take some  
5 specific action. That means we are going to have to do some  
6 of the bilateral things that we really have not wanted to do  
7 in the past.

8 The Europeans do a much better job in their bilateral  
9 agreements than we do, but we are going to have to step into  
10 that kind of a role in order to try to get those kinds of  
11 concessions, opening up those markets to our products.

12 I think if you got the yen and the dollar back to where  
13 it was in 1979, that still wouldn't solve the problem. We  
14 would still have a structural imbalance.

15 But what we should be striving for, again, is opening  
16 up markets in all of these countries and not just Japan. And  
17 it is not "Japanese-bashing," because this is being repeated  
18 over and over around the world. And this world of ours that  
19 from 1970 to 1980 exploded in growth because of the growth  
20 in trade, we are now finding trade being depressed, and that  
21 in turn is going to negate growth in this world, whether it  
22 is the United States or Japan or the rest of these nations.  
23 And we will not get this engine going again unless we can  
24 convince these people to really open up their markets.

25 If we do that, we will start the real growth which we

1 need, which will be better prosperity and a better standard  
2 of living for Asia, for Europe, for South America, and for  
3 this nation of ours.

4 Now, unfortunately, I think we have to take this kind of  
5 a risk to try to get to that kind of a result. And I don't  
6 look forward to it.

7 Senator Wallop. But would you respond to my question?  
8 How do you do that with a measurement so absolute as the  
9 cumulative effects of the trade deficit? That is what worries  
10 me.

11 I don't like Senator Chafee's approach, just the  
12 telecommunications. I do worry about it when you just say  
13 that the cumulative effect is the measurement by which all  
14 action is triggered, and that is not necessarily very valid  
15 on its breadth.

16 Senator Bentsen. Well, as I look at that number, the  
17 cumulative effect of that one, that will be a relatively  
18 small percentage of the total of the deficit. So I think that  
19 whatever specificity comes about there gets muted or diffused  
20 as you look at the total package.

21 The Chairman. Let me tell you what my plans are. I  
22 would like to keep going and keep a quorum so that we can vote  
23 on this before we have to leave, and it is 12:30 now.

24 Senator Boren?

25 Senator Boren. Mr. Chairman, I will try to be brief.

1 I usually -- 99 times out of 100 -- am in agreement with my  
2 good friend from Rhode Island on most issues that come before  
3 this committee; but I have to say that in a way I am sort of  
4 the other pole of this argument. I have of course just joined  
5 with Senator Danforth and Senator Baucus and others this as  
6 we did the resolution.

7 I frankly think it doesn't go far enough in hinging  
8 itself on the cumulative trade balance, and I'll tell you  
9 why:

10 I agree that our goal, of course, is to have access. I  
11 don't want to see us establish barriers that excuse our own  
12 inaction on our budget deficits and other things that we need  
13 to be doing ourselves to get the value of our dollar back to  
14 its rightful place at all.

15 But we have been told by the COMmerce Department that,  
16 even given the value of the dollar and given other economic  
17 failings and shortcomings here at home, that if we had fair  
18 trade practices on both sides we should be able to be selling  
19 the Japanese \$10-12 billion a year more than we are. That is  
20 sort of a hip-pocket estimate that has been given in several  
21 different hearings.

22 Now, I think our problem with the Japanese is -- and I  
23 don't say this unkindly because I happen to think that we are  
24 far too legalistic a society and far too litigious a society  
25 -- that many of the barriers, the real barriers, to our sale

1 of goods are not legalistic sorts of barriers, they are not  
2 trade barriers as such or tariff barriers, they are not  
3 written down into law anywhere, it is the whole climate of  
4 things -- the speed with which the bureaucracy works, how  
5 many of our packing plants, for example, they certify as safe  
6 to export beef from -- I think it is only about 30 or 40 out  
7 of 6,000 or something, even though we know we examine them all  
8 carefully ourselves.

9 I think a more realistic way, frankly, of approaching  
10 the whole thing is to set a figure. And Senator Danforth  
11 knows, and I think I am going to withhold today, although I  
12 may on the floor offer it, we are projecting \$37 billion plus  
13 maybe another five on this, I guess it's to 42. We have been  
14 told by the Commerce Department we should be selling 10 to  
15 12 more.

16 I think perhaps a more workable way to get this done in  
17 a friendly fashion, given the fact you can't really  
18 negotiate law for law with written code versus written code,  
19 because it's just done differently culturally, and I'm not  
20 sure which is the superior way of doing it, is just to say  
21 "All right. If that imbalance, given the existing value of  
22 the dollar, the other factors aside, ought to be \$30 billion,  
23 let's say it's going to be no more than \$30 billion at the  
24 end of this year, have the President take action on a  
25 seasonally-adjusted basis quarterly to bring it to that, and

1 allow the folks on the other end -- allow the people in Japan,  
2 given the fact that there is a whole different cultural and  
3 legal way in which they operate, to decide themselves how to  
4 best do that, and to make the kinds of changes within the  
5 functioning of their bureaucracy and the rest to do it."

6 So I would go completely to the other extreme. I think  
7 that the mere mention of the imbalance that is going to be  
8 added by the auto exports is not enough.

9 The only way we are ever going to get access to their  
10 market is to use the one things we have that they want, and  
11 that's access to our market. And I would prefer to just set  
12 a figure and do it on that basis.

13 Senator Symms. Would the Senator yield for just a brief  
14 question? Would you in your calculations include timber from  
15 the National Forest System and oil from Alaska in those  
16 numbers?

17 Senator Boren. No. I would just say the Japanese shall  
18 take such action to do that. We still have our own -- I mean,  
19 I have no objection to some of these things. But I mean,  
20 in other words, we would say they will take action on their  
21 end to make sure that the trade deficit doesn't exceed a  
22 certain amount. We can negotiate with each other on how to  
23 do it, but we leave a lot of the flexibility to them rather  
24 than us telling them how to do it.

25 The Chairman. Senator Roth, and then Senator Moynihan.



1           Senator Roth. Mr. Chairman, I share the concern of the  
2 imbalance with Japan, and I must say I subscribe to much that  
3 was said by the Senator from Texas. I think this is a  
4 critically important problem.

5           I am a little concerned that I don't think the Chafee  
6 amendment goes as far as I would like, because it is not just  
7 the telecommunications but it is the other areas of access  
8 that we are concerned about as much.

9           However, I would be very, very concerned if we went the  
10 direction that Senator Boren suggests, because I would just  
11 point out there have been many years where we have had a  
12 favorable balance with Europe, and are we going to make that  
13 a new basis of trade relations, that we have to have a  
14 balance with each country or each region? That would deeply  
15 concern me.

16           But I would like to propose as an amendment to Senator  
17 Chafee -- and I would like to ask him if he would be willing  
18 to agree to it -- I would like to see it broadened to  
19 recommend that the President would initiate a case against  
20 Japan under Article 23 of the General Agreement on Tariffs  
21 and Trade.

22           The basis for this case would be that Japan has, in the  
23 language of that article, that GATT article, "nullified and  
24 impaired tariff concessions previously made to the United  
25 States by denying products of the United States access into

1 its market through the less visible means."

2 I think a concomitant case in GATT is necessary, because  
3 I think overall we want to promote and to strengthen our  
4 trading system by strengthening GATT itself.

5 Now, it has been said by a number of our members that we  
6 are not the only country that has a problem with Japan's  
7 market access barrier. For example, I think it was quoted  
8 last week that the U.S. takes 58 percent of LDC exports,  
9 while Japan takes only 8 percent. If this is so, and I  
10 agree that it is, then why don't we bring the Japanese into  
11 the world court of trade -- GATT -- with a charge that they  
12 have nullified and impaired trade concessions made to us in  
13 prior negotiations? Surely we would have the support of  
14 other countries in such a case, and that unified action may  
15 very well help in bringing about a favorable response from  
16 Japan. Japan cannot afford to alienate the world.

17 So I would ask the Senator from Rhode Island if he  
18 would be willing to agree to that.

19 Senator Chafee. Yes, that is agreeable to me.

20 The Chairman. Senator Moynihan, then Senator Baucus,  
21 then Senator Matsunaga.

22 (Continued next page)

23

24

25

1           Senator Moynihan. Mr. Chairman, I have a series of  
2 propositions. First, the Senator from Missouri has stated  
3 that this Administration will not enforce the trade laws,  
4 does not protect the interests of the American economy in  
5 international trade, and says so with great vigor and  
6 insistence, and I will leave the matter to rest there.

7           I don't know why the President will not enforce the  
8 trade laws or protect the interests of American -- the  
9 legitimate interests of American economy in world trade,  
10 but if that is the case, let the record so stand.

11           What concerns me is that increasingly we are determined  
12 to blame others for what we ourselves do to ourselves. We  
13 are hearing at great length today the question of the  
14 imbalance of trade as between the United States and Japan.

15           Mr. Chairman, this imbalance is nothing as compared  
16 with our imbalance with Canada. Canada is our neighbor to  
17 the north, the country closest to us, and the way they do  
18 things and the way they are than other country in the world.

19           Last year, on a per capita basis, our imbalance of  
20 trade with Japan was \$307.00. Our imbalance of trade with  
21 Canada was \$807.00 -- more than twice as much with Canada  
22 as with Japan.

23           Senator Chafee. In our favor.

24           Senator Moynihan. No, just the other way. We have  
25 more than twice as large an imbalance of trade on a per

1 capita basis with Canada as we do with Japan, and Canadians  
2 let you print advertisements in English in their newspapers,  
3 I think -- I believe in most parts of Canada.

4 We have done this to ourselves by a disastrous fiscal  
5 policy and monetary policies that have overvalued the dollar  
6 in such a way that the best American manufacturers cannot  
7 compete.

8 Just last Thursday in Rochester, New York, one of the  
9 best-known companies in America and one of the best-known  
10 American companies in the world -- the Kodak Company --  
11 reported to its stockholders that last year it lost \$1 billion  
12 in profit simply owing to the overvaluation of the dollar.

13 They point out that the dollar has increased in value  
14 by 80 percent since 1980, and those are the numbers of the  
15 Federal Reserve Board.

16 The effect, for example, with Canada is that a Canadian  
17 dollar is worth 75 cents in American currency, and we can't  
18 overcome that balance.

19 The way we have let the dollar become out of line, and  
20 there are people in the Administration who say "A strong  
21 dollar means a strong America." Alas, it just means the  
22 opposite.

23 In effect, we impose an export tax on goods we produce  
24 and provide an import subsidy on goods produced elsewhere.

25 The Kodak Company said that it can't go on this way, if

1 it is to continue to be a profitable company. With the dollar  
2 exchange rate what it is, it will have to move its  
3 manufacturing outside this country.

4 We know, and it has been made very clear, and we  
5 mentioned this the last time we had this Danforth matter  
6 before us, that the automobile companies have made a  
7 conscious decision to move their production offshore for  
8 small engines.

9 The Chrysler Corporation testified before the Ways and  
10 Means Committee that it wanted its share of the deficit with  
11 Japan.

12 These are things we do to ourselves. If ever there was  
13 a thing that the U.S. Government was responsible for, it is  
14 the value of American currency in world markets, and if it  
15 is not going to meet that responsibility, you are going to  
16 see a long-term drifting out of this country of  
17 manufacturing facilities and manufacturing innovations and  
18 technological change that will make the next century a very  
19 different one from this.

20 And I don't see that we are addressing it by simply  
21 blaming the others for our problems.

22 I would make one particular final point. Those same  
23 passages that Mr. Chafee was addressing ask us, on page 5,  
24 to redress the increase in the trade deficit that will come  
25 about because of the Japanese relaxation of the quotas which

1 we got them to impose. They were nominally self-imposed, but  
2 that is a courtesy which they asked for.

3 Now, here the Japanese have made a gesture in the  
4 opposite direction of fixing markets and establishing quotas,  
5 and we say because they have done that, they will have to pay.

6 I suppose it is a ritual and a necessity to say that I  
7 have no grief for the Japanese disinclination to import beef.  
8 And of course, they have had an absolutely horrendous  
9 monopoly in the use of telecommunications systems. That  
10 should be stated differently.

11 Up until now, the telephone system in Japan has been  
12 government owned, and that government-owned telephone system  
13 never found an opportunity to buy a spark plug or a coil of  
14 copper wire, much less switching gear and such like some  
15 in the United States.

16 The Nippon telephone is now being sold and it is now  
17 open, and we have every reason to expect that we will be an  
18 open competitor for new work.

19 And I very much agree with Mr. Chafee in that regard  
20 and will vote for his measure, but that is a specific. It  
21 is something that can be done, should be done.

22 And they are quite capable of doing it. It is one  
23 thing to ask the Japanese to let us bid on telecommunications.  
24 It is another thing to say to them: Do something about the  
25 price of our dollar or make more expensive automobiles.

1           They can't do that. They won't do that. They can do  
2 it, Mr. Chafee --

3           The Chairman. The problem of selling beef or lumber to  
4 them existed long before the dollar problem. We have tried  
5 and tried and tried and tried and they will not let us in.

6           Senator Moynihan. On lumber --

7           The Chairman. And beef. They just won't let us in.

8           Senator Moynihan. I agree. I don't disagree. I just  
9 think there is a specific measure we have which we can do  
10 something about, and about which they will respond.

11          Senator Bentsen. And on orange juice, they impose  
12 domestic content requiring a percentage of it -- Japanese  
13 orange juice.

14          Senator Moynihan. And not one of these things is  
15 accessible under the GATT.

16          Senator Baucus. Mr. Chairman?

17          The Chairman. Senator Baucus?

18          Senator Baucus. Mr. Chairman, I think the Senator from  
19 New York has made an important point here, and we all know  
20 it, but it is important that that point be made again for  
21 all of us to remember.

22          That is, a lot of our trade problems are due to the  
23 overvalue of the U.S. dollar. That is clear.

24          I think we also know, and we should nail it down very  
25 definitely that that is not the whole problem. DRI and

1 other economic models show that our trade imbalance with  
2 Japan is caused about half due to the overvalue of the U.S.  
3 dollar.

4 There is a lot left that is not caused by the overvalue  
5 of the U.S. dollar. And certainly we should do what we can  
6 to bring exchange rates more into line -- whether it is  
7 market intervention coordinated with other countries, getting  
8 our Federal budget down or whatever we have to do and we  
9 should.

10 We are not doing enough, I think, to get that exchange  
11 rate more in line.

12 The point is that there is another part of this, and  
13 that is that Japan is not opening its markets. I am strained  
14 to vote against the amendment by the Senator from Rhode  
15 Island because there are lots of other areas where Japan  
16 is not opening up its markets. One is processed forest  
17 products.

18 Japan's own data shows that from 1967 on through today's  
19 date -- that is the dates for which Japan has figures -- is  
20 1983 -- our sawmills, our plywoods are twice as productive  
21 as Japan's. Japan's own data, and yet Japan closes its  
22 markets to our processed forest products.

23 I will go down the list, and there are lots of other  
24 areas as well -- there is tobacco, there is pharmaceuticals,  
25 electronics, semiconductors, and so forth.



1           So, I think that we have to keep our eye on the ball.  
2           Yes, get our exchange rate more in line. Do what we can do.  
3           Japan can do something, too, in that regard, but also keep  
4           the pressure on to get Japan to open up its markets.

5           I also have a slight problem with the Senator from  
6           Delaware's proposal about GATT. I am worried that the  
7           Administration and others will use that approach to sidetrack  
8           us. That is, just talk.

9           Someone once said that perhaps the GATT -- G-A-T-T --  
10          should not stand for General Agreement on Tariff and Trade  
11          but should, rather, stand for Gentlemen's Agreement to Talk  
12          and Talk, because that is what GATT has been -- a gentlemen's  
13          agreement to talk and talk.

14          Senator Roth. Would the Senator yield?

15          Senator Baucus. Just a moment. A good example of that  
16          is: What did GATT do, or more precisely what did GATT not  
17          do when France obviously violated GATT by subsidizing its  
18          flour sales to Egypt? What did GATT do or what did GATT  
19          not do?

20          It is clear to everyone that was a violation of GATT  
21          that GATT just refused to consider because it might step on  
22          somebody's toes, particularly some countries in the East.

23          GATT needs to be jolted a bit, and one way to jolt GATT  
24          is for us to take action which stands up for our rights.  
25          Our rights are to export freely into Japan's markets.

1           So, I frankly regretfully think that it is not wise at  
2 this point for us to get sidetracked on the kind of approach  
3 which generally would make sense, the kind of approach  
4 suggested by the Senator from Delaware, and I must say, in  
5 the same vein in response to the Senator from Wyoming, sure,  
6 to some degree this bill constrains the President's options.

7           The problem is that the President isn't exercising any  
8 of his options. The President, too, needs to have a fire lit  
9 under him here.

10           And this bill, I think, lights a little fire under GATT,  
11 it lights a fire under Japan, and also under the President.

12           We ought to get moving here, and I think this bill in  
13 a very fair measured way does that.

14           And finally, Mr. Chairman, I would just like to quote  
15 one sentence from a prior Secretary of State, Thomas  
16 Jefferson:

17           "Should any nation contrary to our wishes suppose it  
18 may better find its advantage by continuing its system of  
19 prohibitions, duties and regulations, it behooves us to  
20 protect our citizens, their commerce and navigation by  
21 counterprohibitions, duties and regulations also.

22           "Free commerce and navigation are not to be given in  
23 exchange for restrictions and vexations."

24           It was true then. I think it is true now. I think this  
25 bill is the right approach -- it is not too far, but it is

1 strong enough to get the message across.

2 The Chairman. Senator Roth wants to answer, Senator  
3 Baucus. Limit your answer to that, if you can.

4 Senator Roth. Yes, I will be very prompt, Mr. Chairman.  
5 I just want to make it clear that what I am proposing is  
6 a two-track approach, that at the same time we proceed with  
7 the approach of Senator Chafee, that we also move in GATT.

8 I think it is important that we try to strengthen the  
9 GATT procedures. I have some of the same concerns that are  
10 mentioned by the Senator from Montana, but I think we would  
11 be making a mistake to ignore it.

12 It is my understanding that the basic thrust of the  
13 Senator from Missouri would be that what I propose here would  
14 also be covered by his legislation as drafted.

15 Senator Danforth. As I understand your amendment, I  
16 think it is entailed in the bill.

17 Mr. Santos. Under the Trade Act of 1974, the President  
18 normally would resort both to the 301 procedures and to GATT  
19 resolution procedures.

20 Senator Boren. May I ask a procedural question?

21 The Chairman. You may ask a procedural question, but I  
22 want to recognize Senator Matsunaga who has been waiting  
23 patiently.

24 Procedural question?

25 Senator Boren. The procedural question is: Does the

1 Chafee amendment substitute for the language in the Danforth  
2 bill, on page 5 -- I guess it would be Section (b)(1) -- on  
3 page 5, or is it in addition thereto?

4 The Chairman. Senator Chafee.

5 Senator Chafee. It is my objective to have the Chafee  
6 amendment just supplement, just replace --

7 The Chairman. Oh, substitute?

8 Senator Chafee. Substitute, yes.

9 The Chairman. All right. Senator Matsunaga?

10 Senator Matsunaga. Thank you, Mr. Chairman. Just to  
11 keep the record straight, although the new Ambassador from  
12 Japan is my namesake, I am not the Ambassador from Japan.

13 (Laughter)

14 Senator Matsunaga. I tend to agree with much of what  
15 has been said here, and I think Senator Wallop and Senator  
16 Moynihan brought up points which we often overlook.

17 I will make this prediction: That even if this bill  
18 passes, the situation will not change at all. We will  
19 continue to suffer a deficit in our balance of trade because  
20 our American industry chooses not to sell the Japanese the  
21 goods that they want.

22 The Japanese, on the other hand, would come to America  
23 and determine what the American consumer wants, goes back  
24 and manufactures those goods and sells them here.

25 I will give you some examples. One, in the case of

1 furniture, for example, you complain about the Japanese not  
2 buying American furniture. There is nowhere a restriction  
3 on it, but we export American furniture unaltered, and the  
4 Japanese with shorter legs can't have their feet reach the  
5 floor, so they are not going to buy American furniture.

6 And then, as it was pointed out in the hearings with  
7 the subcommittee chaired by Senator Danforth, we had  
8 Ambassador Smith and Secretary Olnier, and they expressed  
9 opposition to anything such as this, actually.

10 They pointed to the lack of communication between our  
11 two countries, but there is a gap in communication, and if  
12 we could but communicate properly with them -- not only by  
13 way of language -- I think eventually since the Japanese  
14 are learning the speak English, they may begin to understand  
15 us more than we understand them because Americans somehow  
16 will never perhaps learn to speak Japanese.

17 But even in custom. Take one example of the golf ball.  
18 The Japanese love American golf balls but American producers  
19 couldn't figure out why the Japanese wouldn't buy American  
20 golf balls -- because Americans package golf balls in fours.

21 In the Japanese superstition or belief, four is ichini  
22 sanshi (Japanese) -- shi means death. So, they will never  
23 buy anything that is packaged in four.

24 The Chairman. That accounts for my game.

25 (Laughter)

1 Senator Matsunaga. And we have got to understand those  
2 things. I will give you another illustration.

3 In 1979, when I accompanied President Carter to the  
4 Summit on Energy -- the conference -- in Tokyo, I was very  
5 much disturbed by statements made by members of this committee  
6 at that time. I asked our ambassador there to arrange a  
7 meeting for me with the Japanese auto dealers -- importers  
8 and exporters -- and the arrangement was made.

9 I asked them -- I said there was a senator on the  
10 Finance Committee who just returned from a visit to Japan  
11 and said, well, I just came back from Japan and I did not  
12 see a single American car on the streets of Tokyo.

13 I came back to Washington, our nation's capital, and  
14 every other car is a Japanese car, and he proposed that we  
15 impose an embargo on Japanese import of automobiles until  
16 such time as Japan opened up its market to American cars.

17 And so I asked this group: Why don't you permit  
18 American cars? Why don't you buy American cars? And the  
19 spokesman for the group said: Senator, we have been asking  
20 your American automakers to shift the steering gear from  
21 the left to the right because our traffic is on the left  
22 here.

23 And we have been asking them for years, and we can't  
24 sell cars with steering gears on the left side. And they  
25 have absolutely refused to do that.

1           So, when I came back, I asked Senator Long, who was then  
2 Chairman of the committee, to hold a hearing, and we did  
3 invite the automakers, as you will recall, and I posed the  
4 question to them.

5           I just heard this in Japan, that you have been asked  
6 to shift the steering gear from left to right, and you  
7 absolutely refuse to do it. And I said: Why? And the  
8 response was: Senator, our market is not in Japan. Our  
9 market is here in the United States.

10           So, they make no effort to sell American cars, and yet  
11 they were here on the Danforth-Bentsen bill to impose a  
12 quota on imports. We have that situation.

13           I think sometimes we ought to take a look at ourselves,  
14 and inasmuch as the resolution was just passed and there is  
15 positive reaction to that.

16           Prime Minister Nakasone, as you know, has said that he  
17 will add his personal weight toward opening up the market.  
18 He will do what can be done.

19           And also -- as of April 1 -- as of yesterday, there has  
20 been a change -- one, privatization of the telecommunications  
21 business, and two, a centralization of the certification  
22 system.

23           So, I think there are definite signs of progress. And  
24 then, the resolution talks about the trade imbalance between  
25 the U.S. and Japan costing the United States hundreds of

1 thousands of jobs each year. Let us not forget that Japan  
2 has invested in America to the extent of creating over  
3 100,000 jobs -- American jobs -- in Arkansas.

4 A television firm was going bankrupt. Sanyo came in,  
5 took it over, saved 2,000 jobs. The same thing happened in  
6 Illinois, and even in Missouri, there is a steel firm there  
7 where they saved 600 jobs, and others.

8 Now, we must look upon Japan realistically. Japan today  
9 is our best trading partner -- our ally. And we have the  
10 resolution passed already. Why make it worse? I don't think  
11 the bill is necessary, really.

12 The Chairman. Let me ask again. It is 1:00 p.m.  
13 Senator Danforth wants to speak. Senator Bentsen has a  
14 question of Senator Chafee. I would hope we could conclude  
15 with the response.

16 Senator Danforth. Mr. Chairman, I would like to speak  
17 for one minute. I was supposed to be at a lunch for Senator  
18 Tribble at noon, and I think I am going to be a little bit  
19 late. I wonder if we could have a time set for voting.

20 The Chairman. I am not sure how much new information  
21 remains to be said. I would like to vote as soon as we can.

22 Senator Danforth. May I proceed for 30 seconds? I  
23 would hope we would reject the Chafee amendment for two  
24 reasons.

25 One, it covers only one product -- telecommunications.



1 Therefore, I think it is inadequate.

2 Secondly, with respect to the telecommunications issue,  
3 Senator Chafee has the bill. I think it is a very interesting  
4 bill.

5 Senator Bentsen and I and others have been talking about  
6 another approach to telecommunications. There will be at  
7 least two bills that will be introduced on that subject  
8 alone.

9 Hearings have not been held on it. They will be held  
10 in the near future, I am told by Bill Diefenderfer. And  
11 therefore, I would hope that we would reject the Chafee  
12 amendment at this point.

13 Senator Heinz. Mr. Chairman?

14 The Chairman. Senator Bentsen has a question of Senator  
15 Chafee.

16 Senator Bentsen. I am going to withdraw my question.

17 The Chairman. Senator Heinz?

18 Senator Heinz. Mr. Chairman, I will take less than 60  
19 seconds. I am going to vote for the Danforth bill because  
20 I think it is broader and stronger than what we passed last  
21 week.

22 I am reluctantly going to vote against John Chafee's  
23 bill, although I think it is stronger with respect to the  
24 specific area of telecommunications because I don't want  
25 to send the Japanese the wrong signal -- that we are in some

1 way backing off from last week in the resolution that we  
2 passed.

3 Personally, I favor a somewhat more direct approach,  
4 which is a 20 percent across-the-board surcharge aimed only  
5 at the Japanese, not against anybody else, but what I am  
6 going to do after we vote on John Chafee's substitute is I  
7 am going to propose it as an addition to Jack Danforth's  
8 bill, so that we can vote to add it to his bill rather than  
9 to substitute for it.

10 Did I use 60 seconds or less?

11 The Chairman. You have used 60 seconds.

12 Senator Heinz. Thank you.

13 The Chairman. Senator Chafee?

14 Senator Chafee. Mr. Chairman, I am not clear what this  
15 Danforth amendment does. It tells the President to do  
16 something that Senator Danforth has indicated in the past  
17 the President has not been prepared to do. And I don't know  
18 how he is going to do something under this that he hasn't  
19 been willing to do in the past.

20 My bill is specific. It deals with a clear-cut  
21 situation -- the telecommunications field that has just  
22 opened. There is no question that the United States has the  
23 superior product.

24 Let's do something about this and get on with it. And  
25 if we then want to move on to other subjects, fine, but here

1 is something that clearly the equities are on our side, and  
2 I think we ought to move ahead, and it accomplishes  
3 something.

4 It sets a time specific, cuts off all imports of Japanese  
5 products in this field and gets us moving ahead. Thank you.

6 The Chairman. The clerk will call the roll on the  
7 Chafee substitute, which is a substitute for the Danforth  
8 bill.

9 The Clerk. Mr. Dole?

10 Senator Dole. No.

11 The Clerk. Mr. Roth?

12 Senator Roth. Aye.

13 The Clerk. Mr. Danforth?

14 Senator Danforth. No.

15 The Clerk. Mr. Chafee?

16 Senator Chafee. Aye.

17 The Clerk. Mr. Heinz?

18 Senator Heinz. No.

19 The Clerk. Mr. Wallop?

20 Senator Wallop. Aye.

21 The Clerk. Mr. Durenberger?

22 Senator Durenberger. (No response)

23 The Clerk. Mr. Armstrong?

24 Senator Armstrong. (No response)

25 The Clerk. Mr. Symms?

1 Senator Symms. Aye.  
2 The Clerk. Mr. Grassley?  
3 Senator Grassley. No.  
4 The Clerk. Mr. Long?  
5 Senator Long. No.  
6 The Clerk. Mr. Bentsen?  
7 Senator Bentsen. No.  
8 The Clerk. Mr. Matsunaga?  
9 Senator Matsunaga. No.  
10 The Clerk. Mr. Moynihan?  
11 Senator Moynihan. Aye.  
12 The Clerk. Mr. Baucus?  
13 Senator Baucus. No.  
14 The Clerk. Mr. Boren?  
15 Senator Boren. No.  
16 The Clerk. Mr. Bradley?  
17 Senator Bradley. (No response)  
18 The Clerk. Mr. Mitchell?  
19 Senator Mitchell. (No response)  
20 The Clerk. Mr. Pryor?  
21 Senator Pryor. No.  
22 The Clerk. Mr. Chairman?  
23 The Chairman. No.  
24 The Clerk. Five (5) yeas, eleven (11) nays.  
25 The Chairman. The amendment is defeated.

1 John, are you going to make a motion or not?

2 Senator Heinz. Yes, Mr. Chairman. I would move that  
3 we add the Chafee bill to the Danforth bill.

4 The Chairman. You have heard the motion: To add what  
5 was the Chafee amendment -- to add it -- to the Danforth bill.

6 Senator Moynihan. Mr. Chairman, I second that motion.

7 The Chairman. Senator Danforth, do you have any  
8 comments?

9 Senator Danforth. Mr. Chairman, I would hope that the  
10 telecommunications issue could be saved for another day. We  
11 have two different approaches that are going to be offered  
12 on that.

13 I obviously think that the one that I will be  
14 introducing is better, but I think I should at least have  
15 the ability to have a hearing on it, and there will be a  
16 hearing in the near future.

17 The Chairman. The clerk will call the roll on adding  
18 the Chafee amendment to the Danforth bill.

19 The Clerk. Mr. Dole?

20 Senator Dole. No.

21 The Clerk. Mr. Roth?

22 Senator Roth. Aye.

23 The Clerk. Mr. Danforth?

24 Senator Danforth. No.

25 The Clerk. Mr. Chafee?

20

1 Senator Chafee. Aye.

2 The Clerk. Mr. Heinz?

3 Senator Heinz. Aye.

4 The Clerk. Mr. Wallop?

5 Senator Wallop. No.

6 The Clerk. Mr. Durenberger?

7 Senator Durenberger. (No response)

8 The Clerk. Mr. Armstrong?

9 Senator Armstrong. (No response)

10 The Clerk. Mr. Symms?

11 Senator Symms. Aye.

12 The Clerk. Mr. Grassley?

13 Senator Grassley. No.

14 The Clerk. Mr. Long?

15 Senator Long. No.

16 The Clerk. Mr. Bentsen?

17 Senator Bentsen. Aye.

18 The Chairman. Mr. Matsunaga?

19 Senator Matsunaga. No.

20 The Clerk. Mr. Moynihan?

21 Senator Moynihan. Aye.

22 The Clerk. Mr. Baucus?

23 Senator Baucus. No.

24 The Clerk. Mr. Boren?

25 Senator Boren. Aye.

1 The Clerk. Mr. Bradley?

2 Senator Bradley. (No response)

3 The Clerk. Mr. Mitchell?

4 Senator Mitchell. (No response)

5 The Clerk. Mr. Pryor?

6 Senator Pryor. Aye.

7 The Clerk. Mr. Chairman?

8 The Chairman. No.

9 The Clerk. Eight (8) yeas, eight (8) nays.

10 The Chairman. The amendment is defeated. We will vote  
11 on reporting out the Danforth bill. The clerk will call the  
12 roll.

13 The Clerk. Mr. Dole?

14 Senator Dole. Aye.

15 The Clerk. Mr. Roth?

16 Senator Roth. Aye.

17 The Clerk. Mr. Danforth?

18 Senator Danforth. Aye.

19 The Clerk. Mr. Chafee?

20 Senator Chafee. No.

21 The Clerk. Mr. Heinz?

22 Senator Heinz. Aye.

23 The Clerk. Mr. Wallop?

24 Senator Wallop. No.

25 The Clerk. Mr. Durenberger?

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



23  
1 The Clerk. Mr. Chairman?

2 The Chairman. Aye.

3 The Clerk. Twelve (12) yeas, four (4) nays.

4 The Chairman. The amendment is reported out.

5 I would like to seek unanimous consent to authorize me  
6 to offer the substance of Senator Abdnor's bill, S. 245 (as  
7 agreed to by the committee), the auto log bill, as a  
8 committee amendment to another bill on the Senate floor.

9 Without objection.

10 Senator Wallop. Mr. Chairman?

11 The Chairman. Senator Wallop?

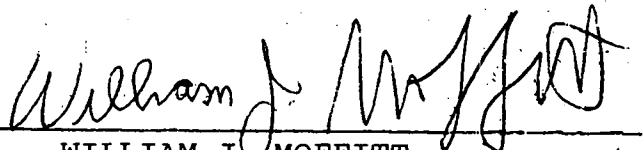
12 Senator Wallop. I would like to be recorded on that  
13 record keeping in favor but with the reservation that I  
14 still might want to offer the amendment that I was unable  
15 to offer.

16 The Chairman. Without objection. This hearing is  
17 adjourned.

18 (Whereupon, at 1:05 p.m., the hearing was adjourned.)  
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C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Session of the Committee on Finance, held on April 2, 1985, were transcribed as herein appears and that this is the original transcript thereof.



WILLIAM J. MOFFITT  
Official Reporter

My Commission expires April 15, 1989.

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EXECUTIVE SESSION  
99th Congress, 1st Session  
April 2, 1985

SENATE COMMITTEE ON FINANCE

EXECUTIVE SESSION

Tuesday, April 2, 1985; 10:00 A.M.; Room SD-215

1. Federal Supplemental Compensation Program  
Phaseout. (Attachment A)
2. Auto Recordkeeping Requirements. (Attachment B)
3. U.S.-Japan Trade Legislation. (Attachment C)

March 29, 1985

MEMO

FROM: FINANCE COMMITTEE STAFF  
(Sydney Olson x4-5427)

TO: MEMBERS, COMMITTEE ON FINANCE

SUBJECT: FEDERAL SUPPLEMENTAL COMPENSATION PROGRAM  
PHASE-OUT OF BENEFITS

This memorandum describes a proposal dealing with the Federal Supplemental Compensation (FSC) Program to be considered during the mark-up. The proposal provides for the continuation of FSC benefits beyond the March 31 expiration of the program. Also attached is a list showing the current insured unemployment rate for each State and the number of weeks of FSC benefits available in each State.

CURRENT LAW

The Federal Supplemental Compensation (FSC) Program was established by the Tax Equity and Fiscal Responsibility Act of 1982. Benefits became payable September 12, 1982. The program is funded from Federal general revenues.

The program provides additional weeks of unemployment compensation to individuals who have exhausted their regular State unemployment benefits and the benefits, if any, under the Extended Benefits (EB) program to which they were entitled. Weekly benefit amounts are identical to regular

**A**

State program benefits for each claimant. The program was originally scheduled to expire on March 31, 1983, but has been extended 3 times.

The current program was extended in the Federal Supplemental Compensation Amendments of 1983. That law authorized the FSC program from October 23, 1983, through the week starting March 31, 1985. After that week, no FSC benefits are payable. There are currently approximately 340,000 individuals nationwide receiving FSC benefits.

Under the current program, benefit durations range from 8 to 14 weeks, depending on the level of unemployment in each State:

1. 14 weeks in States with insured unemployment rates (IUR) of at least 6.0 percent or a cumulative average IUR since January 1982 of at least 5.5 percent;
2. 12 weeks in States with IUR's of at least 5.0 to 5.9 percent or a cumulative average IUR of 4.5 to 5.4 percent;
3. 10 weeks in States with IUR's of 4.0 to 4.9 percent; and
4. 8 weeks in all other States.

COST OF PROGRAM

1. FY82 -- \$ .045 billion
2. FY83 -- \$5.613 billion
3. FY84 -- \$2.970 billion
4. FY85 -- \$ .950 billion

Total \$9.578 billion

INDIVIDUALS RECEIVING BENEFITS

1. FY82 -- .371 million
2. FY83 -- 4.164 million
3. FY84 -- 2.241 million
4. FY85 -- .780 million

Total 7.556 million

Source: Congressional Budget Office (CBO)

PROPOSED CHANGE

The Federal Supplemental Compensation Program would be allowed to expire with the week of March 31 - April 6, 1985. No new claimants would be added to the program after that date.

Benefits would continue for individuals claiming FSC benefits for the week ending April 6. These individuals would continue to receive benefits until they have exhausted the duration of benefits available in their State under the program as in effect on March 31.

CBO COST ESTIMATE

FY85 -- \$100 million

Attachment

ATTACHMENT  
March 29, 1985

<u>STATE</u>	<u>FSC STATUS<sup>1</sup></u> <u># of weeks</u>	<u>IUR<sup>2</sup></u> <u>%</u>
Alabama	12	4.29
Alaska	14	8.52
Arizona	8	1.82
Arkansas	12	5.00
California	10	3.81
Colorado	8	2.71
Connecticut	8	2.27
Delaware	8	2.21
Dist. of Col.	8	2.26
Florida	8	1.29
Georgia	8	2.20
Hawaii	8	2.95
Idaho	14	5.92
Illinois	12	3.91
Indiana	8	3.32
Iowa	10	4.16
Kansas	8	2.89
Kentucky	12	4.25
Louisiana	12	4.56
Maine	8	4.87
Maryland	8	2.84



Massachusetts	8	2.91
Michigan	12	4.45
Minnesota	8	3.77
Mississippi	12	4.59
Missouri	8	3.31
Montana	12	5.62
Nebraska	8	3.08
Nevada	8	3.42
New Hampshire	8	1.41
New Jersey	8	3.60
New Mexico	8	3.25
New York	8	3.35
North Carolina	8	3.15
North Dakota	10	4.63
Ohio	12	4.0
Oklahoma	8	2.67
Oregon	14	5.49
Pennsylvania	14	5.10
Puerto Rico	11	6.77
Rhode Island	12	4.82
South Carolina	8	3.52
South Dakota	8	2.19
Tennessee	8	3.55
Texas	8	1.71

Utah	8	3.56
Vermont	10	4.15
Virginia	8	1.75
Virgin Islands	8	3.26
Washington	14	5.49
West Virginia	14	6.65
Wisconsin	12	4.91
Wyoming	8	2.69

<sup>1</sup>As of March 9, 1985  
<sup>2</sup>Insured Unemployment Rate

FEDERAL SUPPLEMENTAL COMPENSATION PROGRAM

PHASE-OUT OF BENEFITS

1. The Federal Supplemental Compensation (FSC) Program would be allowed to expire with the week of March 31 - April 6, 1985. No new claimants would be added to the program.
2. Benefits would continue for individuals claiming FSC for the week ending April 6. These individuals would continue to receive benefits until they have exhausted the duration of benefits available in their State under the program as in effect on March 31.
3. CONGRESSIONAL BUDGET OFFICE (CBO) COST ESTIMATE

FY85 -- \$100 million\*

\*As of 6:00 p.m., Monday, April 1, CBO has reestimated the cost of this option:

FY85 -- \$160 - \$180 million

## AUTO LOG RECORDKEEPING REQUIREMENTS

### I. Background and Pre-1984 Act Rules

A taxpayer may deduct expenditures (including depreciation and operating costs) attributable to business use of an automobile or other means of transportation. No deduction is allowed for expenditures attributable to the personal use of an automobile, etc. (other than for interest on purchase indebtedness or for certain State taxes).

Under general tax law principles, the courts have held that a taxpayer bears the burden of proving both the eligibility of any expenditure claimed as a deduction or credit and also the amount of any such eligible expenditure, including the expenses of using a car in the taxpayer's trade or business.

In the Revenue Act of 1962, the Congress enacted section 274(d) to require the taxpayer to substantiate the business purpose, amount, and date of certain types of expenditures "by adequate records or by sufficient evidence corroborating his own statement." (This provision was added to the Code because Congress recognized that "in many instances, deductions are obtained by disguising personal expenses as business expenses.") These specific substantiation rules were made applicable to (1) traveling expenses while away from home, including meals and lodging; (2) expenditures with respect to entertainment, amusement, or recreation activities or facilities; and (3) business gifts. Local travel expenses were not subject to this provision, but instead, were subject to the general substantiation requirements applicable to all other business expenditures.

### II. Changes Made by the 1984 Act

#### Recordkeeping

The Tax Reform Act of 1984 made several amendments to Code section 274(d), effective for taxable years beginning after December 31, 1984.

- o The 1984 Act added a requirement that the records kept by the taxpayer must be "contemporaneous."

- o The 1984 Act deleted from section 274(d) the alternative method of substantiating deductions, which was by means of sufficient evidence corroborating the taxpayer's own statement.

**B**

o The 1984 Act made additional property subject to the requirements of section 274(d), including automobiles and other means of transportation. As a result, local travel expenses, like traveling expenses away from home, became subject to the section 274(d) rules.

#### Tax preparer rules

The 1984 Act required that paid income tax return preparers must advise the taxpayer of the new substantiation requirements and obtain written confirmation from the taxpayer that these requirements were met. Failure to advise the taxpayer or to obtain the confirmation subjects the return preparer to a penalty of \$25 for each failure, unless due to reasonable cause and not to willful neglect.

#### Negligence penalty

The 1984 Act provided that, for purposes of the negligence penalty, any portion of an underpayment of tax due to a failure to comply with the new recordkeeping requirements is treated as due to negligence, in the absence of clear and convincing evidence to the contrary. The penalty is five percent of the portion of the understatement attributable to the failure to comply with the section 274(d) recordkeeping requirements.

### III. Initial IRS Temporary Regulations on Auto Logs

On October 15, 1984, the IRS issued temporary regulations under section 274(d), setting forth requirements for substantiation of business use of automobiles or other vehicles subject to that provision.

In general, these regulations required the taxpayer to keep a log or similar record with a separate entry for each business use of the vehicle, made at or near the time of actual use. Each entry was required to specify the date of the use of the vehicle, the name of the user, the number of miles that the vehicle was used, and the purpose of the use (e.g., to meet a customer for a sales presentation).

The regulations also generally excepted from these substantiation rules vehicles of a type ordinarily not susceptible to personal use, such as trucks specially designed for specific business purposes, cement mixers, and forklifts.

### IV. Additional IRS Temporary Regulations on Auto Logs

On February 15, 1985, the IRS issued temporary regulations that amended the initial temporary regulations in certain respects, and added alternative methods available in

certain circumstances for satisfying the statutory requirement of substantiation by adequate contemporaneous records.

Excepted vehicles

The additional regulations added special-purpose farm vehicles (such as tractors and combines) and dump trucks to the class of vehicles not subject to the section 274(d) substantiation rules.

Form of auto logs

The additional regulations provided some increased flexibility with respect to the format of required auto records, the frequency of entries needed, and the content of the required adequate contemporaneous records.

Alternative methods

The additional temporary regulations provided alternative methods, applicable with respect to certain vehicle uses, under which the taxpayer may satisfy the statutory requirement for substantiating business use of automobiles or other vehicles other than by maintaining adequate contemporaneous records in the manner summarized above. These alternative methods apply generally in the case of (1) vehicles used only for business uses where the employer prohibits personal use; (2) vehicles where the employer limits personal use to commuting (except for use by officers or one-percent owners); (3) vehicles used by employees for multiple business stops (such as deliveries); and (4) vehicles used in connection with a farming business.

April 1, 1985

AUTOMOBILE RECORDKEEPING REQUIREMENTS  
AREAS FOR FINANCE COMMITTEE DECISION

Prepared By The Staff Of The Committee On Finance

Summary

A. Contemporaneous Recordkeeping

1. The "contemporaneous" recordkeeping requirement added in 1984 (and related IRS regulations) could be repealed.
2. Pre-1984 substantiation requirements could be reinstated.

OPTION: Pre-1984 requirements could be strengthened to require the taxpayer to have written evidence corroborating the deduction.

3. Taxpayers could be required to answer several short "yes or no" questions relating to business deductions for use of cars on their tax return.

B. Responsibilities of Tax Preparers

1. 1984 Act restrictions on tax preparers (relating to advising taxpayers of substantiation requirements, and obtaining written confirmation thereof) could be repealed.

C. No-Fault Negligence Penalty

1. The special negligence penalty applicable to taxpayers not in compliance with the substantiation requirements of Section 274(d) could be repealed.

D. Withholding for Personal Use of Vehicles Provided by the Employer

1. Income tax withholding for the value of personal use of vehicles provided by the employer could be made optional for the employer.

E. Taxation of Employees for Commuting in Limited Use Vehicles



1. Treasury could be instructed by report language that Congress intends the value of commuting in limited use vehicles (such as marked police cars, ambulances, and dump trucks) to be tax-free to the employee as a working condition fringe benefit.

April 1, 1985

AUTOMOBILE RECORDKEEPING REQUIREMENTS

AREAS FOR FINANCE COMMITTEE DECISION

A. Contemporaneous Recordkeeping

1. Pre-1984 Act

a. Substantiation requirements. Prior to the Tax Reform Act of 1984, the law required substantiation of certain deductions with either--

(1) Adequate records, or

(2) Sufficient evidence corroborating the taxpayer's statement.

b. Application of substantiation requirements. This requirement applied to deductions for--

(1) Traveling expenses

(2) Entertainment, amusement or recreation activities and facilities

(3) Gifts

2. Tax Reform Act of 1984

a. Substantiation requirements. The Tax Reform Act of 1984 requires substantiation by adequate contemporaneous records.

b. Application of substantiation requirements. In addition to the areas named above, the Tax Reform Act of 1984 applied the new substantiation requirements to "listed property," defined as--

- (1) Passenger automobiles
- (2) Any other property used for transportation
- (3) Property used for entertainment, amusement or recreation
- (4) Computers and peripheral equipment
- (5) Any other property specified by the Secretary

3. Possible Change

a. Delete "contemporaneous" requirement. The requirement for "contemporaneous" records could be deleted. All IRS regulations interpreting that requirement would be repealed.

b. Reinstate Pre-1984 Act Standards.

Substantiation rules in effect prior to the 1984 Act could be reinstated. Thus, taxpayers could be required to substantiate deductions for automobiles or other areas listed above with either:

(1) Adequate records, or

(2) Sufficient evidence corroborating the taxpayer's own statement.

OPTION: Pre-1984 Act standards could be strengthened to require sufficient written evidence corroborating the taxpayer's own statement, to be completed by the time the tax return is filed.

c. Tax Return Information. The schedules on which tax benefits for the use of a car

are claimed could include the following questions:

- (1) Total number of miles driven during the year: \_\_\_\_\_ miles.
- (2) Percentage of personal use claimed: \_\_\_\_\_%.
- (3) Was the vehicle used for commuting \_\_\_\_\_  
Yes \_\_\_\_\_ No. If yes, the distance normally commuted \_\_\_\_\_ miles.
- (4) Was the vehicle available for personal use in off duty hours \_\_\_\_\_  
Yes \_\_\_\_\_ No.
- (5) Is another vehicle available for personal use \_\_\_\_\_ Yes \_\_\_\_\_ No.
- (6) I have records or other evidence sufficient to justify these deductions \_\_\_\_\_ Yes \_\_\_\_\_ No. If no, no deduction is permitted.

Similar questions would also apply to other listed property.

B. Responsibilities of Tax Preparers

1. Pre-1984 Act. Penalties apply to preparers of returns with understated liability. The penalties were--
  - a. \$100 per return if the understatement was due to negligence or intentional disregard of rules and regulations by the tax preparer; and
  - b. \$500 if the understatement was due to a willful attempt by the preparer to understate tax liability.
  
2. 1984 Act. The Tax Reform Act of 1984 requires tax preparers to--
  - a. Advise taxpayers of the substantiation requirements described above, and
  - b. Obtain written confirmation from the taxpayer that the substantiation requirements were met.
  - c. A penalty of \$25 per return applies for failure to comply.

3. Possible Change. The restrictions on tax preparers enacted in 1984 could be deleted.

C. No-Fault Negligence Penalty

1. 1984 Act. The Tax Reform Act of 1984 added a "no fault" negligence penalty (equal to 5% of the related underpayment) for taxpayers not in compliance with the substantiation requirements of Section 274(d).
2. Possible Change. The no-fault penalty could be repealed.

D. Withholding for Personal Use of Vehicles Provided by the Employer

1. 1984 Act. The Tax Reform Act of 1984 requires employers to withhold taxes from employees based on the value of personal use of vehicles provided by the employer. Under temporary Treasury regulations, withholding is required to begin in July, 1985.
2. Possible Change.
  - a. Income tax withholding on the value of personal use of vehicles provided by the

employer could be made optional for the employer.

- b. An employer electing to not withhold would be required to furnish the information on the value of the fringe benefit as part of the employee's annual wage statement (Form W-2).

E. Taxation of Employees for Commuting in Limited Use Vehicles

1. Present Law. Most commuting by employees in vehicles provided by the employer is taxable because it rarely qualifies as a tax-free fringe benefit, such as a working condition fringe or a de minimis fringe benefit.
2. Treasury Regulations. Under a special rule included in temporary Treasury regulations published January 7, 1985, and revised February 20, 1985, the amount of income imputed per day is \$3 if--
  - a. The vehicle is used in the employer's business,



- b. The employee is required to commute in the vehicle for bona fide non-compensatory reasons,
  - c. The employer allows no personal use other than commuting, and
  - d. The employee is not a key employee.
3. Possible Proposal. Report language could be written to instruct the Treasury Department that Congress intends the value of commuting in limited use vehicles to be tax-free to the employee as a working condition fringe benefit. The report would list examples, such as:
- a. Marked police and fire vehicles.
  - b. Ambulances.
  - c. School buses.
  - d. Dump trucks.
  - e. Cement mixers.
  - f. Refrigerated trucks.
  - g. Tractors.

h. Specialized utility repair trucks.

MARCH 29, 1985

MEMO

FROM: FINANCE COMMITTEE STAFF (LEN SANTOS 4-5472)

TO: MEMBERS, COMMITTEE ON FINANCE

SUBJECT: APRIL 2, 1985 FINANCE COMMITTEE MARKUP--  
DANFORTH BILL ON U.S./JAPAN TRADE

At the request of Senator Danforth, a draft bill on U.S.-Japan trade will be considered at the Finance Committee markup scheduled for Tuesday, April 2, 1985.

The principal elements of the bill are as follows:

1. A recitation, similar to that contained in S. Con. Res. 15, approved by the Senate on March 28, 1985, of the elements of unfairness which characterize the U.S.-Japan trade relationship. The final element of this recitation is a finding, in language nearly identical to that found in section 301 of the 1974 Trade Act, that action by the United States is appropriate to enforce U.S. rights under trade agreements with Japan and to respond to Japanese acts, policies, or practices which are either inconsistent with trade agreements or constitute an unjustifiable, unreasonable or discriminatory burden or restrict U.S. commerce.

2. A directive to the President to take action pursuant to his authority under section 301(b) of the 1974 Trade Act, as well as other Presidential authority, to enforce U.S. rights under trade agreements to which Japan is a party and obtain the elimination of the offending acts, policies and practices.
3. A requirement that the President announce what actions he will take within 45 days of enactment, and implement the actions within 90 days of enactment.
4. A requirement that if the President's actions do not eliminate the unfair trade practices of Japan, he must negate within twelve months of enactment the cumulative effect of those practices on the balance of trade between Japan and the United States.
5. A requirement that at the least, the President's actions to eliminate unfair trade practices negate the cumulative impact on the bilateral trade balance of the relaxation of Japanese auto export restraints.

99th CONGRESS  
1st Session

S. \_\_\_\_\_

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IN THE SENATE OF THE UNITED STATES  
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Mr. \_\_\_\_\_

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-----  
introduced the following bill; which was read twice and referred  
to the Committee on \_\_\_\_\_  
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A BILL

To require the President to respond to unfair trade practices of  
Japan.

1 Be it enacted by the Senate and House of Representatives  
2 of the United States of America in Congress assembled,

3 SECTION 1. CONGRESSIONAL FINDINGS.

4 The Congress finds that--

5 (1) the United States merchandise balance of trade  
6 deficit with Japan reached the unprecedented level of \$37  
7 billion in 1984--accounting for almost one-third of the  
8 entire United States deficit with the world;

9 (2) this unprecedented bilateral deficit was  
10 accumulated in spite of significant growth in the

1 Japanese economy;

2 (3) the principles of free trade provide for trade  
3 flows between nations on the basis of each nation's  
4 comparative advantage;

5 (4) Japan has extensive access to the United States  
6 market for products in which Japan has a comparative  
7 advantage;

8 (5) United States exporters lack access to the  
9 Japanese market for a wide range of exports in which the  
10 United States has a comparative advantage, including  
11 manufactured goods (such as telecommunications  
12 equipment), forest products, key agricultural  
13 commodities, and certain services;

14 (6) the high value of the United States dollar  
15 relative to the Japanese yen does not account for the  
16 persistent difficulty which the United States and other  
17 countries face in obtaining access to the markets of  
18 Japan;

19 (7) the trade imbalance between the United States and  
20 Japan is costing the United States hundreds of thousands  
21 of jobs every year;

22 (8) negotiating with Japan over the years to secure  
23 meaningful improvements in market access for competitive  
24 United States exports has been largely unsuccessful;

25 (9) the very large trade surpluses accumulated by

1 Japan impose on Japan a special responsibility to  
2 liberalize access to its markets;

3 (10) action by the United States to improve the  
4 competitive position of United States exports  
5 internationally will not by itself overcome the  
6 difficulty in obtaining access to the markets of Japan;

7 (11) an end to the voluntary restraint agreement on  
8 automobiles without a comparable improvement in access  
9 for competitive United States exports to the Japanese  
10 market will severely exacerbate the merchandise trade  
11 deficit that the United States has with Japan;

12 (12) the role of Japanese unfair trade practices in  
13 exacerbating the merchandise balance of trade deficit has  
14 the potential of undermining the entire range of  
15 bilateral relations between the United States and Japan;  
16 and

17 (13) action by the United States is appropriate--

18 (A) to enforce United States rights under trade  
19 agreements to which Japan is a party, and

20 (B) to respond to Japanese acts, policies, and  
21 practices which are--

22 (i) inconsistent, and otherwise deny benefits  
23 to the United States, under trade agreements to  
24 which Japan is a party; and

25 (ii) are unjustifiable, unreasonable, or

1           discriminatory and burden or restrict United  
2           States commerce.

3   SEC. 2. RESPONSE TO UNFAIR TRADE PRACTICES OF JAPAN.

4           (a)(1) Congress directs the President to take all actions  
5   within the power of the Presidency (including, but not  
6   limited to, the actions described in section 301(b) of the  
7   Trade Act of 1974 (19 U.S.C. 2411(b))) that are necessary--

8           (A) to--

9           (i) enforce the rights of the United States under  
10   trade agreements to which Japan is a party, and

11           (ii) obtain the elimination of the acts,  
12   policies, and practices described in section  
13   1(13)(B), or

14           (B) to offset the cumulative impact that--

15           (i) any rights described in section 1(13)(A)  
16   which are not enforced, and

17           (ii) any acts, policies, and practices described  
18   in section 1(13)(B) which are not eliminated,  
19   have on the merchandise balance of trade between the  
20   United States and Japan.

21           (2) By no later than the date that is 45 days after the  
22   date of enactment of this Act, the President shall report to  
23   the Congress and publish in the Federal Register notice of  
24   the actions that the President has determined to take under  
25   paragraph (1).



1 (3) The President shall implement all actions that the  
2 President has determined to take under paragraph (1) by no  
3 later than the date that is 90 days after the date of  
4 enactment of this Act.

5 (b)(1) Actions taken by the President under subsection  
6 (a)(1) shall be calculated to offset the cumulative impact  
7 that the elimination or relaxation of the voluntary  
8 restraints on Japanese automobile exports to the United  
9 States will have on the merchandise balance of trade between  
10 Japan and the United States.

11 (2) Actions taken by the President under subsection  
12 (a)(1) shall be directed against competitive Japanese exports  
13 including, but not limited to, automobiles, telecommunication  
14 products, and electronic products.

15 (c) Any action taken by the President under subsection  
16 (a)(1) may be modified or revoked only if the President  
17 determines--

18 (1) that such modification or revocation is necessary  
19 to achieve the objectives of such subsection, or

20 (2) that the objectives of such subsection have been  
21 achieved.

22 The President shall report to Congress and publish in the  
23 Federal Register notice of such determination.

S. \_\_\_\_\_

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IN THE SENATE OF THE UNITED STATES

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Mr. Chafee introduced the following amendment:

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AN AMENDMENT

To prohibit the entry of Japanese telecommunication products until Japanese markets are open to United States telecommunication products.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

(a) no telecommunication products produced or manufactured (in whole or in part) in Japan may be entered, or withdrawn from warehouse, for consumption in the customs territory of the United States during the period which--

(1) begins on the date June 1, 1985 and

(2) ends on the date on which the written statement described in subsection (b) is submitted to the Congress.

(b) The written statement referred to in subsection (a) is a written statement in which the Secretary of Commerce

and the United States Trade Representative certify that telecommunication products which are produced or manufactured in the United States have equal access to the markets of Japan.

(c) For purposes of this Act, the term "telecommunication product" means any of the following articles of the Tariff Schedules of the United States (19 U.S.C. 1202):

684.57	685.10	685.24	685.48
684.58	685.12	685.25	685.49
684.59	685.14	685.28	688.17
684.65	685.16	685.30	688.18
684.66	685.18	685.32	688.41
684.67	685.20	685.34	688.42
684.80	685.22	685.39	707.90