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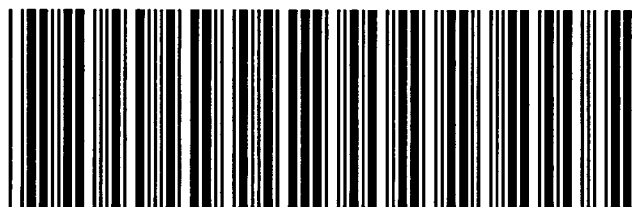
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UNITED STATES SENATE

COMMITTEE ON THE FINANCE

MARK-UP ON MISCELLANEOUS TARIFF BILLS

November 7, 1983
Washington, D. C.

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MARK-UP ON MISCELLANEOUS TARIFF BILLS

Monday, November 7, 1983

United States Senate,
Committee on Finance,
Washington, D.C.

The Committee met, pursuant to notice, at 10:07 a.m.,
the Honorable Bob Dole, Chairman of the Committee, presiding.

Present: Senators Dole, Danforth, Chafee, Roth, Heinz,
Armstrong, Symms, Grassley, Long, Bentsen, Matsunaga, Moynihan,
Chan, Boren, Mitchell, Baucus and Bradley.

Staff present: Messers Kassinger, DeArment, Stern and
Lang.

The Chairman. The Committee will come to order.

I think we can go ahead and discuss various proposals that
we have, and I would hope--I was just visiting with Senator
Danforth, Chairman of the Subcommittee. I've had a chance to
look at the noncontroversial areas. I think we can discuss
those briefly and there will be other members here.

We'd like to keep the bill as free of controversy as
possible, though there are two or three areas I think we ought
to address.

1 And I think, Senator Danforth, you would add your reci-
2 procuity amendment?

3 Senator Danforth. Yes.

4 The Chairman. Ted, why don't give us for the record a
5 brief run down of the proposals and those that are totally
6 noncontroversial I wouldn't spend much time on. We can deal
7 with them en bloc.

8 Mr. Kassinger. Mr. Chairman, the first item on the
9 agenda is H.R. 3398 which is the House passed Omnibus Tariff
10 Bill.

11 It has 23 sections, 21 of which are noncontroversial to
12 the best of our knowledge, should describe each of the non-
13 controversial sections?

14 The Chairman. For the noncontroversial ones, I think
15 you could just for the record submit some information, but
16 not a great deal.

17 Mr. Kassinger. Section 124 of that bill is the first
18 controversial bill. In the Senate, it's S. 37.

19 The Chairman. Where is that in our material?

20 Mr. Kassinger. The materials list the bills in numerical
21 border.

22 The Chairman. Now, the first noncontroversial one is?

23 Mr. Kassinger. That's Section 124 of H.R. 3398 relating
24 to surgical drapes and gowns.

25 The Chairman. Yes.

1 Mr. Kassinger. Mr. Chairman, this is a bill that would
2 reduce the duty on disposable surgical drapes and gowns made
3 of man made fiber products to a level that is equal to that
4 applied to the same products when they are made of paper mater-
5 ial.

6 The Chairman. I understand this was in the last bill, and
7 Senator Roth objected, one of the conferees. It was my hope
8 that between then and now we might work out some resolution.
9 But apparently that hasn't been done.

10 There are a number of senators supporting this proposal
11 and a number of senators opposed. So I think that's one that
12 we're going to have to resolve when we have more senators
13 here.

14 Mr. Kassinger. The second controversial item, the other
15 one in H.R. 3398 is Section 211 (a) which relates to a bill
16 that would bar, essentially bar the Huffy Corporation from
17 getting a foreign trade sub-zone at its manufacturing plant
18 in Ohio for the purpose of bringing in imported bicycle parts,
19 manufacturing them into finished bicycles, and then entering
20 them into the United States.

21 The administration opposes this bill.

22 The Chairman. I understand Senator Danforth was working
23 on a compromise which would limit the bill to one year, to
24 allow the GAO and the ITC to complete whatever they're doing?

25 Mr. Kassinger. Senator Danforth has thought about that.

1 I'm not sure--he had some problems with the bill on the merits
2 also. So it's not clear to me that anything was worked out.
3 Huffy opposed compromise.

4 The Chairman. Where is the administration? They're
5 opposed?

6 Mr. Kassinger. That's correct, Mr. Chairman. The
7 administration would prefer to resolve these issues in the
8 context of the administrative process that's designed to con-
9 sider each zone application.

10 The Chairman. Senator Bentsen?

11 Senator Bentsen. Mr. Chairman, if I might. I want to
12 go on record in opposition to the section on surgical gowns.
13 I have a number of unemployed in my state, and they would be
14 directly affected by this legislation.

15 The Chairman. That's one that we're just going to have
16 decide when we have more senators here.

17 I did note your opposition, along with Senator Roth and
18 others.

19 Mr. Kassinger. The last issue to bring to your attention,
20 Senator, with regard to H.R. 3398 is not a controversial
21 matter. Senator Roth has an amendment he wishes to add to
22 a section of the bill, Section 201, that is sponsored by
23 Senator Durenberger.

24 The Chairman. Do we have that in our book?

25 Mr. Kassinger. That's correct. It should be--the Roth

1 bill is S. 1972; it was just put in a couple of weeks ago.
2 I'm afraid I don't have that in the materials. But Senator
3 Durenberger has a counterpart to S. 201 which is in the
4 materials. S. 1443. It's slightly broader than the House
5 passed bill. He would like to amend the House passed bill
6 with his amendment, and Senator Roth would like to add--

7 The Chairman. What does the amendment do?

8 Does the administration support it? What does it do?

9 Mr. Kassinger. Yes, well, the administration supports
10 the House passed version of the bill. The Durenberger amend-
11 ment has all of the House passed version, plus it would--

12 The Chairman. That doesn't tell me anything. What does
13 it do? I don't know what's in the House passed version.

14 Mr. Kassinger. The House passed version of the bill
15 would provide a draw back which is the rebate of duties that
16 can be paid on packaging materials imported or used in per-
17 forming incidental operations.

18 For example, just packaging materials and sending them
19 back out, rather than paying duties on the packaging material
20 if they are re-exported, the draw back could be obtained.

21 The Senate bill would allow this even if they were not
22 re-exported; if the merchandise is of the same kind and quality
23 as exported or destroyed within three years of the date of
24 importation of comparable articles.

25 So it's a slightly broader bill.

1 The Chairman. Is there any opposition to it?

2 Mr. Kassinger. No, there's no opposition that we've
3 received to the Durenberger bill.

4 Senator Roth has another amendment to the draw back pro-
5 vision that would expand the current statute to allow substi-
6 tuting of fungible articles, so that when an imported article
7 is brought into the country, draw back --

8 The Chairman. Is this S. 1972, do we have any information
9 on it at all, Senators? If not, we'll set it aside and come
10 back to it.

11 Mr. Kassinger. We have not gotten any comments on the
12 bill, Senator.

13 The Chairman. Well, we don't even have any information
14 on it.

15 Mr. Kassinger. There is someone from the Customs Service
16 here who can address the bill, I believe.

17 The Chairman. All right. Is there somebody here from
18 the Customs Service? Do you know anything about the bill?
19 Don't tell us all you know about it, but tell us.

20 Mr. Rettinger. With regard to the amendment to make
21 substitution draw back for packaging materials? Honestly
22 this is the first time I'm actually hearing about the substi-
23 tution portion of it.

24 The Chairman. Maybe we ought to give him a little bit of
25 time to look at it. We can always put it in the deficit

1 reduction package if we can't work it out today.

2 Mr. Rettinger. As originally drafted, even without the
3 substitution packaging, Customs would be hard pressed to
4 examine draw back claims for individual packages or packaging
5 being sent out of the country. By putting in the substitution
6 draw back, as a practical matter, I would imagine, although
7 I don't know for sure, that we would have very little packaging
8 materials coming in where draw back at some point or other
9 is not going to be claimed.

10 The Chairman. I wonder if you might discuss it with
11 Senator Roth's staff and Senator Durenberger's staff, and we
12 can take it up later.

13 Mr. Rettinger. I appreciate that.

14 The Chairman. Obviously, nobody's had much of a chance
15 to focus on it. There have been no hearings on it, right?

16 Mr. Kassinger. No, we haven't received any comment on it.

17 The Chairman. Are members of Senator Roth's and Senator
18 Durenberger's staff here?

19 Mr. Kassinger. Yes, Mr. Chairman.

20 The Chairman. Maybe they could meet with the Customs
21 people.

22 Mr. Kassinger. Item 2 on the Agenda, Mr. Chairman, lists
23 miscellaneous tariff bills that so far as we know are non-
24 controversial, with one minor exception, S. 1771, Item M,
25 we received a--

1 The Chairman. Is that in this material?

2 Mr. Kassinger. It should be S, 1771.

3 The Chairman. I see.

4 All those A through O are noncontroversial?

5 Mr. Kassinger. That's correct. The administration has
6 registered an objection late Friday to S. 1771. But the
7 objection is based on--this is a duty reduction bill for cer-
8 tain clock radios. The administration would prefer not to have
9 a unilateral duty reduction for the countries involved.

10 But that's the only objection that we've received for
11 that bill.

12 Senator Danforth. The administration's position is why
13 give up something unless you get something in return. Other
14 than that general position, there is no--

15 Mr. Kassinger. There is no specific objection to the
16 bill.

17 Mr. Chairman, the Commerce Department just brought to my
18 attention that they also have an objection to S. 1743. And
19 they are here to explain that objection.

20 The Chairman. Okay. We'll hear from the Commerce Depart-
21 ment on S. 1743.

22 Mr. Miller. Thank you, Mr. Chairman. The basis for our
23 opposition on 1743 is the existence of comparable domestic
24 production to the product for which the duty suspension is
25 being sought.

1 And in circumstances such as this, we usually do not
2 support unilateral duty reductions.

3 Senator Danforth. The same issue as in the clock radios?

4 Mr. Miller. Not exactly, Mr. Danforth. On clock radios
5 there is no domestic production, and we're opposing clock
6 radios because we believe that we have a sound negotiating
7 objective which the unilateral reduction would undermine.

8 In the chemical bill that we're discussing here, we have
9 domestic production and in this circumstance, the unilateral
10 duty reduction would alter the nature of the competition
11 between a domestic company and a company that's using imported
12 material.

13 And we're opposing the bill on that grounds.

14 The Chairman. So you have two bills in that list that
15 are controversial from the standpoint of the administration,
16 is that correct?

17 Mr. Kassinger. That's correct. These were registered
18 very late in the week, last week.

19 The Chairman. I would suggest, if it's all right with
20 Senator Danforth and others that we remove those two from the
21 noncontroversial list and try to address those separately.

22 Senator Moynihan. I'm sorry, Mr. Chairman. I was just
23 a bit late. The clock radio legislation was mine last year.

24 The Chairman. Treasury has interposed an objection.

25 Senator Moynihan. What do you propose?

1 The Chairman. I'm just suggesting we take the clock
2 radio and what's the other one?

3 Mr. Kassinger. 1743, benzenoid chemicals.

4 The Chairman. And separate those from the quote non-
5 controversial list and we'll come back to them later.

6 Mr. Kassinger. Mr. Chairman, the next item on the
7 Agenda is a House passed Joint Resolution relating to duty
8 free entry of equipment to be used in the Olympic Games.
9 There is no objection to this.

10 The International Trade Commission, however, has suggested
11 that we convert this into a temporary item in the tariff
12 schedules rather than having a Joint Resolution. And there is
13 no objection from the administration or the Olympic Committee
14 to that proposal.

15 The Chairman. As I understand it, it's rather important
16 that we focus on this now, isn't it? That some equipment is
17 already here.

18 Mr. Kassinger. That's correct, Mr. Chairman.

19 Senator Danforth. In other words, the idea would be to
20 include this in an item in the bill that we'll report.

21 Mr. Kassinger. That's correct, Mr. Chairman,

22 The Chairman. Is there any objection to that?

23 Mr. Kassinger. The next item on the agenda is S. 1940,
24 which is the Canadian Border Broadcasting Bill. This was
25 submitted at the request of the administration again in

1 August. It was before the Committee last year. We had hearings
2 on it. There is no objection from any Senator that I know of
3 to this bill.

4 The Chairman. Senator Moynihan, do you have any interest
5 in the Canadian Border Broadcasting? Do you have any objection?
6 He's just saying he knew of no objection. The administration
7 supports it.

8 Senator Moynihan. That is correct. I wish the negotia-
9 tions had succeeded, but apparently they haven't.

10 Senator Heinz. Mr. Chairman, if I may say just a brief
11 word on it. I'm glad we're putting it in this legislation.
12 I raised it earlier as you know, and the most significant
13 aspect of it is this is the only time, as far as we've been
14 able to ascertain when a 301 case, an unfair trade practices
15 case, has actually resulted in retaliation being taken.

16 It's the first and only time that we have ever made one
17 of our unfair trade laws, Section 301 against unfair trade,
18 work.

19 The Chairman. All right. We still need one other
20 Senator for a quorum.

21 Senator Heinz. I might also add, it's the first time
22 any administration has ever asked for it to work.

23 Senator Moynihan. Could I only say just because this is
24 a matter of real sensitivity with our neighbor. We don't
25 take any pleasure in what we're doing, but we--it's been a

1 good faith negotiation for five years, and there just doesn't
2 seem to be any alternative.

3 There was a much larger measure that was under considera-
4 tion last year. We're not doing that. We're just doing a
5 mirror image

6 The Chairman. Next?

7 Mr. Kassinger. The last item on the Agenda, Mr. Chair-
8 man, is a request for the International Trade Commission to
9 do an investigation under Section 332 of the Tariff Act of
10 1930 on rum imports.

11 This is a request that you announced you would make last
12 July when we completed work--

13 The Chairman. Caribbean Basin.

14 Mr. Kassinger. That's correct. This would provide the
15 Committee with annual information on the effect of rum
16 imports on the Virgin Islands and Puerto Rico's rum industry.

17 The Chairman. As I understand, we got a letter from
18 Senator Mattingly who proposed a number of things including
19 transferring money from Customs for agricultural exports.

20 Senator Moynihan. Mr. Chairman, could I just say that I
21 appreciate the Virgin Islands measure being taken. It re-
22 presents an acknowledgement by us that we know they are there.

23 Mr. Kassinger. Mr. Chairman, you did get a letter Friday
24 from Senator Mattingly proposing that the Committee consider
25 an amendment to Section 32 of the Agricultural Adjustment

1 Act that would set aside a certain portion of customs revenues
2 for export promotion.

3 I have asked the Agriculture Department to look into the
4 matter. They, at this time, do not have a position. My
5 understanding is that that section currently is used to fund--
6 there is a set aside of customs duties, and it's used to fund
7 nutritional programs and certain other export promotion mat-
8 ters.

9 The Chairman. How much do you want to set aside?

10 Mr. Kassinger. \$20 to \$25 million.

11 The Chairman. Have we had any hearings on the proposal?

12 Mr. Kassinger. No, sir. The first I heard about it was
13 Friday afternoon.

14 The Chairman. It would be my view that until we have
15 some hearings or at least some report from USDA that we
16 shouldn't just start transferring money out of funds.

17 I share the view he expresses as far as export promotion,
18 but--

19 Mr. Kassinger. Mr. Chairman, I understand there is the
20 export promotion already being run by the Department of Agri-
21 culture by the Foreign Agricultural Service. It's funded
22 at about a \$25 to \$30 million level.

23 The Chairman. Are there any other matters raised by any
24 senator that we haven't discussed? Senator Danforth, I think,
25 has an amendment.

1 Senator Danforth. Mr. Chairman, I have two amendments.
2 One is to authorize an investigation under Section 332 of the
3 Tariff Act of 1930 on trade implications of the AT&T divesti-
4 ture.

5 The issue to be investigated is what effects if any
6 the change in structure and telephone service will have for
7 the relationship between imports.

8 The Chairman. Is there any objection to that? We now
9 have 7 members present. We can act on amendments.

10 Without objection, that amendment is accepted.

11 Senator Danforth. The second one is to add to the bill
12 the S. 144 which is the reciprocity bill twice passed by the
13 Senate already with a couple of amendments.

14 One amendment--Ted, do you know about these amendments?
15 One is a clarifying amendment, definition of commerce. And
16 the other is an amendment which I think had its origins in a
17 bill entered--

18 Mr. Kassinger. Yes, S. 1420, that is on the list of
19 noncontroversial items, Senator Danforth.

20 Senator Danforth. Senator Mitchell's?

21 Mr. Kassinger. Yes, Senator Mitchell has a bill, S. 1420
22 which would authorize the President to negotiate certain
23 tariff reductions on semiconductors and computers. It's quite
24 similar to a list that is in S. 144 and I understand that you
25 and Senator Mitchell have worked out a common set of tariff

1 items to which that authority will be applicable.

2 And it's your intention to amend S. 144 to reflect that
3 agreement.

4 Senator Danforth. The other is the definition of com-
5 merce, to approve transfer of information?

6 Mr. Kassinger. That's correct. It's an issue of trans-
7 ported data flow in which a number of U.S. companies have
8 complained about interference in their international data
9 operations.

10 The Chairman. Are there any objections interposed to the
11 amendments? Does the administration have any?

12 Mr. Kassinger. I don't believe so.

13 The Chairman. I understand from Congressman Gibbons that
14 in fact if this is added he is willing to accept it.

15 Senator Danforth. Mr. Chairman, my hope is that we can
16 report out a reasonably noncontroversial bill and that we
17 can get it passed in the Senate yet this year. And I think
18 if we can we can have a fairly quick conference. And among
19 other things, reciprocity would be taken care of.

20 The Chairman. Is there any objection to the amendments?

21 Senator Bentsen. I would like to register my strong
22 support for the Senator's amendments.

23 The Chairman. Without objection, the amendment with the
24 clarifying amendment on commerce and with the additional
25 amendment, which as I understand it conforms to a suggestion

1 of Senator Mitchell, be adopted.

2 Now, is there a Mitchell bill on the list and now do we
3 remove that since it's part of reciprocity?

4 Mr. Kassinger. The Mitchell bill is in Item 2 of the
5 Agenda, No. F, S. 1420. That would no longer have to be
6 considered.

7 The Chairman, Senator Bentsen, do you have any?

8 Senator Bentsen. Yes. I have a couple of amendments
9 I would like to propose, Mr. Chairman. One of them is on the
10 question of tubular steel.

11 You have two agreements that were made with the European
12 Common Market, one of them on basic carbon steel that's en-
13 forcable. The pipe and tube agreement is not.

14 The EC has quotas on the export of carbon products, but
15 not on pipe and tube. And what you've seen is the export of
16 pipe and tube really soaring way above what we consider to be
17 the agreement limits.

18 The U.S. has a law to give the Secretary of Commerce
19 authority to bar the carbon steel imports from EC in excess
20 of their agreed level. But the Commerce Department seems to
21 feel that that doesn't apply to the pipe and tube agreement.

22 Now, Senator Tower and I introduced legislation which in
23 effect wrote the U.S.-EC agreement into law, though that's
24 just an informal agreement. And it would have required the
25 Secretary of Commerce to enforce the agreement with quotas

1 after a 60 day consultation.

2 At the present time, you have the 60 day consultation,
3 and if you don't have agreement, it just drops off the cliff.
4 Nothing happens.

5 But now the U.S.-EC agreement only has a year to run.
6 And if something isn't done, then tubular steel industry will
7 in effect have no relief by virtue of the agreement. It will
8 just be like words written on the wind. Nothing happens.

9 Therefore now they've proposed not that there be an
10 enforcement of quotas as such, and I am proposing an amendment
11 to carry it out, but it merely authorizes the secretary to
12 enforce the pipe and tube agreement, rather than requiring
13 it, and leave that option and responsibility with the secre-
14 tary.

15 I understand that the secretary does not oppose that
16 agreement because it does strengthen his negotiating position.
17 And I would like to see the legislation require the secretary
18 to begin consultations under the pipe and tube arrangement
19 immediately.

20 That step would be provided on the ground that U.S. has
21 determined that the EC is already in violation of the pipe
22 and tube arrangement.

23 That is the proposal that I would like to make at this
24 time, Mr. Chairman, as an amendment.

25 The Chairman. I would call on Ted and then Jeff or who-

1 ever's been working on it.

2 Mr. Kassinger. I believe Jeff has the text to the amend-
3 ment. But just as a preference, Mr. Chairman, we had a hearing
4 on September 19th on S. 1035, Senator Bentsen's bill. It
5 would have provided for the imposition of quotas to enforce
6 this agreement on pipe and tube products.

7 As I understand it, your amendment--

8 Senator Bentsen. I'm not asking for that now. All I'm
9 asking is that the secretary have the authority and the
10 option to do it.

11 Mr. Kassinger. Fine.

12 Senator Danforth. I think this is fine. Would there
13 be a specific reference to levels in the amendment? I think
14 that that would--

15 Mr. Lang. Senator, as I understand Senator Bentsen's
16 amendment, it would not refer to levels. However, it would
17 require the secretary if and when consultations do not succeed
18 and the violation continues to impose whatever quotas he does
19 by category.

20 That is, instead of, it doesn't tell him what level to
21 impose the quotas at, but it does tell him that when he
22 imposes them he doesn't impose them across the board on pipe
23 and tube, but rather by category.

24 There are six or seven different types of pipe and tube
25 covered by the agreement. The reason for that is that oil

1 country tubular goods imports have far exceeded their allo-
2 quate share of the overall limitation on imports that would
3 be applied under the pipe and tube arrangement if you applied
4 that arrangement using the base period that is the basis of
5 the arrangement.

6 In other words, in the base period, oil country tubular
7 goods were about 8 or 9 percent of U.S. domestic consumption.
8 Imports are now maybe 18 or 19 percent.

9 The other categories are within or slightly above their
10 alloquate shares of the quota. So the point, I gather, of
11 Senator Bentsen's amendment would be that the secretary
12 wouldn't be told what level to put the individual category
13 quotas at, but he would be told to use categories so as to
14 have equality between the various types of pipe and tube
15 using the base period.

16 Senator Danforth. I don't think there is any objection
17 provided that the reference to levels is not in fact in the
18 bill.

19 Mr. Lang. That's my understanding from your staff.

20 Senator Bentsen. That's the way I want it proposed.

21 The Chairman. Is anybody here from the administration
22 with a different view? If not that amendment will be adopted.

23 Senator Bentsen. The other amendment that I would like
24 to propose is a bill by Senator Chiles and Senator Hawkins
25 of Florida.

1 And that deals with reconstituted citrus juices and
2 citrus juices of natural strength. This is one that is
3 supported by the citrus industry in this country. In my own
4 state, we have a small citrus industry, so I have some knowledge
5 of the problem which they face.

6 What you're talking about is the import tax on natural
7 juice is substantially lower. It's 20 percent for gallon,
8 where on reconstituted juice it's 35 cents.

9 The reason for that is because it's a lot more expensive
10 to transport that which has not been reconstituted, the
11 natural citrus juice being brought in. We're a major market
12 in this country. We consume about \$ 1 billion worth of orange
13 juice a year. As the slogan goes, it's not just for break-
14 fast any more.

15 But what you have seen develop is some of these importers
16 of concentrated juice have started establishing plants for
17 reconstituting the juice either in foreign trade zones or in
18 foreign countries near our border, for the purpose of trying
19 to obtain a rate of duty applicable to natural strength juice.

20 This bill would treat that reconstituted juice as con-
21 centrate. I understand the administration doesn't oppose
22 this provision. And I would say the huge Florida industry has
23 grown up relying in part on this kind of duty disparity,
24 between natural juice and that that is reconstituted where the
25 water is pumped back into it.

1 The that has the greatest indirect advantage in the cur-
2 rent situation by producing the concentrate is also a country
3 that has been singularly reluctant to open its border to some
4 of our products.

5 I just don't believe that we should give them a cost free
6 concession of that kind of imports to a billion dollar industry.
7 I therefore very strongly support Senator Chiles' and Senator
8 Hawkins' bill and urge that it be adopted as an amendment.

9 Senator Heinz. Mr. Chairman, I am advised that Senator
10 Roth has an interest in this bill, that he apparently opposes
11 it, and that he has asked that the consideration of the bill
12 be postponed until he can be present. And he has also advised
13 me that it is his understanding that no hearings have been
14 held on this bill either in the House or the Senate.

15 Mr. Kassinger. Mr. Chairman, I should explain that. At
16 the time that we set the hearing on miscellaneous tariff bills,
17 we knew of no opposition to the bill; therefore, testimony was
18 not scheduled.

19 It has been out for public comment since August, however.
20 Senator Bentsen. It was a timely introduction. It was
21 available for comment.

22 The Chairman. Is he going to be here?

23 Senator Heinz. I have no particular position on the
24 substance of the bill, Lloyd. Senator Roth did ask me to
25 ask the Committee as a personal accomodation to him if they

1 would postpone it, because he wants to make the case in
2 opposition to the bill.

3 The Chairman. Will he be here this morning?

4 Senator Heinz. You would have to ask his staff, Mr.
5 Chairman.

6 The Chairman. As I understand, the administration is sort
7 of ambivalent. They don't support it, but they don't oppose
8 it. Is anybody here from the administration?

9 Does the administration have a firm position on this
10 bill?

11 Mr. Hathaway. Yes. The administration, as it submitted
12 in a letter of November 3rd, does not support the bill.

13 Senator Bentsen. But that does not mean that it opposes
14 it.

15 Mr. Hathaway. No, Senator Bentsen. Just what I said.
16 It does not support the enactment of the bill. The reason
17 for the lack of support--

18 Senator Bentsen. Just the way you stated it, I want
19 clarified. So I further understand that that does not mean
20 opposition to it? You're not fighting for it, and you're
21 not fighting against it?

22 Mr. Hathaway. It does not mean support, and it does not
23 mean opposition to it.

24 We do not support the enactment of the bill, and I would
25 like to tell you the reasons, because we have trade concessions,

1 bound tariffs on this particular item.

2 And if we raise the duty, we will be subject under GATT
3 rules to claims for compensation or possible retaliation. And
4 a good amount of this trade deals with--

5 Senator Bentsen. Well, you have that, but you don't have
6 any with the United Kingdom and that's where it started out.
7 They're not producing a lot of orange juice over there. On
8 the other hand, if you get into Mexico, they're not a member
9 of GATT, you have no compensation to make there. What about
10 Brazil? Are they a member?

11 Mr. Hathaway. We would have a problem with Brazil and
12 we would also have a problem with Canada, because the juice
13 or concentrate is reconstituted in a country and that is a
14 substantial transformation so that if it comes in as a product
15 of Canada and we impair a tariff binding that is a benefit
16 to Canada, then Canada would have a possible claim for
17 compensation, possibility or retaliation.

18 The concentrated juice is now dutiable, and reconstituted
19 by volume coming from Canada is the equivalent of 44 percent
20 ad valorem duty now.

21 But at any rate the reason for not supporting this par-
22 ticular legislation is in fact the possibility that we will
23 be paying for it in terms of withdrawal of concessions in
24 some other sector or similar sector for other products that
25 are of export interest to the United States.

1 We can't say with certainty what the products would be
2 or now much trade would be, could be involved in withdrawal
3 of concessions, or negotiating a reduction of concessions of
4 benefit to U.S. exports.

5 Senator Heinz. What are the products that we significantly
6 export to Brazil?

7 Mr. Hathaway? Brazil?

8 Senator Heinz. Particularly agricultural products.

9 Mr. Hathaway. Agricultural products substantially.
10 Senator Heinz. So this could hurt the export of agricul-
11 tural products.

12 Mr. Hathaway. And by the same token, with Canada, of
13 course, we have a very wide range of exports to Canada, and
14 a large number of concerns. And this is something that is of
15 concern to Canada. We've already received a diplomatic note
16 from the Canadians on the possibility of impairing this par-
17 ticular concession.

18 Senator Heinz. But the administration position is
19 neutrality on the bill?

20 Mr. Hathaway. Yes.

21 Senator Bentsen. So you got more out of him than I got
22 out of him.

23 (Laughter.)

24 Senator Heinz. Somewhere between opposed and do not
25 support is the word neutrality, Lloyd.

1 Mr. Hathaway. I think you got what I intended, Senator
2 Bentsen.

3 Senator Bentsen. Yes, but he nailed it down.

4 The Chairman. Well, we want Senator Roth's interest to
5 be preserved.

6 Senator Heinz. Could it be raised on the floor, Mr.
7 Chairman?

8 The Chairman. We would like to report this bill out
9 this morning if we have any chance at all of passing it. I
10 understand from the Leader in a conversation early this
11 morning with Senator Baker that it's going to have to be
12 fairly noncontroversial or he won't call it up.

13 Do you have any objection to offering it on the floor?

14 Senator Bentsen. Let him strike it on the floor?

15 The Chairman. I was thinking about you offering it on
16 the floor. I just don't want to hold up the bill.

17 Senator Heinz. I don't know if you were present when the
18 administration said if there's a concern it's that other
19 agricultural exports that we export to Brazil and possibly
20 to Canada. There may be claims of compensation. That seems
21 to be where it would strike--

22 Mr. Chairman, maybe we could pass over it and come back
23 later. Maybe Senator Roth will surprise us and show up.

24 The Chairman. I was just thinking maybe we could pass
25 over it, and maybe, Rod, you could reach Senator Roth and

1 tell him if he has any objection to adding it, he could strike
2 it on the floor.

3 But I think that might not be a very good precedent,
4 because other senators, I know there are some other matters
5 here, and if we took them all--

6 Senator Bentsen. All right, Mr. Chairman. We'll do
7 this, we'll offer it on the floor.

8 The Chairman. Fine.

9 Senator Heinz. Mr. Heinz. Mr. Chairman, I have an
10 amendment, or a bill, which is --

11 The Chairman. Is that the pear juice?

12 Senator Heinz. No, this is S. 230, cordage.

13 Mr. Chairman, I think I can demonstrate this problem very
14 quickly very graphically. We have here two examples of
15 cordage. Blue ropes. One is subject to--they're both
16 imported. One is subject to a duty being included in the
17 MFA quota, and has an ad valorem duty on top of that.

18 The other is not in spite of the fact that it was the
19 original intent that it be included for both duty and quota.

20 What has happened is that in spite of the fact that these
21 look alike, they work alike, they have the same strength,
22 they're made out of the same material, some very clever person
23 has figured out how to get around the technical aspects of
24 the description of the item by instead of making the interior
25 of this out of twine, has made it out of kind of a plastic

1 paper which they then roll up and make into equivalent twine.

2 And what S. 230 seeks to do is treat like articles alike
3 by subjecting Item B, which is the one item that's made out of
4 this new high tech approach to be subject to the same duties
5 and restrictions Item A is in.

6 I don't know if there is any objection to this. I am
7 told that there was an objection from one group of farmers
8 who were concerned about bailer twine--this clearly is a
9 little larger diameter than bailer twine.

10 See if you can figure out what the real article is.
11 Apparently the main concerns about bailer twine have been
12 expressed by members of Universal Cooperatives Incorporated,
13 the world's largest cooperative.

14 We learned first that none of the cooperatives polled
15 purchase more than 30 percent polypropylene bailer twine;
16 the rest is natural fiber. And the majority of such poly-
17 propylene purchases are from domestic sources.

18 In addition, the general counsel to Universal, Mr.
19 Floyd Grabielle told the Congress that the position of Univer-
20 sal has changed; the legislation is of no real interest to
21 them at this time, we're not taking a position for or against
22 the issue. Universal is the source of bailer twine purchases
23 for many regional farm coops. And so we now believe that the
24 misunderstanding previously circulated about the bill's
25 effects on the price of bailer twine has been cleared up.

1 We hope you'll agree.

2 The Chairman. I also have a note that it's opposed by the
3 American Farm Bureau, National Grange, the Frank Winney Company,
4 which is an importer, the New Bedford Seafood Counsel, the
5 National Farmers Union and the administration.

6 Senator Heinz. Outside of that, there's no problem with
7 it.

8 The Chairman. But it's supported by Senators Heinz,
9 Symms, Specter, Helms, and Percy, and probably others.

10 Is the administration here?

11 Senator Heinz. Would the administration care to give us
12 their rationale for not treating items that look alike and
13 act alike alike?

14 Mr. Hathaway. The administration's position on this is
15 that there is an administrative procedure for the Customs
16 Service for reviewing the proper classification of the item;
17 that process is ongoing, and the result will be--whatever the
18 result is will be the appropriate method for determining the
19 classification.

20 If after that process is finished there is a remaining
21 question of what the intent was, after the procedure has run
22 its course, then it would be an appropriate time to say the
23 Customs Service and the administrative process has done some-
24 thing that is different from the legislative intent.

25 Senator Heinz. How long is that process going to take?

1 Mr. Hathaway. It has been going on for the past year
2 now, and it is a very controversial question, as you well
3 know.

4 Senator Heinz. Mr. Chairman, maybe we should just face
5 the issue. It doesn't seem terribly reasonable to me that
6 just because somebody has found a way, kind of a technical
7 loophole of getting around something that is our policy, that
8 it should take a year for the Customs Service to deal with the
9 issue.

10 I'm told that the imports that are non-dutiable here are
11 growing by leaps and bounds, and it just doesn't make any
12 sense to me that something that looks like a duck and walks
13 like a duck and quacks like a duck and even tastes like a
14 duck should not be considered a duck, notwithstanding the
15 objections of the administration.

16 If the American Farm Bureau is all upset about bailer
17 twine, let's just exempt bailer twine from the amendment,
18 and then they can't complain about that.

19 Mr. Hathaway. If I might add an additional comment,
20 there is another point, similar point to the last bill on
21 which I spoke.

22 We also have, depending on where this item is classified,
23 we have a bound duty concession. And one which if changed by
24 legislation, we will be faced with a possible claim for compen-
25 sation once again.

1 Senator Heinz. How quickly can you do this administra-
2 tively.

3 Mr. Hathaway. The process is subject to administrative
4 review by customs and then subject to judicial review, and
5 there is a possibility for expedited proceedings, but it can
6 take some time.

7 It depends on how controversial it is. If it was un-
8 contested one way or another, it would go very quickly. It's
9 like any adjudicatory process.

10 Senator Heinz. If you did this through expedited pro-
11 ceedings, how long would it take for getting the judicial
12 review part of it?

13 Mr. Hathaway. It could be done. Of the administrative
14 part, that could be finished very quickly.

15 Senator Heinz, Why doesn't the administration agree to
16 do it through an expedited process and then maybe we won't
17 have to spend a lot of time discussing this.

18 Mr. Hathaway. I can't speak for the process now and give
19 assurances of what Customs will or will not do. I can give
20 the assurance that I will go back, will seek from at least
21 our office, seek the earliest possible decision administra-
22 tively that's possible so that the matter could be finally
23 resolved then if there is still disagreement by the parties
24 through the appropriate judicial process.

25 Senator Heinz. Why does an administrative decision, if

1 you want to expedite it, have to, as I understand what you
2 said, have to be subject to judicial review? It's subject
3 to judicial review only if someone files suit against you.

4 Mr. Hathaway. That's correct. I mean, what we're
5 assuming here, what this started out from is Customs applying
6 the provisions that were written into the tariffs schedules--

7 Senator Heinz. Mr. Chairman, I don't know. The more I
8 listen--I was hoping that we could get this resolved admini-
9 stratively. But the more I listen about how long and involved
10 and there's court suits, the more I'm inclined to believe
11 that we shouldn't rely on the administrative process.

12 I defy anybody here to tell me how these two pieces of
13 polypropylene rope are different.

14 Senator Chafee. Mr. Chairman, I wouldn't you want to
15 get the impression that there's unanimity here on this
16 matter or that it's only involved with the agricultural twine.
17 The fishing people in my area are not enthusiastic about this.
18 That's why Mr. Hathaway was mentioning that this would be
19 contested.

20 So that whereas there may be no problem as the Senator
21 from Pennsylvania sees it, that isn't true everywhere.

22 Senator Heinz. I would say to my good friend from
23 Rhode Island, I'm not going to press the issue if there's
24 going to be a lot of disagreement. But I would still, on
25 the merits, ask my colleagues, and we can take it up on the

1 floor, whether somebody is getting around the law.

2 I mean, my good friend from Rhode Island is perfectly at
3 liberty to disagree with the law; try and change the law.
4 But what we've got here, it seems to me, is a subterfuge,
5 nothing more, getting around the law.

6 The law is that this is a dutiable item and includable
7 in the MFA. If he doesn't like the MFA, if he doesn't like
8 the duty, that's another subject. But I think the subject is
9 are these the same, and the answer is it's taken a year for
10 the Customs Service to look at it. They're no where near
11 making up their mind, and they aren't even using an expedited
12 process after all this time.

13 Mr. Chairman, I'll just raise this on the floor unless
14 we get a more satisfactory response from the Customs Service,
15 and I expect to win it on the floor, too.

16 The Chairman. You're willing to not press it here?

17 Senator Heinz. That's correct.

18 The Chairman. Senator Long?

19 Senator Long. Mr. Chairman, I would like to distribute
20 a few copies of here of comparative tariff schedules, showing
21 what we charge and what the Europeans charge on the same
22 product.

23 The Chairman. Melamine?

24 Senator Long. Melamine, yes. And I would suggest that
25 we add the substance of S. 154 to the miscellaneous tariff

1 bill.

2 A similar bill has been introduced in the House and it
3 received hearings there. The House has not reported the bill
4 yet because the administration opposes it.

5 But in conference, the House counterparts will at least
6 be educated on the subject. Moreover, the House bill was
7 sponsored by a number of Ways and Means Committee members,
8 including Congressman Henson Moore.

9 The bill proceeded to hearing on October 21.

10 The problem involves a duty disparity. The situation
11 with regard to melamine is reflected by the chart that I have
12 asked to be passed out to members.

13 Melamine is produced by Melamine Chemicals of Louisiana,
14 the only U.S. producer for public consumption. This product
15 ought to be one of the U.S.'s exports to Europe. We're just
16 as good as making it as they are.

17 Yet, we import from them and export nothing. And the
18 chart tends to show why.

19 First, the European duty is higher than ours, 9.6 percent
20 ad valorem, versus our 4.3 percent ad valorem. But second,
21 as the chart shows, the quote dutiable value of the same
22 quantity of melamine in the United States and the EC are
23 different because of the EC determination. That's the basis
24 upon which the value is computed.

25 See, if you look at that chart, where it says United

1 States, there is the duty we would charge coming into the
2 United States.

3 So, for a price of \$40, that includes the cost of the
4 bag, you could have \$41 and a duty rate of 4.3. That's the
5 duty charged coming this way.

6 Now, if we're headed in their direction, in addition, they
7 charge the duty based on the CIF basis, to include the ocean
8 freight and insurance. So you add that in, they're charging
9 a 9.6 duty based on the CIF value. So they're charging twice
10 the duty against a higher base.

11 The result is that the EC duty has an impact out of
12 proportion to the U.S. duty. They have twice the ad valorem
13 rate that the United States has, but they have two and two
14 thirds the actual duties we charge on the product. And that's
15 what the chart shows.

16 Now, this bill would simply equalize the rate of duty
17 between the two countries. That's the duty rate. The EC would
18 still have a higher effective duty because they'd be charging
19 against a larger base.

20 The administration opposes the bill because it's a duty
21 increase, but that is based on the theory that they will have
22 to compensate the countries that are the principal exporters
23 of this product.

24 One thing, the total value at issue, is probably about
25 \$3 million a year and the Europeans may not be able to find

1 anything that small that they want.

2 Another thing, this duty increase will not exclude EC
3 exports. It will just about equalize their and our rates of
4 duty.

5 In fact, I suspect that the noncontroversial duty reduction
6 that the staff will recommend to the Committee will pretty
7 well compensate EC for whatever it loses by reason of this
8 duty increase.

9 Finally, in the past the Treasury and later the Commerce
10 Department found that this product is being dumped by certain
11 European producers.

12 I know dumping duties were imposed, because this Louisiana
13 company is not yet dead. But if we wait until that, I don't
14 think that we will need the bill. In fact, these injury
15 findings may well have been distorted because the other
16 melamine producer in the United States, American Cynamid,
17 consumes all of its own product. Therefore it's doing very
18 well, indeed.

19 So while I understand the administration's position in
20 this case, I recommend that we disregard their advice and
21 add this provision to the bill.

22 The Chairman. Is there opposition? Well, the administra-
23 tion opposes it.

24 Senator Heinz. I'm not opposed, Mr. Chairman, but I've
25 got a very similar bill I'm going to bring up in a minute.

1 Senator Bentsen. Well, let me say that I guess my opposi-
2 tion is not that strong, Mr. Chairman. I notice that the
3 question of material injury to the industry was not proven,
4 and they had not met that burden of proof.

5 But other than to make that comment--

6 The Chairman. Does the administration want to be heard
7 on this? This is a big deal with the administration.

8 Mr. Miller. Well, Mr. Chairman, Senator Long has
9 correctly identified our position. We are opposed. We are
10 opposed on the one hand because we would owe compensation or
11 be subject to retaliation, and we are also opposed because
12 there are appropriate administrative remedies through our
13 trade statutes where U.S. industries feel that they are
14 experiencing injurious import competition.

15 And we believe that those remedies should be used where
16 appropriate.

17 Senator Chafee. Mr. Chairman, maybe the trouble with
18 this is maybe we don't like the whole Tokyo Round business,
19 maybe we shouldn't be in it. But we are and there are certain
20 processes set up.

21 As I understand the summary here, the ITC determined that
22 the domestic industry was not materially injured by dumped
23 imports. That was in 80, and in 82 they decided as a prelimi-
24 nary matter there's no reasonable indication of material
25 injury.

1 So I think what we've got before us is a broader thing
2 that Melamine. I was here during the hearing on October 21st,
3 and heard the gentleman, and I thought he presented a case
4 that he's got problems.

5 But I think if we don't like the way the system is set
6 up, then we ought to change it. But here we seem to be going
7 at it in kind of an ad hoc way. If something doesn't come out
8 the way we like, and thus we're going to retaliate as it
9 were.

10 Well, this just seems to me opens a way for retaliation
11 on the other side. And upward we go.

12 I think a clear case can be made that every time we
13 do something like this, that, and so we help Mr. Melamine down
14 there in Louisiana, and so we help his business. And then
15 somebody else loses somewhere else in this country because
16 there is a retaliation.

17 I have great trouble with that.

18 Senator Long. Mr. Lang could explain about this injury
19 thing so far as he understands it. He used to work over at the
20 tariff commission.

21 Mr. Lang. Well, there were, as Senator Chafee points out,
22 several cases at the International Trade Commission under the
23 antidumping law involving this product in 1980 and 1982.

24 There were essentially two producers in the industry,
25 Melamine Chemicals, Inc. in Louisiana, and American Cyanamid.

1 However, American Cyanamid produces exclusively for its own
2 consumption. It doesn't sell malamine on the market.

3 The ITC decided that there was, in one case, there was
4 no material injury, and in another later case they decided at
5 the threshold that there was no reasonable indication of
6 injury.

7 That's the situation.

8 The Chairman. Is it going to create a monopoly here?
9 Is that what we're dealing with?

10 Mr. Lang. Well, I don't think you'd create a monopoly.
11 As Senator Long said, the increase would not necessarily
12 result in no European competition. It would raise the duty
13 applicable to that competition, but it wouldn't necessarily
14 exclude it from the market.

15 The Chairman. Not necessarily exclude it. Likely to
16 exclude it?

17 Mr. Lang. It would raise the duty to 9.3 percent which
18 is hardly a--

19 Senator Long. From 4.6.

20 Mr. Lang. 4.6, something like that.

21 The Chairman. Does the administration have anything else
22 to add?

23 Mr. Miller. Not at this time, Mr. Chairman.

24 Senator Chafee. Mr. Chairman, I suppose what's going to
25 happen here today is we're going through a whole series of

1 cases where they haven't come out the way people would like
2 them--and I've got one myself. And so we don't like the way
3 they've come out, and so we come up and try to get Congress
4 to change it.

5 Have we ever had an oversight on this whole ITC handling
6 and whether they're doing it right or wrong?

7 The Chairman. We have an ITC. Short a couple of members,
8 they're still there.

9 Well, I think we have several of these. I think we just
10 have to decide. I read what the administration suggests.
11 If we are creating a monopoly here for one domestic firm, if
12 that's what we wish to do, if in fact that would happen. Jeff
13 indicates it may not necessarily be the case.

14 What does the chairman of the Subcommittee have?

15 Senator Danforth. Well, Mr. Chairman, I just have--my
16 only thought is that there are a number of items that will be
17 in this bill. There are dozens of items in this bill which
18 are going to be of great importance to a number of senators.
19 And my hope is that we could pass the bill this year.

20 I think that to the extent that we add things to it that
21 are opposed by the administration, that are controversial
22 with other senators, that minimizes the chances of its passage
23 this year.

24 That's my principal thought about it. I don't as a
25 general rule like violating Tokyo Round bindings, but I think

1 that the main consideration is what can we reasonably
2 accomplish before we leave.

3 The Chairman. I wonder if there would be any objection
4 to those were there's absolutely no disagreement, I think we
5 need to focus on Kimberly-Clark, because they were promised
6 a couple of years ago we would. But on the others, where
7 there may be disagreement, could we report our two bills?
8 One where we have generally noncontroversial items, and the
9 other where there might be controversy?

10 I don't care. I'm willing to add some of these on the
11 bill, but I want to--if that would mean we're going to
12 eliminate 40 or 50 provisions where there is no controversy.
13 Are there other vehicles? I guess any of these are vehicles?

14 Mr. DeArment. We have two potential vehicles before
15 the Committee. And there are other potential vehicles.

16 The Chairman. But aren't there other tariff bills over
17 here?

18 Mr. DeArment. We have just two, I believe.

19 Mr. Kassinger. My understanding is that the Subcommittee
20 on Trade and the Ways and Means Committee will take up another
21 omnibus package within the near future and try to report that
22 over to us. It wouldn't come here till the New Year, though.

23 The Chairman. We have a House number on the floor,
24 don't we? Trade adjustment?

25 Mr. DeArment. Yes, we do, Mr. Chairman. I'm not sure

1 that that has any tariff or revenue provisions in it.

2 Mr. Lang. Mr. Chairman, I am informed that Senator
3 Matsunaga is on his way and has arrived at a compromise on
4 S. 1184 which he would like the Committee to consider.

5 The Chairman. Is that orange juice?

6 Mr. Lang. No, sir, that's a bill having to do with
7 the informal entry of articles into the United States, and
8 apparently he has worked out a compromise that would be
9 acceptable to all sides. I don't believe the administration--

10 The Chairman. What's the pleasure of the Committee on
11 Senator Long's proposal?

12 Senator Chafee. Mr. Chairman, I think every one of these
13 has an appeal to it. I think we have to make up our mind,
14 why not take them all? Somebody wants something, let's do
15 it,

16 I don't see how we distinguish between one and another.

17 The Chairman. That's why I was suggesting we put them on
18 another vehicle if we're going to approve any.

19 Senator Chafee. You mean separate out the noncontroversial
20 ones? If no one objects is this then noncontroversial?

21 The Chairman. There's already been one objection. The
22 administration opposed it. I assume that makes it contro-
23 versial.

24 Senator Long is willing to accept a voice vote.

25 Senator Chafee. Can you distinguish between this and

1 the other so-called controversial ones? Why don't we accept
2 them all as a package?

3 The Chairman. Ted, is there some distinction between
4 the other more controversial provision?

5 Mr. Kassinger. On some we've received more objections
6 than others.

7 Senator Chafee. Some less worse than others?

8 Mr. Kassinger. I would hate to have to judge quality,
9 Mr. Chairman. On some we've received more objections than
10 on others. That's true.

11 The Chairman. If it's all right with Senator Long,
12 why don't we just go through the other controversial ones,
13 we may end up with only this one. Is that all right?

14 Senator Long. Fine.

15 Senator Boren. Mr. Chairman? I have one that was not
16 listed as a controversial one that we didn't know was contro-
17 versial. It had been accepted earlier. It might be a little
18 bit different category. It's a labeling matter on gas
19 cylinders which was S. 1808.

20 The Chairman. Why don't you bring it up right now?

21 Senator Boren. It's not on the list because it is not
22 a duty question but a non-duty item.

23 S. 1808 is sponsored by myself and Senator Mattingly, and
24 a similar bill has been introduced by Congressman Archer in
25 the House. This deals with two loopholes in existing law in

1 regard to labeling of country of origin for gas cylinders and
2 related materials, pipes, pipe fittings.

3 And I understand that the domestic cylinder industry is
4 primarily concentrated in Pennsylvania, Texas, New York, in
5 addition to my own state of Oklahoma.

6 These exemptions, according to the industry, are creating
7 real problems because they're making meaningless the labeling
8 requirement. There is an exemption that if they're imported
9 directly from a foreign supplier they don't have to be
10 labeled. If they're ordered directly they don't have to
11 be labeled.

12 And so it ends up that most of them are not being labeled.
13 I had understood that this was to be included in the bill and
14 was not considered controversial until yesterday, but that
15 the administration may have some objection to it.

16 The Chairman. Ed, do you have any? I thought this was
17 noncontroversial.

18 Mr. Kassinger. Mr. Chairman, I did, too. Certainly at
19 the time we scheduled the hearing, but my understanding is that
20 there might be at least a mild objection.

21 Does the Customs Service object to S. 1808?

22 Mr. Rettinger. Pipefittings? I know Customs would have
23 no difficulty in enforcing S. 1808. I'll defer to Commerce,
24 if I can, with regard to administration position.

25 Mr. Miller. Thank you, Mr. Chairman. The administration

1 is opposed to this bill. We believe that the imposition of
2 additoinal marketing and labeling requirements on imported
3 goods is contrary to our attempts to encourage foreign
4 countries to reduce similar requirements and other nontariff
5 barriers on our exports.

6 We generally oppose additional marketing and labeling
7 requirements unless they are necessary to provide essential
8 information to consumers, or to protect the public health and
9 welfare.

10 In this case, we believe that the additional information
11 is not necessary.

12 We think that users of these products are sufficiently
13 knowledgable regarding the country of origin.

14 The Chairman. Is that a strong objection or boilerplate?

15 Senator Boren. Mr. Chairman, it sounds rather boiler-
16 plate since they only thought of it last night and the Customs
17 say they could enforce this, and we would not do away with
18 the labeling already existing on the statute books.

19 We do have a labeling requirement already, I guess you
20 know. Anything subject to resale in the United States, and
21 what's happening is that it's becoming hard to enforce that
22 because of this exemption that's in here in terms of direct
23 purchase.

24 Mr. Chairman, unless--I know there is interest, as I
25 say, in Pennsylvania, New York, Texas and several states

1 represented in this Committee, and I would just like to move
2 its adoption unless there is objection from members of the
3 Committee to it.

4 Senator Heinz. Just one inquiry of my good friend from
5 Oklahoma. Does his bill include marking of certain man hole
6 rings, covers and assemblies?

7 Senator Boren. Yes. I think you had had that added into
8 the bill, and it would, in addition to pipes, pipe fittings
9 and gas cylinders which is the principal thrust of it.

10 Senator Long. We have a similar situation in Louisiana.
11 I was hoping we might be able to get administrative relief,
12 and he's clearly entitled to relief, no doubt about that,
13 and they're supposed to put the labeling where you can clearly
14 see it. They're putting it on the rim. If you wanted to put
15 it somewhere you could see it, they would put it on top so
16 people would see it.

17 The Chairman. Well, do you have any last words?

18 Mr. Miller. We're still opposed to the legislation, Mr.
19 Chairman.

20 The Chairman. We appreciate your opposition. This seems
21 to be very noncontroversial. So, we'll take this--

22 Senator Long. He just wants to clearly define what's
23 not adequately defined.

24 The Chairman. All right. Without objection, up here
25 at any rate.

1 The Chairman. Senator Mitchell?

2 Senator Mitchell. Mr. Chairman, referring to S. 759,
3 that's duties on fish nets. That's one of those up for dis-
4 cussion today.

5 The fishermen in this country pay an effective rate
6 of roughly 33 percent on imported nets. Under current law
7 that duty will be reduced in stages to a permanent level of
8 17 percent in 1989. This bill would reduce the duty to
9 17 percent immediately.

10 The bill was passed last year by this Committee. After
11 it passed the Committee but before it got to the floor, a
12 compromise was worked out, modified it somewhat. That passed
13 the Senate, and a different version passed the House. And
14 unfortunately none of it survived conference because of some
15 what would appear to be misunderstanding or reversal of posi-
16 tion on the part of the domestic manufacturers,

17 On behalf of the bill I would like to make a few points.
18 First, American fishermen are caught in a real vice, because
19 duties on fish products are either minimal or nonexistent, while
20 duties on fishing equipment are extremely high as this one
21 indicates.

22 Secondly, netting is a very important part of any fishing
23 equipment as is obvious, and it's quite expensive, so the
24 duty here being very high constitutes a significant burden
25 on American fishermen.

1 Finally, I would point out that the hearings demonstrated
2 that a significant portion of the netting that's imported
3 consists of nets that are not manufactured in the United
4 States. And that was acknowledged by the representatives of
5 some of the manufacturers.

6 Their position was well, if they'll tell us what they
7 want, we'll make it, but they have no shown any inclination
8 to move in that direction. And since the current law provides
9 for a phase down of the duty over the seven year period between
10 now and 1989 it seems apparent that they're not going to move
11 into new areas.

12 And so I think that this is the kind of legislation that
13 we should be passing here because it will significantly reduce
14 expenses for American fishermen and will cause no discernable
15 harm to any domestic industry.

16 Senator Heinz. Mr. Chairman. I don't agree with that.

17 The Chairman. I understood there would be some opposition.
18 You not only want to lower the duties. Others may want to raise
19 the duties depending on what the item is and where we live.

20 But is the administration opposed to this?

21 Mr. Miller. Yes, Mr. Chairman, we are opposed. We
22 recognize the importance of the netting to the domestic
23 fishing industry, and in part that was the reason why we
24 reduced this item so significantly in the trade negotiations.
25 But because of the probable economic effect on existing pro-

1 ducers and to give those producers a chance to adjust to
2 increased competition, we staged those reductions over the
3 full staging period of the multilateral trade negotiations.

4 Since this bill would enact the final rate of duty without
5 that staging, we're opposed. We believe that the domestic
6 industry has made strides to become more competitive, including
7 efforts to make nets that they have not made in the past.
8 And these efforts are ongoing, and we believe would be under-
9 cut by enacting this legislation.

10 The Chairman. What about last year? Senator Mitchell
11 worked out a compromise which unraveled. Would that have the
12 support of the administration?

13 Mr. Miller. Senator, we were not involved in that
14 compromise, so I'm really not knowledgeable to speak to it
15 at this time.

16 Senator Mitchell. Well, the compromise provided that the
17 17 percent duty would apply to a certain level of imports
18 roughly comparable to the current level, and then that the
19 current law's schedule of duties would apply to any imports
20 above those levels. That was intended to meet what was then
21 the principal objection of the domestic industry, and that was
22 fear of a new surge of imports.

23 And it was, as I said, agreed upon. Unfortunately when
24 we got to the conference, there was some confusion or reversal
25 of position and we ended up not getting anything. But I think

1 the conferees indicated that they were prepared to accept
2 something. We just couldn't get it done at the last minute
3 because of that confusion.

4 Senator Bentsen. Mr. Chairman, I would have to speak in
5 opposition to the proposal of the Senator from Maine. I
6 think again the domestic industry has made some progress
7 in providing products that are more adaptable to domestic
8 fishermen.

9 But what you're talking about doing is giving a unilateral
10 concession to the Japanese in this regard, something sub-
11 stantially more than the administration arrived at in a
12 bilateral agreement and from what we've seen in the way of
13 lack of unilateral concessions on the other side by the
14 Japanese, I don't know why we can start on this side.

15 Senator Heinz. Mr. Chairman, I would like to strongly
16 agree with the Senator from Texas. Here we're about to send
17 the President over to Japan this weekend and we want him to
18 be successful in his negotiations, and what we're about to do
19 is unilaterally concede something to the Japanese who to date
20 have been something less than accomodating on a number of
21 areas.

22 Senator Mitchell. I just would say, Mr. Chairman, that
23 we've reached a curious stage of Japan phobia in this country
24 which we are unwilling to help substantial number of Americans
25 because it might as a subsidiary effect help the Japanese.

1 Senator Heinz. That's the second point I would like to
2 make.

3 Senator Mitchell. May I finish? Secondly, if I may say,
4 the statement has been made twice here this morning that the
5 domestic industry is moving to expand their product to meet
6 this need.

7 I attended all the hearings on this subject, and I can
8 recall no testimony or no evidence on the record to support
9 that conclusion.

10 Indeed, we addressed that issue specifically in the
11 hearing, and the representative of the domestic industry's
12 only assertion was, well, if the fishing industry will tell
13 us what they want us to make, we'll consider making it.

14 I've heard of reluctant sales efforts before, but that's
15 got to be one of the most reluctant I've ever heard of.

16 I'll say, Mr. Chairman, I understand your attitude on
17 controversial ones, and it's apparent this is even more contro-
18 versial than the others that have been presented.

19 So if you want to separate them, I'll hold this one aside
20 and if you have a separate vehicle for controversial matters,
21 take it up then. Or if not, I'll address it on the floor.

22 Senator Heinz. Mr. Chairman, would the Senator from
23 Maine yield for just one comment? On the point of the fishing
24 industry, let me say that I'm not opposed to helping them, but
25 when I hear as I heard this morning from Senator Chafee that

1 there are fishermen who believe that Koreans should be allowed
2 to drive a giant loophole through existing law on this
3 question of polypropylene cordage, I lose my sympathy for
4 an industry that wants to have it both ways.

5 And in the process wants us to just forget what the intent
6 of existing law is.

7 Senator Chafee. I find that a very curious reasoning,
8 that you're going to take it out on the fishermen because of
9 something I said.

10 I look at these things very, very objectives, and I
11 find the Senator's proposal here a very good one. And I
12 certainly would hope that because something I said about
13 Koreans sending imports, sending exports to the U.S., you
14 wouldn't take it out on the fisherman.

15 Senator Heinz. I just think it's a double standard.

16 The Chairman. Well, if it's satisfactory with Senator
17 Mitchell, we're looking for another vehicle for some of these
18 controversial items. This does appear to be controversial and
19 we can either vote on it.

20 Senator Mitchell. I'll wait and see what you do with
21 all the controversial amendments.

22 Senator Bentsen. We will have a chance to discuss it
23 at that time if you decide to bring it up.

24 The Chairman. Right.

25 Senator Bentsen. Because I want to readdress this

1 question as to whether or not the domestic industry is
2 becoming somewhat more competitive and innovative, as I think
3 we do have specific testimony on that during the hearings.
4 And I'll be prepared to defend it.

5 The Chairman. Sparky, do you have a compromise on some-
6 thing?

7 Senator Matsunaga. Yes, Mr. Chairman.

8 This is relative to S. 1184. We had excluded the ob-
9 jectionable items from coverage under the informal entry
10 provisions, that is, leather goods and textiles.

11 And I have a letter here, a copy of a letter from the
12 Economic Consulting Services, Inc. representing Amalgamated
13 Clothing and Textile Workers Union, AFL-CIO, the Footwear
14 Industries of America, International Leather Goods, Novelty
15 Workers Union, AFL-CIO, Luggage and Leather Goods Manufacturers
16 of America, Inc., United Food and Commercial Workers Union,
17 AFL-CIO, and the Work Glove Manufacturers' Association.

18 This is signed by the President saying that in view of
19 the proposed compromise substitute they would have no objections
20 to the measure.

21 And so I offer the substitute for my bill. I believe
22 a copy of it is in the hands of--

23 The Chairman. Maybe we can hear from the administration.
24 As I understand it, it would exempt products classified in
25 Schedules 3, textiles, and 7, footwear, and other things from

1 the new limit, leaving them subject to the \$250 level.

2 Is that in essence what the compromise does?

3 Mr. Kassinger. That's correct.

4 The Chairman. Does the administration support the com-
5 promise?

6 Mr. Miller. Mr. Chairman, we were just made aware of
7 the compromise this morning, so it's really hard to take a
8 definitive position.

9 Our letter on the original bill by Senator Matsunaga
10 indicated our opposition to that approach, and we indicated
11 that we were working within the administration also to try to
12 develop something that would be acceptable, and meet our
13 concerns.

14 Somewhat unofficially I can see that the \$1,500 limit
15 is a little high from what we were looking at within the
16 administration.

17 Senator Matsunaga. It's \$1,000, not \$1,500.

18 Mr. Kassinger. I'm sorry, the amendment I had from the
19 Footwear people said \$1,500.

20 Senator Matsunaga. No, it's \$1,000.

21 The Chairman. Does that make it better?

22 Mr. Miller. That makes it better.

23 Senator Matsunaga. As a matter of fact, the Customs
24 Service people had suggested the change in addition to Virgin
25 Islands, Puerto Rico and other territories, Guam, et cetera.

1 The Chairman. I wonder if Treasury might take a quick
2 look at that while we set this aside temporarily because
3 Senator Bentsen now has, I think, a compromise on the con-
4 centrated orange juice.

5 Senator Bentsen. Yes, Mr. Chairman, I'd like to juice
6 up these proceedings by letting a little sunshine in and
7 telling you that we've discussed it with Senator Roth, and
8 he is prepared--this is on orange juice, reconstituted
9 orange juice.

10 And we would be prepared to accept as a compromise the
11 imposition of this on April 1st, 1985, if there is no objection.

12 The Chairman. As I understand, that satisfies the
13 opponents. I would hope we might accept it. I think it's
14 good without the compromise. But if Senator Bentsen is
15 willing to compromise, without objection, the --

16 Senator Chafee. Well, what's it do? Could you briefly
17 explain it?

18 Senator Bentsen. Well, we went through this earlier in
19 the meeting.

20 But what it does, it says that on reconstituted orange
21 juice that it would not have the same kind of duty that
22 natural juice does coming in. That there was a separate
23 duty, 35 percent, on concentrated orange juice and 20 percent
24 on natural orange juice.

25 And what they ten resorted to was to bring the concentrated

1 in and then pump water into it outside the border, and bring
2 it in, and try to get the fresh orange juice duty on it.

3 This says it remains at 35 percent. That will not go
4 into effect until April 1st, of 1985, this compromise we
5 arrived at with Senator Roth.

6 The Chairman. As I understand it, the administration
7 is neutral.

8 Senator Chafee. Doesn't a lot of this come from Argentina?

9 Senator Bentsen. Brazil.

10 The Chairman. Canada.

11 Mr. Lang. The concentrated product originates in Brazil,
12 but it is reconstituted mainly today in Mexico. The problem
13 with reconstituted juices, of course, it's harder to ship
14 than the concentrated juice, so it is brought near the border,
15 reconstituted and then imported at the lower rate of duty.

16 The Chairman. Without objection, then, the compromise
17 as amended, that provision will be adopted.

18 I wonder if we might, before I recognize Senator Moynihan,
19 are you working on your deal, Sparky?

20 Senator Matsunaga. I believe they're ready to accept.

21 The Chairman. Okay. The administration is ready to
22 accept.

23 Mr. Miller. Thank you, Mr. Chairman, we have a couple of
24 questions. Particularly in the latter part of the amendment.
25 What is intended by the phrase or any other article for which

1 formal entry is required? Is this intended to provide the
2 Commissioner of Customs latitude, or the President latitude?

3 Senator Matsunaga. The Customs people.

4 Mr. Miller. So, for example, if they determined for
5 some reason that formal entry is required, they will have the
6 authority to do so?

7 Is it intended that the President could direct the
8 Commissioner of Customs in a particular case?

9 Senator Matsunaga. I believe it's in accordance with
10 existing law. And the Customs people would know what existing
11 law includes within the term formal entry.

12 Are you from the Treasury, Mr. Miller?

13 Mr. Miller. No, I'm from the Department of Commerce.

14 Senator Matsunaga. Oh, no wonder. Check with the
15 Treasury people. Customs people are for this.

16 Mr. Miller. We have. I've asked Customs if they under-
17 stand what the breadth of this authority is, and they're not
18 sure.

19 Senator Matsunaga. Well, this was drafted by staff.

20 The Chairman. Ted, can you clarify?

21 Mr. Kassinger. My understanding is that Senator Matsunaga's
22 attempt was simply not to preempt the requirements of formal
23 entry for articles that for one ever specific reason might
24 have to go through formal entry. Is that correct, Senator?

25 Senator Matsunaga. Yes. That's correct. In other words,

1 we're putting a protective clause here. That we're not ex-
2 cluding formal entry either.

3 Mr. Miller. We're just trying to clarify. And the other
4 question I have, if there's somebody here from the ITC
5 possibly they could clarify that.

6 Appendix 2, I believe, is covered by the amendment, and
7 that Appendix 2 applies to items subject to import relief?
8 I'm not sure on that, and I'm not sure what part 3 of the
9 appendix applies to.

10 The Chairman. Jeff, do you know what?

11 Mr. Lang. Well, one is import relief. It would mean
12 that you could not avoid any quota that was applicable under
13 the escape clause by using informal entry.

14 In other words, it saves administration escape clause
15 relief from defeat by this amendment.

16 I think. I don't have a copy of the amendment so I
17 don't know exactly what we're talking about.

18 Mr. Miller. Well, we certainly share the concern that
19 informal entry not be used to avoid quotas that are imposed,
20 subject to Title II import relief.

21 But we're curious as to whether you want that applied
22 for example when just increased tariffs are imposed as the
23 remedy in the escape clause procedure.

24 The Chairman. Is there going to be a Committee report
25 on this or not?

1 Mr. Kassinger. Yes.

2 The Chairman. Can't you take care of these little problems
3 in report language?

4 Mr. Kassinger. It strikes me that that's clearly possi-
5 ble, Mr. Chairman.

6 The Chairman. Is that all right with you, Sparky?

7 Senator Matsunaga. Yes.

8 The Chairman. Without objection, then, we'll agree to the
9 compromise.

10 I wonder if we might, while we have a quorum here--I
11 don't want anybody to leave afterwards--but if we could
12 approve all the noncontroversial things.

13 Senator Heinz. Mr. Chairman, excuse me. I don't want to
14 get in anybody else's way, but there are two other items
15 I would like to bring up for this bill.

16 The Chairman. I don't want to foreclose that. I just
17 want to be sure that while we had a quorum at least we were
18 able to act on the items on the agenda, where there is no
19 controversy.

20 I know Senator Moynihan has an amendment. You have two
21 amendments.

22 Is there any objection to H.R. 3398?

23 Mr. Kassinger. There are two controversial items within--

24 The Chairman. But those have been set aside.

25 Mr. DeArment. Yes, except for Section 124 and 211(a).

1 The Chairman. We've set aside the controversial ones.
2 So there's no objection, as I understand it.

3 So without objection, H.R. 3398 with those two exceptions
4 will be approved.

5 Then, on the other item, other tariff bills, I understand
6 two of those items are controversial, is that correct?

7 Mr. DeArment. Two that we've passed over, S. 1743 and
8 S. 1771, we've temporarily set aside. And S. 1420 we've in-
9 cluded in the reciprocity language, items K and M on the list.

10 The Chairman. So, as I understand it, there is no
11 objection with the exception of K or M on that list. So if
12 there is no objection, they will be approved.

13 And then we have agreed to certain other provisions.

14 Mr. DeArment. Those would include a modified version
15 of the equipment for Olympic Games. The Border Broadcasting
16 provision. We approved of the request for a 332 investigation
17 dealing with rum imports. We approved the reciprocity bill,
18 S. 144, with two modifications. That is, including the list
19 from S. 1420, and a definition of commerce.

20 We had approved a 332 investigation of the AT&T divesti-
21 ture, Senator Bentsen's tubular steel quota authority amend-
22 ment, S. 1808, the labeling of pipefittings that Senator
23 Boren offered, S. 1636, the citrus amendment, and S. 1184,
24 Senator Matsunaga's amendment.

25 The Chairman. So, we've agreed to those. I know of no

1 objection to H.J. Res. 298, S. 1940, 332 investigation and
2 reciprocity and the other matters you've just referred to.
3 So if there is no objection, they will be approved.

4 I think because of the timing we might also want to
5 report out H.J. Res. 290 separately.

6 Mr. DeArment. That's right. As we amended it. So, we
7 would report out H.R. 3398 with the amendments that I listed,
8 and separately report out H.J. Res. 290 as modified, making
9 the items temporary item on the tariffs schedule.

10 The Chairman. So if there's no objection, we can do that.
11 But there are still other amendments we want to consider, and
12 if we can agree to them, they'll be made a part of this package.

13 I think Senator Moynihan wanted to be recognized.

14 Senator Danforth. Also, Mr. Chairman, the controversial
15 items here.

16 The Chairman. Right. If Senator Mitchell, if we have a
17 vote on that and he is sustained, then we'll want to find a
18 vehicle, the same as any other amendments we can agree to.
19 Senator Long's amendment is still pending.

20 The surgical drapes and gowns provision is one we need
21 to resolve this morning. We can vote on that at any time.

22 Mr. DeArment. Section 124 of H.R. 3398 that the Chairman
23 set aside. It's also S. 37.

24 The Chairman. Why don't we try to dispose of that.

25 Senator Chafee. Is that Section 111?

1 Mr. DeArment. It's Section 124 of H.R. 3398. And it is
2 also S. 37.

3 And I think it's listed in the materials under Section
4 124 which is about a third of the way through this big list
5 of materials.

6 The Chairman. This is a controversial matter. It seems
7 to me that the bill would simply level a field of competition.
8 There's much opposition on the Committee. There is some
9 considerable support from other senators.

10 I assume, in any event, this will be some dispute on
11 the Senate floor.

12 Senator Bentsen. Mr. Chairman, if it's timely, I would
13 move to strike Section 124 of the House passed bill. That
14 is the provision that would result in reducing duties on
15 imported surgical drapes and gowns, 21 percent ad valorem,
16 and 31 percent ad valorem, 5.6 percent ad valorem.

17 And I do so because it's likely to have a direct impact
18 on employment in this country. 1,300 of my constituents, and
19 700 of them are in the border town of El Paso. And that's
20 an area where we find unemployment unacceptably high. We've
21 had a peso devaluation. The entire border area between
22 Texas and Mexico is extremely depressed, and this would con-
23 tribute to the problem.

24 I therefore move that we strike that section.

25 Senator Heinz. Mr. Chairman, I want to support Senator

1 Bentsen's motion for the same reason.

2 Senator Symms. Mr. Chairman, I would like to make a point
3 here that if this is done, and as you know, this is a move
4 to do this until 1989, is that correct, Ed?

5 Mr. Kassinger. Yes, that's correct.

6 Senator Symms. You're talking about putting one company
7 who manufactures similar product in this country in sheets
8 and then sends it out of the country and has it made into
9 gowns and brought back.

10 Here we are at a time when we're talking about trying to
11 keep hospital costs down. But I know that Senator Bentsen
12 speaks of an employment problem, but we'll do the same thing
13 to the people who manufacture, the employees who work for
14 Kimberly-Clark Corporation will end up being on unemployment.
15 So I think this is one of those situations where in all equity
16 that's really all Section 124 is asking for, is just equity
17 on the surgical drapes and sterile gowns which are very
18 similar type of manufacturing material.

19 And it would appear to me that it would be really
20 an inequitable situation if we strike this from the bill. I
21 think this would be a mistake.

22 Senator Bentsen. Mr. Chairman, let me say in response
23 to that, these people are presently employed producing both
24 products as the playing field is now. And major capital
25 investments were made in my State with the understanding that

1 this was the import rate differential.

2 So it's not a question of putting those people out of
3 work who are at the present time working for Kimberly-Clark.
4 They're working.

5 But if you drastically lower the import duty on that
6 type of gown from 21 percent and 31 percent to 5.6 percent,
7 you're going to have a dramatic effect on the manufacturing
8 of the other product.

9 And obviously, I think that means you have a dramatic
10 effect on the employment level.

11 People on both sides of this issue are now working. As
12 long as you don't change the import duty. If you lower it
13 substantially, I think you would put a lot of people out of
14 work, and you would put them out of work in an area of
15 intense, high unemployment and where the per capita income
16 is already extraordinarily low.

17 Senator Heinz. Would the Senator yield.

18 Senator Bentsen. Of course.

19 Senator Heinz. One other reason that I think is important
20 to support the position of the Senator from Texas is that
21 if we were to approve it this would be one more successful
22 effort to undermine and nibble away the multi-fiber agreement,
23 which has a lot of problems as it is.

24 These are items that should be included, and in fact
25 are included in the MFA. In a textile apparel product, and I

1 think it would not be a very good precedent when we have the
2 kind of high unemployment we have in that industry generally
3 to start burrowing through the multifiber agreement. It will
4 just encourage more of the same thing, and I don't want to
5 do that.

6 Senator Symms. Well, if the Senator would yield. I hear
7 what you're saying, but the problem is we've got one company
8 out here that is expanding operations in the United States,
9 and they're paying three to five times the rate, so they're
10 at a competitive disadvantage.

11 That's going to drive employment down in this country
12 and create more unemployment. And it just seems like if we
13 want to see them expand their sheet material and so forth.

14 I don't want to have Texans out of work, but we have to
15 be competitive in these kinds of operations, and at the same
16 time we're faced with the rising costs of Medicare, and hospital
17 costs and all these things we're trying to do that are also
18 tough things. And here we are allowing a situation to take
19 place that would drive up the price of materials used in the
20 hospitals.

21 So I think there is a good argument for keeping that in
22 the bill.

23 Senator Bradley. Mr. Chairman?

24 The Chairman. Senator Bradley.

25 Senator Bradley. I heard what the Senator from Idaho

1 said about the Texans out of work. New Jersey is a long way
2 from Texas, but I think that Senator Bentsen in this case has
3 made a very strong argument.

4 I would support it, and I don't see that the company got
5 into the business, the other company, and the rates are where
6 they are, and the burden of proof of reducing the rate has
7 yet to be made from my perspective.

8 Senator Symms. Well, it doesn't mean that they're going
9 to be out of work. It just means they're going to have to
10 have an even footing to start the competition.

11 The way it is right now, Kimberly-Clark will be paying
12 three to five times as much tax on the same product. That
13 puts them at a competitive disadvantage.

14 Senator Bradley. Have they made capital investment?

15 Senator Symms. They're making capital investments to make
16 the sheet material.

17 Senator Bradley. With the rate where it is now?

18 Senator Symms. Sure, they are.

19 Senator Bradley. So that if it gets reduced, is that
20 a windfall to them if it's reduced?

21 Senator Symms. They're trying to increase it, if they
22 can make a profit.

23 Senator Bentsen. You already told me they're growing,
24 they're expanding, under the present duty rate. Adding people
25 on.

1 The Chairman. I think the lines are fairly well drawn
2 on this. I can just about tell where people are from.

3 But I think the record should reflect a letter we
4 received from Senators Nunn, Mattingly, Cochran, Kasten,
5 Durenberger, and others who have a different view, and they're
6 not on the Committee.

7 So, my own view is we promised we would try to work this
8 out two years ago. We haven't done it. If it stays in the
9 bill, we'll go to conference, and maybe we can work it out.
10 But if it's striken, then I assume the senators who have an
11 interest will make that effort on the floor.

12 So I would suggest we vote on the Bentsen proposal to
13 delete it from the bill and move on to something else.

14 Senator Heinz. Mr. Chairman, as I understand it, this
15 provision is in the House bill.

16 The Chairman. Right.

17 Senator Heinz. So if we don't adopt Senator Bentsen's
18 position, we have no options in conference.

19 The Chairman. Well, that's true.

20 Mr. Lang. The provision is in the House bill.

21 Senator Heinz. But if we do not agree with Senator
22 Bentsen's motion to strike it from this bill, it will be in
23 both bills, and it will be an automatic decision in conference.

24 The Chairman. Okay. Let's vote.

25 Mr. DeArment. Mr. Packwood.

1 (No response.)

2 Mr. DeArment. Mr. Roth.

3 The Chairman. He votes aye.

4 Mr. DeArment. Mr. Danforth.

5 Senator Danforth. Aye.

6 Mr. DeArment. Mr. Chafee.

7 Senator Chafee. Aye.

8 Mr. DeArment. Mr. Heinz.

9 Senator Heinz. Aye.

10 Mr. DeArment. Mr. Wallop.

11 (No response.)

12 Mr. DeArment. Mr. Durenberger.

13 Senator Symms. No.

14 Senator Heinz. You have his proxy on that?

15 Senator Symms. I have his proxy right here.

16 The Chairman. I've got one dated November 4th that says
17 vote no. Vote against.

18 Mr. DeArment. Mr. Armstrong?

19 (No response.)

20 Mr. DeArment. Mr. Symms.

21 Senator Symms. No.

22 Mr. DeArment. Mr. Grassley?

23 (No response.)

24 Mr. DeArment. Mr. Long?

25 Senator Long. Aye.

1 Mr. DeArment. Mr. Bentsen?

2 Senator Bentsen. Aye.

3 Mr. DeArment. Mr. Matsunaga?

4 Senator Matsunaga. Aye.

5 Mr. DeArment. Mr. Moynihan.

6 Senator Moynihan. Aye.

7 Mr. DeArment. Mr. Baucus.

8 (No response.)

9 Mr. DeArment. Mr. Boren?

10 (No response.)

11 Mr. DeArment. Mr. Bradley.

12 Senator Bradley. Aye.

13 Mr. DeArment. Mr. Mitchell.

14 Senator Mitchell. Aye.

15 Mr. DeArment. Mr. Pryor.

16 Senator Pryor. Aye.

17 Mr. DeArment. Mr. Chairman.

18 The Chairman. No.

19 The ayes are 11 and the nays are three. The amendment
20 to delete that section is agreed to.

21 Senator Moynihan, do you want to bring up clocks?

22 Senator Moynihan. Yes. There are no clock radios
23 manufactured in the United States, nor any prospect of them.
24 They are designed in the United States and engineered, but
25 the actual manufacture is abroad.

1 Last year we voted to suspend the tariff rate for those
2 radios valued less than \$40 until September 30th, 1984.

3 S. 1771 would continue that tariff suspension until September
4 30th, 1987.

5 The argument is a simple one, that this is a product
6 which is in a sense partly manufactured in the United States
7 since they are designed here and made abroad. None are made
8 here, and it is simply, there is an advantage to consumers
9 and to the people who market and design them.

10 The administration's apparently objecting because this is
11 in some small measure a concession to Japan, but Japan only
12 produces 10 percent of these clocks. Most are produced in
13 Hong Kong and Singapore with a somewhat growing component
14 from Malaysia. Malaysian clocks would come in duty free in
15 any event under the GSP.

16 Senator Danforth. As I understand it, the only objection
17 to this is the administration, and it's not a specific objection.
18 It's the general point that tariff reductions that are not
19 matched by some concession from other countries are not good
20 strategy.

21 Mr. Kassinger. That's correct, Senator Danforth. We
22 have received no other objections to the bill.

23 Senator Chafee. Mr. Chairman, I would like to ask
24 Senator Moynihan a question if I might. The thrust of this,
25 I suppose, is so that clock radios can be sold cheaper in the

1 U.S. Is that it?

2 Senator Moynihan. Yes.

3 Senator Chafee. And the down side is we lose 29 million
4 dollars over three years.

5 Senator Moynihan. That's, you mean the actual tariffs?

6 Senator Chafee. That's what it says here.

7 Senator Moynihan. Yes.

8 Senator Chafee. What's the advantage, just so people can
9 buy clock radios at a cheaper price?

10 Senator Moynihan. Yes. And I think in effect buy more
11 of them; if they're cheaper, more of them will be bought.

12 Let me be specific. This is a General Electric activity
13 in particular. They're involved in--it's something we will
14 probably see a lot more of in the future. They design these
15 clocks and engineer them. And they make them abroad.

16 This just continues something we have already agreed to
17 do. I mean, the suspension is in place. Nobody is displaced
18 in any way.

19 The Chairman. This was on the noncontroversial list.

20 Mr. Hathaway. It's more than just a concern with imports
21 from Japan, because the administration also has a proposal for
22 the renewal of the Generalized System of Preferences, where
23 we'll be taking into account market access granted U.S.
24 products when determining what products to designate as
25 eligible for GSP benefits.

1 And under the administration's proposal, it would be
2 possible to alter the competitive need limits and of benefit
3 to the major, some of the major suppliers of clock radios.
4 So it is both just in a regular duty sense, which is about
5 nine and a half million dollars a year in duties collected
6 on this item, but also as an additional leverage of the
7 extension of GSP is provided along the lines we're proposing,
8 where we'll in effect be looking at the kind of market access
9 we're getting from some of these more advanced developing
10 countries when we're deciding what items can be on GSP and
11 what their competitive need limits ought to be.

12 So both for just general tariff and also for the GSP
13 the administration is opposed to a continuation or a reenact-
14 ment of a duty suspension bill on this item. It's a much
15 larger item of trade than many of the other duty suspension
16 bills. It was \$115 million annually. It's not a small
17 give away.

18 Senator Chafee. Mr. Chairman, it seems to me that we're
19 looking around for money, not that this is going to solve our
20 problems by a long shot. That's a minor factor. Secondly,
21 I think the administration's point about bargaining chip if
22 you want.

23 If we get into the Generalized System of Preferences, I
24 think it makes sense. I hate to just give it away without
25 getting something.

1 Senator Danforth. It's not in the House bill, is that
2 correct?

3 Mr. Lang. That's correct. Although it does have a House
4 counterpart, H.R. 3731.

5 The Chairman. This falls into, I assume, the belated
6 controversial area. I'm willing to vote on it. This is not
7 in the House bill so I assume if it were adopted, it would
8 still be in conference.

9 Mr. Kassinger. That's correct.

10 Senator Danforth. Let me ask you this, Mr. Hathaway.
11 Supposing nothing were done on this. Eventually we're going
12 to negotiate it away. How long would we have to wait for that?

13 Mr. Hathaway. We currently don't -- one of the reasons,
14 let me give a preparatory comment on answering that question.
15 One of the reasons you're faced with this thing that looks
16 like the yellow pages on the miscellaneous tariff bills is
17 because we don't have any negotiating authority now, we don't
18 have an extension of--we tried to get an extension of Section
19 124, and we've got some things in your reciprocity bill which
20 will be helpful.

21 But many of these items should be easily taken care of.
22 For example, in the high technology item stuff. That's simply
23 agreed upon reciprocal tariff concessions that are just out
24 there, many cases sitting there waiting for us to have the
25 authority to conclude a deal, or in the absence of that

1 negotiating authority, waiting for there to be enough pressure
2 on our side, from those who would be benefitted in the United
3 States, of having a duty suspension bill.

4 So we're faced with either giving it away or having
5 authority to negotiate it down.

6 Senator Moynihan. Without interrupting you, Mr. Hathaway,
7 I wonder if it wouldn't resolve the question--you want to
8 negotiate this away. We have no domestic production. We
9 do have domestic people involved in design and engineering.
10 What if we extended the suspension for one year and that
11 would give you two years in which hopefully you're going to
12 get some new negotiating?

13 Mr. Hathaway. I couldn't be in a position now to say
14 that we would support that, but that would be substantially
15 better than having a bill of a duration that was longer than
16 a year.

17 Senator Moynihan. One year more, and I think they should
18 get some negotiating power.

19 The Chairman. A reasonable proposal.

20 Senator Moynihan. Extend the suspension for one additional
21 year during which time we hope they will have that additional
22 negotiating authority so they can indeed negotiate this away
23 and get something in return for it.

24 The Chairman. What would happen at the end of that year?

25 Mr. Kassinger. You would snap back to the current rate of

1 duty unless you enacted a further suspension.

2 The Chairman. That doesn't disadvantage the administra-
3 tion does it?

4 Mr. Hathaway. It doesn't as much as having a three
5 year. Of course, in terms of negotiating leverage, it would
6 be substantially better to have negotiating authority and not
7 have duty suspensions, but it would be preferable to having
8 a longer duty suspension.

9 It's very difficult to negotiate credit for a duty
10 suspension bill that has been passed for three years and
11 extended for three more years; even though it is of significant
12 value to other countries, they are very reluctant to pay for
13 it, because experience has shown --

14 Senator Moynihan. I'm well prepared to say one more
15 year,

16 Mr. Bradley. What do you think it's worth, Mr. Hathaway,
17 about 100,000 cars?

18 Mr. Hathaway. It's \$975 million.

19 The Chairman. We could be here all day on this. You
20 could have it negotiated it by the time we complete it if
21 we don't do something.

22 Let's accept the one year suspension and move on to
23 something else. I think Senator Long would be willing to
24 limit his amendment for a period of two years, which I think
25 would be satisfactory. That would take care of some of the

1 objections. I don't know whether Senator Bentsen--

2 Senator Long. That would be all right with me, Mr. Chair-
3 man, and furthermore, that would give us a chance to see what
4 the situation in the petrochemical area is going to be a
5 couple of years from now.

6 Because if there's something else underway as far as that
7 industry is concerned, it's going to wipe it all out, it's
8 going to wipe out all this chemical industry in the United
9 States.

10 And I have in mind the fact that the Mexicans are taking
11 that gas that we should have bought until Mr. Schlesinger
12 got talked out of it by people in DOD and they're using it,
13 putting it in feed stock, and are willing to put it in at
14 zero price if need be in order to penetrate our market and
15 others.

16 And the Saudi Arabians have their plans. They're expanding
17 a petrochemical complex, and taking the feed stock on the
18 same general principal that they can sell it whatever they've
19 got to sell it for. Which means in effect that they're putting
20 the feed stock back in at zero if need be.

21 And we have 64,000 jobs that we're going to lose. A lot
22 of it's in Louisiana and Texas, but we have refineries all
23 around the country that are involved.

24 So we can take a look at what the broader problem is
25 going to be a couple of years from now. If we make it just

1 a two year bill, that would be all right with me. You can
2 decide which ones you want to save and which ones you don't
3 want to save.

4 The Chairman. Jeff, would you give us a run down of
5 this amendment, what would be the status of present law with
6 this amendment?

7 Mr. Lang. Under current law the rate of duty is staged
8 down under MTN agreements over a five or six year period to
9 1987. The current rate of duty is I think 4.3 percent
10 ad valorem.

11 Under Senator Long's amendment, the rate of duty would
12 go up to 9.3, I think it is. But 9.2 for a period of two
13 years. It might be easier from an administrative point of
14 view to start that on something like January 1st so it was
15 easier to administer for the Customs Service and then run
16 for two years after that time.

17 At that point the duty would snap back to the legal rate
18 which at that time would have staged down even further. The
19 ultimate bottom rate on melamine is, I think, 3.5 percent in
20 1987.

21 So you would snap back to that rate when the two years
22 was expired.

23 The Chairman. The administration probably does not support
24 that, but we've got to move on here. So without objection,
25 we'll take the modification.

1 It's still in conference, so if there are strong objections,
2 they could be raised there.

3 Senator Moynihan. Mr. Chairman, I had one other thing
4 which I hope the Committee would consider.

5 In brief, there is a rising concern in different parts
6 of the country that is not so much economic as it is principled
7 over the degree to which we are importing increasing amounts
8 of products from trading nations which are manufactured in
9 part by forced labor, or the equivalent of prison labor.

10 That violates the Tariff Act of 1930, and I have an
11 amendment which I could pass out which just simply asks if
12 the International Trade Commission would conduct a study
13 on the nature and extent of imports into the United States
14 that have been manufactured in whole or part in state trading
15 nations by using prison or forced labor and to have this by
16 December 31, 1984. And to consider the violations of inter-
17 national law which occur as a result of that, if that is the
18 case.

19 We have been curiously complacent about this of late.
20 And it just gives, it would give us a basis in facts. We would
21 know something on a subject that there's got to be some of
22 this going on. There may be a lot of it going on.

23 It gives the Tariff Commission a chance to inquire.

24 The Chairman. Anybody here from the ITC, whether they
25

1 can do this study?

2 Senator Moynihan. Mr. Chairman, I've had some discussions.
3 And I think there is a disposition at the ITC to do the study
4 or to find that they can't do the study. It's a subject that
5 concerns them, and if they can't do it then they can come and
6 talk to us about it. It's in no way intended to reflect on
7 internal affairs.

8 The Chairman. I understand. As I understand, I think
9 I sent a letter along with about 25 or 26 other senators to
10 the Treasury Department.

11 Mr. Kassinger. That's correct, Senator, urging the
12 stricter enforcement of current law that Senator Moynihan
13 referred to that bars the import of prison products made from
14 prison made labor.

15 I believe you recently received a reply.

16 The Chairman. Why don't we put that correspondence
17 in the record.

18 Would they be necessary to participate in this study?
19 You have no idea?

20 Senator Moynihan. I think the ITC will get its information
21 where it can find it. That's one of the questions. What
22 basis of fact, what data exists.

23 The Chairman. Is there any objection?

24 (No response.)

25 The Chairman. If not, the amendment is agreed to.

1 Senator Matsunaga?

2 Senator Matsunaga. I have a bill on rifle sites, I under-
3 stand Senator Bentsen is interested in and may support.

4 The Chairman. What number is that?

5 Mr. Kassinger. S. 1642.

6 Senator Matsunaga. Telescopic sites. And after consulting
7 with those interested, they're agreeable to reducing the
8 amount from \$50 to \$30. I'm wondering whether the Senator
9 from Texas would be amenable to such a change.

10 Senator Bentsen. The Senator has been conferring with a
11 lot of people but not with me.

12 Senator Matsunaga. Your staff.

13 Senator Bentsen. That's not enough. I would like hear
14 something about it myself. Give me a few minutes to take a
15 look at it.

16 The Chairman. I understand it's opposed by all the
17 commercial interests. It may or may not be a good reason.
18 But is the administration aware of the amendment?

19 Senator Matsunaga. This would lower the duty from 20
20 percent ad valorem down to 14 percent on telescopic rifle
21 sites, \$50 and below.

22 The Chairman. Mr. Miller?

23 Mr. Miller. Mr. Chairman, we weren't aware of the pro-
24 posed amendment, so I'm not able to really speak. I know
25 that our original opposition to the bill was based on the

1 significant effect that the duty reduction might have on
2 competition in the United States, and particularly production
3 in the United States.

4 Senator Matsunaga. Well, we did have hearings on it.
5 While there was opposition from the manufacturers, especially
6 from the W.R. Weaver Company of Texas, it was, gee, I don't
7 know what the administration's position was at that time.
8 I don't believe the administration testified.

9 Mr. Kassinger. Only W.R. Weaver. They testified for
10 themselves and on behalf of several other manufacturers of
11 rifle scopes, all of which were opposed.

12 Senator Matsunaga. But we did have hearing on it? And
13 I might point out that the ones that were interested, American
14 distributors and retailers as well.

15 Senator Danforth. Mr. Chairman, this is a quite contro-
16 versial item. And as the administration has suggested, they
17 oppose it. There are also a number of manufacturers in the
18 United States that oppose it.

19 I would hope that this would not be added to this bill
20 if we're going to hope to get the bill passed this year.

21 Senator Bentsen. Mr. Chairman, I also would have to
22 oppose this. I think it's bad trade policy. It unilaterally
23 reduces a duty once again on a product exported from Japan
24 without requiring Japan to make any compensating concessions.
25 And I think that might be a way to proceed, if no U.S.

1 interests were being hurt, but that certainly is not the
2 case.

3 Once again I get back to an area in my State, El Paso, with
4 high unemployment. This would put more people out of work,
5 and I have to oppose it.

6 The Chairman. Sparky, I think your support is slipping
7 away.

8 Senator Matsunaga. Yes. Well, I might point out to the
9 Chairman that the Koreans, and the Taiwanese are shipping
10 in duty free absolutely right now so t hat this would deal
11 only with a small amount.

12 But in view of the opposition, Mr. Chairman, in order
13 that I might be able to discuss a possible compromise,
14 reducing the amount from \$50 to \$30, I will withdraw that.

15 Would the Senator from Missouri be willing to discuss
16 the compromise proposal? Keep it out this time--

17 Senator Danforth. Fine, withdraw it this time, and
18 see if we can--

19 Senator Matsunaga. Arrive at some compromise on a future
20 bill. So I will withdraw it, Mr. Chairman.

21 The Chairman. I thank the Senator from Hawaii. I think
22 we're about ready to wind up here. So let me keep everybody
23 for just a few minutes.

24 Senator Chafee wanted to say something.

25 Senator Chafee. I have, I think, a noncontroversial one.

1 If you look in your papers, it's S. 1524.

2 The Chairman. Has the Dingell-Johnson bill been reported
3 out?

4 Mr. DeArment. No, Mr. Chairman. We've reported out the
5 substance of it, but not the House number.

6 Senator Chafee. The key words in this 1524, it's near
7 the back of your package, the administration position, the
8 administration does not oppose this bill.

9 Mr. Chairman, what this is is a manufacturer seeks to
10 buy spindle parts in the United States. He can't buy all his
11 parts in the United States, because there are no suppliers for
12 all of these spindle parts for a motor.

13 He can buy the whole motor. If he buys the whole motor
14 in West Germany, he can get it with a low tariff, and thus
15 fairly cheaply.

16 If he tries to buy some of the parts in the United States
17 and he can't buy them all, then he has to -- the parts he
18 does buy in West Germany come in under a high tariff.

19 Thus, it's cheaper for him to buy the whole motor with
20 no parts from the U.S. than it is to buy some of the parts
21 in the U.S.

22 So what's he seeking is a two year suspension of the
23 tariff on some of the parts so that thus he can buy the
24 balance of the parts in the U.S. and provide more jobs in the
25 United States.

1 That's a summary of what he's trying. It seems to make
2 sense to me.

3 Mr. Kassinger. The Department of Commerce apparently
4 now has an objection to this bill and wishes to comment on
5 it.

6 Senator Chafee. Well, that's regrettable. I don't know
7 why. I suppose they say U.S. manufacturers currently produce
8 spindle parts suitable for use in these memory disc drives.

9 Well, we had some testimony and it seemed to me they
10 were very reluctant, unenthusiastic about supplying these
11 parts.

12 This is just like the one the Senator from New York had
13 which prevailed which had a suspension. This is just a two
14 year suspension.

15 The Chairman. He only got one year.

16 Senator Chafee. Well, I'll take one year. How firmly
17 does the administration feel? When this material was writ-
18 ten up, they didn't oppose. It must be a late alarm?

19 The Chairman. Mr. Miller?

20 Mr. Miller. Thank you, Mr. Chairman. The administra-
21 tion is opposed to this legislation for some time. We
22 believe that there is significant production of competitive
23 parts in the United States.

24 It is true that the gentleman that is seeking the duty
25 suspension uses a part that is patented and is not available

1 in the exact, the exact item is not available here, but
2 certainly competitive items are available here.

3 Senator Symms. Well, let me ask you a question. Are
4 you from Commerce?

5 Mr. Miller. Yes, Senator.

6 Senator Symms. Well, wouldn't it be better off the way
7 you're treating the thing, wouldn't it be better then if the
8 Germans just made the motors in Germany and brought them over
9 here?

10 Is the answer to that yes?

11 Senator Chafee. That's what he's doing now. It's cheaper
12 to buy them in Germany.

13 Mr. Miller. We understand the problem. We did suggest,
14 and we understand that the gentleman who is manufacturing
15 this disc drive is working on this approach. And that is to
16 bring in the part through a foreign trade zone, manufacture
17 the finished item using both imported and domestic items,
18 and then exporting to the United States from the foreign
19 trade zone the finished item at the lower rate of duty.

20 That is a currently available remedy. We understand there
21 is a petition before the Foreign Trade Zones Board from Rhode
22 Island which would permit this.

23 Senator Chafee. I don't remember that. That didn't come
24 up in the testimony, I don't think. I don't remember it
25 anyway.

1 The Chairman. I wonder if we might give an additional
2 one year's suspension.

3 Senator Chafee. There isn't any suspension yet.

4 The Chairman. It isn't in the House bill.

5 Senator Chafee. No.

6 The Chairman. Well, why don't we do that.

7 Senator Heinz. Mr. Chairman, may I make a suggestion?

8 First of all, I looked at the hearing record and it was an
9 extraordinary hearing record. Senator Chafee, I gather, chaired
10 the hearing, I wasn't here for it. And it appeared that the
11 U.S. suppliers of parts and the manufacturer in Rhode Island
12 had never, either one, talked to the other.

13 Yet one was claiming he couldn't get parts from the
14 parts supplier. The parts supplier was claiming they had
15 never been asked for parts.

16 Senator Chafee, you apparently said, you two fellows
17 go out in the hall and meet each other for the first time.
18 It was a remarkable situation.

19 Senator Chafee. Well, one was from way off; he was in
20 Connecticut, so they hadn't talked.

21 Senator Heinz. We understand the 13 colonies are still
22 having their problems.

23 It would seem to me that since the company in question
24 here apparently to the extent they're having a documentable
25 problem is having a problem on parts of spindle motors suitable

1 for computer memory disc drives, which are not presently
2 manufactured, we might initially just restrict this one
3 year, make it one year and just restrict it to that specific
4 item.

5 Because all I could really get clear from the hearing
6 is that appears to be a problem. Would the Senator be
7 amenable to that?

8 Senator Chafee. I think so. Yes. That's what they're
9 looking for.

10 Senator Heinz. What we would do is just suspend the
11 duty for one year on parts of spindle motors suitable for
12 computer memory disc drives which are not presently manu-
13 factured in the U.S., rather than all parts for the motor.

14 Mr. Kassinger. You would add the phrase to your amend-
15 ment not presently produced in the United States?

16 Senator Heinz. Yes.

17 Mr. Kassinger. I'm not sure how the Customs Service
18 could make that determination on individual entries as to
19 whether or not a particular product --

20 Senator Heinz. Maybe we can work out some language.

21 Mr. Miller. Mr. Chairman, we've explored this possibility
22 with some interest with the Customs Service, and we have been
23 advised that there is just no way to identify this particular
24 part at the border to distinguish it from competitive items.

25 Senator Chafee. Mr. Chairman, we can't spend all morning

1 on this. But let me just say something about that. The Senator
2 from Pennsylvania is right. There were two people here
3 who indicated that they would be willing to supply, but then
4 they weren't able to supply.

5 And the Senator is right, I told them to get together and
6 see if they could work it out. Well, apparently they couldn't
7 work it out.

8 One wasn't interested in supplying this type of specialty
9 item. And I'm not sure what happened to the other one.

10 But clearly it's going to provide more jobs in the
11 United States if instead of buying the whole motor in Germany
12 they buy some of these parts.

13 I would take a one year suspension and see what happens.

14 Senator Heinz. Just to follow up, Mr. Chairman. As I
15 understand what Mr. Miller said is that they cannot identify
16 a part of -- that's a new one on me.

17 The Chairman. Let's go ahead and do it anyway, because
18 we're going to lose our quorum here.

19 If we can't work it out, you and Chafee can go to Customs
20 and help them.

21 Let me say that at 2:00 o'clock this afternoon -- I met
22 with the staff on Saturday, and suggested they go over the
23 list of the various requests we had from senators on this
24 committee and other senators on so-called add ons to any
25 committee amendment we might agree to if we had the reconcilia-

1 tion hopefully sometime this next week.

2 What I did maybe arbitrarily is sort of adopted the so
3 called Long rule where I asked the Treasury, the Joint Committee
4 and our staff to take a look at the amendments, see whether
5 there have been hearings, whether there was any opposition
6 from Treasury which would not be paramount in some cases,
7 whether it was mild opposition, and have the Joint Committee
8 take a look at it as far as revenue is concerned, and discuss
9 it with all the staff.

10 We thought we might discuss some of those matters starting
11 at 2:00 o'clock this afternoon.

12 Senator Heinz. Mr. Chairman. I still have two amend-
13 ments.

14 The Chairman. Yes. Senator Heinz has two. Senator
15 Danforth has two.

16 Senator Grassley. I've got two.

17 The Chairman. Thanks for dropping in. I appreciate
18 this.

19 Senator Grassley. I'll buy you a new set of glasses.

20 The Chairman. I didn't notice you there earlier.

21 Senator Heinz. Mr. Chairman, it's my hope that the
22 first one of these which is S. 453 is noncontroversial. This
23 has to do with the problem of apple and pear growers and the
24 problem they are dealign with with concentrate.

25 Basically the problem, as I understand it, is that because

1 the apples and pears that they produce are not considered a
2 like product which eventually becomes, comes into competition
3 with imported concentrate from apples and pears, they are
4 precluded from filing under countervailing duty law any case.

5 What I would propose is an amendment to Section 771(10)
6 of the Tariff Act of 1930 as Amended to add the following
7 new sentence: "An agricultural product shall be considered a
8 like product if (a) it is at an earlier stage of processing
9 than the imported article; and (b) the imported article is at
10 an intermediate state of processing prior to its final con-
11 sumption."

12 In this way the growers who are currently precluded from
13 taking any action against, for example, subsidized imports
14 of apple juice from Argentina would be able to find relief.
15 It's my understand that the Farm Bureau supports some sort
16 of action on this kind of problem.

17 The Chairman. Is that a modification from S. 453?

18 Senator Heinz. This is a modification of S. 453.

19 The Chairman. Does the administration now support this
20 modification?

21 Mr. Hathaway. Unfortunately we can't.

22 Senator Heinz. Senator Bentsen would want to know whether
23 you do not support it, whether you are opposing it or neutral.

24 Mr. Hathaway. We would, at least at this time, Senator
25 Heinz, we would oppose a provision which in effect would

1 still result in an impairment of a bound tariff concession
2 and would change our countervailing duty laws in a way that
3 could violate our international obligations under the GATT
4 and under the subsidies code.

5 Senator Heinz. Well, apart from that, why are you against
6 it?

7 Mr. Hathaway. Other than that, I think we support it in
8 principle.

9 The Chairman. It's negotiable.

10 Senator Heinz. It sounds to me like they're undecided.
11 Reaching for the usual arguments, Mr. Chairman.

12 The Chairman. On that basis we can either vote on it,
13 or we can in either case add it to the fishnet provision
14 which is also controversial.

15 We do have a separate number.

16 Mr. DeArment. We could report it out on a separate
17 number, Mr. Chairman.

18 Senator Heinz. Put it on the fishnet bill? Even if the
19 fishnet bill itself doesn't survive?

20 Senator Danforth. I think the question is whether we're
21 going to pass this bill this year.

22 Senator Heinz. We're going to have a second bill.

23 The Chairman. I think we have one. The Dingell-Johnson.

24 Mr. DeArment. Yes, it's the sport fishing.

25 The Chairman. If you put the sport fishing provisions in

1 reconciliation so we have that number.

2 Senator Heinz. With the understanding that we can put
3 both cordage and apple juice on that, I'd have no objection.

4 The Chairman. The cordage?

5 Senator Heinz. That's the two indistinguishable like
6 items.

7 The Chairman. Can we put surgical gowns on there too,
8 because their indistinguishable.

9 Senator Heinz. If someone has the votes, I'm all for
10 it.

11 The Chairman. Then we do have that number, right?

12 Mr. DeArment. Yes, Mr. Chairman. It's the Federal
13 Boat Safety Act, H.R. 2163.

14 The Chairman. Is that all right with you, Senator
15 Mitchell, to put your fish nets? That ties in with the boats
16 there pretty good.

17 (Laughter.)

18 Senator Mitchell. Sure.

19 The Chairman. What about your -- should we put the
20 pear juice in this one? Put that in the boat, too.

21 Senator Heinz. The last one deals with the issue of
22 roses which are produced unfortunately in only a minority of
23 states.

24 Senator Danforth. Before we get to the roses, I wonder
25 if the same strategy might be possible for dealing with that.

1 Senator Heinz. It might very well be possible.

2 But I would like to briefly explain it.

3 Mr. Kassinger. It's S. 1296, Mr. Chairman.

4 Senator Heinz. Mr. Chairman, the problem is that the
5 rose producers are suffering a substantial amount of injury
6 from foreign imports principally imports coming in from the
7 Netherlands and Colombia.

8 And what the bill would do would be to increase U.S.
9 tariffs to the sale level as those now in effect in the
10 European Community.

11 Now, the reason for this legislation is that the prin-
12 cipal market for roses is the European Community and the
13 United States.

14 With respect to imports of roses from the Netherlands into
15 the United States, in a sense what the producers in our
16 country are seeking is reciprocity.

17 Right now, the EC levies a duty anywhere from 17 to 24
18 percent on American exports of roses whereas we only levy
19 a duty of 8 percent.

20 So one principle involved here is reciprocity. The other
21 principle involved is the issue of diversion, that is to
22 say, that countries like Colombia, which is the major non-
23 European producer of rose blooms, is forced to divert its
24 production into the United States because they are faced with
25 the duties that I just mentioned, namely anywheres from 17

1 to 24 percent, when they export to their other major market,
2 namely Europe.

3 As a result, there is a tremendous amount of diversion
4 from the European Community into the United States.

5 It seems to me that if we want to try and establish some
6 equity and fairness among all the countries involved that
7 this legislation would be the best way to do it.

8 Senator Long. One of my constituents called in and was
9 very opposed to this proposal. And I would like Mr. Lang,
10 who discussed the matter with him, to explain the basis of
11 his opposition.

12 It sounds like he's got a good case.

13 Mr. Lang. There were two bases of his opposition,
14 Senator. First, he was concerned that it would hurt him in
15 the high season.

16 He said that he sells more flowers at certain seasons
17 of the year than others.

18 During his regular time, he buys flowers from domestic
19 producers. But when the high season comes on, the domestic
20 producers are not able to supply him with enough cut roses,
21 so at that point he buys the imports and this would help
22 him in those seasons.

23 And the second point he made is that the domestic
24 rose growers have a pending countervailing duty case against
25 these products from Colombia, and that they should be remanded

1 to their administrative remedies.

2 Senator Heinz. Mr. Chairman, let me ask unanimous consent
3 that a series of letters I've received from rose growers from
4 across the country be included in the record immediately
5 following my remarks, but before Senator Long's inquiry.

6 Secondly, let me just note in response to the question,
7 Senator Long's question, that this is not a quota that we are
8 proposing. It is an increase in the tariff and would not
9 restrict the quantity of roses.

10 Senator Symms. Would the Senator yield?

11 Senator Heinz. Yes.

12 Senator Symms. How much more is it going to cost some-
13 body to send a dozen roses to somebody on Valentine's day?

14 Senator Heinz. How many girlfriends do you have.

15 Senator Symms. Let me just say one.

16 Senator Heinz. The senator is not able to calculate
17 that immediately.

18 Senator Long. How much additional tariff is this?

19 Senator Symms. What is it, 25 percent?

20 Mr. Lang. I'm not sure that there is an increase, that
21 you can calculate the increase per bloom. I thought it was
22 30 cents per bloom would be the result.

23 Senator Symms. Florists in my state have been calling
24 saying it's going to cost 25 percent more. I don't know how
25 accurate that is.

1 The Chairman. I think we need to move on. The Commerce
2 Department is opposed to this. You've got a couple of cases
3 pending now against Colombia and Mexico, right?

4 Senator Heinz. Mr. Chairman, let's do this, just to
5 speed up, could we get a record vote on this?

6 Senator Matsanuga. If the Senator would yield, I would
7 like to support him in the bill. Hawaii has been suffering
8 because of the different in the rate.

9 I think all we're asking is equity as the Senator from
10 Pennsylvania.

11 Senator Bradley. Essentially this would result in an
12 increase in the price of roses, right?

13 The Chairman. That's one of the arguments.

14 Well, the record indicates that you do have cases pending.

15 Mr. Miller. Yes, Mr. Chairman. And the record should
16 also indicate that the administration is opposed to the legisla-
17 tion.

18 The Chairman. You are trying to resolve the problem.
19 Is that correct.

20 Mr. Miller. Well, we're addressing within the Commerce
21 Department, the countervailing duty complaints, and we believe
22 that is the appropriate procedure.

23 The Chairman. Let's have a record vote on this.

24 Mr. DeArment. Mr. Packwood.

25 (No response.)

1 included with the vote for final passage? Item J.

2 The Chairman. Right.

3 Senator Grassley. They were included, okay.

4 Then the amendment I have refers to a bill, S. 1886,
5 which has been in everybody's file. I know of no objection
6 to it.

7 The Chairman. What does it do?

8 Senator Grassley. The purpose is to suspend the duty
9 for a temporary three year period on a high technology
10 organic chemical intermediate used in the manufacture of
11 semithetic antibiotic in order to maintain the competitiveness
12 of the sole U.S. manufacturer, which is Lilly in exports of
13 such antibiotics from the United States to Japan and other
14 foreign markets.

15 The Chairman. We had hearing on it?

16 Mr. Kassinger. Mr. Chairman, we put it out for comment.
17 It was introduced the first part of October. We have not
18 received any comments. The administration has no position.

19 The Chairman. Does the administration have any position
20 today?

21 Mr. Miller, No, Mr. Chairman. We haven't developed a
22 position, Mr. Chairman.

23 The Chairman. Any senators?

24 Mr. Kassinger. We haven't heard from anybody about the
25 bill, Mr. Chairman.

1 provision.

2 Yes, we do have that.

3 Could we clear up the thing that Senator Durenberger and
4 Senator Roth had an interest in? That's been resolved, now,
5 is that correct?

6 Mr. DeArment. That's Section 211(a).

7 The Chairman. Let's move quickly, because Senator
8 Grassley has amendments.

9 Mr. Kassinger. My understanding is that it had been
10 resolved.

11 The Chairman. Who was it resolved with?

12 Mr. Kassinger. The Customs position, as I understand
13 it, is that they do not have a position on the merits, but
14 they would have no problem in administering the provision.

15 The Chairman. Who else is involved?

16 Mr. Kassinger. Commerce.

17 Mr. Miller. Mr. Chairman, we've had no opportunity to
18 examine the economic impact.

19 The Chairman. Okay. We'll just leave it out. If you
20 can work it out we'll offer it as an amendment.

21 Senator Grassley?

22 Senator Grassley. Mr. Chairman, I said I had two amend-
23 ments, but first I want to make sure that since I wasn't
24 here if S. 1481 through S. 1485 which are bills I have intro-
25 duced, they're on the list with the package. They were

1 (No response.)

2 Mr. DeArment. Mr. Baucus.

3 (No response.)

4 Mr. DeArment, Mr. Boren.

5 (No response.)

6 Mr. DeArment. Mr. Bradley.

7 Senator Bradley. No.

8 Mr. DeArment. Mr. Mitchell.

9 Senator Mitchell. No.

10 Mr. DeArment. Mr. Pryor.

11 Senator Pryor. No.

12 Mr. DeArment. Mr. Chairman.

13 The Chairman. Present.

14 On this vote the nays were nine and the ayes were two.

15 The amendment is not agreed to. One voted present.

16 Senator Heinz. I have no further amendments. My under-
17 standing is that we're going to take care of the apple and
18 pear legislation in the so called fishnet bill together with
19 cordage, is that right?

20 The Chairman. That's correct. If there's no objection,
21 I think that's how we'll proceed. I think that's satisfactory
22 with Senator Mitchell, satisfactory with you. That doesn't
23 mean there won't be opposition on the floor to those two
24 provisions.

25 Senator Bentsen has indicated he would oppose the Mitchell

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

1 Senator Danforth. I would think it would be premature to
2 consider it now.

3 Senator Grassley.. Well, it's been in everybody's file.
4 But the reason I didn't bring it forth in time to be on this
5 list was because we needed some additional information that
6 we were able to get out.

7 But in other words, it's not traditional to pass on these
8 except for the position of the administration being known?

9 The Chairman. No, but most of these we've had hearings
10 on. What might be -- does the administration think it can
11 develop a position in the next few days?

12 Senator Grassley. Is there any chance we could vote it
13 out and if there is any one senator objects, or if the
14 administration objects, then pull it off? Would that be
15 possible to do it that way?

16 The Chairman. Or you can do it the other way. This bill
17 will be brought up some time next week, and if there's no
18 objection, just offer it as an amendment.

19 That would serve notice on the administration, if they
20 don't have a response by then, we would accept the amendment.

21 Senator Grassley. I'll have an opportunity to do that --
22 it doesn't have to be a trade --

23 The Chairman. This tariff bill is going to be on the
24 floor, and you can offer the amendment at that time.

25 Senator Grassley. Why don't I do that on S. 1886. It has

1 been out for everybody's consideration. One other one that
2 hasn't been that I would like to propose under the same condi-
3 tions if I could would be S. 2019, and it's been more recently
4 introduced.

5 The Chairman. What does that do?

6 Senator Grassley. That provides for the fact that there
7 are no American manufacturers of megatron tubes used in micro-
8 wave ovens and this would--there is no U.S. manufacturer that
9 is benefitting from that sort of limit now.

10 And it would do the same thing for that as S. 1886 would
11 do for the chemical that I was referring to.

12 Could we then have those two under those conditions
13 if there is no objection to them?

14 The Chairman. Right. I assume if no senator objects
15 and the administration doesn't object, it would be very easy
16 to offer them as amendments.

17 Now, you can offer them in any event, but we're trying to
18 keep this bill clean of any controversy.

19 Senator Grassley. Well, I appreciate that and that's the
20 only condition I'm moving forward on these. If I didn't meet
21 those conditions, I wouldn't want to push it.

22 The Chairman. Fine.

23 Senator Danforth. Yes. I would hope that any amendment
24 offered on the floor would be noncontroversial, because the
25 question is whether or not Senator Baker will bring up the

1 whole bill and whether we can get it passed over the next
2 few weeks. If it looks as though we're going to have a lot
3 more amendments, he won't do it.

4 Senator Grassley. Let me assure the senator from
5 Missouri that at this point, with this amendment before it
6 comes up on the floor, I won't be pursuing those unless they
7 fall into that category.

8 The Chairman. It may be that I misspoke earlier. As I
9 understand, there is a vehicle available for Senator Mitchell
10 and Senator Heinz their quote controversial end quote amend-
11 ments.

12 Mr. DeArment. That's the sport fishing, H.R. 2163.

13 The Chairman. So as I understand it, Senator Bentsen
14 wants to oppose the Mitchell amendment when it's offered to
15 that bill, so if we can maybe do that the first thing this
16 afternoon.

17 Mr. DeArment. So that we would report out the H.R. 2163
18 with apple juice on it as a substitute?

19 The Chairman. You just keep it. We'll do it this after-
20 noon. In other words, everything we've approved we'll report
21 out. We'll keep that Dingell-Johnson bill, bring it up
22 this afternoon.

23 Senator Mitchell can offer his amendment. We'll have a
24 vote on it. Somebody said they wanted to vote on it, Senator
25 Heinz, he can offer that. And then we'll report it.

1 Senator Danforth. Mr. Chairman, before we report this
2 out in the House bill they have this provision about bicycle
3 parts, and the foreign trade zones.

4 Mr. Kassinger. That's correct. That was also held over.
5 That was the second of the two controversial provisions
6 of H.R. 3398.

7 Senator Danforth. I see. The bill as it stands, that
8 is not in the bill, but it could be added?

9 Mr. Kassinger. No, I think procedurally the situation
10 is somebody has to move to strike that out, just like on the
11 surgical drapes and gowns.

12 Mr. DeArment. What I understand, when we read through
13 this list and before the Committee voted, we excepted out
14 Section 124 and 211(a). So that's accepted out. That's what
15 I stated when we voted.

16 It is out. It's in the House bill. It would be in
17 conference.

18 The Chairman. And then it will be in conference, as well
19 as the surgical gowns will in conference.

20 The Chairman. Are there any other matters to be clarified
21 before we get out of here? Some of us are coming out.

22 Mr. Lang. Mr. Chairman, while this is being cleared up,
23 if Senator Chafee has no objection, would we begin that
24 amendment on spindle motors on a date certain. Do you have
25 any preference on that? Most of the days are 15 days after

1 the date of enactment.

2 Senator Chafee. All right.

3 The Chairman. 15 days after date of enactment.

4 Mr. Lang. It gives the Customs Service a chance to --

5 Senator Danforth. Mr. Chairman, on the surgical gowns
6 and bicycle parts, the question is procedure, because we did
7 have a motion to strike on surgical gowns so my concern is
8 didn't we just more or less put them side for the moment?

9 Mr. DeArment. Before we voted out the amended version
10 of H.R. 3398, I excepted both of those before the vote, both
11 Section 124 and 211(a).

12 Then subsequently Senator Bentsen wanted to raise the
13 question of surgical gowns and formally moved to strike it.

14 The Chairman. But they both will be in conference.

15 Senator Heinz. On the issue of bicycle parts, what is
16 involved here among other things, but principally, it's an
17 issue of what the purpose of the foreign trade zone should
18 be.

19 We originally proposed and instigated the Foreign Trade
20 Bill legislation to facilitate on the exportation of U.S.
21 source manufacturers.

22 I am concerned that if we do not have an appropriate
23 provision in this bill, that we could come up with a solution
24 that doesn't make a lot of sense.

25 Now, it's my understanding that the Committee sometime in

1 the next six to 12 months is going to considering trade reform
2 legislation.

3 The House is working on some kind of a bill. I think the
4 Chairman of the Trade Subcommittee has indicated that he will
5 be taking up some similar measures.

6 And I would suggest that maybe what we ought to do is
7 have a one year prohibition on this particular zone that is
8 involved here so that we can give the Committee the appropriate
9 time in which to take action and we do not leave a potential
10 loophole here through which -- there's some other people,
11 and I'm really more concerned about a lot of other people
12 as much as I am -- through which someone can drive a truck
13 through.

14 So I would like to suggest and propose that if we have
15 a prohibition here and will extend out for three years--

16 The Chairman. It would seem to me if we had nothing in
17 our bill and went to conference, that would probably be a
18 result that we could -- I had raised that earlier. I under-
19 stood Senator Danforth might offer such a compromise. I don't
20 have any strong feeling at present.

21 Senator Grassley. Mr. Chairman, I have an inquiry on
22 this very same point. Is there anything in the House bill or
23 in this bill that we're dealing with that would put a cloud
24 over any pending sub-foreign trade zone applications? Because
25 I have one pending in my state that we've been working on for

1 about a year and a half, and I would like to know if there is
2 an application. _____

3 Mr. Kassinger. It applies only to the Huffy application
4 so far as I'm aware.

5 Senator Grassley. Is this the first time we've ever done
6 anything like this in this Committee?

7 Mr. Kassinger. So far as I am aware, Senator.

8 Senator Grassley. Thank you, Mr. Chairman.

9 Senator Heinz. I don't mean to take the Committee's
10 time, but it seems to me we have been put in a most unfortunate
11 position by the administration.

12 The administration could have made their decision pre-
13 viously. Frankly, it's my view that they have been ducking
14 making a decision.

15 And if we decide that to leave the, be silent on the
16 issue first of all, we don't know where we're going to come out
17 in conference.

18 Secondly, the administration might decide that the Senate's
19 silence on the issue is consent to the zones. I don't think
20 we ought to presume an answer at this point.

21 And I admit in this case it's somewhat of a complex issue,
22 but I don't want the administration to go out saying, well,
23 the Senate had an opportunity, they didn't adopt any restraint
24 on the House, along the lines of the House, and therefore,
25 we can say Congress is divided, we'll just let this application

1 go on through.

2 Now, under those circumstances, our unwillingness to do
3 anything is in effect taking a position in favor of something,
4 and I think we should try and be even handed. And that's why
5 I would like to see us adopt a one year delay on this so that
6 we can deal with the issue.

7 If we don't deal with it, then they can go ahead and
8 do what they want. So I would like to insist on that motion.

9 The Chairman. Does the administration want to be heard
10 briefly? Because I'm going to leave here if no one else does
11 in about two minutes.

12 Mr. Da Ponte. To give you an idea of the timing that
13 we see for making a decision, in our efforts to be very
14 thorough in the review process, we have a Bureau of Industrial
15 Economics Study that is due by the end of the year on this.

16 After that, it is our practice to make this study available
17 to both sides and to the public for further comments.

18 Given the fact that GAO and the ITC are reviewing the
19 zone program, I do not see a decision on our part until April
20 or May of 1984, if it's to be a thorough and complete review.

21 Senator Pryor. Would the one year period be a proper
22 approach, do you think?

23 Mr. Da Ponte. Well, the only thing I can say on that,
24 I can't speak officially, but the applicant here is a bicycle
25 manufacturer, and they're looking for relief in terms of the

1 higher duties they must pay on bicycle parts as compared to
2 the importers of finished bicycles.

3 We, in the Commerce Department, are opposed in principle
4 to the idea of this being handled legislatively as opposed
5 through the administration process which has a public interest
6 provision that we apply.

7 It's a means of dealing with situations such as came up
8 earlier, incidentally, in Senator Chafee's situation on the
9 motors, where there is an inverted tariff which favors the
10 importation of the finished product.

11 The Chairman. Why don't we just vote on it. I don't
12 have any strong feelings. Senator Danforth?

13 Senator Danforth. Well, Mr. Chairman, I think that
14 Senator Heinz's position may be one that we end up with
15 eventually. But I think for the time being if we just do not
16 have this in the bill, then it would be conferencable and
17 we could see what we would have.

18 The Chairman. Can we have a vote?

19 Senator Chafee. What are we voting on? Whether we're
20 for the Heinz amendment?

21 Senator Heinz. The Heinz amendment would deny the
22 establishment of the zone for in effect one year. The House
23 bill would deny it for three years.

24 The rationale that it's going to take a while for the
25 Committee or the Commerce Department to make up its mind, but

1 most importantly in the interim we don't want the Commerce
2 Department interpreting our silence as to consent to a policy
3 issue which we will be deciding later this year.

4 The Chairman. I don't want to quarrel with that result,
5 but I think if it's going to be in conference, I agree with
6 Senator Danforth, that we can probably satisfy the Senator
7 from Pennsylvania there.

8 Let's have a vote. Those in favor of the amendment.

9 (Chorus of ayes.)

10 The Chairman. Opposed.

11 (Chorus of nos.)

12 The Chairman. Okay.

13 Mr. DeArment. For the record, I think we should establish
14 that the nos had that vote.

15 The Chairman. All right. Is there anything else that
16 staff needs?

17 Senator Danforth. We'll vote it out this afternoon.

18 The Chairman. We've already reported this one out. We're
19 going to hold back the Dingell-Johnson bill.

20 Mr. DeArment. Yes, H.R. 2163 would be held back till this
21 afternoon.

22 The Chariman. Fine.

23 (Whereupon, at 12:54 p.m. the Committee was adjourned, to
24 reconvene at 2:00 p.m. in the same place.)

25

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p.m. — 2

(The Committee reconvened at 2:17 p.m.)

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2 The Chairman. We have a flexible agenda here in this
3 Committee, and this morning there were a couple of details
4 that we didn't quite finish. As I understand, there is a
5 House-numbered bill on which Senator Heinz and Senator
6 Mitchell could propose their amendments. Senator Bentsen,
7 as I understand, wanted to be present when Senator Mitchell's
8 amendment was offered on fishnets, so he could oppose it and
9 I assume have a vote. No one made that request of Senator
10 Heinz on--what was it, pear and apple ---

11 Senator Heinz. No, pear and apples is already in, to my
12 understanding; cordage is the issue that we did not dispose
13 of. This stuff.

14 The Chairman. There was opposition to the cordage. Was
15 that someone on the Committee?

16 Senator Heinz. No, it was only from the Administration.

17 Mr. Kassinger. You read the list of the Farm Bureau,
18 the National Grange, and those fellows.

19 The Chairman. That's right. Well, let's wait. We need
20 at least seven Members to act on amendments.

21 Mr. Kassinger. Mr. Chairman, there is one thing I needed
22 to clarify from this morning. The House-passed bill contains
23 a provision relating to trips by excursion vessels from the
24 Virgin Islands, and there are some critical words missing
25 from the bill, as drafted, and I wanted to clarify that we

1 had technical drafting authority to make sure those ---

2 The Chairman. What did you leave out, Grenada?

3 (Laughter.)

4 No, if it's technical in nature, you are not adding any
5 islands, or countries.

6 Mr. Kassinger. No.

7 The Chairman. We have a series of votes--at least one
8 vote--starting at 2:45. So when we finish the tariff matters,
9 then we are going to start talking about add-ons to what we
10 hope will be a package, a Committee amendment; and then I
11 think Senator Bentsen may want to raise--well, as soon as
12 we have two more Members, we can--is there any objection to
13 putting the Heinz amendment on?

14 Mr. DeArment. The cordage amendment on H. R. 2163?

15 The Chairman. Yes. It remains controversial, but at
16 least it goes to the floor.

17 Senator Heinz. That would be helpful, Mr. Chairman. I
18 appreciate that.

19 The Chairman. And the pear juice is already on there,
20 the pear and apple juice?

21 Mr. DeArment. That's my understanding, Mr. Chairman.

22 Senator Heinz. Mr. Chairman, I want to thank my col-
23 leagues. I have to go down to the White House.

24 Senator Danforth. Well, before you thank your col-
25 leagues, I would object to putting the cordage amendment on.

3
1 The Chairman. On the boat safety?

2 Senator Danforth. Yes.

3 Senator Heinz. Would you care to explain why?

4 Senator Danforth. I oppose it.

5 Senator Heinz. Well, any particular reason?

6 Senator Danforth. Yes.

7 (Laughter.)

8 Senator Heinz. Well, would you care to make some kind
9 of case?

10 Senator Danforth. Well, not much, I think most of these
11 tariff items, you are either for them or against them, depend-
12 ing on where you live.

13 (Laughter.)

14 Senator Heinz. I gather this is a matter of high prin-
15 ciple.

16 Senator Danforth. No, none of these are matters of high
17 principle--or even low principle.

18 (Laughter.)

19 Senator Heinz. I can see this is going to be a wild
20 discussion, Mr. Chairman.

21 Notwithstanding Senator Danforth's objection, could we
22 put this on the bill?

23 The Chairman. Do you want to be recorded in the negative?

24 Senator Danforth. Yes.

25 The Chairman. All right.

4
1 Senator Pryor. I have no objection to putting it on
2 but I would like to be recorded in the negative.

3 The Chairman. Down to 3 to 2--you had better hurry.

4 (Laughter.)

5 Great, put it on. I mean, it's still highly controver-
6 sial, but it does get it to the floor.

7 Senator Heinz. Thank you, Mr. Chairman. I still thank
8 all Senators.

9 The Chairman. We will wait for Senator Mitchell to of-
10 fer the fishing net amendment.

11 Senator Armstrong. Mr. Chairman, are you looking for
12 amendments? I have some.

13 The Chairman. On tariffs?

14 Senator Armstrong. Well, it isn't clear to me. I am
15 sorry that I wasn't present this morning, but I was taking
16 part in another meeting.

17 Is it your desire not to take up tax amendments on this
18 bill?

19 The Chairman. We would prefer not to do it on this bill;
20 we haven't taken any tax amendments. We have tried to limit
21 it, for the most part, to non-controversial tariff amend-
22 ments.

23 Senator Armstrong. If tax amendments are not offered
24 to this bill, then what is the vehicle that would be available
25 to us to offer tax amendments?

5
1 The Chairman. It will be in the next session that
2 starts as soon as we finish the tariff.

3 Senator Armstrong. No, I mean what legislative vehicle,
4 the reconciliation bill?

5 The Chairman. That's one thought, reconciliation, a
6 separate Committee amendment which we could take up on
7 another bill which I think would satisfy the Senator from
8 Colorado.

9 So there are a number of options. Personally, I would
10 like to see it on reconciliation, but if that is not possible
11 then I think we ought to at least report it out of the Com-
12 mittee. There are some other vehicles on the calendar which
13 we could call up.

14 (Pause)

15 Is there any resolution, Rod, of the other matter that
16 Senator Roth and Senator Durenberger had an interest in?

17 (Staff consult)

18 Senator Armstrong. Are we open just for general conver-
19 sation?

20 The Chairman. Right.

21 Senator Armstrong. Well, Mr. Chairman, let me just re-
22 port that this morning I participated in a hearing on the
23 Grace Commission Report, and there is a very interesting
24 series of recommendations, some 2,200 recommendations, for
25 cost cuttings that they claim have the potential of saving

6
1 \$300 billion over three years. A number of those are within
2 the jurisdiction of the Finance Committee, and as soon as
3 they get their report smoothed up, I hope that we will be
4 able to schedule some rather detailed hearings on it, because
5 they at least talk a good game.

6 The Chairman. Right.

7 Senator Armstrong. Whether or not it's all real, I
8 don't know.

9 The Chairman. I appreciate Senator Armstrong calling
10 that to the Committee's attention, because I have talked to
11 staff about it.

12 Do you have any hearing date scheduled?

13 Mr. DeArment. We don't have a hearing date scheduled,
14 but we have been preparing with the idea of setting a hearing
15 in mind; we have been reviewing the preliminary drafts par-
16 ticularly of reports dealing with HHS and the Treasury De-
17 partment.

18 Senator Armstrong. There is quite a lot of the subject
19 matter of the Grace Commission Report actually within the
20 Finance Committee jurisdiction, and I will just tell you
21 this: that I have attended a lot of hearings, and most of
22 them are boring, but that Peter Grace this morning was one
23 of the most interesting witnesses--clever, well-informed,
24 made I thought a very good impression before the Budget
25 Committee. I really believe it's worth our time to dig into

7
1 that.

2 The Chairman. Well, we do intend to do that, and I
3 appreciate Senator Armstrong calling it to our attention.

4 I wonder if we might--we know what the fishnet amendment
5 is, correct? Do you want to explain that, Ted.

6 Mr. Kassinger. The fishnet amendment that Senator
7 Mitchell intends to offer I believe is a tariff rate quota
8 that will reduce tariffs--accelerate immediately the tariffs
9 on fishnets to 17 percent up to a certain level, of which I
10 am not informed.

11 (Staff consult)

12 Mr. Lang. Under last year's agreement--I don't know if
13 this is what Senator Mitchell proposes now--but under last
14 year's agreement, the quota cut in at 1,750,000 pounds, or
15 28.5 percent of apparent domestic consumption. Those were
16 figures that were supposed to represent the approximate level
17 of domestic consumption of the product in 1983.

18 Mr. Kassinger. So the duty under last year's proposal--
19 the 17 percent duty would have applied up to that level, and
20 beyond that level it would have kicked back up to the higher
21 rate.

22 Senator Bentsen. Are we back on fishnets again, Mr.
23 Chairman?

24 The Chairman. What we are doing is offering it to
25 another vehicle, knowing it's controversial, and we withheld

8
1 doing that this morning because we thought you wanted to op-
2 pose it even on that vehicle.

3 Senator Bentsen. That's correct, and that is what I so
4 advised you, Mr. Chairman.

5 Yes, I do continue to oppose it, Mr. Chairman. I think
6 it's giving a unilateral reduction that is not warranted, it
7 is not justified. Once again we are trying to trade with the
8 Japanese, and here, to give them this additional concession
9 I think is a mistake. You have got people in this particular
10 business in our country, the fishnetting industry, that like
11 many others is battling for survival. I had hoped that the
12 distinguished Senator from Maine would be here at this time.

13 The Chairman. I think he's on his way.

14 Senator Bentsen. He had made the point that two of us
15 had stated that the industry had tried to become more com-
16 petitive, and he challenged that. He was talking about hav-
17 ing attended the hearings and heard nothing along those
18 lines. I would assume that he must have left the hearing at
19 some particular point--but here he is.

20 Now, because the industry has worked very hard to try
21 to bring about some changes within the framework of the
22 staged tariff reductions--two examples are the polyethylene
23 trawl netting and the monofilament netting. Approximately
24 five years ago the market started experimenting with poly-
25 ethylene trawl netting. Initially they had to import all of

9
1 that netting, and several domestic companies began to import
2 the twine to make the netting. These companies found they
3 couldn't import the twine at a price which would make their
4 netting competitive, that they were not in a position to make
5 the twine without large capital expenditures. Domestic in-
6 dustry had to invest in extrusion equipment to extrude the
7 yarn, braiders to braid the yarn into twine, and heat setter,
8 depth stretchers to process the netting after it came off the
9 machines to make quality nets.

10 Some of these domestic firms made those capital invest-
11 ments, and began the production. Consequently, the price of
12 polyethylene trawl netting dropped sharply; domestic consump-
13 tion for the imported netting dropped the market price 20
14 percent.

15 Another area in which the domestic manufacturers are
16 involved is the production of highly efficient monofilament
17 netting for the lower Mississippi fisheries. Now, that one,
18 just like the other one before, where they were trying to
19 change and be innovative, creative, requires major capital
20 investment.

21 Now, if you have the instant tariff cut, that dries up
22 those capital funds that would be needed for that product
23 development.

24 So steps have been taken by the industry to be more
25 competitive, to try to be innovative and creative. And to

1 immediately reduce the rate to 17 percent I think is inap-
2 propriate and ignores the negotiated concessions that were
3 obtained--and, frankly, I think it would be a mistake, as
4 other Members of this Committee apparently also feel.

5 The Chairman. Senator Mitchell?

6 Senator Mitchell. Thank you, Mr. Chairman. I have pre-
7 viously stated the arguments in behalf of the amendment, and
8 I won't take up the Committee's time to do that again.

9 What I would propose to offer for a vote is the compro-
10 mise version that was agreed upon last year officially by the
11 industry, and this was, Mr. Chairman, I would remind the
12 Members of the Committee, even though the Committee had ap-
13 proved the original version of the bill--but I think that
14 since we did have a compromise--as I indicated this morning,
15 it ultimately fell through because of some misunderstanding
16 regarding the industry's position during the conference--
17 that the fairest approach for me would be to offer the
18 compromise.

19 And I would like to do that now, and abide by whatever
20 the decision of the Committee is.

21 The Chairman. Ted, could you just briefly outline the
22 compromise?

23 Mr. Kassinger. As I understand it, Senator, your
24 compromise is that the tariff rates that will ultimately come
25 into play in 1989 will be immediately accelerated, that is, to

1 17 percent on fishnets, up to the greater of 1.75 million
2 pounds, or 28 percent of the prior year's consumption of
3 fishnets. And after that quota level is reached, then the
4 normal tariff, whatever it is between now and 1989, would
5 apply to these fishnets.

6 Senator Mitchell. That's right, the duty that would
7 exist under existing law would apply to ~~cover~~ that.

8 And I want to emphasize, Mr. Chairman, and Members of
9 the Committee, that compromise was designed specifically in
10 response to the concerns raised by the industry last year,
11 that is, fear of a surge of imports. And so what we said
12 was, all right, well, we will just have the lower quota up
13 to that level, and then the current law would apply.

14 Senator Bentsen. I would like to ask the Treasury's
15 position on the compromise?

16 The Chairman. Anybody here--Mr. Miller is with Commerce.

17 Senator Bentsen. Let me state that that compromise I
18 frankly don't support. That is what I was addressing as I
19 made my comments earlier.

20 Mr. Miller. Thank you, Mr. Chairman. The Administration
21 hasn't been formally asked, of course, for its views on the
22 compromise, so it is somewhat hard to give an official posi-
23 tion. But I should indicate that the factors which led us
24 to oppose the original bill are still in part in play in the
25 compromise, and that is that you still have a substantial

1 amount of current imports that would be subject to an imme-
2 diate duty reduction that we had anticipated would come into
3 force over a number of years.

4 And there would be some disincentive for the domestic
5 industry to continue its efforts to adjust with that duty
6 reduction coming into force.

7 The Chairman. How do you want to proceed? Do you want
8 a record vote or a show of hands or a voice vote?

9 Senator Mitchell. Who is in the room at the moment?
10 I've got a couple of proxies, and one proxy is on its way,
11 but I hesitate--does Senator Bentsen have a preference on how
12 to proceed?

13 Senator Bentsen. No, I defer to my friend from Maine.

14 Senator Mitchell. Why don't we take a record vote, Mr.
15 Chairman.

16 The Chairman. Voting on the compromise--well, on the
17 reported compromise--on the offer.

18 Senator Danforth. Does this have a bill number?

19 Mr. Kassinger. Well, the compromise does not, but the
20 bill is S. 759.

21 Senator Bentsen. Let me state you can't address some-
22 thing as a compromise that hasn't been compromised, and I am
23 opposing it. He is speaking in the past tense when he is
24 speaking of something like this. I am talking about what the
25 situation is now.

13

1 Senator Mitchell. I understand that. I thought I made
2 clear that what I am offering now is less than what the bill
3 provided, and it was a compromise to which you agreed last
4 year.

5 The Chairman. Okay, the Clerk will call the roll.

6 Mr. DeArment. Mr. Packwood. Mr. Roth. Mr. Danforth.

7 Senator Danforth. Aye.

8 Mr. DeArment. Mr. Chafee. Mr. Heinz. Mr. Wallop.

9 Mr. Durenberger. Mr. Armstrong. Mr. Symms. Mr. Grassley.

10 Senator Grassley. Aye.

11 Mr. DeArment. Mr. Long. Mr. Bentsen.

12 Senator Bentsen. No.

13 Mr. DeArment. Mr. Matsunaga. Mr. Moynihan.

14 Senator Mitchell. Aye by proxy.

15 Mr. DeArment. Mr. Baucus.

16 Senator Baucus. Aye.

17 Mr. DeArment. Mr. Boren. Mr. Bradley.

18 Senator Bradley. Aye.

19 Mr. DeArment. Mr. Mitchell.

20 Senator Mitchell. Aye.

21 Mr. DeArment. Mr. Pryor.

22 Senator Pryor. Aye.

23 Mr. DeArment. Mr. Chairman.

24 The Chairman. Aye.

25 Senator Bentsen. Well, it's obvious that my friend has

1 done a good job of lobbying.

2 The Chairman. The ayes are 8 and the nays are 1.

3 Senator Bentsen. (Inaudible).

4 The Chairman. 8 to 2. So the amendment is agreed to,
5 and that will be on the fishing boat bill.

6 (Pause)

7 Rod, take Senator long off that fishnet.

8 (Pause)

9 Nothing else on the tariff matters, then, right?

10 Mr. DeArment. That is correct. We need to then order
11 reported H. R. 2163, as modified with ---

12 The Chairman. Is there objection to reporting it as
13 modified? If not, it will be reported.

14 Mr. DeArment. The tariff matters will be a complete
15 substitute.

16 The Chairman. Right. Now what I would like to do--is
17 Mr. Brockway here and Mr. Chapoton and others? Move from
18 tariffs to taxes, if we can.

19 (Pause)

20 On Friday and Saturday last week I met with the staff on
21 a couple of occasions, Joint Committee, to ask them about
22 different amendments that Members were suggesting and maybe
23 some not on the Committee, that we might be able to make a
24 part of the Committee amendment, which could either be
25 offered on reconciliation or on a free-standing amendment or

1 on one of the House vehicles we have in the Committee.

2 I suggested to the staff and the Joint Committee that
3 we sort of adopt the Long rule which is unless there have
4 been hearings on the proposal, and depending on hearings,
5 Treasury approval, or how strong their disapproval was,
6 Joint Committee's revenue estimates and Joint Committee's
7 --maybe not recommendations but observations, along with
8 Majority and Minority staff observations, that we would pro-
9 bably not consider the amendments.

10 So since Saturday I think the Joint Committee has gone
11 over a long list of proposed amendments, and I think Dave
12 you are now in a position at least to discuss some of the
13 amendments that have been submitted by either Members of the
14 Committee or other Senators, is that correct?

15 Mr. Brockway. That's correct, Mr. Chairman. We have
16 gone through the list of items that were submitted, the
17 three staffs and the Treasury staff, to see which ones seem
18 controversial; there are a number of them that there are
19 still open questions about, but we have gone through some
20 that we think appear to at least satisfy the test that they
21 have been supported by the Treasury, they have had hearings
22 by the Committee, and either they are amendments that were
23 previously approved or they did not have significant revenue
24 impact. Or that they could be modified to reduce the revenue
25 impact.

16

1 The Chairman. I know we are going to have a series of
2 votes starting very quickly. I might suggest that rather than
3 try to run back and forth, if you can discuss as many as we
4 can now, and following, when we all leave for the first vote,
5 that perhaps members of our staff can sit down with Committee
6 staff on both sides and the Joint Committee and Treasury and
7 go over the various add-ons, and then we can take it up again
8 tomorrow.

9 So let's start down the list. We are not going to vote
10 on any of them right now.

11 Mr. Brockway. One item is in the leasing bill, the
12 public property leasing bill that you adopted earlier, that
13 the treatment of sound recordings created certain problems
14 where you record the record here but you strike the recording
15 overseas.

16 And under the bill as structured, because they don't
17 use ACRS, they use the income-forecast method of deprecia-
18 tion, they would possibly be hit by the bill and lose both
19 the investment credit and depreciation. You had a special
20 exception in the bill for movies that it would not apply,
21 but movies have a certain rule that you adopted in 1976, so
22 they have lower investment credit.

23 On examination of this, it seemed that for income-
24 forecast method on records, about 90 percent of the value
25 is written off in the first year, and so there was some

1 question whether it would be appropriate in this situation
2 to totally exempt them from the operation of the bill and
3 give them a full write-off in the first year, a 90-percent
4 write-off, plus the investment credit. And the suggestion
5 was that they be exempted from the bill for depreciation
6 purposes, but they be not allowed an investment credit if
7 the depreciation was faster than the depreciation allowed
8 under ACRS.

9 So that if they depreciated faster than the five-year
10 property, they would get no credit unless they were between
11 five and three year, and they would get a 6-percent credit.

12 The Chairman. Does Treasury have any observation on
13 that?

14 Mr. Chapoton. Our staff worked with the Joint Committee
15 staff on that, and that is fine with us.

16 Mr. Brockway. The next item is an item that was ap-
17 proved by the Senate in the past, and that deals with re-
18 porting ---

19 (The Chairman gavels)

20 The Chairman. What you have there, do you have copies
21 of it?

22 Mr. Brockway. I've got some drafts. Mike will get a
23 draft of just the notes.

24 The Chairman. I think maybe if we have a little better
25 order, then we can follow it.

18

1 Mr. Brockway. The next item is an item that was in
2 last year's legislation, or I guess it was earlier in the
3 withholding bill, that in (inaudible) you provided a required
4 reporting on state tax refunds, where you got a refund for
5 state tax purposes in April or June, the following year the
6 state would have to send a 1099 to the taxpayer to tell him
7 how much of a refund he got so he could report it on the
8 state tax return. There is a problem for the states that
9 requires them to send out two mailings, and they would like
10 to be able to send out the 1099 together with the refund
11 check in June, and this would allow them to do that beginning
12 in 1984.

13 That would, over the three-year period, have a revenue
14 loss of approximately 100 million.

15 The Chairman. I think the first one we discussed was
16 raised by Senator Baucus. This was raised by a number of
17 Senators, including I think--Senator McClure called it to
18 my attention, Senator Symms and others.

19 Has Treasury had a chance ---

20 Mr. Chapoton. Yes, we have met with the state people,
21 and we can easily understand that it is much more expensive
22 to them to have a separate mailing. It is also, I think all
23 the people who look at it agree, more effective if you have
24 a separate mailing so that the information comes at the time
25 the taxpayer is gathering this information for his tax return,

19
1 and the revenue estimates show that.

2 So it really is a revenue question. We do recognize the
3 problem. The problem it causes the states is very real.

4 The Chairman. It was also called to my attention by a
5 number of House Members, including I think Congressman
6 Kindness wrote me a long memo on it--so Treasury has no
7 objection?

8 Mr. Chapoton. No, we would just point out that the
9 provision is that much less effective with the mailing at
10 the time--the earlier mailing, no separate mailing.

11 We don't have an objection other than that.

12 The Chairman. Okay, Dave, we can take a couple of more
13 before ---

14 Mr. Brockway. The next item deals with the computation
15 of bad debt reserves for financial institutions. Right now
16 there is a statutory percentage of six-tenths of 1 percent
17 of the outstanding indebtedness just dropped to that from 1
18 percent previously, and there is some concern on the part of
19 banks that in 1988 they have to go to the experience method
20 which allows them a write-off based on the five previous
21 years' experience--and their concern is that in recent years
22 they have had particularly high experience in bad debt
23 reserves, so they would like an option--the suggestion here
24 is an option that they can either use the regular experience
25 method where you average over the previous five years plus

1 the current year.

2 This would give them the option to use the two previous
3 years, so they have a shorter period, if they happen to have
4 had a particularly high bad debt experience in recent years,
5 and this would be a permanent election.

6 Senator Bentsen. Mr. Chairman, if I might say on that
7 one--I led that fight at one point a year or two ago to keep
8 it from going to six-tenths of 1 percent; I thought it was
9 absolutely the worst possible time to cut reserves for loan
10 losses.

11 And to try to say that you can just extrapolate the
12 past and determine the future insofar as loan losses just
13 isn't the case, because we had not experienced in recent
14 years what we are heading into now, whether you are talking
15 about international loans or you are talking about domestic
16 loans.

17 If there is a time that we want the banks to give us
18 stability and some security, it's now.

19 So I go along with us--I frankly think it should have
20 stayed at full 1 percent, because I don't think the experience
21 ratio is sufficient in this kind of circumstance.

22 But this will be something that will partially alleviate
23 it, as I understand, going to ---

24 Mr. Brockway. It should.

25 Senator Roth. Mr. Chairman, could I just say I

1 strongly agree with what Senator Bentsen just said.

2 Senator Symms. I would just like to second that: I
3 agree with what Senator Bentsen said, too.

4 The Chairman. I don't think anybody disagrees, but we
5 are trying to find some way to make it revenue-neutral.

6 Did you have any suggestion on that?

7 Mr. Brockway. We don't at the moment, Senator, but we
8 are looking at some options. You had hearings that con-
9 sidered quite a number of options in the area, and we can
10 come back to you with certain ---

11 The Chairman. What about Treasury?

12 Mr. Chapoton. Well, Mr. Chairman, we had supported last
13 year and I think we would still this year support the con-
14 tinuation of the 1 percent. I frankly haven't had a chance
15 to look at this in depth. This might be a more attractive
16 method, I am not certain.

17 We had last year supported the 1 percent.

18 Senator Bentsen. Let me say that if Treasury would go
19 for the 1 percent, it seems to me that that would be ---

20 The Chairman. I think that was at the time of all the
21 withholding battle, and many people interested in this provi-
22 sion were supporting Treasury on withholding. That may not
23 be a fair assessment.

24 Mr. Chapoton. A lot was going on then, that's correct,
25 Mr. Chairman.

1 The Chairman. How many Members would like to come back?
2 We would like to go over some of these while the Members
3 are present. We are not going to vote on anything. We
4 could be back here and probably spend another 30 or 40
5 minutes on it.

6 Mr. Brockway. Mr. Chairman, will we be going over only
7 the eleven items on the sheet that we have been given?

8 The Chairman. That's a start. Are these the ones
9 that you have sort of culled out?

10 Mr. Brockway. These are the ones that we went through
11 the meetings where there seemed to be consensus that they
12 wouldn't be controversial and they wouldn't be ---

13 The Chairman. But others can be raised, obviously.

14 Mr. Brockway. There are some that aren't on the list
15 merely because they didn't have hearings.

16 The Chairman. Plus you probably haven't had enough
17 time to put them all together in any event, have you?

18 Mr. Brockway. Well, that is correct.

19 The Chairman. Why don't we come back for another 30
20 minutes or so after the vote.

21 (Committee recesses at 2:55 p.m. and reconvenes at
22 3:15 p.m.)

23 The Chairman. Let's see, Dave, you just finished the
24 third--you finished discussing that, and, as I understand,
25 we were trying to find an offsetting provision, right?

1 Mr. Brockway. That is correct, Senator.

2 The Chairman. And No. 4?

3 Mr. Brockway. This is basically a provision--you have
4 a bill in, Senator, that corrects an error that was made I
5 guess it was in the '75 Act dealing with percentage deple-
6 tion for secondary and tertiary production.

7 The way the amendments made in that Act worked after
8 1983, they erroneously--one repealed percentage depletion
9 for secondary and tertiary production, and, two, had provided
10 ever since that legislation passed that the anti-~~100~~ (C)
11 transfer rules would not apply to secondary and tertiary
12 production.

13 I think both of those--there is general agreement that
14 they are mistakes, and the only question is really as to
15 when you apply the anti-transfer rules, whether you apply
16 those to any transfer that occurred after the '75 Act, so
17 that if you wanted to get percentage depletion on secondary
18 and tertiary production, you could only get it if you were
19 the original owner--that is the way your bill was drafted--
20 or whether you wanted to grandfather out transfers that were
21 made prior to I guess there is a date in September ---

22 Mr. DeArment. Yes, September 19th in the House bill;
23 if you were going to pick a date, that would be a logical
24 date to grandfather any transfers.

25 Mr. Brockway. And the issue there is, I guess there is

1 no revenue if you do it as you introduce it, there is roughly
2 95 million over the three years if you take the date in the
3 Archer bill.

4 The Chairman. As I understand--I will check with
5 Treasury--I think there was an error made whenever that Act
6 was passed--we simply correct the error. Does Treasury have
7 a position on that?

8 Mr. Chapoton. We concur, it was an error. Secondary
9 and tertiary is supposed to be subject both to the anti-
10 transfer rule and certainly is supposed to have continued
11 depletion after '83.

12 The Chairman. Whichever date I think we can postpone
13 that until we have more Members here, because there is a
14 revenue loss involved.

15 No. 5.

16 Mr. Brockway. The next item deals with contributions
17 of appreciated property that is used for research and de-
18 velopment purposes. There are some bills in from certain
19 Members that would extend those provisions that allow you to
20 deduct the fair market value of the property contributed
21 rather than the cost to you as the manufacturer. And
22 Treasury generally opposed those bills but did take the
23 position that it might be appropriate to expand it in
24 situations where not only the taxpayer manufactured the
25 property given to the charitable entity but also where they

1 assembled the property.

2 We don't have a revenue estimate on that yet; it's a
3 relatively narrow change, though, so I don't think it would
4 be that significant of a revenue loss.

5 The Chairman. Who raised that?

6 Mr. Brockway. Senator Danforth has a bill in; I think
7 there are certain other Senators.

8 The Chairman. Does Treasury have a position on that?

9 Mr. Chapoton. Yes, we support that.

10 The Chairman. In that limited fashion, right?

11 Mr. Chapoton. Yes, sir. There is a good deal more
12 involved in this entire area that we raised some questions
13 about.

14 The Chairman. Okay, No. 6.

15 Mr. Brockway. That deals with situations where a home-
16 owner is offered a chance by the mortgage bank to cash in
17 his mortgage at a lower amount than the principal amount of
18 the mortgage because interest rates have dropped. Under
19 present law that would be treated as the amount of mortgage
20 indebtedness that was forgiven would be treated as income
21 to the homeowner. You had a provision in the Mortgage Bond
22 Act that would have treated that as not income to the home-
23 owner under the general rule, but would have reduced the
24 basis in the house.

25 If you did it that way, and as introduced this is

1 Senator Danforth's amendment, and applying it retroactively,
2 that would cost about 500 million over the three years, so
3 that what we are doing at the staff level is trying to exa-
4 mine whether applying it on a prospective basis would reduce
5 revenue--I think there is some consensus that a change in
6 this area might be appropriate but we are trying to figure
7 out whether there is a way to do it and not have such a
8 substantial revenue loss.

9 The Chairman. Yes, let me urge you--we are not looking
10 for revenue losers. Even though the Treasury Secretary is
11 not worried about the deficit, some of us are.

12 Senator Matsunaga. How much?

13 Mr. Brockway. If that were provided on a prospective
14 basis that would drop to around 100 million. This item if
15 it were done only for indebtedness forgiven in the future,
16 the revenue cost over the three-year period would drop to
17 about 100 million, about 100 million over the three years
18 rather than the ---

19 The Chairman. To 100 instead of half a billion.

20 Mr. Brockway. Right, correct.

21 The Chairman. If you make it prospective. Okay, that's
22 another one. Let's go on and discuss all of these and then
23 we can add up the total revenue loss.

24 Mr. Brockway. The next item deals with installment
25 payments of state tax. Right now, in the case of a closely

1 held business, you can pay your estate tax on an installment
2 basis over a 14-year period. What this bill would do--it
3 would make two changes: one, it would allow to qualify for
4 this installment sale treatment a situation where you had a
5 personal holding company that owned a stock in the closely
6 held business, you would just look through the holding com-
7 pany, so if you didn't own the stock of a closely held
8 business directly, but you held stock in the holding company
9 that held the closely held business, that would qualify under
10 the general rule; and also another item, it would allow a
11 judicial review of the IRS determination of whether or not
12 you qualify for the installment-payment method in the state
13 tax. Right now you can't get into court on this, so this
14 would allow a declaratory judgment procedure with a review
15 of the decision as to whether you qualify. That would not
16 involve any significant revenue loss.

17 The Chairman. Has Treasury reviewed this provision?

18 Mr. Chapoton. Yes, sir, we have reviewed this and we
19 support this.

20 The Chairman. Okay, No. 8.

21 Mr. Brockway. The eighth item deals with the rehab
22 credit. Right now, in order to get a rehab credit, you have
23 to maintain at least 75 percent of the exterior walls of the
24 building being rehabilitated. This would provide an alterna-
25 tive method that says that, if you so elected, as long as

1 you retain 50 percent of the external walls are retained as
2 external walls; 75 percent of the original external walls
3 are retained either as external or internal--sorry, I've got
4 that incorrect. 95 percent of the external walls are re-
5 tained.

6 The Chairman. Internal.

7 Mr. Brockway. Internal.

8 The Chairman. That's spelled with an "i," I think.

9 Mr. Brockway. Right, that makes it make a little more
10 sense.

11 The Chairman. Does that apply to Rhodes Tavern?

12 Mr. Brockway. I understand if that is done there is no
13 significant revenue effect. There is some question--I gather
14 that some of the groups interested in this would like to see
15 this 95 percent of the internal walls retained--that number
16 dropped somewhat.

17 The Chairman. Has Treasury viewed this ---

18 Mr. Chapoton. Yes, sir, we have supported this position
19 in previous testimony.

20 The Chairman. Is this a Treasury proposal?

21 Mr. Chapoton. It was not our proposal; it was a propo-
22 sal that we did not object to, though.

23 Senator Chafee. Mr. Chairman, in order to get the
24 rehabilitation credit, do all of these criteria have to be
25 met?

29
1 Mr. Brockway. Yes, sir. If you are going to this
2 election, or, alternatively, you can keep up 75 percent of
3 the external walls and use them as external walls, as in the
4 present law. This would just expand this to allow you to
5 take--if you met all three of these, you could also qualify.

6 Senator Chafee. I didn't get that; I didn't understand
7 that.

8 Mr. Brockway. Under present law, if you retain 75
9 percent of the external walls and you use them as external
10 walls, you qualify. This would say that if you can't meet
11 that test, but you can meet these three tests, you also quali-
12 fy.

13 So you would have to keep half the walls as external
14 walls, 75 percent of your external walls you would have to
15 retain either as external or internal, and 95 percent of the
16 internal walls have to be retained.

17 Senator Chafee. I just thought that 95 percent is an
18 awfully high figure.

19 The Chairman. That's a pretty juicy credit anyway,
20 isn't it?

21 Senator Chafee. It is a juicy credit, there is no
22 question about that.

23 The Chairman. Too juicy.

24 Mr. Brockway. There is some discussion of possibly
25 reducing that level somewhat; I have heard discussion of

1 either 75 or 80 percent on retaining internal walls rather
2 than the 95 percent.

3 Senator Chafee. To me the idea of rehabilitation with
4 95 percent of the internal walls maintained is a very, very
5 strict figure, particularly when you are dealing with old
6 factory buildings where you might want to change things
7 around a little bit.

8 Now, if the Committee believes the whole credit is too
9 juicy, then maybe we ought to look at the credit, but I think
10 to have a credit where you keep 95 percent of the internal
11 walls seems awfully, awfully stiff to me.

12 Mr. Chapoton. I think we agree with Senator Chafee
13 --we have been discussing the possibility of reducing that,
14 that does seem to make some sense.

15 The Chairman. If there is any cost, I am certain you
16 could tighten up that credit a little bit to offset any loss
17 here. Plenty of juice in that credit.

18 But I think Senator Chafee makes a good point.

19 Senator Chafee. What is your proposal, Mr. Chairman,
20 to approve these now?

21 The Chairman. No, we are not approving anything, be-
22 cause we want to get the revenue estimates--we don't have
23 the revenue estimates yet.

24 Mr. Brockway. And some of the details on all these, I
25 think we have to work through.

31
1 The Chairman. The suggestion is made that we reduce the
2 95 percent to a smaller figure.

3 Does Treasury have a recommended figure?

4 Mr. Chapoton. We were talking about 75 percent of the
5 internal structure was retained, the framework.

6 Senator Chafee. That seems reasonable. I know the
7 preservationists always have a lot of thoughts on these.
8 Absent any overriding argument, I think 75 percent seems like
9 a fair figure.

10 The Chairman. Well, let's go ahead and base our esti-
11 mates on revenue losses on a 75-percent internal structure,
12 is that ---

13 Mr. Chapoton. As I understand, being advised, the
14 framework, the internal structural framework is the test, I
15 mean internal walls--you do not necessarily have to keep the
16 walls, but the framework itself.

17 The Chairman. Okay, we can go ahead and make our esti-
18 mates on that.

19 No. 9?

20 Mr. Brockway. The ninth item is--Senator Grassley had
21 legislation that would modify the rules governing audit of
22 churches. Treasury, in its testimony, indicated that cer-
23 tain of those changes they felt were appropriate, and so
24 what was listed here were those changes that Treasury agreed
25 to.

1 The Chairman. You have no objection to this provision?

2 Mr. Chapoton. No, this seems to be carefully drafted;
3 I think Senator Grassley agrees.

4 Senator Grassley. I am not sure, except for the day of
5 testimony that we have had, I am not sure that we have de-
6 lineated in my own mind that I would agree with all those
7 changes, but at least at this point, for starters, I am
8 willing to have it listed that way and see how it works out.

9 Senator Matsunaga. What does it do?

10 Senator Grassley. Well, I can tell you what the bill
11 does; I am not sure I can say what changes ---

12 Senator Matsunaga. No, this No. 9, what does No. 9
13 do?

14 Senator Grassley. No. 9 would change the procedure by
15 which you determine churches subject to audit or not. It
16 doesn't change any of the substantive laws, whether or not
17 churches would owe taxes or not, but there would be a one-
18 year moratorium--I mean there would be a one-year period of
19 time in which an investigation starts it would have to be
20 completed; there would be a three-year time limit how far
21 you could go back on taxes due; and there would be a provi-
22 sion that, in order to investigate, you would have to have
23 the approval of the regional counsel as well as the regional
24 commissioner, and some things like that.

25 Senator Bradley. Mr. Chairman, what is this change

1 supposed to address? What problem is it supposed to address?

2 Senator Grassley. It addresses the problems of, in a
3 very general way, of fishing expedition type efforts by the
4 IRS in which they may think that a church owes some taxes,
5 or that there might be a way a church is getting around pay-
6 ing some taxes, in which there is no procedure by which those
7 accusations are outlined very early on. And so one of the
8 things that it would do, other than what I have said, yet
9 another provision, would be to provide for a conference be-
10 tween the church and the IRS early on to see what the IRS
11 was after, so that the information could be provided, and
12 to save some instances in which there has been investigations
13 going on for many years--and very costly as well.

14 But I want to emphasize, it is not going to change the
15 procedure by which churches under present law owe taxes; we
16 aren't changing the substantive law at all.

17 Mr. Pearlman. I think that is generally consistent with
18 our understanding, Mr. Chairman. There are some provisions
19 in the proposed legislation that would change the evidentiary
20 threshold which the Service has to get over in order to
21 examine a church, and we are concerned about making sure that
22 that threshold is not so high that some of the tax protestor
23 type organizations that claim church status are given protec-
24 tion by this bill.

25 But it seems to me that the constructive way to proceed

1 on this one is to let us work out a set of rules.

2 Senator Bradley. Well, could I ask a question or two.
3 Is this--would this then treat churches differently than
4 individuals are treated for purpose of the IRS? From the
5 standpoint of investigations.

6 Mr. Pearlman. Churches are currently treated different-
7 ly. The statute currently puts some restrictions on the
8 Internal Revenue Service, and so it will continue that dis-
9 tinction; but it will expand that distinction somewhat more
10 broadly.

11 Senator Bradley. Well, what does Treasury think is the
12 minimum level of--you said the evidentiary tax threshold,
13 that you wouldn't want to see that crossed. What do you see
14 as the minimum?

15 Mr. Pearlman. Well, our concern in the bill might indi-
16 cate that in order for the Service to commence an examination
17 of a church, that it has to possess--and I think that is the
18 language of the bill--possess a level of evidence which it
19 simply could not obtain if it didn't first begin an examina-
20 tion of a church, so we want to make sure that ---

21 Senator Bradley. You are saying that the bill as now
22 written, that would be the case?

23 Mr. Pearlman. Well, we are concerned that that might be
24 the case, and that is why ---

25 The Chairman. As I understand, Treasury is willing to

1 go along with some modification with this. Now, if maybe
2 Senator Bradley has a question, you could discuss that with
3 Treasury.

4 But I just go over some of these, and as there has been
5 a question raised on this, so let's mark that as one that
6 there is some objection to, even though Treasury and others
7 may have no problem with it. It may be just the understand-
8 ing of it. That's why I think it's better not to take action
9 on these right now.

10 No. 10.

11 Mr. Brockway. That item was just put on the list to
12 let you know that we are still working on the issue that was
13 raised in the mark-up the other night on straddles, that what
14 you do about covered calls, there is not yet agreement on
15 what would be appropriate change--but this is just recorded
16 here to let you know that we are still working on that at the
17 staff level.

18 The Chairman. I notice in The New York Times this
19 morning an article saying--apparently it wasn't fair to some
20 of the options; I didn't read it carefully, I sent it over
21 to Andre.

22 Did you read it Andre?

23 Mr. Leduc. I'm sorry, Senator, I have not seen that
24 article yet. We are continuing to work with the industry on
25 this question, but at the present time we haven't satisfied

1 ourselves that there is not significant potential not only
2 for deferral but also for the conversion of ordinary income
3 into capital gain and the conversion of short-term capital
4 gain into long-term.

5 The Chairman. This has nothing to do with the commodi-
6 ty problem. This was raised on options.

7 Mr. Leduc. Stock option straddles.

8 The Chairman. But in any event you might take a look at
9 that article; it raises some questions.

10 Senator Moynihan. Mr. Chairman, for the record, may I
11 just say that the American Stock Exchange called to say that
12 they fully agreed with the proposal that stock options not be
13 used in the manner that commodity options were used to avoid
14 taxes in that straddle mode.

15 But this other practice of what area called covered
16 calls has been a routine trading practice for years, and I
17 think it was not our intention--I think Mr. Chapoton was
18 sympathetic to that.

19 Mr. Chapoton. Yes, and the concern has been--I think we
20 left it the other night, that we would try to work out a
21 distinction between those options--the clear case seems to
22 be whatever is meant by deep-in-the-money (?) option, if one
23 can define that; if that is the case, it should be covered,
24 and I think the Exchange agreed with that.

25 But in working trying to draw that distinction the staffs

1 have uncovered a problem where they do not feel they have got
2 a good distinction that prevents the abuse case. And they
3 are still working on that.

4 I think everyone sort of agrees that the small dealer
5 in day-to-day writing covered options is not the problem
6 area, but when you get certain dollar amounts it may be a
7 problem area.

8 Senator Bentsen. There's no question but where you are
9 in the business purely for economic return other than tax
10 avoidance. That isn't what we were directing our effort
11 against. We should not, and I think we are all in agreement
12 on that.

13 Mr. Chapoton. I think that is correct, Senator Bentsen,
14 I think that is how it is stated often, though we have to be
15 careful because you can get to the point whatever your intent
16 was originally you can close out one side of the transaction,
17 take a tax loss when you have no economic loss. And I think
18 we wanted to prevent that. But, at the same time, not sweep
19 in every little transaction that is a written covered call.

20 Senator Bentsen. We used to (inaudible) business sell
21 stock options (inaudible) and had a very nice economic re-
22 turn. There was no such tax avoidance in process; we paid
23 the tax on the return. Obviously there is a legitimate role
24 to be played, and we are not seeking to penalize that.

25 Mr. Chapoton. I think that is correct.

1 The Chairman. Again, I will call this article to your
2 attention.

3 All right, the last one is extending the provisions re-
4 lating to removal of architectural barriers--it is not the
5 last one we have; as I understand, three other non-
6 controversial amendments, one by Senator Long on helicopters,
7 one technical amendment, ---

8 Mr. Belas. And there is one provision--all these three
9 were not included on the original list because of not meeting
10 the hearing requirement. The first one was to pick up the
11 Senate version of an exemption from the aviation excise
12 taxes for helicopters used exclusively in natural resource
13 exploration or development--that was a provision in the
14 Senate bill that was dropped in conference in TEFRA. A
15 second would be to repeal the general retroactive effective
16 date of the Multi-Employer Pension Plan Amendments Act of
17 1980 for employer plan withdrawal liability, that is only
18 the general rule; there are several other effective dates
19 for employer withdrawal liabilities, one more rigorous and
20 others that are a little more lenient. Those would not be
21 changed, including one for the seagoing industries.

22 And, third, there has been suggested to us an amendment
23 to the Social Security Amendments Act of 1983 to provide that
24 with respect to employer payments of employee contributions
25 to a state or local retirement plan, FICA and FUDA (?) would

1 apply only to salary reduction arrangements.

2 The Chairman. Let's do No. 11, and then we will call
3 on Senator Long.

4 Senator Danforth. Could I ask one question about this
5 last group of three, on the multi-employer pension plan
6 liability, withdrawal liability? Is this the same language
7 that the Finance Committee reported out last year?

8 Mr. Belas. Yes, sir. In addition, you might want to
9 consider an additional provision related, not to the multi-
10 employer, but the pension area, which would have covered
11 the situation of a rollover from a qualified plan to an IRA;
12 that was also included in that same bill last year.

13 Senator Danforth. I just wanted to make sure it takes
14 care of my problem.

15 Senator Matsunaga. Don't you have on that list of the
16 tax-exempt organizations, educational institutions investing
17 in mortgage real estate?

18 Mr. Belas. Senator, the list I just read were additional
19 items that there was no disagreement among the staffs and
20 Treasury and no significant revenue loss. That one I believe
21 was objected to by Treasury.

22 Senator Matsunaga. I know there is no objection, as I
23 understand, with certain modifications.

24 Mr. Brockway. I think Treasury was looking at certain
25 modifications of it, and we were discussing ---

1 The Chairman. Let's finish No. 11, then the three that
2 Rich has in mind, then we will go to Senator Matsunaga.

3 No. 11.

4 Mr. Brockway. No. 11 is just as you stated, Senator,
5 that a provision allowing a \$25,000-a-year expensing for
6 removal of architectural barriers expired at the beginning
7 of this year; this would extend it for two more years.

8 The Chairman. There's a revenue factor there.

9 Mr. Brockway. That's about 25 million over the three
10 years.

11 The Chairman. Okay, Rich, let's take the helicopters.
12 Senator Long?

13 Senator Long. Well, the helicopter is a simple matter.
14 These helicopters do not use the airports and they don't use
15 the highways; as a matter of fact, the padsthat they use in
16 many instances are built at enormous cost out at sea.

17 The Chairman. I've been on one of them.

18 Senator Long. I've been on them, too. I went out with
19 the President of the United States on one one time. And that
20 is an enormous cost, no federal aid to it. You have got to
21 find tax-paid money to go build it with. And, of course, a
22 guy has to have a corresponding pad on land, but the govern-
23 ment doesn't aid with that either.

24 So in view of the enormous costs that they have to build
25 a pad, particularly ones at sea, out in as much as 500,000

1 feet of water in some cases--it is not fair that they have
2 to pay an airport tax for airports that they don't use.

3 Now, we had this in--I don't think there is any objec-
4 tion at all about this matter; when we passed the bill it
5 went to conference with the exemption in there--the House
6 would not agree to it, and Senator Packwood made a noble
7 fight for this position; finally, when the House would not
8 agree, for reasons I just never could understand, the con-
9 ference said, well, they would go along in the spirit of
10 compromise where you would exempt these same type helicopters
11 if they are used in forestry work.

12 So the forestry part is exempted, and the part used for
13 developing other natural resources is not exempt and just
14 doesn't make any sense. And I really am encouraged to think
15 that if we take it back to conference, the House would agree
16 with it; I don't think we would have too much ---

17 Mr. Brockway. That's correct; it was exempted in the
18 gas tax bill out of this Committee and on the Senate floor,
19 and it was not--there is an exemption for hard minerals and
20 there is exemption for timber when they are not using the
21 airports, and this would simply extend that to oil and gas.

22 The Chairman. And although we haven't had hearings, it
23 is a matter we passed before in the Senate.

24 Mr. Brockway. That's correct.

25 Senator Long. We did have hearings last year, though,

1 didn't we?

2 The Chairman. Right. And it is identical language, is
3 that correct?

4 Mr. Belas. Yes, sir. We understand that it is some-
5 thing like \$17 million over three years; it is not a major
6 revenue item.

7 The Chairman. Senator Danforth, how about your ERISA?

8 Senator Danforth. Yes, that was one that Rich was
9 describing on the list of three. We reported this out of the
10 Finance Committee last year, and, as far as I know, it is
11 not controversial.

12 Mr. Belas. Generally, Senator, there has been a major
13 battle going on in the courts as to the constitutionality of
14 the retroactive effective date in the bill. The bill was
15 enacted in September of 1980; it was retroactive generally
16 for only the employer withdrawal liability provisions--when
17 the employer left the multi-employer pension plan, the
18 liability to that plan, the rest of the bill was effective
19 upon enactment.

20 The Ninth Circuit, I think, has ruled that the retroac-
21 tive date is unconstitutional, and there are additional court
22 battles.

23 The Chairman. Well, again, this is a provision that we
24 passed last year, is that correct?

25 Mr. Belas. That's correct.

1 The Chairman. And this is identical with the ---

2 Mr. Belas. Yes, sir, and it would also include that
3 IRA rollover provision that also was supported by ---

4 The Chairman. By Treasury.

5 Mr. Chapoton. Is this Senator Danforth's bill, retro-
6 active multi-employer withdrawal liability?

7 Senator Danforth. Right.

8 Mr. Chapoton. We understand it is really not a tax
9 provision so much; it's a matter of concern to the PBDC
10 and the Department of Labor, and they have been meeting on
11 this today. And we just really need to wait some guidance
12 from that meeting.

13 The Chairman. We are not going to take final action
14 today, in any event, but this is one I think we could add
15 to that list, since we passed it last year.

16 Then there was a technical amendment.

17 Mr. Belas. Yes, sir. The technical was to the Social
18 Security Amendments Act, that it would be identical to a
19 provision in the House technical corrections bill, which
20 would limit the situations in which payments made by an
21 employer to a state or local pension plan on behalf of an
22 employee would be subject to FICA and FUDA tax. The FICA
23 and FUDA tax would only apply to situations where there was
24 a bona fide salary reduction arrangement.

25 The Chairman. Is there any Administration objection to

1 that?

2 Mr. Chapoton. I think not. I haven't been over that
3 personally again today, Mr. Chairman.

4 The Chairman. All right, well, that's one we need to
5 look at.

6 I am going to yield to Senator Matsunaga in just a
7 minute.

8 What about changing Section 355 of the Code to allow
9 restructuring of a family business? Was that addressed?

10 Mr. Brockway. Well, it's an item that we talked about
11 somewhat this morning, that I think it would have some signi-
12 ficant revenue effect. Treasury, I believe, is more familiar
13 with the specifics.

14 Mr. Pearlman. We have partially--and we have got some
15 significant reservations, Mr. Chairman, although we are still
16 talking with the staff, and I would say we want to pursue
17 it. But at this point we could not be supportive.

18 The Chairman. But you are still ---

19 Mr. Pearlman. We are still looking at it.

20 The Chairman. Still looking at it. Senator Matsunaga?

21 Senator Matsunaga. Thank you, Mr. Chairman. This is a
22 bill, S. 1183, which has the same provisions as a bill which
23 was passed last year by the Committee, but which at the last
24 minute was objected to by one Member, otherwise it would have
25 passed. This is a bill cosponsored by Senators Long, Bentsen,

1 Durenberger, Grassley, and Moynihan.

2 It is a bill intended to cure a defect under existing
3 law whereby pension trusts investing in mortgage real estate
4 are treated more favorably than educational institutions in-
5 vesting in mortgage real estate.

6 If the educational institution should invest in real
7 estate in cash, then they are tax exempt from the income, but
8 if they have a mortgage on it, then they are not exempted
9 from the tax. It is a wholly incredible situation which
10 this bill is intended to correct.

11 And, as I understand it, the Treasury will agree to it
12 with one amendment there, by limiting the partnerships in
13 which a tax-exempt organization holds debt finance real
14 estate to partnerships with other tax-exempt organizations.

15 And that is agreeable with me.

16 Mr. Chapoton. Senator Matsunaga, I know that has been
17 discussed, but we have testified--the matter being addressed,
18 as you point out, is unrelated business income from real
19 estate. There was an exception written in the law a few
20 years ago exempting pension plans from the rule. I think
21 the theory was that income from pensions will eventually be
22 taxed, though I am not sure that is a good basis for a dis-
23 tinction and I don't want to maintain that one.

24 But it is a dismantling of the unrelated business in-
25 come rule; Part of the problem we suggested was the

1 partnership context, but I think we have had problems with
2 that beyond the partnership problem.

3 So let us look at that.

4 The staff is suggesting some changes that would lessen
5 some of our concerns. Let us look at that, and then we will
6 get back to you.

7 Senator Matsunaga. That was the same response given last
8 year, but we reported it out anyhow.

9 The Chairman. We may do the same again. We have not
10 taken any final action on any of these today, and that gives
11 them a chance to address it.

12 Senator Matsunaga. Fine. So will you really take a
13 look at it this time?

14 Mr. Chapoton. Yes, sir. Well, we did last time. We
15 had several meetings on this, and we just didn't change was
16 the problem.

17 The Chairman. We need some revenue estimates on all
18 these, too, because I think if we are going to do a lot of
19 these we are going to find some way to offset the cost, and
20 we got a lot of loopholes that could be closed.

21 Have you worked out an agreement with Senator Symms
22 on generation-skipping? I understood that was near resolu-
23 tion.

24 Mr. Chapoton. We have presented a bill to Senator Symms,
25 and it is a pretty significant change in the generation-skipping

1 scheme, a much bigger exemption but a tax that does--it
2 still is a generation-skipping tax.

3 Senator Symms. It was my understanding we had it all
4 worked out, but maybe Rod wants to comment on it.

5 The Chairman. Rod, have you got it worked out? Have
6 they skipped your generation?

7 Mr. DeArment. They have skipped my generation; this is
8 not a problem in my estate planning.

9 Senator Symms. It's income-neutral to the Treasury,
10 and I think, Mr. Chairman, I guess the position I still take
11 is that we should just repeal it, and then if they want to do
12 something about it, they can start over on it next year.

13 But the way it is, we have got all these estates hanging
14 out there, nobody knows what the rules are. And I think we
15 would save the Treasury a lot of trouble if we just repeal
16 it. I hope we could just do it.

17 The Chairman. I must say, as you travel around your
18 states, this is raised quite frequently.

19 Senator Symms. It's what?

20 The Chairman. It's a matter that is raised quite fre-
21 quently with people who do estate work.

22 Mr. Chapoton. That's right, and that is why we have
23 spent tremendous amounts of time in this area, but we con-
24 cluded that a generation-skipping concept made some sense,
25 and I think--not all, by any means, but many of the

1 professional groups recognize the validity of that point.
2 And so what we want to do is make a generation-skipping tax
3 that did not affect nearly as many taxpayers in terms of
4 numbers, but did prevent the wholesale avoidance of the
5 estate tax.

6 Senator Symms. Well, Mr. Chairman, every professional
7 group--the ABA, the National Association of Certified Public
8 Accountants, and so forth--they have all testified this
9 ought to be repealed; and it just keeps hanging around. I
10 would just like to have a vote on it and repeal it. And
11 then at least it would be off everyone's back. It is not
12 going to cost--the Treasury's own figures are, they haven't
13 raised any money with it. So it isn't going to affect the
14 price of the bill, but it would certainly save a lot of head-
15 aches and save a lot of trouble with respect to estate type
16 planning situations around the country.

17 The Chairman. Well, since we are not taking final ac-
18 tion on anything today, I wonder if you could get together
19 with Senator Symms and see--and there may be others who are
20 even opposed to the compromise, at least we can see what--I
21 think we need to know more about what the compromise might be.

22 Senator Symms. Well, the problem with the compromise is
23 you still come back to the problem you have right now. I
24 mean, I haven't actually seen any compromise language, but
25 just the suggestions--they still never get away from what we

1 had with respect to testimony in the estate planning subcom-
2 mittee; there never has been anything that will avoid all of
3 the red tape--and, frankly, there is nobody who understands
4 the present law.

5 And that is why Treasury can't seem to get any--the
6 estate planners don't understand the present law, and they
7 don't know how to treat it. And I would just like to repeal
8 it.

9 Mr. Chapoton. I agree with Senator Symms that the pre-
10 sent law is inadequate; that is why we spent the amount of
11 time we did, and would wipe the slate clean for the past
12 and put in a much shortened, much clearer generation-skipping
13 proposal that would affect many fewer estates.

14 The question, though, I think the Committee has got to
15 address is the one we have been wrestling with, whether, if
16 you should just have no generation-skipping proposal, why
17 you still have an estate tax. And we concluded we could not
18 say that, so we tried to clear up the provision. But defi-
19 nitely wipe the slate clean to date; there has been a great
20 deal of uncertainty since 1976.

21 Senator Symms. But there wasn't any big problem with
22 this question prior to 1976.

23 Mr. Chapoton. I think it had been discussed at great
24 length in the literature about how easy it was to avoid the
25 estate tax for wealthier taxpayers that could simply not pass

1 property from generation to generation or pass it in a way
2 that the intervening generation could enjoy the use of the
3 property, but simply through drafting techniques avoid the
4 taxing incident in the intervening generation.

5 Senator Symms. It seems to me what came out in the
6 hearings was that the real wealthy people layer these trusts
7 and have all kinds of ways to--what I am talking about is
8 your small business type person out there that is trying to
9 keep a family business, a newspaper, a small farm, or a
10 farming operation, or something like that from being in
11 trouble. It's not that they are poor people certainly, but
12 it just seems like it is just an unnecessary continuation of
13 something.

14 Why don't we just repeal it and then if Treasury wants
15 to come up with something for a suggestion, we start over?

16 Mr. Chapoton. Well, we have up here a suggestion, and
17 it contains a (inaudible) can bypass a generation with a gift
18 of \$2 million, with total exemption from a generation-skipping
19 tax. The question is whether we should allow the very large
20 estates to skip the tax.

21 And we concluded, as I say, that we could not support
22 such a change.

23 Senator Bradley. How many small businessmen would that
24 \$2-million exemption take care of?

25 Mr. Chapoton. Well, it depends, Senator Bradley, on

51

1 how you define "small business" once again. But we have a
2 problem only if indeed the arrangement is to skip the inter-
3 vening generation.

4 So with an exemption that large, we thought the problem
5 should go away, except in the very large estates.

6 Senator Symms. Well, Buck, isn't the problem, though--
7 it's not how big the estate is, whether the guy has got
8 \$500,000 or \$15 million or \$20 million or \$100 million; the
9 private sector attorneys and accountants and Treasury people
10 have not yet figured out how to apply the law we have. Yet
11 we are still clinging on to this thing. And so you have all
12 this whole area up here that is in confusion.

13 And that is really what the issue is; it isn't who is
14 going to be hit or not hit. The Treasury has raised no
15 money with it, but they have this thing hanging over a cloud
16 out here with no resolution of it, and there still is a prob-
17 lem with the suggestions that Treasury has made--we don't
18 have any legislative language written, and the private sector
19 attorneys tell me that they still can't figure out how they
20 are going to apply it if you did adopt the ---

21 Mr. Chapoton. We do have a bill, Senator--and I don't
22 disagree with the problem in the present law--the present
23 law is very difficult to understand and to administer.

24 Senator Symms. Well, where's the bill? I have never
25 seen it.

1 Mr. Chapoton. I apologize; I thought it had been sent
2 to you. We do have a draft bill, and we have sent a detailed
3 proposal to you. And we do have a draft bill. But I haven't
4 given you that yet.

5 Senator Grassley. Mr. Chairman, could I ask on another
6 matter?

7 The Chairman. Well, let me sort of move off this mat-
8 ter; I think we have got--we are not going to vote today, so
9 we can decide whether we want to vote. But at least Treasury
10 is willing to offer some proposal.

11 Mr. Chapoton. Yes, sir.

12 The Chairman. That would clean up what we have now, is
13 that correct?

14 Mr. Chapoton. Yes, sir, it would wipe the slate clean,
15 that's correct.

16 The Chairman. Just one other general question--and
17 there may be other Members--I think Dave has a list there--
18 and again I would suggest that if we are going to do some
19 of these things, we are going to have to find a way to off-
20 set the cost.

21 But I know we are going to have raised sooner or later
22 the question of foundations, and I can see at least--I know
23 there are three or four Members on the Committee as well as
24 others who have questions of some urgency--the Macarthur
25 Foundation, the ---

1 Mr. Brockway. That's correct. We put none of the
2 foundations on the list even though there were certain pro-
3 posals, such as a general proposal that would in fact take
4 care of Macarthur. Even though that was not controversial,
5 we didn't put it on the list, because we assumed that you
6 would like to look at foundations in the aggregate. Certain
7 Members were interested in certain foundations, others were
8 interested in the general restructuring bill that was in the
9 House.

10 So we just left that off the list. But certainly a
11 number of Senators raised that on their submissions.

12 The Chairman. As I recall, there are about a half dozen
13 specific ones. Last year, Senator--one in South Carolina,
14 Texas, Oklahoma, Colorado, Illinois, and New York.

15 Senator Bentsen. Perhaps if we can get something ge-
16 neric (inaudible) restrictions on how it would function, we
17 could find some area of accommodation.

18 Mr. Brockway. The most controversial area is the excess
19 business holdings area. I think there is general support for
20 restructuring a number of the changes that were made in the
21 House and, for example, a situation like the Macarthur
22 Foundation were in the process of selling off their excess
23 business holdings, but haven't been able to complete it.
24 Then there are these seven or eight foundations that have
25 excess business holdings would either like further time to

1 dispose of their holdings or would like to eliminate the re-
2 quirement but have a higher standard.

3 Senator Bentsen. Or you could avoid (inaudible) avoid
4 interlocking officers.

5 Mr. Brockway. Correct.

6 The Chairman. Well, that might be a better approach.
7 As I understand, the House finally rejected any change.

8 Mr. Brockway. They rejected change; they took a change
9 that would allow additional time for certain foundations to
10 sell off where they have made a bona fide attempt, but the
11 more controversial area of allowing a grandfather for excess
12 business holdings where they don't have interlocking direc-
13 tors, that type of thing was rejected in the House.

14 The Chairman. Does Treasury have any comment on some
15 generic type proposal?

16 Mr. Chapoton. No, Mr. Chairman, I think we do not have.
17 We have wrestled with this problem, and we have decided that
18 the '69 law made sense. Well, let me correct myself as to
19 one case: where there were properties received and because
20 of unusual circumstances, the period of divestiture is not
21 significant enough, and we did suggest allowing the IRS at
22 least discretion to extend the period of disposition.

23 But it would have been a pretty limited rule, would be
24 a pretty limited rule.

25 Senator Bentsen. I think we have to work on it, and

1 I hope we are going to address this problem.

2 Senator Bradley. Or at least get some further extension
3 of time for some of these foundations.

4 The Chairman. I think maybe, if it's all right with
5 Members, I will just instruct the Joint Committee and our
6 staff on both sides, with technical assistance from Treasury,

7 ---

8 Senator Bentsen. Limited to that.

9 The Chairman. At least give us some idea what the op-
10 tions may be. We may decide there aren't any good options.
11 And obviously Treasury will have the right to be heard.

12 Senator Bentsen. Mr. Chairman, when you get through, I
13 want to ask a question.

14 The Chairman. Senator Bradley, do you have something
15 else?

16 Senator Bradley. We covered it with the foundations.

17 Senator Grassley. I want to know on No. 5, does the
18 term "educational institution" include community colleges and
19 secondary vocational education schools?

20 Mr. Brockway. It does not, as listed here. The provi-
21 sions of your bill that would allow it for vocational educa-
22 tion were not picked up in this proposal.

23 Senator Grassley. Well, of course, 5 is much more nar-
24 row than what my bill would do.

25 Am I right?

1 Mr. Brockway. That's correct. That would be limited
2 to higher education, the present law.

3 Senator Grassley. To include property assembled by the
4 taxpayer. I suppose you mean something invented?

5 Mr. Brockway. Well, this would be the type of property
6 which you presently have an exception right now, and that has
7 to be given to--research equipment given to an institution of
8 higher education where the donor was the manufacturer. This
9 would expand that to include where the donor assembled it.

10 But that would be limited to institutions of higher edu-
11 cation, and your proposal was directed at vocational educa-
12 tion.

13 Senator Grassley. Yes. I don't want to discuss it at
14 this point, but I think before we make a final decision on
15 that, if we are broadening the existing legislation to in-
16 clude assembled, we ought to go further and go beyond re-
17 search; the applicability of research we already have now
18 in highly technical areas. It's important that we have the
19 application of this material to everyday use, and particular-
20 ly the training of people in a high-tech society.

21 So I would like to throw that out for a suggestion, and
22 when we vote upon it I can bring that along at that time.

23 The Chairman. Okay, we will have the staff take a look
24 at that.

25 Senator Bradley. Mr. Chairman, could we also say, if we

1 are going to broaden it to vocational, that we broaden it as
 2 well to certain non-profit scientific institutions like Mayo
 3 Clinic and places like that?

4 Senator Grassley. Since some of those are teaching in-
 5 stitutions, wouldn't they be already ---

6 Mr. Chapoton. No, they are not. What we are talking
 7 about, Senator, is a very special rule in the law that was
 8 added, I believe, in 1981, that would allow gifts in excess
 9 of the ordinary income portion of the property, that is, if
 10 the property were sold at fair market value at the time of
 11 the gift, the portion that would yield ordinary income under
 12 prior law, there would be no deduction for that amount; under
 13 the '81 amendment you get a partial deduction for that
 14 amount, but it was aimed at basic research type grantees.
 15 And so it was limited to higher education and limited to
 16 equipment that would be used in research and development
 17 activity.

18 I think Senator Bradley's point is it was limited to
 19 educational institutions, and why should it not also apply
 20 to other institutions that might conduct the same type of
 21 research, though not qualifying as educational institutions.

22 That was done in the research and development credit,
 23 I believe.

24 In your situation, Senator Grassley, the question is
 25 whether the purpose of the original amendment would be

1 broadened by application of the research as well as doing
2 the research itself.

3 The Chairman. Well, could Treasury take a look at that
4 with the Joint Committee and staff. When you talk about
5 broadening, are you talking about raising the cost, too?

6 Mr. Brockway. That's correct. Any change would cer-
7 tainly ---

8 The Chairman. Keep in mind offsetting loophole clos-
9 ings.

10 Senator Bentsen?

11 Senator Bentsen. I have a couple. One of them is the
12 nature of technical amendments. Senator Tower and I worked
13 on the financing of the purchase of facilities by regional
14 pollution control authorities. One of the provisions that
15 was written into that was that the seller should not benefit
16 indirectly by being permitted to pay the authority less
17 for treating waste (inaudible) than others would have to
18 pay.

19 Then you run into the problem of state authorities--for
20 example, in our own state--stating that they couldn't impose
21 on customers arbitrary prices which did not reflect actual
22 costs, and would be higher than necessary to carry out its
23 duties.

24 So you end up with the provision that we passed not
25 being useful as we had anticipated. I understand the Joint

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1 Tax Committee has probably signed off on this, but I would
2 hope that the Treasury would move expeditiously so we can
3 get a determination in time to take care of this technical
4 problem.

5 Mr. Chapoton. Senator, I am not familiar with that.

6 Senator Bentsen. I am not asking for a judgment, Mr.
7 Chapoton, Mr. Secretary, at this point, but I would ask that
8 in the next day or two that you take advantage of the infor-
9 mation developed by the Joint Tax Committee and see if we
10 can't get a decision on it.

11 The next one I wanted to ask you, Mr. Chairman, is
12 what we are going to do insofar as the insurance bill that
13 Mr. Chafee and I have introduced? As I understand it, the
14 bill is attached to the measure on the House side, and the
15 House, by one means or another, is attributing a great sav-
16 ings or additional revenue of some \$2.3 billion. If we go
17 into this situation without having it attached to our side,
18 and they so contend, and we end up not being able to make any
19 modifications on our own side except in conference, I have
20 some concern about that.

21 And I would ask enlightenment on the issue by the dis-
22 tinguished Chairman. What do you intend to do?

23 The Chairman. We intend to address the insurance ques-
24 tion. As I understand, there was a meeting of sorts--maybe
25 it's already been held today--with some representatives of

1 ACLI, particularly on the revenue side of maybe two or three
2 other questions, is that correct?

3 Mr. Chapoton. That's correct, yes, sir, that meeting
4 has been held.

5 The Chairman. So we haven't forgotten it; in fact, I
6 think I indicated on Thursday there would be a meeting on
7 Monday. There is a difference of opinion on whether it is
8 a tax cut or ---

9 Senator Bentsen. Or revenue raiser.

10 The Chairman. And I think that is one of the questions.
11 I have suggested to the insurance industry that they work it
12 out with the Administration.

13 Mr. Chapoton. Well, their meeting was held this morn-
14 ing with the Secretary, Mr. Chairman, and we wanted to con-
15 sider certain aspects of it further and then talk to your
16 staff about it.

17 Senator Bentsen. I will be urging, when we finally do
18 get a chance to review it, that the policyholder provisions
19 be dropped from that bill to deal with the tax revenues
20 (inaudible).

21 The Chairman. I think there are about two or three--
22 not directly related--but related items, is that correct,
23 Rich?

24 Mr. Belas. Mr. Chairman, there are a number of items
25 that have been brought to our attention over the last couple

1 of weeks, and we are continuing to look at the technical is-
2 sues for possible amendments that the Committee might wish
3 to consider.

4 The Chairman. So it's not that we are not alert to the
5 interests in bringing that up. I think it's a question of
6 how much can we resolve before we bring it up, first;
7 secondly, if we don't bring up anything, if we don't pass
8 anything, what happens in conference.

9 And I think there is every disposition to try to do
10 something.

11 Senator Bentsen. I would like as much as we can, Mr.
12 Chairman, before we get into the conference, if we are going
13 to work on that particular measure, that we have the input
14 of this Committee.

15 The Chairman. And that is one we haven't had hearings
16 on, but I think--that's a \$2- or \$3-billion item.

17 Senator Symms. Mr. Chairman.

18 The Chairman. In fact, I have suggested we might have
19 some witnesses in here.

20 Senator Symms. I guess we have a vote on. Are we
21 going to come right back?

22 The Chairman. Not today.

23 Senator Symms. I would hope the staff and Treasury
24 could look at S. 1193, which is a bill that Senator McClure
25 and I have introduced which deals with the tax treatment on

1 phosphate. Eighty percent of the phosphate in the country
2 is mined in Florida and it has less impurities in it in
3 Florida than it does in the phosphate that is in North
4 Carolina, Montana, Utah, and Idaho, and they use a process
5 there--and there has been a ruling that it wasn't--it's a
6 heat process to remove some of the impurities.

7 So I wish you would look at that. It's minimal with
8 respect to the Treasury on tax treatment on depletion on
9 phosphate; but it is very important to those parts of the
10 country that are not getting that treatment that the other
11 people are getting.

12 I think it's a mistake; Treasury said that they needed
13 legislative action on it.

14 The Chairman. Are you familiar with that, Secretary
15 Chapoton?

16 Mr. Chapoton. No, sir, I am not.

17 The Chairman. Senator Moynihan?

18 Senator Moynihan. Mr. Chairman, I wonder, if we are
19 not going to stop today, could I just say that tomorrow I
20 have been asked to propose the changes in the Code that the
21 President's Committee on the Arts and the Humanities, of
22 which Mrs. Reagan is the Honorary Chairman, have come up
23 with a series of proposals that they think will increase
24 charitable contributions, of which the most specific is to
25 allow 75 percent of adjusted gross income as against 50

1 percent--and I think I would like to suggest that perhaps,
2 Rod, Rich, or Mike ---

3 The Chairman. Is Treasury aware of that?

4 Mr. Chapoton. Yes, sir, we are aware of that, and we
5 have supported this, yes, sir. It raises the limit on
6 charitable gifts and it also deals with a problem we think
7 should be dealt with, that is, gifts of property shortly
8 after they have been acquired by the taxpayer claiming a
9 large deduction. It limits that.

10 Senator Moynihan. It limits that to 40 percent.

11 The Chairman. Okay, we'll have Treasury work on that
12 with, again ---

13 Are there any other areas that Members want to raise?

14 Senator Danforth?

15 Senator Danforth. I understand on foreign tax credit
16 provisions, that there is agreement on that, or are we closer
17 on that?

18 Mr. Chapoton. I think it's a lot closer, Senator
19 Danforth. Just as I understand it, it would reduce the re-
20 venue impact considerably, though still a revenue impact,
21 some 270 million over the three-year period.

22 The Chairman. How much?

23 Mr. Chapoton. 270 million.

24 The Chairman. Do you have an offsetting ---

25 Mr. Chapoton. No, sir.

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1 Mr. Brockway. There are a number of proposals in the
2 area that you could offset with it; it's just a question of
3 whether you want to do it in ---

4 The Chairman. This is a pay-as-you-go meeting, so if
5 you want to play, you have to pay.

6 Senator Grassley. That's if it costs a lot of money;
7 if it costs just a little bit of money ---

8 The Chairman. Well, if it's negligible, why, then, we
9 have another category.

10 Senator Danforth. The original program was 2 or 3
11 billion.

12 The Chairman. Big saving.

13 Senator Long?

14 Senator Long. Mr. Chairman, I just want to raise this
15 question, that as tempting as it might be to put some of these
16 amendments, or even some of the non-controversial amendments
17 of a tariff nature, on a reconciliation bill, I would urge
18 that we not do it. And the reason I say that is because the
19 reconciliation process was not intended for that purpose, and
20 the more we do that type of thing, the more we open the door
21 to things that would follow, that would become a part of it,
22 that would not be good for the country. For example, every
23 one of those amendments, non-controversial though they may
24 be, are subject to amendment so long as those amendments are
25 germane to the Committee amendment.

1 And that also sets the stage for what eventually might
2 lead to further abuse of the process to use the reconcilia-
3 tion process to create loopholes in the tax laws that would
4 not be created in the ordinary process.

5 I think that we can pass our bills--it might take a lit-
6 tle bit more time to do it, but--in some cases, it might force
7 us over into the next session, but we ought to be able to
8 pass these less controversial bills without having to abuse
9 the reconciliation process by using that as a rider, because
10 the process was not intended for this. And the more we
11 wander astray, the more we get ourselves into mischief that
12 should not happen.

13 As the Chairman so well knows, we have met the House
14 with House amendments to reconciliation that were an absolute
15 outrage to even talk about, where the House would bring some
16 reconciliation bill--they would claim a saving by just moving
17 a date up by one month or by a single day, to claim a billion
18 dollars of savings--and, frankly, we have used some pretty
19 clever devices ourselves to claim a savings in reconcilia-
20 tion, some of which actually brings laughter when you talk
21 about what we actually did do along that line to claim il-
22 lusive savings in both Houses--and then proceed to put on
23 such bills measures that enormously increase the cost of
24 government, which of course is exactly opposite to what the
25 reconciliation process was intended for.

1 So I would hope that we would try to maintain the right
2 type purity, or come close to it, on reconciliation, and use
3 our efforts to see that the House does likewise, because the
4 reconciliation process can lead to all kinds of mischief by
5 virtue of the fact that it is not debatable; that is, it
6 is only debatable for 20 hours, an amendment is only one
7 hour.

8 So while it is tempting for us to use it, in time we
9 would be compelled to take the lead in trying to obtain a
10 change of the rules to prevent others from doing the same
11 thing.

12 And I just hope that we don't get caught down that road,
13 because I think that part of the responsibility is for us not
14 to do it and to resist efforts by the House to do the same
15 thing.

16 The Chairman. I don't know that I disagree with that,
17 except we were instructed by the Congress to come out of here
18 with \$73 billion in revenues and only \$1.7 billion in spend-
19 ing, which is part of the reconciliation. It would still be
20 my hope, though it may not be possible, that if in fact it
21 is on reconciliation, we stick fairly close to the revenue
22 side but try to balance the package with enough spending to
23 make it worthwhile, spending restraint.

24 But had we been asked to come out with a billion in
25 revenues and we were talking about 75 billion--but the

1 instruction, as I recall, was \$73.4 or .5--so if we report
2 out a \$75-billion revenue bill and a \$75-billion spending
3 restraint, we would only be about a billion and a half off
4 on revenues, and 63 billion off on spending.

5 But I think that the point you make is probably of a
6 broader application, and that is if we can use the reconcilia-
7 tion process we can in effect frustrate the efforts of some
8 to change what we propose.

9 I think that is something we need to think about, be-
10 cause I know some Members would like to put all these things
11 in reconciliation. If that can't be done, then maybe nothing
12 goes in reconciliation, which means that nothing would pass
13 this year, which means we would go to conference on insura-
14 ance, for example, with the House bill.

15 But there are a lot of ways I guess you can ---

16 Senator Long. Well, I am just saying, Mr. Chairman--I
17 have been around here long enough to see a lot of things that
18 are done that we had to reverse ourselves on and regret we
19 ever started, and I am just saying that it will come back to
20 haunt us if we try to use this bill for the whole gamut of
21 what appear to be non-controversial, and which I believe are
22 non-controversial revenue and tariff measures, but by virtue
23 of the fact that that is not what the reconciliation process
24 is for, to me it is inconceivable that we can do that, that
25 we can wander that far astray without having the whole thing

1 come back to haunt us--and I just hope that we will use the
2 ordinary legislative process to pass these bills. I will be
3 glad to support the Chairman in doing it, and I am doing my
4 best to try to help him save however much he wants to save.

5 The Chairman. As long as we don't give up on deficit
6 reduction--apparently some have in this town, but I don't think
7 this Committee has.

8 Senator Moynihan. Mr. Chairman, for the record, can I
9 say that I would like to bring up sometime a measure concern-
10 ing cooperative apartments which the Treasury agrees to?

11 The Chairman. I hope now that maybe there would be a
12 little time for staff to get together with the Committee and
13 see if there are other things we haven't raised; then I will
14 check--we will notify Members today about meeting tomorrow.

15 What time does the President leave tomorrow?

16 Voice. Quite early.

17 The Chairman. Well, we might wait till the plane takes
18 off.

19 (Laughter;)

20 (The Committee adjourned at 4:20 p.m.)
21
22
23
24
25

TO BE CORRECTED

November 7, 1983

List of noncontroversial amendments which have insignificant revenue effect and for which hearings have been held by the Finance Committee this Congress

1. Provide an exception to the leasing bill and provide that there is no investment tax credit for short-lived sound equipment. Equipment would be short-lived if its cost recovery method would be more generous than that provided by ACRS.

2. Modify the requirement of TEFRA relating to reporting of State tax refunds to provide that the statement to be given to the taxpayer may be provided with the refund check.

for refunds after 1983

3. Modify the experience method of computing bad debts for banks to permit taxpayers to elect a shorter period (i.e., two prior years and current taxable year).

4. A technical error would be ^{corrected} changed to permit secondary and tertiary production to retain percentage depletion after 1983 and would subject secondary and tertiary production to the anti-transfer rules.

5. Broaden the rules relating to charitable deductions for donations of equipment to educational institutions to include the property assembled by the taxpayer.

6. Extend the exemption from income for forgiveness of indebtedness provided by sec. 108 to forgiveness of indebtedness on mortgages on residential housing.

7. Modify the rules permitting installment payments of estate taxes attributable to closely-held businesses by

allowing the look-through of certain personal holding companies and by allowing judicial review of certain IRS determinations.

8. Extend the rehabilitation credit to cases where the following criteria are met:

(a) 50 percent of external walls are retained,

(b) 75 percent of external walls area retained as either internal or external walls,

(c) 95 percent of external walls are retained.

9. Modify the rules governing churches consistent with Treasury testimony.

10. Broaden the rules for the application of the tax straddle provision to apply to covered calls of stock options.

11. Extend the provisions of the Code relating to expenses for removing architectural barriers for the handicapped for 2 years.

DESCRIPTION OF TAX PROVISIONS

**PRECLUSION OF STATE AND LOCAL TAXATION OF
PERSONAL PROPERTY IN FOREIGN TRADE ZONES
(SECTION 211(B) OF H.R. 3398)**

AND

**DENIAL OF FEDERAL TAX DEDUCTIONS FOR ADVERTISING
CARRIED BY CERTAIN FOREIGN BROADCASTERS
(S. 1940)**

Scheduled for a Markup Before the

SENATE COMMITTEE ON FINANCE

ON

NOVEMBER 7, 1983

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

NOVEMBER 5, 1983

JCX-37-83

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INTRODUCTION

The Senate Finance Committee has scheduled a markup on November 7, 1983, on various measures, including two tax provisions. One provision (section 211(b) of H.R. 3398, which is identical to S. 1411 (introduced by Senators Byrd, Bentsen and Tower)), would make it clear that States and localities cannot impose property taxes on certain tangible personal property located in foreign trade zones. The second provision, S. 1940 (introduced by Senators Danforth, Mitchell, Evans, Bentsen, Gorton, Moynihan, Cohen, Heinz, Wallop, Symms, and Baucus), would deny deductions for expenses paid to a foreign broadcaster for advertising directed primarily to United States markets if the foreign broadcaster were located in a country that denied its taxpayers a deduction for advertising directed to that country and carried by United States broadcasters. The bill "mirrors" a Canadian provision, and Canada is apparently the only country to which the bill would now apply.

Part I of this document provides a summary of these tax provisions. Part II is a more detailed description of section 211(b) of H.R. 3398, including present law, prior legislative consideration, issues, effective date, and revenue effect. Part III is a more detailed description of S. 1940, including background, present law, issues, effective date, and revenue effect.

I. SUMMARY

Preclusion of State and Local Taxation of Personal Property in Foreign Trade Zones (section 211(b) of H.R. 3398)

Under current law, U.S. customs duties do not generally apply to imports brought into foreign trade zones. States and localities may seek to impose personal property taxes on personal property located in foreign trade zones. The bill would make it clear that States and localities cannot generally impose property taxes on personal property held in foreign trade zones that is (1) produced outside the United States or (2) both produced in the United States and held for export. The bill would not restrict the rights of States and localities to tax machines, equipment, and other property used in foreign trade zones for manufacturing or other processing.

Denial of Federal Tax Deductions for Advertising Carried by Certain Foreign Broadcasters (S. 1940)

Background

In 1976, the Canadian Parliament enacted legislation denying tax deductions for Canadian income tax purposes for advertisements directed primarily at Canadian markets and carried by non-Canadian broadcasters. Presidents Carter and Reagan determined that this Canadian tax rule unnecessarily burdened U.S. commerce under Section 301 of the Trade Act of 1974. Each of them suggested retaliation along the lines of S. 1940, described below.

Present law

Ordinary and necessary advertising expenses paid or incurred by a U.S. taxpayer in the conduct of a trade or business are generally deductible whether incurred in the United States or abroad. In certain limited situations, however, tax results of foreign-related transactions depend on the identity of the foreign nation involved. Examples of harsher tax results include the following: Foreign persons subject to U.S. taxation whose countries tax U.S. persons at discriminatory rates or at rates higher than U.S. rates may owe more taxes than they would otherwise owe (secs. 891 and 896); certain conduct by a foreign nation may make articles produced therein ineligible for the investment tax credit in the hands of a U.S. purchaser (sec. 48(a)(7)); and participation or cooperation by a country in an international boycott will cause U.S. taxpayers who support the boycott to lose certain tax benefits (secs. 908, 952, and 995).

S. 1940

The bill would deny deductions for expenses of advertising primarily directed to U.S. markets and carried by a foreign broadcaster, if the broadcaster were located in a country that denied its taxpayers a deduction for advertising directed to its markets and carried by a U.S. broadcaster. Although the bill does not mention Canada by name, Canada is the only known country to which the bill would apply.

II. PRECLUSION OF STATE AND LOCAL TAXATION OF PERSONAL PROPERTY IN FOREIGN TRADE ZONES

(Section 211(b) of H.R. 3398)

A. Present Law

In general, merchandise may be brought into a foreign trade zone without being subject to the customs laws of the United States (the Foreign Trade Zones Act of 1934, 19 U.S. Code sec. 81a et seq.). Merchandise may generally be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise or otherwise manipulated in a foreign trade zone, or be manufactured in a foreign trade zone, without being subject to U.S. customs laws, and it may then be exported or destroyed without being subject to U.S. customs laws. This exemption does not apply to machinery and equipment that is imported for use (for manufacturing or the like) within a foreign trade zone.

When foreign merchandise moves from a foreign trade zone into customs territory of the United States it is subject to the laws and regulations of the United States affecting imported merchandise. Thus, current law provides a deferral of U.S. import duties during the period when merchandise is held in a foreign trade zone.

A similar deferral of U.S. import duties applies to goods stored in government supervised, bonded customs warehouses, which are generally treated as being outside U.S. customs territory. Only if goods are withdrawn for domestic sale or stored beyond a prescribed period does any duty become due. The Supreme Court of the United States has ruled that Congress's comprehensive regulation of customs duties preempts state property taxes on goods stored under bond in a customs warehouse (Xerox Corp. v. County of Harris, Texas, and City of Houston, Texas, No. 81-1489, December 13, 1982).

Local taxing jurisdictions in Texas may seek to impose property taxes on some tangible personal property stored in foreign trade zones. The staff is not aware of any States or localities outside the State of Texas that seek to impose property taxes on tangible personal property located in foreign trade zones for bona fide customs reasons.

B. Prior Legislative Consideration

On August 11, 1983, the Subcommittee on International Trade of the Senate Committee on Finance requested comments from the public with regard to various bills, including S. 1411. On October 21, 1983, the Subcommittee held hearings on

various measures, including S. 1411. On June 28, 1983, the House passed H.R. 3398, section 211(b) of which is identical to S. 1411. Along with other items, this provision (originally introduced as H.R. 717) was the subject of hearings in the Subcommittee on Trade of the House Committee on Ways and Means on April 27, May 5, and May 10, 1983; the Committee on Ways and Means issued its Report on H.R. 3398, H. Rep. No. 98-267, on June 24, 1983.

C. Issues

Section 211(b) of H.R. 3398 raises the following general issues:

- (1) Should Congress specifically preclude States and localities from taxing imported personal property that taxpayers hold in foreign trade zones for bona fide customs reasons?
- (2) Should Congress preclude States and localities from taxing U.S.-produced personal property that taxpayers hold in foreign trade zones for export?
- (3) Should Congress preclude States and localities from taxing U.S.-produced personal property that taxpayers hold in foreign trade zones for combination with imported goods and for later reintroduction into the United States?

D. Explanation of Provision

The bill would amend section 15 of the Foreign Trade Zones Act of 1934 to make it clear that tangible personal property imported from outside the United States and held in a foreign trade zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in a zone for exportation, either in its original form or as altered by any of the above processes, would be exempt from State and local ad valorem taxation. Thus, the bill would preempt State law or local law imposing ad valorem taxation on such property.

As for imported goods, the benefits of the bill would apply only to goods in a foreign trade zone for bona fide customs reasons. That is, it would not apply to property imported into the United States for use in manufacturing within a foreign trade zone (rather than for sale). Moreover, the Foreign Trade Zone Act of 1934 does not apply to machinery and equipment within a zone for use therein, so the benefits of the bill would not extend to those items whatever their origin.

As for U.S.-produced property, the benefits of the bill would apply only if the property were held in the zone for exportation. The benefits would not apply to U.S.-produced property that was present in the zone for combination with imported property or for other processing if the U.S.-produced property were destined for later use in or sale into the United States. By contrast, the benefits would apply to U.S.-produced property that was present in the zone for combination with imported property or for other processing if the U.S.-produced property were destined for later use or sale outside the United States.

E. Effective Date

The bill would take effect on January 1, 1983.

F. Revenue Effect

It is estimated that this bill would not have a significant effect on budget receipts.

III. DENIAL OF FEDERAL TAX DEDUCTIONS FOR ADVERTISING
CARRIED BY CERTAIN FOREIGN BROADCASTERS
(S. 1940)

A. Background

In 1976, the Canadian Parliament amended the Canadian tax law to deny deductions, for purposes of computing Canadian taxable income, for an advertisement directed primarily to a market in Canada and broadcast by a foreign television or radio station (Bill C-58, enacted and codified in Income Tax Act of Canada, sec. 19.1). This provision, which supplemented a similar provision for print media, became fully effective in 1977. The purpose of this provision was to strengthen the market position of Canadian broadcasters along the U.S.-Canadian border. The Canadian Government officially views the tax provision as a means of protecting the Canadian broadcast industry, whose goal is "to safeguard, enrich and strengthen the cultural, social and economic fabric of Canada."¹

At the time Canada adopted this provision, the United States and Canada were renegotiating the income tax treaty between the two countries. The Treasury Department negotiators raised U.S. concerns with the Canadians, but the Canadian negotiators apparently refused to discuss this provision.²

After the Canadian Parliament passed the provision denying foreign broadcasting deductions, the U.S. Senate approved a resolution finding that the provision appeared to inhibit commercial relations between Canadian businesses and U.S. broadcasters, and asked the President to raise the issue with the Canadian Government.³ In addition, some broadcasters filed a complaint under section 301 of the Trade Act of 1974, 19 U.S.C. 2411(a)(2)(B). The complaint alleged that the Canadian provision was an unreasonable practice that

¹ Statement of Canadian Government Position Concerning Complaint (under Section 301 of the Trade Act of 1974) of U.S. Television Licensees Relating to Section 19.1 of Canadian Income Tax Act, citing Canadian Broadcasting Act of 1968.

² Tax Treaties, Hearings before the Senate Committee on Foreign Relations, 97th Cong., 1st Sess. 36 (September 24, 1981) (testimony of John B. Chapoton, Assistant Secretary of the Treasury for Tax Policy); Bureau of National Affairs, Daily Report for Executives, No. 97 at G-5 (May 16, 1980) (reporting testimony of Donald Lubick, Assistant Secretary of the Treasury for Tax Policy).

³ S. Res. 152, 95th Cong., 1st Sess., 123 Cong. Rec. S14349 (1977).

burdened U.S. commerce. On September 9, 1980, President Carter determined that the provision unreasonably and unnecessarily burdened U.S. commerce, reported an estimate that the Canadian provision was costing U.S. broadcasting \$20,000,000 annually in lost advertising revenues, and suggested legislation along the lines of this bill (S. 1940). On November 17, 1981, President Reagan sent a message to the Congress concurring in President Carter's views. On May 14, 1982, the Senate Finance Committee held hearings on S. 2051, a bill virtually identical to S. 1940. On July 26, 1982, the Subcommittee on Trade of the House Committee on Ways and Means held a hearing on H.R. 5205, a bill virtually identical to S. 1940. Congress took no further action on those bills in 1982.

B. Present Law

Deductibility of advertising expenses

Under present law, taxpayers may generally deduct, in computing their Federal income tax, all ordinary and necessary expenses paid or incurred in carrying on any trade or business. The reasonable cost of advertising, whether paid to a domestic or foreign entity, generally qualifies as a deductible ordinary and necessary business expense under Code section 162.

Tax results dependent on the identity of a particular foreign country involved

Under present law, the income tax consequences of a transaction involving a foreign country ordinarily do not depend on the particular foreign country involved. However, the Internal Revenue Code⁴ provides in a number of cases for more burdensome income tax treatment for foreign-related transactions on the basis of the laws or policies of the particular foreign country involved. These rules have the effect of adversely affecting taxpayers from a particular foreign country or of discouraging U.S. taxpayers from dealing with a particular foreign country or its persons.⁵

⁴ In addition to the Code provisions discussed in the text, the bilateral tax treaties to which the United States is a party alter Federal tax rules for transactions involving the United States and the treaty partner in varying degrees. For instance, absent a treaty, interest paid by a U.S. borrower is ordinarily subject to a 30-percent withholding tax if the interest income is not effectively connected with a U.S. trade or business of the lender. Some treaties reduce this rate below 30 percent, while some treaties eliminate the tax altogether.

Several specific Code sections allow higher taxation of foreign taxpayers from particular countries. For example, there are two alternative remedies that the President may invoke against taxpayers from a foreign country that taxes United States persons more heavily than its own citizens and corporations. When the President makes a finding that a foreign country's tax system discriminates against U.S. persons, he is to double the applicable U.S. tax rate on citizens and corporations of that foreign country (sec. 891). Alternatively, upon a finding of intransigent discrimination against U.S. citizens and corporations, the President is to raise U.S. tax rates on citizens, residents, and corporations of the discriminating foreign country substantially to match the discriminatory foreign rate, if he finds such an increase to be in the public interest (sec. 896). In addition, if the President finds that a foreign country intransigently taxes U.S. persons more heavily than the United States taxes foreign persons, he is to increase the U.S. tax rates on U.S.-source income of residents and corporations of the high-tax foreign country to the pre-1967 rates if he finds such an increase to be in the public interest (sec. 896). These provisions have apparently never been used.

Moreover, U.S. taxpayers may have to pay higher taxes because of transactions involving certain countries. The President, by executive order, may eliminate the investment tax credit on articles produced in a country that engages in discriminatory acts or policies unjustifiably restricting United States commerce (sec. 48(a)(7)).⁶ The power to eliminate the investment tax credit as a retaliatory measure was aimed in part at a number of countries that discriminated in favor of locally produced motion pictures.

⁵ By contrast, some tax rules favor dealings with specific countries. For example, convention expenses incurred in Canada or Mexico receive more favorable treatment than similar expenses incurred in other foreign countries, and convention expenses incurred in certain Caribbean Basin countries are eligible for more favorable treatment in certain cases (sec. 274). In addition, certain corporations formed under the laws of Canada or Mexico will, if the U.S. parent elects, be permitted to join in the U.S. consolidated return of their parent companies (sec. 1504(a)). Moreover, a mutual life insurance company with branches in Canada or Mexico may elect to defer taxation on income of those branches until its repatriation (sec. 819A).

⁶ This provision has apparently never been applied. Recently, however, Houdaille Industries of Florida sought application of this provision, but the United States Trade Representative announced on April 22, 1983, that the U.S. Government had decided to deny the relief that Houdaille sought (19 Tax Notes 467, May 2, 1983).

In addition, taxpayers participating in or cooperating with an international boycott generally lose certain tax benefits--the foreign tax credit and tax deferral under the rules governing controlled foreign corporations and Domestic International Sales Corporations--allocable to their operations in or connected with countries involved in a boycott (sec. 999). Unlike the previously described rules, the international boycott provisions of the Code do not necessarily require a finding or decision by any person in the executive branch of government. Although the Secretary of the Treasury maintains a list of countries requiring participation in or cooperation with an international boycott, the absence of a country from this list does not necessarily mean that the country is not participating in an international boycott.

C. Issues

The bill, S. 1940, raises the following general issues:

- (1) Is it appropriate to deny tax deductions to U.S. persons who incur ordinary and necessary business expenses for advertising directed primarily at U.S. markets through Canadian broadcast media?
- (2) Will retaliatory denial of tax deductions for use of Canadian broadcast media to reach U.S. markets prompt repeal of the discriminatory Canadian provision denying deductions for use of U.S. broadcast media to reach Canadian markets?

D. Explanation of the Bill

S. 1940 would deny taxpayers any deduction for expenses of advertising carried by a foreign broadcast undertaking and directed primarily to a market in the United States, but would apply only to foreign broadcast undertakings located in a country that denies a similar deduction for the cost of advertising directed primarily to a market in the foreign country when placed with a United States broadcast undertaking. Although the only known country to which the bill would now apply is Canada, the bill does not mention Canada by name, and it would apply to any other country that had a tax provision similar to Canada's.

If Canada repealed its rule of nondeductibility, the bill would have no further application to Canada from the

⁷ See S. Rept. No. 437, 92nd Cong., 1st Sess. (1971), reprinted in 1972-1 C.B. 559, 573-74 n. 1.

effective date of the repeal.⁸ That is, on the first day that a Canadian taxpayer could make a deductible payment to a U.S. broadcaster for advertising directed primarily to a Canadian market, a U.S. taxpayer could make a deductible payment to a Canadian broadcaster for advertising directed primarily to a U.S. market.

Under the bill, the term "broadcast undertaking" includes, but is not limited to, radio and television stations. Transmission of video programming by cable would also be considered a broadcast undertaking.

The bill would disallow deductions for foreign-placed advertising only if the advertising were directed primarily to a United States market. Whether advertising is primarily directed to a United States market would be a question of intent. In the event of a dispute, objective determination of subjective intent could depend on a number of factors, which could include the geographic range of the broadcast, the distribution of population within that geographic range, the proximity of the advertiser's place of business to the border, whether the purchaser of the advertised product or user of the advertised service would ordinarily come to the advertiser's place of business (or whether the advertiser conducted a mail-order sales business or a mobile service business), and even the nature of the broadcast program the advertiser sponsored (e.g., a sporting event featuring teams from only one of the two countries).

The bill would automatically become effective without any finding or action by the executive branch (although the Secretary of the Treasury could announce those countries to which the bill applied). The determination of the nondeductibility of advertising expenses accordingly would be made in the first instance by the taxpayer, who would be expected on his return to reduce his deduction for advertising expenses by the amount of such expenses paid or incurred to foreign broadcasters for advertising directed primarily to U.S. markets through broadcast undertakings located in a discriminating country.

⁸ It is, of course, unclear whether Canada would repeal its rule in the face of this bill. The use of U.S. broadcasters by Canadian advertisers affected by the Canadian legislation would likely have been greater than the use of Canadian broadcasters by U.S. advertisers who would be affected by the bill. S. Rept. No. 402, 95th Cong., 1st Sess. 1 (1977). The Canadian Parliament may believe that Canada retains a comparative advantage even upon enactment of the bill, and political factors might also be important.

E. Effective Date

The provisions of the bill would apply to taxable years beginning after the date of its enactment.

F. Revenue Effect

This bill is expected to increase budget receipts by less than \$5 million annually.