

1 EXECUTIVE COMMITTEE SESSION

2 TUESDAY, APRIL 28, 1987

3 Senate Finance Committee

4 Washington, D.C.

5 The session was convened, pursuant to recess, at 10:05  
6 a.m. in Room SD-215, Dirksen Senate Office Building, the  
7 Honorable Lloyd Bentsen (Chairman) presiding.

8 Present: Senators Bentsen, Matsunaga, Moynihan, Baucus,  
9 Boren, Bradley, Mitchell, Pryor, Riegle, Rockefeller,  
10 Daschle, Packwood, Roth, Chafee, Wallop, Durenberger, and  
11 Armstrong.

12 Also present: Bill Wilkins, Staff Director; Jeff Lang,  
13 Chief, International Trade Counsel, Marcia Miller, Trade  
14 Staff, Majority; Josh Belten, Trade Counsel, Minority,  
15 Karen Phillips, and Brad Figel, Trade Staff, Minority.

16 Also present: Alan Woods, Deputy U.S.T.R.; Alan Holmer,  
17 Chief Counsel, U.S.T.R.; and Robert Jones, Deputy Assistant  
18 Secretary, Department of Labor.

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1 The Chairman. This meeting will come to order.

2 Today we will start the markup and actual voting on  
3 amendments. Let me refresh memories insofar as what we  
4 agreed to early in the session insofar as procedures, and  
5 that is that members will be able to vote by proxy, giving  
6 that to the Chairman or ranking member or whomsoever they  
7 want amongst members.

8 In addition to that, votes can be changed or cast up  
9 until 5:30 at the close of normal business hours. Now, that  
10 has been the general procedure -- we have had some variations  
11 in the past, but that is what we stated at the beginning of  
12 this session.

13 Frankly, what we are seeking is a consensus, and, with  
14 the competing demands on the time of the members with other  
15 committees that they have to be meeting with, there is no  
16 way that you are going to have all the members here all the  
17 time. Now, we want to get the true feelings of the members  
18 on each issue that is raised; so, for that day, on that  
19 issue, they will be able to vote up until 5:30, and actually  
20 change a vote and actually change the outcome. If it is  
21 changed, then that will be announced. Assuming that we have  
22 a meeting the next morning, it will be announced by the  
23 Chairman at that time.

24 Let me also say that what we have done in this  
25 committee in the past generally, and what we will do this

1 time, is revisit issues if someone wants to bring it up for  
2 another vote -- at a later time we will reconsider that  
3 particular issue.

4 So, once again, that is trying to cooperate with all  
5 of the members and see that we develop a true consensus on  
6 what we want to do on each of these issues.

7 Insofar as the schedule: To the extent that we can  
8 advise you ahead of time, we will. We can't give you  
9 long-term guesses on what that schedule will be, because  
10 so many things happen during the hearings that delay  
11 consideration of one issue or another, and something that  
12 you though wasn't going to be particularly controversial  
13 turns out to be just that.

14 We will be marking up S. 490. And today -- and the  
15 staffs have been advised of this ahead of time -- we will  
16 be taking up Intellectual Property, Technology Transfer, and  
17 hopefully Trade Adjustment Assistance. Now, if we have time  
18 after all of that, we will try to get to section 301 and  
19 start consideration of it.

20 For tomorrow, if all goes well, we will be talking about  
21 301 tomorrow. And then for the next day, if we get through  
22 that, we are going to 201 and try to get consideration of  
23 that.

24 Now, those are major items. I have no assurance that  
25 we will be able to complete them by that period of time. But

1 let me say for the benefit of the members that, as I have  
2 looked at the book of the amendments that may be offered,  
3 some of them appear to be limited only by the limits of the  
4 imagination of the staff.

5 (Laughter)

6 The Chairman. I would say that a great number of them  
7 have substantial similarity, with just minor gradations from  
8 that. And if we don't let authorship become too big a point,  
9 hopefully we can see a combining of a lot of those  
10 amendments; otherwise, we hope we have a long session and  
11 plenty of time to consider this, because we won't be about to  
12 meet our schedule -- and I am determined that we will meet  
13 that schedule.

14 One of the other items: When we get through these big  
15 items, we are still looking at over 100 miscellaneous tariff  
16 bills that we have to consider. We will try to get as many  
17 of those on this bill as we can, where we can get some  
18 reasonable consensus.

19 So, you see we have a very heavy agenda. Instead of  
20 meeting at 10:00 tomorrow we will start at 9:30, and we will  
21 be doing that for the rest of the time, now that I have gotten  
22 over the shock of looking at how many amendments we have that  
23 can possibly be offered.

24 So, with that cheerful note, are there questions?

25 Senator Packwood. No questions. I think the Chairman

1 has put us on notice, also, that if necessary we will go  
2 afternoons or some evenings to fit this schedule. I have  
3 cleared my schedule accordingly and will be here; but I  
4 think all of the members have had fair warning.

5 Senator Heinz wanted to be here today. He is not  
6 suggesting that you hold up on Trade Adjustment Assistance,  
7 but it is his dad's memorial service, and he has gone. But  
8 if we get to that, he has an interest in a number of the  
9 amendments, including some that he and Senator Rockefeller  
10 have proposed, and he said go right ahead -- he just wants  
11 his interests to be known.

12 The Chairman. Senator Packwood, I visited with  
13 Senator Heinz about that, and we certainly understand his  
14 obligations and commitments there. I assured him that we  
15 would have this thing where we could bring up an issue and  
16 have it revisited, and then votes taken again. And that  
17 that would be available to him, in case we have to pursue  
18 that.

19 Now, with that in mind, Mr. Lang, are you ready?

20 Mr. Lang. Mr. Chairman, the first subject you have  
21 announced for today is Intellectual Property Rights, which  
22 begins on spreadsheet page 94

23 (Pause)

24 The Chairman. Would you proceed with the discussion of  
25 it?

1 Mr. Lang. Mr. Chairman, the provision that is in S. 490  
2 is an amendment to section 337 of the Tariff Act of 1980.  
3 That is a provision that bars the importation of goods into  
4 the United States that are tainted with an unfair trade  
5 practice if they cause injury within the United States.

6 The provision, which is essentially the same as what  
7 the Administration proposes, is that in cases where the  
8 unfair trade practice is a patent, the injury requirement  
9 would be repealed.

10 Senator Packwood. Would be what, Jeff?

11 Mr. Lang. Would be repealed.

12 Senator Packwood. Thank you.

13 That is also true of copyrights and trademarks, isn't  
14 it, if it is a statutory right?

15 Mr. Lang. Yes, sir, it is. It would be all intellectual  
16 property rights.

17 Senator Packwood. All right.

18 The Chairman. It is my understanding, Mr. Lang, on the  
19 Intellectual Property Rights, that we had some problem with  
20 the effective date, and that there was consideration of  
21 changing that effective date to conform to the House, where  
22 you have investigations underway at the present time, in order  
23 to not complicate those proceedings. Would you address that  
24 point?

25 Mr. Lang. Yes, sir. Under the provision in the Senate

1 bill, the changes would not take effect until 90 days after  
2 the date of enactment. There are a number of companies whose  
3 actions against --

4 The Chairman. You have cases pending, don't you?

5 Mr. Lang. Yes. You have some cases pending against  
6 alleged infringing articles.

7 The Chairman. As I recall there were several --  
8 amongst them, and one I know that has been called to my  
9 attention, is that of Texas Instruments.

10 Mr. Lang. Yes, sir.

11 The House dealt with this problem by making the  
12 effective date of the provision the date of enactment, and  
13 then allowing the International Trade Commission, which  
14 conducts these investigations, to extend the time allowed  
15 under statute for pending cases by three months if they felt  
16 it was necessary in order to implement the provision. As  
17 I understand it, what you are suggesting is that you  
18 substitute the House effective date for the effective date  
19 in S. 490.

20 The Chairman. Frankly, I don't know of opposition to  
21 that, and I think that would keep us from interfering in  
22 the negotiations taking place.

23 I would ask for any questions concerning that.

24 Yes, Senator Rockefeller?

25 Senator Rockefeller. Mr. Chairman, I notice that in the

1 injury test, patents, trademarks and copyrights are included  
2 but not trade secrets. I wondered if there was any particular  
3 reason for that in the exemption.

4 Mr. Lang. They are included in S. 490. However,  
5 Senator, our understanding is that the Administration has  
6 some reservations about including both common law trademarks  
7 and trade secrets within the scope of the amendment  
8 withdrawing the injury requirement, because they are not  
9 statutorially-mandated protection of intellectual property  
10 rights. But S. 490 does currently treat them as within the  
11 scope of the amendment to section 337. So, in those cases,  
12 if S. 490 is approved, there would be no requirement to  
13 demonstrate injury.

14 Senator Rockefeller. They would come under the  
15 exemption?

16 Mr. Lang. Yes, sir.

17 Senator Rockefeller. That is by implication, or by  
18 fact?

19 Mr. Lang. No, it is specific. And you can find that  
20 on spreadsheet page 94 in the right-hand column, the third  
21 item down, which begins, "...the same as H.R. 3, except..."  
22 and you will see in the fourth or fifth line, "...common  
23 law, trademarks, and trade secrets."

24 Senator Rockefeller. I see it. Thank you.

25 The Chairman. Now, back to the amendment -- the



1 technical amendment, in effect -- that I am suggesting,  
2 in conformance with the House, the reason for giving the  
3 90-day delay in the Senate bill was to give the ITC a  
4 chance to adjust to ongoing cases, the new standards. But  
5 I believe the House bill better addresses that, by giving  
6 the ITC discretion as to when it is appropriate to adjust.  
7 I would therefore urge its adoption, unless there are  
8 further questions concerning it.

9 Are there question?

10 (No response)

11 The Chairman. Well, all in favor of the amendment, make  
12 it known by saying Aye.

13 (Chorus of Ayes)

14 The Chairman. Opposed?

15 (No response)

16 The Chairman. The amendment is carried.

17 Senator Mitchell, you had an amendment that you wanted  
18 to offer.

19 Senator Mitchell. Yes, I do, Mr. Chairman. It would  
20 deal with the problem of Intellectual Property Rights, and  
21 it would establish a procedure whereby the Trade  
22 Representative would identify a list of priority foreign  
23 countries which deny adequate and effective protection of  
24 intellectual property rights or fair market access to U.S.  
25 intellectual property companies. It would require the USTR

1 to initiate proceedings under section 301 to investigate  
2 any unfair act or policy and make recommendations to the  
3 President of a possible action.

4 This is an amendment that is intended to decrease  
5 barriers to intellectual property rights and to deal with the  
6 problems of piracy by foreign countries.

7 Senator Packwood. May I ask a question?

8 The Chairman. Yes, of course, Senator Packwood.

9 Senator Packwood. As I understand, George, what you have  
10 got is basically an accelerated 301 process, although the  
11 President is not compelled to mandatorially retaliate.

12 Senator Mitchell. That is correct.

13 Senator Packwood. I am inclined to agree with your  
14 amendment. I hope it doesn't cause other industries to say,  
15 "Well, why don't we get an accelerated process?" But I  
16 think what you have done in this particular area better lends  
17 itself to an accelerated process than in many other areas;  
18 this at least is a more provable area than some of the other  
19 ones we have to deal with.

20 Senator Mitchell. It is. And in addition, such  
21 properties tend to be such that their value may decline  
22 rapidly with time, as they are by definition "intellectual  
23 properties"; and I think the current process simply doesn't  
24 lend itself to dealing with their problems in a timely  
25 fashion.

1 The Chairman. So, if you don't get an agreement within  
2 six months, then the President is authorized to take remedial  
3 action. Is that right?

4 Senator Mitchell. That is correct.

5 The Chairman. And withdraw trade benefit agreements or  
6 GSP.

7 Senator Mitchell. That's right.

8 In the first instance, with respect to the investigation,  
9 the U.S. Trade Representative may prefer such investigations  
10 under two circumstances: If he determines that the foreign  
11 country in question has entered into good-faith negotiations,  
12 he can make the judgment that they may defer the  
13 investigations; or, if he determines that the investigation  
14 itself would be detrimental to U.S. economic interests,  
15 the national economic interests of our country. So, you  
16 have several steps along the way that provide for not  
17 proceeding under certain defined circumstances.

18 The Chairman. Are there further questions?

19 (No response)

20 The Chairman. My understanding is that Senator Bradley  
21 is on the way and wants to offer a provision on the  
22 amendment.

23 Mr. Holmer. Mr. Chairman?

24 The Chairman. Yes?

25 Mr. Holmer. While we wait for him --

1           The Chairman. Fine, Mr. Holmer; we would be glad to  
2 have your comments.

3           Mr. Holmer. I just wanted to raise a couple of the  
4 concerns that we have with respect to the amendment: We  
5 strongly support the objective behind it, but it is difficult  
6 for us to determine what it is that is broken with respect  
7 to current law that needs to be fixed. We see the  
8 U.S. Trade Representative and this Administration having the  
9 most aggressive program in the history of the country to go  
10 after intellectual property rights' barriers in foreign  
11 countries.

12           The biggest concern we have is, when you establish  
13 what the priority countries are, in terms of the countries  
14 that the USTR wants to go address, then when we try to go  
15 negotiate with countries that have not been designated as  
16 "priority countries," it is a pretty ready argument for them  
17 to respond: "Well, gosh, you have already indicated publicly  
18 that we are not a priority country as far as you are  
19 concerned," and it does make it more difficult for us to be  
20 able to negotiate with them.

21           We are pleased that there is no mandatory retaliation  
22 that is included at the end of the day with respect to this  
23 amendment; but we do think that there are going to be some  
24 instances, by stigmatizing some countries as being  
25 "non-priority countries," that it may have a counterproductive

1 impact.

2 Senator Packwood. On the other hand, they may prefer not  
3 to be stigmatized as "priority countries."

4 Mr. Holmer. Exactly.

5 Senator Mitchell. Well, the response to the question  
6 of what is broken is, as I suggested earlier, that the  
7 uniquely short lifespan of the products involved when you  
8 are dealing with intellectual property means that the  
9 lengthy procedures under the existing 301 frequently result  
10 in no action prior to the time the damage has already  
11 occurred.

12 Senator Baucus. Would the Senator yield? I was just  
13 wondering, if you could rank on a chart the number of  
14 countries that have significant intellectual copyright  
15 infringement, and overlay on top of that the countries that  
16 would be ranked as priority countries, would there be a  
17 correlation there, or would there not be a correlation?

18 Mr. Holmer. Well, there would be some correlation.

19 Senator Baucus. How much of a correlation?

20 Mr. Holmer. The problem we have right now is, the  
21 U.S. is in a relative minority of countries in the world in  
22 terms of strong protection of intellectual property rights,  
23 and we are trying -- with a fair amount of success -- in  
24 dragging along the rest of the world.

25 Senator Baucus. You are not answering my question. I am

1 trying to get at the point that Senator Packwood and you  
2 yourself raised; that is, in some cases you are dealing with  
3 countries that are nonpriority countries, that in fact some  
4 countries do not want to be priority countries.

5 You both have legitimate, good points. I am trying to  
6 find out where is the resolution.

7 So, again, what is the correlation between countries  
8 that are significant infringers on the one hand, and countries  
9 that would be priority countries under this amendment?

10 Mr. Holmer. Well, my guess is that if you had to list  
11 the countries that we would regard as being infringers, it  
12 would be I would guess well over 20 or 30 countries.

13 Senator Baucus. I said "significant" infringers.

14 Mr. Holmer. I guess it is in the eye of the beholder.  
15 I could easily get you a list of at least 20 with whom we  
16 have --

17 Senator Baucus. Now, would those 20 be priority  
18 countries, or would they not be?

19 Mr. Holmer. They are certainly priority countries for  
20 those industries that have had problems with respect to  
21 access to that market, or problems with respect to  
22 intellectual property protection.

23 Senator Baucus. It sounds pretty mushy to me.

24 Well, thank you.

25 Senator Packwood. Let me ask you, George, if I

1 understand what you hope the amendment intends. Secretary  
2 Holmer indicates you have got quite a number of countries  
3 that sort of violate this, 20 or 30. You are hoping that  
4 maybe he can say, "Here are the top seven or eight that  
5 constitute 90 percent of the violations, and those are  
6 priorities"?

7 Senator Mitchell. Right.

8 Senator Baucus. Well, is that the case?

9 Senator Packwood. Well, I don't know.

10 Senator Mitchell. There is no specific number.

11 Senator Packwood. No, no -- I understand that. But  
12 so, you sort of leave it to the USTR's judgment, the  
13 Administration's judgment, as I understand it, and they say,  
14 "All right, these are the top seven or eight that  
15 constitute the overwhelming bulk of intellectual property  
16 violations." And I think what Mr. Holmer is saying is, if  
17 you happen to be one of the other 15 or 20 that are left  
18 out, maybe then they would come to you and say, "Well, we  
19 are not important; we are not even on your priority list."  
20 I don't know if that is what your fear is or not.

21 Senator Mitchell. It is the hope that the countries  
22 involved will alter their behavior so as not to be included  
23 on the priority list, and therefore much of the intent will  
24 be accomplished prior to that time.

25 Second, there is no limited number; so they can identify

1 as many as they want. And if you are inclusive in it, you can  
2 get much of the problem dealt with, both through the  
3 behavior prior to the designation and in the designation  
4 process itself.

5 Senator Baucus. Why do we want to even name the  
6 countries that are priority countries? It seems to me we want  
7 to speed up the process and keep them guessing.

8 Mr. Holmer. And speed it up for everybody.

9 Senator Baucus. Yes. Why can't we do that? Why do we  
10 want to name these countries and get those off the hook?

11 Senator Mitchell. Well, because there is a difference  
12 in the volume and the intensity of activities in various  
13 countries.

14 Senator Baucus. But leave it to the USTR to figure  
15 out which ones those are, and keep them guessing a little,  
16 then go after those countries, it seems to me. Why name  
17 them?

18 Senator Mitchell. In the first place, as Senator  
19 Packwood's question suggested, there are a relatively small  
20 number, with respect to which the total volume of the  
21 problem is far greater. If in fact you have got the matter  
22 resolved with respect to them, you would be resolving most  
23 of the problem and you would have it dealt with.

24 So, I think the idea is that, by indicating that you  
25 are going to have a designated list, you will affect the



1 behavior of all prior to the time of designation. If you  
2 don't have any point at which there will be designation,  
3 then presumably you are not going to have any response with  
4 anybody; as people will make an effort to stay off the list,  
5 if there is to be no list, then there is no effort that  
6 you are going to get from them.

7 The Chairman. And the point that you put the worst  
8 offenders out there on the list, if they don't get off of it  
9 ahead of time, and you concentrate on and emphasize that.

10 Well, Senator Bradley, do you have a comment?

11 Senator Bradley. Yes, Mr. Chairman.

12 As I understand the amendment, there are two tracks  
13 here. The National Trade Estimate identifies the list of  
14 foreign countries, and the first track is those who deny  
15 adequate and effective protection of intellectual property  
16 rights -- in other words, they don't have adequate protection  
17 of intellectual property rights in the country.

18 The second track is for those countries that deny fair  
19 and equitable market access to U.S. companies that rely on  
20 intellectual property rights.

21 Now, I think there is a real distinction between these  
22 two. I think that the first one is justified -- those  
23 countries that deny intellectual property rights. The  
24 second one, in my view, is not justified, particularly in  
25 light of the rest of this bill. We have now in the bill a

1 streamlined 301 procedure, where there is a 19-month period.  
2 And for actions that are unjustified, a violation of treaty,  
3 it is a mandatory retaliation. For those that are unreasonable,  
4 unreasonable, basically unfair practices, it is not mandatory.  
5 And what this amendment does is to short-circuit the 19-month  
6 period to only six months for a particular industry -- that  
7 is, an industry that relies on intellectual property rights  
8 and says, "If you want market access, you can get a  
9 determination and retaliation within six months; but if any  
10 other industry wants market access, it will take them up to  
11 19 months to get a decision." In my view, this is a kind of  
12 special exception for a particular industry.

13 This is not to say that it might not be merited, but  
14 it just means there will be other industries that will now  
15 be coming in to attempt to riddle what we have done  
16 generically on 301.

17 And this is again to say that the first provision here,  
18 if a country denies intellectual property rights, denies an  
19 adequate and effective protection of intellectual property  
20 rights -- in other words, if County-X is counterfeiting or  
21 not protecting U.S. trademarks, or whatever -- then they  
22 should get an expedited procedure. But if a company that  
23 has intellectual property rights simply can't get market  
24 access, I personally don't see why that company should be  
25 given special treatment while another country or industry

1 that doesn't have property rights is not given an expedited  
2 procedure.

3 Senator Mitchell. Mr. Chairman, may I respond to that?

4 The Chairman. Senator Mitchell.

5 Senator Mitchell. There is not "an" industry involved.  
6 It is not sector- or industry-specific. It deals with a  
7 product or a process which by definition has a very limited  
8 lifespan in terms of value, and which says that the 19-month  
9 or the ordinary process under 301 is simply inadequate  
10 because the economic lifespan of a film or a record or a  
11 computer software program may be measured in just a few  
12 months.

13 It seems to me that, say we cannot make a distinction  
14 based on a real problem of an industry for fear that others  
15 may make the same argument, is to suggest that we are  
16 unable of making any discerning judgment with respect to  
17 problems in our society. And the answer to anybody else that  
18 comes in is that, "If you don't have a unique circumstance,  
19 which doesn't have this particular problem, then you are  
20 not entitled to this relief." That is the entire process  
21 there of making discerning judgments.

22 In this case it is not a particular industry, it is not  
23 a particular product; it is by definition an intellectual  
24 property which spans the entire economy -- creative arts,  
25 industrial manufacturing, publishing, computer software,

1 process patents, copyrights, trademarks -- that is the  
2 defining mechanism.

3 So, what we are doing is recognizing that, because of the  
4 possibly very short economic lifespan of this particular  
5 product, you have to have some kind of expedited procedure;  
6 otherwise, it is inadequate.

7 Second, in terms of who tracks, it is a single provision,  
8 a single provision which provides for action under either  
9 of these alternatives.

10 Senator Roth. Mr. Chairman?

11 The Chairman. Senator Roth.

12 Senator Roth. I would just like to reinforce what  
13 Bill Bradley said. I have the same concern.

14 First of all, we have limited resources; whether it is  
15 in the Department of Commerce, or whether it is the USTR  
16 that is involved in the matter, our resources are unfortunately  
17 not as extensive as I think are necessary. And I think it  
18 would be a mistake -- and I might say this as one who has  
19 been a principal sponsor of intellectual property rights,  
20 so I feel very strongly about these provisions -- it seems  
21 to me it would be making a mistake giving this kind of  
22 priority, because what could happen is that other cases of  
23 equal importance, of a different nature, might have to be put  
24 on the back table.

25 I think we have to have some confidence in the

1 Administration, whoever that may be, that they are going to  
2 exercise the best judgment. For that reason, I think it is  
3 a mistake to put one set of problems on a fast track.

4 Senator Packwood. I have a question, Mr. Chairman.

5 The Chairman. Yes, Senator Packwood.

6 Senator Packwood. George, what is it you are exactly  
7 trying to achieve? Maybe I am missing the point. Is it  
8 access of intellectual properties in the foreign countries,  
9 or to stop them from violating our intellectual properties  
10 by illicit copying and selling things here? What is the  
11 motive?

12 Senator Mitchell. Both.

13 Senator Packwood. You are talking about a short  
14 duration, and I am not sure I understood that.

15 Senator Mitchell. Well, the economic value of a film  
16 or a record or a computer software program may decline very  
17 sharply in time; it is current; it can become quickly dated.  
18 The existing procedures, including the procedure that Bill  
19 mentioned of 19 months, may be such that it has been rendered  
20 valueless during that period. So, there is no meaningful  
21 protection if you are going to wait that long a period of  
22 time.

23 But the whole objective here is to encourage people to  
24 discontinue both of the practices suggested: One, prohibiting  
25 access; and the second is pirating.

1           So I think that what you are saying is that you are  
2 eliminating a major part of it. You can't say, "Well, we are  
3 for doing it," and then say, "But we are not going to provide  
4 this," because then you are really not accomplishing it and  
5 it is really just lip service.

6           So I think what we are trying to do, in what I think is  
7 a very moderate and responsible way, is to encourage the  
8 Trade Representative to identify those countries that are  
9 the worse offenders and to seek to engage them in good-faith  
10 negotiations to bring about a reduction in the activities  
11 which no one disputes -- no one disputes -- are harmful to our  
12 trade interests and violate either our laws or our concept  
13 of their inequitable market access.

14           Senator Bradley. Mr. Chairman?

15           The Chairman. Yes. Senator Bradley.

16           Senator Bradley. Let's say I'm a farmer, and I want  
17 to get market access. I don't have intellectual property  
18 rights here. I certainly have a time-sensitive product. But  
19 I am subject to 19 months, versus someone who has  
20 intellectual property rights and gets a six-month duration.  
21 Say I want to bid on a construction project. It is moving.  
22 I have a 19 months wait; whereas intellectual property  
23 rights has a six-month wait.

24           I think what we are doing here is opening up the 301  
25 procedure to a series of exceptions; and that is not to

1 not to say that the first part of this amendment is not  
2 important -- I think it is important. Those countries that  
3 deny intellectual property rights should get hit with an  
4 expedited procedure. But those countries with whom we have  
5 problems on market access, or a sector has problems on market  
6 access, I think they don't deserve the expedited procedure.

7 If we give it to intellectual property rights, we are  
8 then going to face a series of amendments that will make the  
9 argument on agriculture, that will make the argument on  
10 construction projects, and any number of other areas that  
11 will be viewed or at least termed time-sensitive.

12 So Mr. Chairman, at the appropriate time I would like to  
13 call for a division of the Mitchell amendment.

14 The Chairman. Yes, that will be fine. But let me ask  
15 a question of Senator Mitchell.

16 As I understand it, that 19 months only applies to  
17 trade agreement violations. So we are talking about  
18 something different here in the question of the timeliness  
19 or the life of the product.

20 Senator Mitchell. That is correct, Mr. Chairman. This  
21 is a situation where not only are there no agreements but  
22 what we are saying is that they don't have to proceed with  
23 section 301 investigation if the USTR determines that that  
24 foreign country is simply negotiating in good faith.

25 So, as to the business of agricultural products, you

1 can't duplicate a tomato and sell it as the original  
2 product.

3 There may be other valid arguments; but, to suggest that  
4 we should deny something which has a valid argument on the  
5 grounds that someone else may be able to make a valid  
6 argument, it seems to me to deny ourselves any concept of  
7 making independent decisions or judgments based upon the  
8 validity or lack of a validity of a particular case.

9 If we are to say that we never are to legislate because  
10 it might establish a precedent for something else, then we  
11 might as well banish the notion of legislating.

12 If someone else can make a good case that they have a  
13 particular circumstance that requires relief, that they are  
14 now being denied access or being denied the protection of  
15 our laws, then we ought to be giving them help. We ought  
16 not to be denying it to someone else on the grounds that  
17 there may be a later request that is valid.

18 So, I think we ought to evaluate each case on its  
19 merits. It seems to me there has been no suggestion here  
20 that this case does not have merit; the only suggestion that  
21 has been made is that someone else may come in and make a  
22 similar argument. If they do, we ought to evaluate that case  
23 at that time.

24 It seems to me that we have here a situation where there  
25 is, in my judgment, a distinguishing fact and one which



1 renders the current mechanism -- and even the mechanism  
2 in this bill were it to become law -- as a nullity as to  
3 this particular property. It makes relief, for practical  
4 purposes, unavailable.

5 Senator Daschle. Mr. Chairman?

6 The Chairman. Yes.

7 Senator Daschle. If the Chairman would recognize me, I  
8 would like to ask George a question, if I could, with regard  
9 to the USTR's responsibility with regard to the deferral of  
10 this whole process.

11 As I understand your amendment, the USTR would be  
12 allowed to defer the implications of this amendment if it  
13 were detrimental economically -- to either country, or  
14 simply to our country?

15 Senator Mitchell. To our country.

16 Senator Daschle. And second, if in the opinion of the  
17 USTR the other country were making progress with regard to  
18 resolving the problem that you are addressing.

19 Senator Mitchell. Yes.

20 Senator Daschle. Could you elaborate on that? It seems  
21 to me that that really is the out for any real concern here;  
22 that if in the opinion of the USTR he has the authority to  
23 make a unilateral decision here, it is a very practical  
24 approach to trying to address the issue. Could you address  
25 that?



1 et cetera, and it will riddle the approach that is laid out  
2 in this bill. That is my concern.

3 Again, I believe that countries that deny intellectual  
4 property rights should be hit and that we should have an  
5 expedited procedure. But if the question is market access  
6 only, I think that this is the first exception to the rule  
7 that we have carefully worked out in the committee, and that  
8 it will be followed by other exceptions. And I think that  
9 the other exceptions will be difficult to turn down, because  
10 the arguments will be similarly compelling.

11 The Chairman. Are you prepared to offer your division?

12 Senator Bradley. Yes. I would offer a division of the  
13 Mitchell amendment requiring a vote on the first and the  
14 second -- separate votes on the first and the second -- or  
15 at least a vote on the second if no one objects to the first.  
16 I don't object to the first.

17 The Chairman. All right.

18 Senator Packwood. Tell me, Bill, what do you mean by  
19 "first" and "second," so I can understand what I am voting on.

20 The Chairman. Mr. Lang, would you cite the first  
21 section, and then the second section?

22 Mr. Lang. As I understand it, Senator Bradley would have  
23 the Mitchell amendment divided into two parts. The first  
24 part would apply the amendment to foreign countries that deny  
25 adequate and effective protection of intellectual property

1 rights. And the second part would apply the Mitchell  
2 amendment to countries that deny fair market access to U.S.  
3 products imbued with intellectual property.

4 The Chairman. Would you have any objections, then,  
5 Senator Bradley or Senator Mitchell, if we go ahead and vote  
6 on the first part, then have a vote on the second part? Is  
7 that agreeable?

8 Senator Bradley. Yes.

9 Senator Mitchell. Yes.

10 The Chairman. Are there any further questions?

11 (No response)

12 The Chairman. Then once again, the motion is presented  
13 that we vote on the first part of the Mitchell amendment,  
14 which has just been stated by Mr. Lang.

15 Are there other questions concerning it?

16 (No response)

17 The Chairman. All in favor of that motion stated make  
18 it known by saying Aye.

19 (Chorus of Ayes)

20 The Chairman. Opposed?

21 (No response)

22 The Chairman. And Senator Riegle, by proxy, will be  
23 listed as voting for it.

24 All right now, the motion is on the second part of the  
25 amendment by Senator Mitchell. Are there further questions

1 about it before we vote?

2 (No response)

3 The Chairman. If not, all in favor of the second  
4 part of Senator Mitchell's amendment which deals with market  
5 access make it known by saying Aye.

6 (Chorus of Ayes)

7 The Chairman. Opposed?

8 (Chorus of Nays)

9 The Chairman. The Chair is in doubt. May we have a  
10 show of hands?

11 All in favor of the motion, raise your hands --  
12 and that is in favor of Senator Mitchell's second part.

13 (Show of hands)

14 The Chairman. The count is one-two-three-four, and  
15 Senator Riegle is five.

16 Senator Armstrong. I would say it is a pretty noisy  
17 group.

18 (Laughter)

19 The Chairman. And Senator Heinz votes Aye, so that is  
20 six.

21 All of those opposed?

22 (Show of hands)

23 The Chairman. One-two-three-four-five. The motion  
24 carries by a vote of six to five.

25 Senator Pryor. Mr. Chairman, may I ask a question?

1           The Chairman. Senator Pryor, yes.

2           Senator Pryor. On the Mitchell amendment -- well,  
3 wait, it passed. Well, in further votes as we go through  
4 this markup, what will be the ultimate rule, Mr. Chairman,  
5 about revisiting an issue should an amendment fail or a  
6 portion of an amendment fail?

7           The Chairman. Senator Pryor, that was stated at the  
8 beginning of the meeting, but we will go through it again  
9 because a number of you were not here at that time.

10           The rule that we agreed on at the early session of  
11 this committee, one of the first meetings of this committee,  
12 was, first, that you could change your vote, or vote, up  
13 until the end of the business day on the day the vote was  
14 taken, and we designate that as 5:30.

15           Now, in addition to that, it has been the general  
16 practice of this committee -- not always as you got into a  
17 tough bill, toward the end we finally locked it up; I can  
18 recall that on the Tax Bill, a good example of that -- that  
19 we will revisit these issues if they are requested by the  
20 members.

21           Now, I reserve the right to change that as we get near  
22 the end if we are having problems finishing up. As I recall,  
23 Senator Packwood did that -- finally had to -- on the Tax  
24 Bill toward the end. He had to lock up the decision so we  
25 could move ahead. But at least for the present, we will have

1 it open to go back and reread these issues and ask for  
2 another vote, if you want it.

3 Senator Pryor. Thank you, Mr. Chairman. I am sorry I  
4 was not here when you first discussed this issue.

5 Senator Baucus. Mr. Chairman?

6 The Chairman. Yes, Senator Baucus.

7 Senator Baucus. As I understand the procedure, then,  
8 when there is a vote, an absent member can, that day, record  
9 his vote?

10 The Chairman. Even if it changes the result.

11 Senator Baucus. Even if it changes the vote?

12 The Chairman. Yes. And we discussed this at the  
13 beginning of this session. That is what we agreed on, and  
14 that has been the practice by a number of the Chairmen --  
15 not always, but generally so. So you can even change the  
16 result, and that would then be announced the next morning.

17 But what I am striving for is a true consensus, so we  
18 know what this committee wants, and that you have throughout  
19 that day to do that.

20 Now, the argument is made that you are going to have  
21 the blandishments of the lobbyists and all that sort of  
22 thing. You have had them already. And if you can't stand  
23 up to that one, you ought not be in this job.

24 Senator Baucus. Mr. Chairman, I am not going to do  
25 anything to stand in the way, but it is my personal view

1 that a vote recorded after the result has been announced,  
2 recorded later that day, should not change the result, that  
3 we should come back and vote again in open session, if we  
4 wanted to; but I am not going to stand in the way of it.

5 The Chairman. Well, Senator, I would have to differ  
6 with you. What I am trying to do -- there are so many  
7 demands on the time of the Senators to be at other  
8 committees that I don't want any of us standing around here  
9 waiting until they see somebody leave the room and then  
10 call for their amendment. I want to be able to say that  
11 for the rest of that day that that member who had to leave  
12 and had other demands on his time can register his vote,  
13 even if it means a change of that vote.

14 Senator Bradley. Mr. Chairman, if I could, what was  
15 the vote on the Mitchell amendment?

16 The Chairman. Six to five for the Mitchell second  
17 section of the amendment.

18 I understand there is doubt about the count,

19 (Laughter)

20 The Chairman. So, if there is, we will go through it  
21 again and we will just call the roll. I don't want any  
22 question about this thing.

23 Senator Matsunaga. Mr. Chairman?

24 The Chairman. Yes, Senator Matsunaga.

25 Senator Matsunaga. Before we proceed on the vote:



1 . Provided that a quorum was present at the time that the vote  
2 was taken, absent members may come to vote. Is that it?

3 The Chairman. No.

4 Senator Matsunaga. There is no provision for a quorum?

5 The Chairman. No, not for an amendment.

6 Senator Matsunaga. At the time that a vote is taken,  
7 there need not be a quorum?

8 The Chairman. Let me check that one.

9 Mr. Wilkins. The quorum for doing business in the  
10 committee is initially seven. The committee may continue to  
11 do business with as few as five members, once seven have  
12 come.

13 The Chairman. That is right. Good. So, we don't need  
14 the traditional 11 like we just had to vote on the nomination.

15 All right. Let us have a vote on the second part of the  
16 Mitchell amendment.

17 Senator Baucus. As I understand it, then -- I hope.  
18 I am not causing problems here -- votes during the day don't  
19 mean anything.

20 The Chairman. Oh, yes, they do. Not so, at all.

21 (Laughter)

22 Senator Baucus. And all that counts the next morning  
23 as to what happened the previous day is --

24 The Chairman. Senator Baucus, we have been through  
25 this repeatedly in this committee, and it has happened to us.

1 I can cite you some specific instances where votes were  
2 changed. And we had that.

3 But what I am asking for is to move the business of  
4 this committee along, and that we develop a true consensus of  
5 what the feeling of the members happens to be.

6 You look at this. We have 11 or 12 members. But time  
7 and time again we will not have that, because of the demands  
8 on the time of these members. I just don't want to be in the  
9 situation where we say, "Well, we have two on the other side  
10 who have just left the room" for whatever reason, "so I  
11 am going to call for my vote now." Some members are not  
12 above that. So, what I am trying to get is a true reflection  
13 of what a majority of this committee wants, and they have  
14 for the rest of that day to do it.

15 We have done this time and time again in the past,  
16 Senator Baucus.

17 Senator Mitchell. Mr. Chairman, I am sorry Mr. Wilkins  
18 was in doubt -- I wasn't on the previous vote, and I didn't  
19 think you were.

20 But I would like to ask a procedural question. It is  
21 obviously a very close vote. What you have here is  
22 Senator Bradley trying to strike one provision out of my  
23 amendment.

24 Senator Bradley. No.

25 Senator Mitchell. It is single-fold, and is not the

1 proper vote on a motion by Senator Bradley to delete a  
2 provision that is in this amendment?

3 Senator Bradley. Mr. Chairman, I did not propose a  
4 motion to strike or to delete; I proposed the division of the  
5 amendment into two votes. We have already gone through half  
6 of the division. We voted on the first half.

7 Senator Mitchell. Actually, we voted on both.

8 The Chairman. We voted on both.

9 (Laughter)

10 Senator Mitchell. Now that you mention it.

11 The Chairman. But I understood there was some question.

12 Senator Packwood. Mr. Chairman?

13 The Chairman. Yes?

14 Senator Packwood. I think you could probably resolve  
15 it just by calling the roll. Because if we are going to  
16 ever follow the theory that you can change your vote or come  
17 back, that's all right; just vote again. Sure.

18 The Chairman. Well, if there is a question on this,  
19 let us get it done again. We are talking now about the  
20 second half of that amendment. Let me ask you, on procedures  
21 just to be sure we are right, when we are voting on the  
22 second half, and there is a division, is it a question to  
23 delete or is it a vote on the second half and therefore  
24 requiring an affirmative vote?

25 Mr. Wilkins?

1 Mr. Wilkins. Mr. Chairman, my interpretation would be,  
2 on a division, that it would require a majority vote to  
3 adopt the second division of the amendment.

4 The Chairman. That is my understanding. All right.

5 Now, the vote is on the second half, and this is the  
6 market-access provision. We will call the roll.

7 The Clerk. Mr. Matsunaga?

8 (No response)

9 The Clerk. Mr. Moynihan?

10 (No response)

11 The Clerk. Mr. Baucus?

12 Senator Baucus. Aye.

13 The Clerk. Mr. Boren?

14 (No response)

15 The Clerk. Mr. Bradley?

16 Senator Bradley. No.

17 The Clerk. Mr. Mitchell?

18 Senator Mitchell. Aye.

19 The Clerk. Mr. Pryor?

20 Senator Pryor. No.

21 The Clerk. Mr. Riegle?

22 The Chairman. Aye, by proxy.

23 The Clerk. Mr. Rockefeller?

24 Senator Rockefeller. No.

25 The Clerk. Mr. Daschle?

1 Senator Riegle. Aye.

2 The Clerk. Mr. Packwood?

3 Senator Packwood. No.

4 The Clerk. Mr. Dole?

5 (No response)

6 The Clerk. Mr. Roth?

7 Senator Roth. No.

8 The Clerk. Mr. Danforth?

9 (No response)

10 The Clerk. Mr. Chafee?

11 (No response)

12 The Clerk. Mr. Heinz?

13 Senator Packwood. Aye.

14 The Clerk. Mr. Wallop?

15 (No response)

16 The Clerk. Mr. Durenberger?

17 Senator Durenberger. Mr. Chairman, I have the advantage  
18 of coming without benefit of all of the debate and discussion;  
19 I will vote no.

20 (Laughter)

21 The Clerk. Mr. Armstrong?

22 Senator Armstrong. No.

23 The Clerk. Mr. Chairman?

24 The Chairman. Aye.

25 Senator Matsunaga. Mr. Chairman, unaccustomed to my name

1 being called first, I didn't recognize my name being called.  
2 I vote Aye.

3 The Clerk. You vote Aye?

4 Senator Matsunaga. Yes.

5 Mr. Wilkins. The vote is seven to seven.

6 The Chairman. As you know, that vote is left open for  
7 the rest of the day.

8 All right.

9 Senator Rockefeller. Mr. Chairman?

10 The Chairman. Yes.

11 Senator Rockefeller. Might I revisit the matter of a  
12 moment ago about trade secrets?

13 The Chairman. Yes, of course. Go ahead.

14 Senator Rockefeller. In consultation with committee  
15 staff, it appears that in fact trade secrets are not included  
16 in the injury test under 337. They are included in all the  
17 other provements, intellectual property provements, with  
18 respect to 337. It is not clear to me why trade secrets  
19 should be given provements -- treatments under everything  
20 else but not under the injury test -- and I would like to  
21 see them included in that injury test. I would just ask  
22 the committee staff's interpretation of that.

23 The Chairman. Mr. Lang, would you comment on that?

24 Mr. Lang. Senator Rockefeller, we did misspeak the  
25 first time you asked the question. On reviewing the

1 statutory language, you are correct: The trade secrets and  
2 other nonstatutory intellectual property rights would not be  
3 covered by the amendment removing the injury test from  
4 section 337 investigations.

5 Senator Rockefeller. If those were to be included,  
6 Mr. Chairman, how would I proceed to do that? If trade  
7 secrets were to be included in the injury test, specifically?

8 The Chairman. Then I assume you would propose an  
9 amendment for that purpose. Would you like to offer that  
10 at this time?

11 Senator Rockefeller. I don't, because I simply noticed  
12 it when I came in this morning. But it would be just to  
13 include that. There is an interrelationship between trade  
14 secrets and other intellectual property matters, and it would  
15 be very difficult to apply one without the other, I would  
16 think; and I would just ask that the trade secrets be  
17 included in that list.

18 The Chairman. Mr. Holmer, would you like to comment on  
19 that?

20 Mr. Holmer. Yes. Mr. Chairman, as a non-intellectual-  
21 rights expert, what we are talking about here are things like  
22 for example, the precise temperature that a patented process  
23 is used. And the reason why we did not include it in our  
24 bill, and the reason why it was not included in the bill as  
25 it was passed by the House, is that trade secrets -- there is

1 really no injury to the public good that is being talked about  
2 here. For example, if you have a protection with respect to  
3 patents, you really are denying access to that patent to the  
4 public; whereas, with respect to trade secrets, it is  
5 something that is secret anyway and not available to the  
6 public. It is not what is considered a federally-recognized  
7 intellectual property right; it is governed by State law, and  
8 there is no consistency among the State laws. And that is  
9 why the Administration proposed that it not be included, and  
10 why the House also did not include it.

11 Senator Packwood. Mr. Chairman?

12 The Chairman. Senator Packwood.

13 Senator Packwood. As I read 490, you have made a  
14 distinction between statutory and nonstatutory. And, perforce,  
15 statutory is public -- the patents, the copyrights, the  
16 trademarks. The trade secrets are deliberately not public. I  
17 think they would be probably unwisely lumped together with  
18 the public protections.

19 Senator Rockefeller. Mr. Chairman, my view on that would  
20 be that they are very much a fact of intellectual property --  
21 there is a direct and absolute interrelationship. I understand  
22 the State law aspect of it, but we are involved here in the  
23 consideration of intellectual property of which trade secrets  
24 are an integral part.

25 The Chairman. Are there further comments?



1 (No response)

2 The Chairman. Senator, do you have an amendment that  
3 you are offering?

4 Senator Rockefeller. Simply that the trade secrets would  
5 be included in the injury test under 337.

6 The Chairman. Mr. Lang, do you have further comments?

7 Mr. Lang. No, sir.

8 The Chairman. And the amendment is now offered?  
9 Senator, you are offering the amendment?

10 Senator Rockefeller. Yes.

11 The Chairman. All right.

12 You have the amendment before you. All in favor make  
13 it known by saying Aye.

14 (Chorus of Ayes)

15 The Chairman. Opposed?

16 (Chorus of Nays)

17 The Chairman. There is a question. All in favor make  
18 it known by a show of hands.

19 (Showing of hands)

20 The Chairman. Opposed?

21 (Show of hands)

22 The Chairman. The amendment fails.

23 (Continued on following page.)

24

25

1           The Chairman. On the trade adjustment assistance, there  
2 are a couple of technical amendments that the chairman would  
3 like to offer. One of them is an amendment to provide  
4 borrowing authority for the Trade Competitive Trust Fund. This  
5 is not unique to this particular fund.

6           As I recall, we did that for the Superfund, where it  
7 might run short for a period of time, and we allow the  
8 borrowing of it, and then we allow the adjustment in the  
9 tax in the following year to try to make up and pay off  
10 the amount of money borrowed.

11          Senator Matsunaga. What page is he on in the  
12 spreadsheet?

13          Mr. Lang. You are now in the Trade Adjustment Assistance  
14 part of the spreadsheet. It begins on spreadsheet page 47.

15          The financing parts of the program are reflected,  
16 beginning on spreadsheet page 50. And under the program  
17 set up in the Senate bill, a trust fund is created, funded  
18 by a duty on imports that is capped at one percent ad  
19 valorem. In fact, the CBO estimate suggests that a much  
20 smaller duty will be sufficient to fund the program; between  
21 0.5 and .1 percent ad valorem would be sufficient to fund  
22 the program in its first year.

23          As I understand it, the chairman's amendment would  
24 simply assure that the fund was always filled up from the  
25 import duty rather than from general revenues so that, if in

1 any year the Treasury's estimate as to the level of the import  
2 duty necessary to meet the obligations of the program were  
3 insufficient, then in the next year the import duty could  
4 be adjusted so as to repay the general fund what had been  
5 borrowed to provide benefits under the program.

6 The Chairman. The point being, as you stated, that  
7 what we are seeking is that the import duty always pays  
8 for the benefits. Senator Packwood?

9 Senator Packwood. Mr. Chairman, I have misgivings about  
10 the import fee. We started down this road last year in  
11 the reconciliation on the tax bill regarding an import fee  
12 for the Customs Service, as I recall. Now, we are going to  
13 go down this road for an import fee for trade adjustment  
14 assistance, and I am not sure how broadly the imagination  
15 can conjure up other social obligations or functions of  
16 Government that we say are related to trade, one way or  
17 another and, therefore, finance them with an import fee.

18 I would rather finance it just straight out of general  
19 funds, if we say we are going to do it. We are already being  
20 taken before the GATT on the import fee on the Customs  
21 Service, and we will be on this; but I would appreciate  
22 the Administration's view. I am not going to fight this  
23 hard if the Administration doesn't care. I just hate to  
24 see it go down the road.

25 The Chairman. Mr. Woods?

1 Mr. Woods. Yes, sir, thank you. The Customs fee,  
2 which was passed last year, we have always felt would be  
3 allowable under the GATT. Now, that having been said,  
4 we are in GATT dispute settlement on it over the level  
5 of the Customs fee that was levied last year.

6 This import surcharge, however--as I think the  
7 committee recognizes--would violate our current GATT  
8 obligations, and that is the reason why you have had a  
9 two-year period to negotiate--for us to negotiate--in the  
10 GATT to allow the GATT to permit duties, taxes, and fees  
11 on top of a bound tariff to cover this issue.

12 The thing that we would ask the committee to remember  
13 is that these kinds of surcharges, if they are allowed,  
14 cut both ways. To the degree that our trading partners  
15 would like to fund their unemployment insurance programs  
16 or their unemployment programs out of duties on American  
17 exports, that would be a major concern for us if we are  
18 to enter into such a negotiation in the GATT to make this  
19 surcharge legal.

20 Senator Daschle. Mr. Chairman?

21 The Chairman. Senator Daschle?

22 Senator Daschle. In that regard, I just have a question  
23 of Mr. Woods. It is my understanding, and maybe an error,  
24 that other countries are currently funding adjustment  
25 assistance through fees of this kind. Are there no other

1 instances in which that is done?

2 Mr. Woods. We are not aware of any. We are not aware  
3 of any. Other countries may earmark some of their tariffs  
4 for such a program, but that would be different. That is  
5 not a special charge on top of tariffs otherwise found in  
6 the GATT.

7 Senator Daschle. In other words, revenue that is  
8 generated in some form selected from imported products in  
9 other countries is currently utilized to provide for  
10 adjustment assistance. Is that correct?

11 Mr. Woods. No, I don't know that. I would say, however,  
12 that that would be legal under the GATT, to earmark funds  
13 that are already bound duties. This proposal is on top  
14 of current duty binding. It is a surcharge on top of  
15 current duty binding. We take our funds for this purpose  
16 and they go into general revenues.

17 Senator Bradley. Mr. Chairman?

18 The Chairman. Yes?

19 Senator Bradley. Just to suggest to Mr. Woods that  
20 this is not unemployment insurance.

21 Mr. Woods. I understand that.

22 Senator Bradley. This is money used for training, for  
23 upgrading of skills; and to imply that it is unemployment  
24 insurance, financed out of this small tariff, misses the  
25 direct relation between the tariff and the need for adjustments

1 and adjustment assistance in order to keep the trading  
2 system open. Furthermore, the argument is that you take it  
3 to GATT because you believe that that modification--some  
4 small tariff that is used for adjustment--facilitates an  
5 open trading system and is the counterweight to an alternative  
6 which is much more dangerous, sector by sector protection.

7 And the fact of the matter is that, unless you can  
8 deal with the worker directly, you are going to get  
9 protection; and a number of people believe that this is even  
10 GATTable and that the whole system will be better off having  
11 pursued the case. That is why you take it to GATT.

12 Senator Roth. Mr. Chairman?

13 The Chairman. Yes, Senator Roth?

14 Senator Roth. Mr. Chairman, this is my provision, and  
15 I would point out that initially I got the idea from a  
16 practice in Hongkong where a small fee is established for  
17 the purposes of promoting exports.

18 Now, I think Senator Bradley has stated very well why  
19 I think this is particularly appropriate. I favor an open  
20 trade policy, but if we are going to have that, it seems  
21 to me to be important that we protect those that are  
22 burdened by such a policy; and that means that we ought to  
23 give them relief and particularly train them for other jobs.

24 And what other more logical way could there be to pay  
25 for this training than by a fee that will be paid by those

1 who benefit by an open trade practice. So, it seems to me  
2 that this makes very good sense.

3 Furthermore, we have a difficult financial problem. I  
4 have no confidence that if we rely on the general revenues,  
5 that the program will be financed. So, for that reason,  
6 Mr. Chairman, I would support your amendment because that  
7 is my intent--that this be entirely reborn by the small  
8 fee that would be exacted.

9 And if for some reason it isn't adequate, it ought to  
10 be made up the following year, as I understand your  
11 amendment, so I would support your amendment.

12 The Chairman. What I was seeking was implementation of  
13 the overall objective to be sure that we did leaven it out,  
14 and where you had a shortfall, that you could come back in  
15 and take care of it. Yes?

16 Senator Rockefeller. Mr. Chairman, I totally associate  
17 myself with the remarks that Senator Bradley and Senator Roth  
18 have made. I was a governor for a number of years, and I  
19 watched this TAA work and not work. The entire appropriation  
20 for the nation is \$30 million. The money ran out two months  
21 ago. So, to depend upon general revenues is to simply  
22 understand that we are not going to have the money in the era  
23 that we are now in, and this input surcharge worked through  
24 GATT strikes me as eminently sensible.

25 Senator Armstrong. Mr. Chairman?

1 The Chairman. Yes, Senator Armstrong?

2 Senator Armstrong. I am not sure I understand. I  
3 thought the point of your amendment was to say that, if the  
4 fee didn't produce the money, it would be financed by  
5 general revenues.

6 The Chairman. What it did state was that the fund  
7 can borrow the money and then repay it through the Customs  
8 fee, and it is comparable to a provision, as I recall, in  
9 the Superfund. Didn't we put something like that in the  
10 Superfund?

11 Mr. Lang. Yes, sir. That is correct.

12 Senator Armstrong. I see. Mr. Chairman, do we have  
13 any projections as to what this really could cost if it  
14 really got going?

15 The Chairman. What are the projections on that?

16 Mr. Lang. We have a CBO estimate on the bill. In  
17 order to pay for the program as amended, in the out years  
18 --remember, the amendments don't take place for three fiscal  
19 years after the date of enactment--in order to pay for that  
20 program beginning in the second fiscal year after enactment,  
21 the fee would have to increase total Federal revenues by  
22 \$300 million. That is not the increase caused by the change  
23 in the program requirements; that is the cost for paying  
24 for the total program--current benefits plus the new benefits.

25 Senator Armstrong. And then, are the projected



1 expenditures beyond the second year?

2 Mr. Lang. Yes. \$300 million actually more than covers  
3 the cost in all of the out years. The highest cost is in  
4 1992, and there the total of the baseline plus the increases  
5 in Federal expenditures, due to the program changes, is  
6 \$264 million, according to CBO's calculations. I don't have  
7 the baselines, but they are much lower for earlier years and  
8 so are the program costs.

9 So, the program costs under this CBO letter would always  
10 be lower than \$300 million. They have calculated \$300  
11 million in order to prevent the kind of problems Senator  
12 Bentsen is worried about but nonetheless the safer thing  
13 to do is just to make sure that you can always pay the fund,  
14 if you want to assure that the fee always pays for the  
15 program.

16 Senator Armstrong. Mr. Chairman, how would you feel  
17 about an amendment that simply said a ceiling of \$300  
18 million on it? In effect, we are authorizing a program;  
19 and if it is only going to cost \$300 million out into the  
20 next five or ten years, how about putting a \$300 million  
21 number on it, so that if it began to exceed that, the  
22 committee would get back into the act?

23 The Chairman. I was dealing with the technical part  
24 of this. We will let some of the proponents of the  
25 amendment itself--the basic underlying amendment--comment

1 on that. Senator Daschle?

2 Senator Daschle. The only problem with that--if I  
3 understand it--is that it is an entitlement program. As  
4 an entitlement program, from our experience in the past,  
5 caps have never worked very well.

6 Senator Armstrong. That is exactly the point. This  
7 \$300 million program might get a little bigger than that,  
8 if we are not pretty careful. And so, I will make the  
9 following motion, Mr. Chairman.

10 I move that we set a limit of \$300 million and with  
11 a proviso that it be prorated if the funds are not available.  
12 In fact, I would even be willing to go above \$300 million  
13 since we are talking about \$300 million as the highest  
14 number that is estimated in any of the projected out years.  
15 Let me suggest that the cap ought to be \$400 million, but  
16 my concern is that it won't be \$400 million if we don't take  
17 some kind of steps right now to declare what our intentions  
18 are; then it will be \$4 billion at some time in the future.

19 Senator Bradley. If the Senator will yield, I don't  
20 think the program could possibly be \$4 billion, because  
21 there is a limitation.

22 The Chairman. I think he said \$400 million, didn't you?

23 Senator Bradley. He said \$4 billion.

24 Senator Armstrong. I said my fear is.

25 Senator Bradley. He said once you let it out, it is

1 just going to take off.

2 Senator Armstrong. Bill, I think you may be right, but  
3 I just was thinking of too many of these programs that were  
4 going to cost \$10 billion, \$30 billion, \$300 million; and  
5 they just end up costing a little more than that.

6 So, my motion is for a \$400 million cap.

7 Senator Rockefeller. Will the Senator yield?

8 Senator Armstrong. That is well above what we are  
9 already estimating.

10 Senator Bradley. There is already a cap in the law  
11 as to the amount of the fee. The fee cannot exceed one  
12 percent.

13 Senator Daschle. One percent ad valorem.

14 Senator Bradley. It is now one-tenth of one percent.

15 Senator Armstrong. What would one percent raise?

16 Senator Bradley. \$3.3 billion.

17 Senator Armstrong. How much?

18 Mr. Lang. Probably between--if you go to the out year  
19 estimates of total imports--it would probably be just under  
20 \$4 billion--\$3.9 or something like that.

21 (Laughter)

22 Senator Bradley. \$4 billion is too much.

23 Senator Armstrong. My suggestion is \$400 million,  
24 Mr. Chairman, just to get a number that will trigger a  
25 proration of the funding and bring the Congress back into

1 the act.

2 The Chairman. Further comments?

3 Senator Roth. Mr. Chairman?

4 The Chairman. Yes, Senator Roth?

5 Senator Roth. What we are proposing, first of all, is  
6 that we negotiate in GATT the right to have such a fee up  
7 to one percent. I think it would make no sense to have, say,  
8 a \$300 or even a \$400 million limitation.

9 I would point out that this proposal has had the approval  
10 of the retailers--the one percent--as well as the unions  
11 as being a logical approach of providing compensation for  
12 those that are hurt through an open trading policy.

13 Now, there is no guarantee that we will ultimately get  
14 the full one percent when we negotiate, but it seemed to me  
15 that the one percent was a reasonable figure. I would also  
16 point out that the Administration itself has proposed some  
17 kind of a Customs fee to pay the cost of bringing in materials  
18 whether it is covered by a duty or not.

19 So, I don't see the difference, why they are disagreeing  
20 with this proposal. But in any event, I don't think we want  
21 to have it so narrow when we go to negotiate with GATT that  
22 we are going to have to go back and renegotiate within a  
23 couple of years.

24 The Chairman. Are there further comments? Yes, Senator  
25 Rockefeller.

1           Senator Rockefeller. Simply to point out, Mr. Chairman,  
2 that the philosophy and the point of this thing is to make  
3 available to those workers who are affected by this problem  
4 this financing. I don't think anybody around this panel  
5 assumes that it is going to reach a one percent cap. The  
6 point is that it is a serious problem and it is being entered  
7 into in good faith; and to put a cap on it is antithetical  
8 to the purposes of this, in my judgment, because it  
9 potentially excludes people who are injured due to these  
10 trade matters, which would be wrong.

11           The Chairman. The point is you have a cap.

12           Senator Rockefeller. There is a cap.

13           The Chairman. And the suggestion by Senator Armstrong  
14 is a lower cap.

15           Senator Bradley. Much lower.

16           Senator Armstrong. Mr. Chairman, coming to this as  
17 a matter of first impression, I asked what this is going  
18 to cost. And I was told that the absolute highest number  
19 anybody could see out on the horizon was \$300 million; and  
20 so, I said fine. Let's set an outer limit then of \$400  
21 million so that at least we won't be creating something that  
22 is open-ended.

23           You know, I am ready to amend it to say \$500 million,  
24 but there was a kind of note of humor in the room when I  
25 suggested \$4 billion, but it turns out that that is what a

1 one percent fee would raise.

2 Senator Bradley. No, it doesn't raise \$4 billion.

3 Senator Armstrong. Did I misunderstand that?

4 Senator Bradley. Yes.

5 Senator Armstrong. Oh.

6 Senator Bradley. He said under \$ billion.

7 Senator Armstrong. Under \$4 billion?

8 (Laughter)

9 Senator Armstrong. How much under \$4 billion?

10 (Laughter)

11 Senator Bradley. Slightly under \$4 billion.

12 (Laughter)

13 Senator Armstrong. My point is, Mr. Chairman, that I  
14 am not suggesting to Senator Rockefeller that, if this is  
15 a good program and if it is needed, that at the right time,  
16 I guess the easiest thing is to increase it; but if we make  
17 it simply a 100 percent open-ended entitlement program, then  
18 it will never come back to us in a triggered way. It will  
19 be like--somebody said--other entitlement programs, and I  
20 am not suggesting to Senator Daschle that I think caps have  
21 been very effective. Honest to Pete, they really haven't.

22 And if somebody has got a better idea, I would like to  
23 know it; but I want to figure out whether we are buying a  
24 \$300 million a year program or what we are buying. So, I  
25 just suggested \$400 million. If somebody has a different

1 number that they would feel more comfortable with, I would  
2 be glad to hear that.

3 The Chairman. Senator Packwood?

4 Senator Packwood. Yes. One, Senator Wallop is on his  
5 way, and he would like to comment on this. He should be  
6 here very shortly, if we can just hold up a vote until he  
7 gets here. Two, we have used a cap successfully, at least  
8 in a specific instance, about ten years ago now when we  
9 were dealing with the social service fund. We told the  
10 States we would pay them 90 percent of anything that they  
11 came up with for social services, and they began to define  
12 different things as social services--all the way from highways  
13 to school buses--and the program was going to go through  
14 the roof, and we just put a \$2.5 billion cap on and said  
15 you get a pro rata share. You can pay for anything you  
16 want out of your pro rata share, but you are only going to  
17 get a pro rata share of \$2.5 billion.

18 Third, if anybody here can answer this: If this is  
19 found to be GATT-illegal, are we subject to compensation?  
20 And if so, who pays it? Can anybody tell me?

21 Mr. Woods. Yes, we would be subject to compensation,  
22 and our exporters would pay it--presumably if they had  
23 higher tariffs in other countries.

24 Senator Moynihan. We would not go into it thinking  
25 it was GATT-illegal.

1 Senator Packwood. Is it GATT-legal?

2 Senator Bradley. Yes. That is one of the purposes of  
3 taking it to GATT, is to make the point that such a tariff  
4 is helpful to overall opening of the trading --

5 Senator Packwood. Now, wait. I think we are talking  
6 about two different things. I want to know if it is GATT  
7 legal now. You are suggesting taking this to GATT and  
8 seeing if you can negotiate it legal, as I understand it.  
9 I want to know what it is now.

10 Senator Moynihan. There are provisions that anticipate  
11 such measures, are there not, in the present GATT agreement?

12 Mr. Woods. The present GATT agreement only anticipates  
13 surcharges, as we interpret it as being surcharges which  
14 are for the purpose of funding Customs services--Customs  
15 user fees, as it were. There are no provisions otherwise  
16 in the GATT for surcharges that we have been able to determine.

17 The Chairman. Senator Bradley?

18 Senator Bradley. But this does not go into effect  
19 until you have taken it to GATT.

20 Mr. Holmer. That is true, Senator Bradley. It doesn't  
21 go into effect unless we have failed --

22 Senator Bradley. So, what is the compensation for  
23 having been found illegal if you haven't imposed a fee?

24 Mr. Holmer. There is no compensation --

25 Senator Bradley. All right.



1 Mr. Holmer. Until -- Wait, now. The amendment is  
2 described in the fact sheet and is in S. 490. It recognizes  
3 that doing this now is GATT-illegal, and therefore we are  
4 to go to the GATT and try to obtain GATT approval for doing  
5 this. And if we fail, then it automatically goes into  
6 effect. And the end result of that is that we have taken  
7 action two years from now that is GATT-illegal for which  
8 we will have to pay, in terms of compensation or retaliation  
9 against U.S. exports.

10 Senator Bradley. And of course, the Congress at that  
11 time could revisit it. Right? Of course, we could.

12 The Chairman. All right. Senator Armstrong, are you  
13 ready to offer that in the way of an amendment? I think we  
14 have had sufficient debate on that.

15 Senator Daschle. Mr. Chairman?

16 The Chairman. Yes, Senator Daschle?

17 Senator Daschle. I have one other clarification. The  
18 cap would propose a \$400 million limit. Senator Bradley has  
19 indicated that the total fund available may be under \$4  
20 billion. If we go the way that other trust funds have gone  
21 --the Highway Trust Fund, the Airport Trust Fund--that money  
22 has been diverted to general revenue for other purposes.  
23 I mean, that money is not isolated out, is it? Could I  
24 get a clarification of the status of the unexpended funds  
25 on an annual basis in this fund?

1           The Chairman. Let me say, Senator Daschle, not to my  
2 knowledge have we diverted, for example, out of the Highway  
3 Trust Fund. That money has not been diverted.

4           Senator Moynihan. You mean, not--

5           Senator Packwood. We have had occasion not to use it  
6 and it mounts up in the trust fund, but we haven't used it  
7 for other purposes.

8           The Chairman. It has been used for budgetary purposes  
9 in the overall budget and the unified budget; but insofar  
10 as the allocation of these funds, they have remained in  
11 that trust fund.

12          Senator Armstrong. Was it your thought that the  
13 amendment, instead of specifying a limitation on  
14 expenditure, ought to specify a limitation on the size of  
15 the trust fund?

16          Senator Daschle. I am just curious as to whether--I  
17 am unsure as to the legal status of the unexpended funds,  
18 and whether this amendment addresses that.

19          The Chairman. Let me state that my amendment--that I  
20 had discussed earlier before we got to the question of a  
21 limitation--was allowing the Congress to adjust that Customs  
22 fee to see that it correlated to the amount of money that  
23 was being spent, with a maximum going up to whatever it  
24 provided at the one percent. So, to try to take care of that  
25 particular concern of building a lot of money into a fund

1 that was not utilized, or allowing the borrowing in case it  
2 had a shortfall, that would then be paid by the Customs fee.

3 Senator Armstrong. Are you saying, Mr. Chairman, that  
4 if my amendment were adopted, that the original terms of  
5 your amendment would preclude an accumulation of a large  
6 trust fund balance?

7 The Chairman. It would then be within the jurisdiction  
8 of the Congress to do that, as I understand it.

9 Mr. Lang. There are a couple of different things being  
10 discussed here. The bill as it currently stands provides a  
11 procedure for adjusting the fee annually to provide an  
12 estimated amount of revenue, the estimate being the  
13 anticipated cost of the program in a future year; and that  
14 process begins two years out after enactment.

15 So, Senator Daschle, the results of the situation in  
16 the case you describe would be that the fee would be  
17 adjusted downward for the following year so as to allow the  
18 accumulated funds that hadn't been spent to flow over into  
19 a future fiscal year.

20 The Chairman. And my amendment allows the borrowing  
21 for a shortfall, at least in the beginning.

22 Mr. Lang. That is right; that is right.

23 Senator Roth. And I would point out the reason for  
24 the one percent. There is no magic in that particular figure  
25 because we intend to negotiate that with GATT, but the

1 provision would not, as already indicated, provide more funds  
2 than were necessary. It would be adjusted annually. I  
3 have no objections to having this committee become somewhat  
4 involved in that process, if that would help.

5 The Chairman. I think we have had ample discussion.  
6 Senator Moynihan?

7 Senator Moynihan. Mr. Chairman, Mr. Roth and I are  
8 associated on this matter, and I much agree.

9 Senator Wallop. Mr. Chairman, am I then to understand  
10 that this would not come into effect until it had been  
11 negotiated?

12 Mr. Lang. The way the provision works, Senator Wallop,  
13 is that the program does not begin to pay out benefits until  
14 the third year after enactment. The fee goes into effect in  
15 the second year after enactment in order to build up the  
16 fund sufficient to pay for the program when it goes into  
17 effect in the third year. If the negotiations in the GATT  
18 are successful in accepting the fee or some level of fee  
19 that would pay for the program prior to the beginning of the  
20 second year, then the fee goes into effect at the earlier  
21 date. But even if the negotiations are unsuccessful at a  
22 date certain, the fee goes into effect and the year after  
23 that the revised and expanded program goes into effect.

24 Senator Wallop. Whether or not it is GATT legal?

25 Mr. Lang. I would let STR speak to GATT legality.

1 Whether or not the GATT process has authorized this kind of  
2 fee, I think is the way the law reads.

3 Senator Packwood. And if our GATT partners say no--we  
4 don't like this; we think it is illegal; we don't agree to  
5 it--I think the answer is yes. It goes into effect, anyway,  
6 and then we get compensation or retaliation or whatever comes  
7 along with it.

8 Senator Matsunaga. That is under the Senate provision,  
9 but under the House provision, there would be no GATT illegal  
10 provision.

11 Mr. Lang. That is right, Senator Matsunaga. Under  
12 the House bill, the fee only goes into effect if there is  
13 an agreement internationally about such fees.

14 Senator Matsunaga. So, my next question is: Which is  
15 preferable? What is the purpose of the amendment which  
16 would bring about a GATT-illegal case?

17 Senator Wallop. I just have a hard time inherently  
18 figuring out why we indulge ourselves in negotiations only  
19 to decide at some moment in time they don't suit our  
20 convenience.

21 Senator Bradley. That is really a later decision. That  
22 is a decision only if it is found to be GATT illegal and we,  
23 knowing that, go ahead and push it forward.

24 Senator Wallop. But that is what we are proposing.

25 Senator Bradley. We can revisit the issue if, indeed,

1 it turns out to be GATT-illegal.

2 Senator Matsunaga. If I may pursue it further, Mr.  
3 Chairman?

4 The Chairman. Go ahead.

5 Senator Matsunaga. Would perhaps the advantage of the  
6 Senate provision be that we may put sufficient pressure on  
7 GATT to make it legal? I don't know whether pressure is  
8 desirable or not. That is my question.

9 The Chairman. Yes, Senator Moynihan?

10 Senator Moynihan. Mr. Chairman, could I just make the  
11 general point so we all know why Mr. Roth and I and you  
12 are handling this particular section? What we have in mind  
13 is a dependable source of financing for retraining. In the  
14 course of the Tokyo Round, we reached agreement with the  
15 trade unions. We will change the nature of the workforce,  
16 so we will provide for retraining in the aftermath. Then,  
17 the retraining didn't come. There was no source to fund it.

18 And this is intended to say that this is a guarantee.  
19 This time we will keep our word.

20 Senator Wallop. Could I make an inquiry, Mr. Chairman?

21 The Chairman. All right, Senator Wallop?

22 Senator Wallop. I apologize for this, but I have got to  
23 tell you that one of the reasons I am inquiring is that I  
24 noticed that we were going to take up this subject; it came  
25 to our office yesterday afternoon at 4:00, which is not really

1 a comfortable period of time to get all the answers,  
2 especially on a Monday.

3 Senator Bradley. We discussed this last week.

4 The Chairman. Senator, we discussed this at some  
5 length last week.

6 Senator Wallop. Let me just ask then one question. What  
7 kind of imports will this duty be applied to? All imports  
8 or just those which displace workers?

9 The Chairman. Mr. Lang?

10 Mr. Lang. The fee does have exceptions essentially for  
11 those in what is called Tariff Schedule 8, which deals with  
12 exceptional importations, that is personal importations,  
13 importations where American value was incorporated in the  
14 product and foreign value was added at a later date. They  
15 are a relatively small exception, and it is the same  
16 exception that applies with respect to the import fees that  
17 are already in effect to pay for the operations of the U.S.  
18 Customs Service.

19 Senator Wallop. But it then can be considered just a  
20 new tax for Americans to pay on imports. Is that correct?

21 Senator Bradley. One-tenth of one percent.

22 Senator Roth. Mr. Chairman, could I also point out  
23 that this proposal was unanimously reported out by this  
24 committee last year and for the specific purpose of promoting  
25 open markets.

1           The Chairman. That is a good point, Senator, and I  
2 think now we ought to move along. We have had a good debate  
3 on the issue, but Senator Armstrong has an amendment he  
4 wants to propose insofar as the cap. If you will propose  
5 that, we will prepare to vote on it.

6           Senator Armstrong. Mr. Chairman, for the benefit of  
7 those who have arrived since the subject was opened, my  
8 amendment simply suggests the cap of \$400 million on this  
9 program, and the number is derived from the fact that the  
10 highest estimate for any out year that is estimated as an  
11 expenditure is \$300 million. My notion is that we ought to  
12 at least set some outer limit so that it isn't completely  
13 open-ended. If the \$400 is about to be breached, then under  
14 the terms of my amendment to be drafted if passed, would  
15 simply require proration of the expenditure.

16           The Chairman. Can I get one comment on the proposed  
17 amendment? And then, we will put it to a vote.

18           Senator Bradley. There already is a cap in the  
19 legislation. It is a one percent upper limit cap. We do  
20 not need a dollar cap. The future is uncertain, and the  
21 alternative to this kind of program financed in this way  
22 is tariffs and protection, which would be a disaster.

23           The Chairman. All right. If we are ready, we will  
24 go to a vote. And the motion is that there be a \$400 million  
25 cap. All of those in favor of that cap, make it known by a



1 show of hands.

2 (Showing of hands)

3 The Chairman. Four. All opposed?

4 (Showing of hands)

5 The Chairman. Ten. What is the vote?

6 Mr. Wilkins. We counted four ayes, eleven noes.

7 The Chairman. All right.

8 Senator Packwood. Senators Heinz and Danforth want to  
9 be reported as "no."

10 The Chairman. And Senator Riegle.

11 Senator Chafee. Mr. Chairman?

12 The Chairman. Yes?

13 Senator Chafee. As I understand the vote we have just  
14 taken now, what we have initiated is an entitlement program  
15 for this trade adjustment assistance?

16 The Chairman. That is correct. A request has now been  
17 made for a roll call. Will you call the roll, please?

18 Senator Armstrong. That is on?

19 The Chairman. On the \$400 million cap.

20 The Clerk. Mr. Matsunaga?

21 Senator Matsunaga. No.

22 The Clerk. Mr. Moynihan?

23 Senator Moynihan. No.

24 The Clerk. Mr. Baucus?

25 Senator Baucus. No.

1 The Clerk. Mr. Boren?  
2 Senator Boren. No.  
3 The Clerk. Mr. Bradley?  
4 Senator Bradley. No.  
5 The Clerk. Mr. Mitchell?  
6 Senator Mitchell. No.  
7 The Clerk. Mr. Pryor?  
8 (No response)  
9 The Clerk. Mr. Riegle.  
10 Senator Riegle. No.  
11 The Clerk. Mr. Rockefeller?  
12 Senator Rockefeller. No.  
13 The Clerk. Mr. Daschle?  
14 Senator Daschle. No.  
15 The Clerk. Mr. Packwood?  
16 Senator Packwood. Aye.  
17 The Clerk. Mr. Dole?  
18 (No response)  
19 The Clerk. Mr. Roth?  
20 Senator Roth. No.  
21 The Clerk. Mr. Danforth?  
22 Senator Packwood. No.  
23 The Clerk. Mr. Chafee?  
24 Senator Chafee. Aye.  
25 The Clerk. Mr. Heinz?

1 Senator Packwood. No.

2 The Clerk. Mr. Wallop?

3 Senator Wallop. Aye.

4 The Clerk. Mr. Durenberger?

5 Senator Durenberger. Aye.

6 The Clerk. Mr. Armstrong?

7 Senator Armstrong. Aye.

8 The Clerk. Mr. Chairman?

9 The Chairman. No.

10 Senator Roth. Mr. Chairman, while we are waiting for  
11 the count, do we have acceptance of your amendment?

12 The Chairman. No, I was bringing that up next.

13 Senator Roth. All right.

14 The Clerk. Five ayes, 13 nays.

15 The Chairman. All right, gentlemen, I now propose the  
16 more or less technical amendment allowing the borrowing for  
17 the fund to take care of any shortfalls that might occur,  
18 particularly in the early initiation of this procedure.

19 Is there any further question concerning that?

(No response)

20 All in favor of that amendment, make it known by saying

21 "Aye."

22 (Chorus of ayes)

23 The Chairman. Opposed?

24 (No response)

25 The Chairman. The ayes have it. The amendment is passed.

1 I have a second technical amendment I would like to  
2 offer, if I might, and that is that, under the current law,  
3 eligible workers are entitled to a weekly task payment in  
4 the form of a trade adjustment allowance. S. 490 proposes  
5 that qualified workers who will be required to enter  
6 retraining programs will also be entitled to up to \$4,000  
7 to pay for training costs.

8 The purpose of this amendment is to clarify that both  
9 of these TAA benefits are entitlements and not subject to  
10 the Appropriations Act, and that has been a good deal of  
11 the thrust of this debate. Is there further discussion?

12 (No response)

13 The Chairman. All in favor of that amendment make it  
14 known by saying "Aye."

15 (Chorus of ayes)

16 The Chairman. Opposed?

17 Senator Wallop. No.

18 The Chairman. The motion is carried.

19 Senator Boren. Mr. Chairman?

20 The Chairman. Senator Boren?

21 Senator Boren. Mr. Chairman, I believe that this would  
22 be an appropriate time to offer an amendment which I want  
23 to offer on behalf of myself and Senator Bennett Johnston.  
24 It has been offered by the principal author of this amendment  
25 on the floor previously, and other members of this committee

1 have been very supportive of it, the vast majority of the  
2 members of this committee. It is the same action that we  
3 have taken on the floor of the Senate by a strong action  
4 four separate times, only to have trouble with it on the  
5 other side of the Capitol.

6 It has to do with clarifying the eligibility of oil and  
7 gas workers for trade adjustment assistance. We are, of  
8 course, facing a devastating situation in that area. We  
9 have had 71,000 jobs lost since 1982. Fifty percent of all  
10 of the oil and gas related businesses in the United States  
11 have gone out of business since 1982, which is a staggering  
12 figure--50 percent.

13 Forty oil and gas companies have applied for TAA, but  
14 only four have been approved. A very technical policy has  
15 been followed that very restrictive definitions would be  
16 followed that, in essence, have only allowed for refinery  
17 workers to be covered. The draft now before us expands that  
18 slightly to encourage those that also sell products or  
19 services to refineries, so there is some slight expansion.

20 Very clearly, those in exploration, those in production,  
21 those in seismic work where we have had a 70 percent layoff  
22 rate, drill bit producers and sellers in the service  
23 industry and many others have been severely impacted. Copies  
24 of the amendment are being given to you that would define  
25 it. It would simply clarify that oil and gas workers would

1 be eligible for TAA benefits.

2 We have had a situation where we have had such a decline  
3 that, for example in my State, the actual figures are now  
4 in for the last 12 months, and we have had a 20 percent  
5 actual decline level of oil and gas production. We have  
6 gone from 4,400 active rigs in the United States down to  
7 around 700. In my State, we have gone from 1,100 down to  
8 a little over 100 oil and gas rigs and active exploration.

9 Obviously, these people are being thrown out of work,  
10 and it has to do with our ability to compete with prices  
11 that are being manipulated. I appreciate very much the  
12 understanding that members of the committee have shown on  
13 this matter in the past. I think we have gone under the  
14 theory that this program was set up for those in trouble.

15 I remember our discussions back when TAA was first  
16 adopted in this committee; and at that time, we were  
17 experiencing quite a boom in our part of the country. And  
18 I remember several of my colleagues who are still on the  
19 committee saying to me: You know, there is probably not a  
20 single worker in the State of Oklahoma who is going to  
21 benefit from the passage of this legislation; we hope you  
22 will support it on the basis of sound national policy.

23 I did so, I must say, reluctantly from a parochial  
24 point of view. I did support, and I have to say now, looking  
25 back on it, that those predictions made by my colleagues were

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1 very much in order because the situation has reversed 180  
2 degress, and we are now experiencing extreme difficulty.  
3 The people that are being thrown out of work, who want to  
4 work, are going through the same kind of emotional trauma  
5 that shoe workers and steel workers and many others have  
6 gone through in the past, in terms of trying to meet their  
7 house payments and educate their children and get retrained  
8 in a new occupation.

9 So, I am just very hopeful that we can reaffirm what we  
10 have done on the Senate floor four times in passing the  
11 language. It is, I might say, the most narrowly drawn  
12 version of the language. We have passed four separate  
13 provisions on the Senate floor. This is the most narrowly  
14 drawn, keeping eligibility to the narrowest categories of  
15 the four different enactments that we have made on the  
16 Senate floor. So, we are not here asking the committee to  
17 go any further than we have previously gone in the Senate.

18 In fact, I have opted for the more conservative option  
19 among them.

20 Senator Packwood. Mr. Chairman?

21 The Chairman. Senator Packwood?

22 Senator Packwood. What benefits does this give, David,  
23 to oil and gas workers that they would not otherwise get  
24 under the generic definition in this bill?

25 Senator Boren. All right. The generic definition, as

1 it has been interpreted, would simply exclude most oil and  
2 gas workers from receiving the benefits. In other words, we  
3 are not giving any more benefits to oil and gas workers here  
4 than we do others. It is extended unemployment benefits and  
5 retraining benefits, identical benefits to those available  
6 under TAA. We are not changing the definition of what is  
7 available under TAA.

8 The problem has been that eligible workers, as defined  
9 under TAA--as it has been interpreted as applying to oil and  
10 gas workers--has been very, very narrowly construed to include  
11 only those in refining. For example, when the rig count went  
12 from 4,400 down to 700, those people in the exploration  
13 section and all the related people--not just those that are  
14 on the drilling crews that are now unemployed--but those  
15 who do the seismic work, for example. They go out and they  
16 run the sound waves in the ground to look at formations.  
17 They are out of work; 70 percent of the people in the  
18 seismic field are unemployed.

19 The people who were installing and producing drill bits,  
20 for example, are thrown out of work. All the people in this  
21 chain, those that inject drilling mud down into the hole  
22 during the operation, are out of work. They are every bit  
23 as much out of work as those in refining.

24 So, we are not changing the benefit structure at all.

25 Senator Packwood. How does this differ from the timber



1 industry? I am curious. We have got the mills, which I  
2 guess are equivalent to refineries, but most of the logging  
3 is done by independent contractors and not the lumber  
4 companies. And they are relatively small independent  
5 contractors. They are not covered either if there is a  
6 down turn in the timber industry, as there was with the  
7 Canadian imports.

8 Senator Boren. I cannot honestly answer as to how that  
9 breaks down in the timber industry. All I can say is that,  
10 in the oil and gas industry, what you have is a very, very  
11 --you know, there is no way that you can differentiate between  
12 a refinery worker and someone thrown out of work who is  
13 in the exploration business or in the seismic business.

14 These people are full-time specialists--not people who  
15 have been in other fields. In some of these areas, there  
16 are people who were highly technically trained just to do  
17 certain things, like the seismic work; and they would need  
18 retraining, and basically, the 40 companies that I have  
19 talked about are not independent contractors; they are 40  
20 companies that have been in business for a number of years.  
21 Their employees are in the seismic field and in the  
22 exploration field and so on--and in the service field--where  
23 they have simply had massive layoffs among their normally  
24 employed work force. I mean, this is a standard work force  
25 where people have been paying payroll taxes, etcetera.

1           It is not an independent contractor type situation with  
2 an individual.

3           The Chairman. Let me make a point here about the  
4 unusual stress that is being experienced, to give you some  
5 feel for it. I was in Midland and Odessa during the Easter  
6 recess, and they said let us show you the largest employer  
7 in these two cities. And they took me out to a warehouse,  
8 and the largest employer is the FDIC. The largest employer  
9 in the two cities, and once a week they hold an auction.

10           Now, I don't know how long they have been doing it--but  
11 now once a week--and most of the properties they auction off  
12 are oil equipment, whether it is pumps or drilling rigs,  
13 whatever it is; but that has been going on for months and  
14 months and months. And it is foreclosed pieces of property  
15 by the banks. So, that is what they are up against.

16           Senator Boren. It is a desperate situation. We have  
17 lost 47 banks in my State in the last three years. Looking  
18 at the figures for growth, for example, of bank deposits  
19 and bank loans outstanding, there are six or seven States  
20 in the country that have negative--in other words, actual  
21 contraction--economic contraction, and they are in this area.

22           And as I say, 50 percent of the businesses, and most  
23 of these have been in existence for many, many years.  
24 Several companies that I have been to their 50-year business  
25 celebrations are now gone. It really is a tragic

1 circumstance.

2 Senator Chafee. Mr. Chairman?

3 The Chairman. Yes, Senator Chafee?

4 Senator Chafee. How far does this extend? Suppose  
5 you have the person who makes the drilling bits? Do the  
6 workers for that company receive this assistance?

7 Senator Boren. If they are laid off because of the  
8 failure--on the drilling bits themselves?

9 Senator Chafee. That is right. The drilling rigs have  
10 stopped drilling. Therefore, the person who makes the  
11 drilling bits that are sold for the drilling rigs has layoff?

12 Senator Boren. No, they would not be. Say, the company  
13 for years has been in the business of going out and  
14 installing the drilling bits on location as a part of the  
15 exploration process, they have lost their jobs because of  
16 oil imports, which as you know have grown from 26 percent  
17 to I believe 43 percent of our total usage in the last 18  
18 months. Those are the people who would be affected.

19 I misstated that a while ago. We would not go all the  
20 way back to that.

21 Senator Moynihan. Would the Senator yield?

22 On the provison that Senator Roth and I are sponsoring  
23 on behalf of the chairman, we expand the eligibility of  
24 trading adjustment to secondary workers. That is right, is  
25 it not? Mr. Wilkins? Mr. Lang?

1 Mr. Lang. I beg your pardon, sir.

2 The Chairman. Would you restate it, please?

3 Senator Moynihan. Surely. In the provision on trade  
4 adjustment that Senator Roth and I have offered on behalf  
5 of the chairman, we extend our provision to cover secondary  
6 workers, do we not?

7 Mr. Lang. Indeed you do.

8 Senator Moynihan. And is that not what--

9 Senator Boren. I would be very happy if the refining  
10 business were the only ones impacted. Your provision, I  
11 am told by those who would apply it, would take care of  
12 the secondaries in the refining business; and I appreciate  
13 very much what the Senator has done. He has been very  
14 supportive of our efforts in the past. It is a help and  
15 certainly a step in the right direction.

16 But I am told it would not cover those who are in the  
17 exploration business, for example, who are in the service  
18 business--like the mud servicing business. It would affect  
19 those secondary to refining, but it would not affect those  
20 in the other segments of the industry.

21 Senator Packwood. Then I am confused. Bring me back  
22 to the timber business again. I didn't mean to use the  
23 term "independent contractor," but it is legitimately that.  
24 They are old businesses. They cut trees; they are not in  
25 the business of cutting them up into lumber. They cut them

1 down--the lumber companies. I suppose, Max, they operate  
2 the same way in your State. I take it those people--I don't  
3 know if they are covered or not under the amendment as  
4 proposed by Senator Moynihan and Senator Roth--but what I  
5 don't grasp is why the oil and gas people appear to be  
6 getting an unusual treatment that I don't think applies to  
7 any other industry.

8 Senator Boren. I just am not knowledgeable enough of  
9 how the law affects the timber industry to fully answer your  
10 question. Where we would draw the distinction is those  
11 that are actually in the chain of the oil and gas production  
12 and who have been shut down because of the level of imports.

13 In other words, we would not go all the way back,  
14 however, to the manufacturing process itself; but we would  
15 include the exploration and production phase. So, we would  
16 include those filling rig crews that are laid off. We  
17 would include the mud companies, the seismic crews, then  
18 up through the refining, which is really already covered  
19 and which has been expanded in its coverage.

20 So, I am sorry I can't answer that question, and there  
21 might be something there to look at. I am sympathetic to  
22 the timber industry obviously because we have some of the  
23 same problems. But the problem is so massive right now  
24 that we are dealing with in this sector.

25 Senator Wallop. When you say the mud companies, does

1 that include mud miners?

2 Senator Boren. Mud miners?

3 Senator Wallop. I am serious. We mine it. I mean, it  
4 all comes--most of it--from oil. How far back in the chain  
5 does it go?

6 Senator Boren. I don't believe it does. I think we  
7 have not expanded it back beyond those that are actually  
8 putting the mud into the hole during the drilling process.

9 I agree that there are levels beyond which perhaps we  
10 should continue to look at this, and perhaps there are some  
11 others that should be covered; but we have tried. We think  
12 where they are is obviously too restrictive. It is not  
13 just refining that is being impacted by the manipulation  
14 of the price of oil internationally and this huge increase  
15 in our imports; and we have thousands of people thrown out  
16 of work in the rest of the chain.

17 At the same time, quite frankly, we took the definition  
18 from last year's on the floor, which was the narrowest of  
19 the four that we had passed, in the hope that we might get  
20 it on through the House this time and also in not asking  
21 the committee to go further than the Senate itself had gone  
22 in the past. But I believe we would not go back as far as  
23 those who were actually mining the substances that go into  
24 the making of the mud product.

25 The Chairman. Is there further discussion?

1           Senator Packwood. I have the feeling that we are leaving  
2 a lot of people out that I don't know about. I haven't  
3 seen this amendment, though.

4           Senator Boren. I would certainly be willing to look  
5 at the problems in other industries and go back further. I  
6 was just trying to draw this as narrow as I could and take  
7 care of an obvious problem in the oil and gas industry; and  
8 there may be other equities and other groups that we should  
9 revisit as we go along. But I think there is a clear case  
10 for this particular situation, as we know it.

11           Senator Wallop. From my own perspective, trade  
12 adjustment assistance has not been wildly successful. It  
13 has been wildly expensive. The Job Training Partnership  
14 Program is more efficient, I think, and has probably worked  
15 better; but if we are going to have it, and it is a new  
16 entitlement, clearly those in this industry are every bit  
17 as entitled as those in any other industry. And I would  
18 support this amendment.

19           The Chairman. Is there further discussion on the  
20 amendment?

21           (No response)

22           The Chairman. Are you prepared to offer the amendment?

23           Senator Boren. I am, Mr. Chairman.

24           The Chairman. The motion is before you. All in favor  
25 of the motion as stated make it known by saying "Aye."

1 (Chorus of ayes)

2 The Chairman. Opposed?

3 Senator Packwood. No.

4 Senator Chafee. No.

5 The Chairman. The ayes appear to have it; the ayes have  
6 it. Senator Rockefeller?

7 Senator Rockefeller. Mr. Chairman, I have three  
8 amendments which Senator Heinz is co-sponsoring with me  
9 that have been gone through an input by members through  
10 their staffs; and they in no way cost money. They come out  
11 of a study by the Office of Technology Assessment with  
12 respect to TAA, and I would like to describe three of them,  
13 if I might?

14 The first calls on the Department of Labor to exercise  
15 more leadership in terms of coordinating the TAA program  
16 and other programs, for example, such as the one that  
17 Senator Wallop has mentioned, the JTPA dislocated workers'  
18 assistance program. It is rather extraordinary to me that,  
19 if you go to a lot of States--not necessarily all of them,  
20 but a lot of them--and TAA is done in one department of  
21 the State government and Title 3 is done in another. They  
22 do not coordinate; they do not know what is going on.

23 They do not know how they can help each other, and it  
24 is a technical area and a small area. It is an area where  
25 the Department of Labor, it seems to me, should exercise a



1. lot more leadership in terms of coordinating these programs  
2 which are aimed at dislocated workers. That would be the  
3 first one.

4 The second one has to do with workers--a very small  
5 number, I might say--who are lucky enough to be certified  
6 for TAA close to the time that they are laid off. Now,  
7 often the Department of Labor can take up to six months  
8 before the certification, in fact, comes through. The way  
9 the law now is, the worker must wait for their 26 weeks of  
10 unemployment insurance to expire before in fact they can  
11 apply for training under TAA.

12 There are going to be examples where workers are notified  
13 by the Department of Labor that they fit in that category  
14 quite properly--that is, TAA related--and they should be  
15 able, on a discretionary basis, to go for training if they  
16 want to. And this is what this amendment would do.

17 The Chairman. May I interrupt there, Senator?

18 Senator Rockefeller. Of course.

19 The Chairman. All these studies I have seen recently  
20 show that there is a great deal more success in these  
21 programs when they get them enrolled early on, often even  
22 before they have left their job if the company, for example,  
23 gives prior notice that they are going to have a closing.

24 So, anything that you have in here that urges and  
25 assists in their becoming participants in an early training

1 program, before they have been disbursed, for example, in  
2 a plant closing, and looking at the eight or ten that were  
3 given as the best prime examples of such programs that have  
4 worked, one of the very important points was always early  
5 training--before the workers are disbursed and where they  
6 can have the kind of advice and counsel in a collective  
7 way that is helpful.

8 Senator Rockefeller. That is precisely the point of  
9 the amendment, Mr. Chairman, to allow these people to not  
10 have to wait for 26 weeks.

11 The third amendment is an interesting one in that it  
12 is sort of an incorrect interpretation by the Department of  
13 Labor that, if there are funds outside of TAA which become  
14 available either private or public or TAA training  
15 assistance, they are not allowed to take advantage of that  
16 funding. And I will give you one example.

17 In my own State of West Virginia, USX workers were laid  
18 off--coal miners in southern West Virginia. USX was willing  
19 to put up money to help them on retraining, but they cannot  
20 make that available under current law. So, this is what  
21 I would call sort of a comingling amendment which would  
22 allow TAA funds to be leveraged and/or matched by other  
23 private funds or, in some cases, Federal funds, for example  
24 vocational education. It strikes me as a way to make more  
25 money available. Under S. 490, \$4,000 is made available for

1 a training voucher, but in some cases, more may be required.

2 And if it comes from private or other sources, I think  
3 that is all to the benefit of the worker. That is what this  
4 amendment would do. The members have the amendments in front  
5 of them, Mr. Chairman, and I would propose them in any  
6 manner which you would feel appropriate. And I would remind  
7 you that Senator Heinz--who could not be here because of a  
8 memorial service for his father--is the co-sponsor.

9 Senator Matsunaga. Mr. Chairman?

10 The Chairman. Yes, Senator Matsunaga?

11 Senator Matsunaga. As I understand, your amendment  
12 would make technical corrections to the regulations and  
13 promote coordination between TAA and other displaced worker  
14 programs. Am I correct?

15 Senator Rockefeller. That is correct in the first  
16 amendment.

17 Senator Matsunaga. And I think, Mr. Chairman, that is  
18 something that has been lacking and something needed.

19 Senator Moynihan. Might I say I agree?

20 Mr. Woods. Mr. Chairman?

21 The Chairman. Yes, Mr. Woods?

22 Mr. Woods. Mr. Robert Jones from the Department of  
23 Labor is here and might have some comment on these amendments.

24 The Chairman. Good. Go right ahead.

25 Mr. Jones. Mr. Chairman, we have spoken in the past.

1 I would commend Senator Rockefeller. This first amendment is  
2 an important step in the right direction. The only point we  
3 would like to make is the programs--both the vocational  
4 education and job training programs and others, as well as  
5 TAA--are administered at the State level by the governor;  
6 and it would be useful in the Act if there were some  
7 recognition that the governors should join in the  
8 administration of these programs so that the maximum service  
9 could be --

10 Senator Moynihan. You mean as part of the employment  
11 service?

12 Mr. Jones. No, Senator. We would like not to make that  
13 distinction. We would like simply to have the governor  
14 join these things wherever--maybe it is the employment  
15 service; maybe it is JTPA; maybe it is welfare. We don't  
16 know, but if we could make that distinction, we could get  
17 these programs together and there would be more benefits  
18 to these people.

19 The Chairman. Senator Rockefeller, do you have a comment  
20 on that?

21 Senator Rockefeller. I have no objection.

22 The Chairman. All right. Are there further comments?  
23 Senator Heinz was a co-sponsor?

24 Senator Rockefeller. That is correct.

25 Mr. Jones. Senator, on the second amendment, you have

1 made the point more eloquently than we ever could. As soon  
2 as these people can get in training, there is clearly a  
3 benefit to be derived. I think in the last few months,  
4 Senator Rockefeller, we have certified everybody in less  
5 than 60 days. It would clearly be beneficial, as we have  
6 suggested, in worker adjustment legislation.

7 If you would require prior to the 10, or 13, or 15,  
8 whatever you would do, by doing that you would ensure  
9 people moving into the training stream sooner, and you  
10 would reduce the cost, rather than wait. The history here  
11 is that people will wait until the last minute before they  
12 engage in training. That has been amended, in fact, in  
13 both committees; and we urge you to consider it.

14 Senator Rockefeller. Mr. Chairman, the reason that I  
15 have problems with that is not that it is, in and of itself,  
16 a reasonable idea; but the fact is that, in fact, it takes  
17 sometimes 10 weeks or more for an individual who might want  
18 to search for a new job and feels that he has a reasonable  
19 shot at being able to get a new job.

20 Under my amendment, a person can get into training and  
21 is encouraged to get into training if he wants to; but on  
22 the other hand, if the person feels that he has a reasonable  
23 shot at getting a job, I don't think he should be mandated  
24 to get training if he feels he has that opportunity.

25 That is the reason I have not used the word "mandatory";

1 I have used the word "discretion." I think there is a fairly  
2 important difference. If you mandate them to go into  
3 training, I think there are all kinds of problems that  
4 arise. If you encourage them to do it, that I think is  
5 better.

6 The Chairman. Further comments on that point?

7 Senator Bradley. Mr. Chairman, I agree strongly with  
8 what Senator Rockefeller just said.

9 The Chairman. I must say that I agree with Mr. Jones;  
10 they are a darned sight better off if they go early, and  
11 all these studies show that. But I am reluctant to mandate  
12 it--again, giving them some options of time to decide whether  
13 they are going to move or what their career is going to be.  
14 So, I would support the Senator in his amendment.

15 Senator Chafee. What are the alternatives here? Mr.  
16 Jones says how long? Ten weeks?

17 Mr. Jones. Our proposal, Senator, was ten. I think we  
18 have heard discussions around the Senate and the House  
19 ranging from 13 to 15, and I think any of those are  
20 productive steps forward.

21 Senator Chafee. And absent that, what is it?

22 Mr. Jones. Twenty-six weeks is the standard  
23 unemployment insurance period of time before they would  
24 enter any activity. I think a 15-week period accomplishes  
25 what Senator Rockefeller is looking for.

1 Senator Chafee. Which is?

2 Mr. Jones. Three to four --

3 Senator Chafee. Nearly four months?

4 Mr. Jones. To search out a job before entering training.

5 Senator Chafee. What is your answer to that one,

6 Senator Rockefeller?

7 Senator Rockefeller. My answer to that one is that,  
8 under the present law, a dislocated worker due to trade  
9 related matters is unable to go into a training program  
10 until he has exhausted his unemployment insurance, at the  
11 end of 26 weeks. That, I think, is absolutely ridiculous.

12 Senator Chafee. Nobody is suggesting that.

13 Senator Rockefeller. So, I am suggesting that he has  
14 the option of getting into a training program earlier if  
15 one is available, which in most cases will be the case, but  
16 that he not be mandated to get into one at a period of 10  
17 weeks because he may very well be in the process of job  
18 searching successfully at that point.

19 Senator Moynihan. Could I just add that the  
20 singular feature of our new proposal is this \$4,000 voucher,  
21 and that right there is something you can take and use; and  
22 you ought to be encouraged to take it and use it early on.

23 Senator Bradley. If I could just follow on Senator  
24 Chafee's question, another answer is that if you have  
25 somebody who has worked 30 to 40 years--30 years at some

1 plant--for one reason or another, the plant is not far  
2 sighted, and they don't think about retraining--if he loses  
3 his job, he is genuinely disoriented. He needs some time  
4 to adjust. And to say to that person, gee, within 10 weeks  
5 you have got to get into a training program, some people will  
6 need a longer time to adjust to a traumatic experience.

7 The Chairman. Yes.

8 Senator Bradley. And I think encouraging them to get  
9 in is important. Requiring them to be in after 8, 10, 12  
10 or 15 weeks is arbitrary and doesn't recognize the difference  
11 in human reactions to the loss of lifetime employment.

12 The Chairman. Are there further comments?

13 (No response)

14 The Chairman. Senator, do you propose the amendments?  
15 There are three of them, they are before you, and they have  
16 been debated. All in favor of the amendments as stated,  
17 make it known by saying "Aye."

18 (Chorus of ayes)

19 The Chairman. Opposed?

20 (No response)

21 The Chairman. The amendments are carried.

22 Senator Mitchell. Mr. Chairman?

23 The Chairman. Yes. Senator Heinz will be recorded as  
24 having voted "Aye." I think if we stay in here another 30  
25 minutes, we may be able to able to finish trade adjustment



1 assistance, and I would like to see that. Yes, Senator  
2 Mitchell?

3 Senator Mitchell. Mr. Chairman, I have an amendment  
4 which proposes a series of five relatively minor changes  
5 in the trade adjustment assistance laws where we have  
6 had some technical problems. I offer it on behalf of  
7 myself, Senator Heinz, and Senator Rockefeller. It  
8 incorporates the provisions of two bills introduced earlier  
9 this year by myself, Senator Heinz, Senator Rockefeller,  
10 and Senator Spector.

11 The first one would clarify the definition of separation  
12 from employment for the purpose of determining the eligibility  
13 period for benefits. It would provide that the most recent  
14 incident, in which an individual is separated from  
15 employment, would determine eligibility rather than the  
16 first separation. This is designed to deal with the quirk  
17 in the law which has caused some displaced workers to be  
18 disqualified for trade adjustment assistance benefits when  
19 they are laid off for a temporary period and then  
20 reemployed before finally losing their jobs.

21 It occurs in industries where workers are laid off  
22 for temporary, sporadic periods during which the plant is  
23 certified under the Trade Adjustment Assistance Program.

24 The production needs of the plant fluctuate, and some  
25 workers are recalled. They are rehired for temporary periods

1 before being laid off. The current interpretation causes  
2 the eligibility for these workers to begin to run from their  
3 first separation, even though in the interim they have been  
4 rehired; and then when they finally and irrevocably have  
5 lost their jobs, they find that they have also lost much,  
6 and in some cases all, of their Trade Adjustment Assistance  
7 benefits because the period has run during the time that  
8 they were actually employed.

9 So, some workers now lose all of their eligibility while  
10 they are still employed on an interim basis.

11 The second change deals with the problem of short  
12 semester breaks or vacations during training. The Department  
13 interprets current law to prevent the payment of benefits  
14 during periods that an individual is enrolled in a training  
15 program but is on a semester break or a vacation in that  
16 program. This penalizes individuals who cannot obtain  
17 alternative employment during a short break in training  
18 programs; and this amendment provides for a continuation of  
19 benefits where the break in training does not exceed two  
20 weeks. It does not increase the number of weeks in the  
21 aggregate; it simply provides for more flexible payment  
22 periods.

23 The third change prohibits the Secretary from  
24 establishing an absolute limit on the length of the training  
25 program and requires the Secretary to consider whether the

1 training provided is of suitable duration to achieve the  
2 desired skill level within a reasonable time.

3 Under the law now, if a training program exceeds 104  
4 weeks, then the person is ineligible for any benefits. On  
5 the other hand, if it was less than that, he would be  
6 eligible for the full benefits up to that point. This  
7 change would not increase the benefit period, but it would  
8 simply make eligible for the stated period benefits, even  
9 though the program went beyond that. You now have a  
10 situation that if a person enters a program that is  
11 scheduled for 25 months duration, that person is ineligible  
12 for any benefits. Yet if the program is scheduled for 23  
13 months in duration, he would get benefits for the full 23  
14 months.

15 So, what we are saying is: If the program goes beyond  
16 the limitation, they wouldn't get benefits beyond the  
17 limitation; but they would be eligible up to the limitation.

18 The fourth provision would require the Secretary to  
19 provide better information to eligible workers about the  
20 program. Though current law requires general notification,  
21 it is often insufficient to inform displaced workers of  
22 their eligibility, particularly where you have unorganized  
23 workers who do not live near the place of employment.

24 This would require the Department to publish notice of  
25 general circulation, in newspapers, and to mail notices to

1 eligible workers.

2 Finally, the amendment would deal with the loss of  
3 benefits by a limited number of workers affected by the  
4 first separation problem--which I described at the outset  
5 --and it would permit displaced workers who lost benefits  
6 due to the first separation interpretation to reapply for  
7 benefits if they are still unemployed and free to participate  
8 in these training programs. According to the CBO, these  
9 changes would cost \$14 million over three years.

10 Senator Chafee. \$14 million?

11 Senator Rockefeller. Over three years. Right. And  
12 most of that cost, I am advised, would be involved in the  
13 provision involving the short semester break or vacation  
14 of a two-week period.

15 Senator Chafee. I would be curious as to what Mr. Jones  
16 has to say about that.

17 The Chairman. Mr. Jones?

18 Mr. Jones. Thank you, Senator. I think the amendment  
19 here of the most concern is the first one.

20 The Chairman. Is that the one where you calculate the  
21 beginning of the worker's eligibility?

22 Mr. Jones. Yes. A period of 104 weeks, two years, of  
23 eligibility; and if during that period of time, they are  
24 reemployed and then later subsequently laid off, the current  
25 interpretation is that their eligibility is from the first

1 certification period, not the second.

2 The Chairman. Is that the one that results from the  
3 1981 conference on budget reconciliation?

4 Mr. Jones. Yes, sir.

5 The Chairman. And led to the ruling by the Department  
6 of Labor?

7 Mr. Jones. That is correct, in conjunction with a  
8 court case in Maine. Subsequently, the regulations that we  
9 wrote.

10 This amendment, in addition to the one you considered  
11 earlier on your oil and gas people, I do have to suggest  
12 it expands the eligibility considerably. It does address  
13 the question that Senator Packwood raised in bringing in  
14 a lot of other industrial people under consideration, and  
15 the costs are going to change substantially.

16 In this case here, what you are doing is suggesting  
17 that two years from the certification, for people who have  
18 been working or drawing benefits, but would in fact extend  
19 their eligibility for another year or two beyond that if  
20 there was an intervening period of employment.

21 That is putting ourselves in a position of using this  
22 program to extend benefits to people for up to three or  
23 even four years technically under that kind of a model.

24 Instead, what we would urge you to do-- As you know,  
25 we have proposed that these people--all of them--any related

1 industry people of any kind--be addressed under the Worker  
2 Adjustment Program. They are all eligible. They all would  
3 be served under the \$980 million that are there and would  
4 save substantial funds under this program and ensure their  
5 service without expanding the trust fund costs to the  
6 extent that we pointed out earlier.

7 The Chairman. Are there further comments?

8 Senator Moynihan. Mr. Chairman, might I just say that  
9 I recognize Mr. Jones' concerns, but there is a reality here  
10 about people moving in and out of training; and there is a  
11 reality about certain kinds of training that is taking a  
12 lot longer than we had been led to assume. There is a general  
13 inverse rule here that the more you need it, the longer it  
14 takes.

15 Senator Mitchell. Mr. Chairman?

16 The Chairman. Yes, Senator Mitchell?

17 Senator Mitchell. I would like to just point out that  
18 the word "last" was in the law prior to 1981. We then  
19 dropped it with no history and with no legislation. I think  
20 many States' employment departments responded to the change,  
21 and it caused a lot of difficulty. And there are many  
22 industries in which this is a reality. This is not a  
23 hypothetical case. It is particularly true of the shoe  
24 industry in Maine, where we have suffered the loss of  
25 thousands of jobs; and in that period following the initial

1 certification, production does fluctuate. So, people come  
2 back for a substantial period of time; and they don't know  
3 it, but the clock is running on their eligibility for  
4 benefits all of that time.

5 Then, they get to the end of it--and obviously, they  
6 are not going to turn down work; we don't want to encourage  
7 them to turn down employment--now, they get to the end of  
8 it and they find there are no benefits because the period  
9 began at the time of their first separation. And in the  
10 intervening time, they have gone back and worked as much  
11 as they could. They want to work.

12 Now, they find they are not eligible for any benefits.  
13 It really is an unfair situation, and this is an attempt  
14 to deal with it, as Mr. Jones has indicated. We had litigation  
15 in Maine because the State didn't want to enforce this,  
16 feeling that it was such an unfair circumstance; and finally  
17 it is clear that the only way to do it is to change the law.

18 There is no explanation as to how and why the law was  
19 changed at that time. Is that correct?

20 Mr. Jones. That is correct, Senator.

21 Mr. Chairman, I would only add to that that they are  
22 eligible for any regain unemployment benefit that they  
23 gain from their new employment period, and they are eligible  
24 for retraining under the Job Training Partnership or Worker  
25 Adjustment Programs, as our shoe people in Maine now are

1 being covered. It is just a question of whether you are  
2 going to extend the income benefits again for another period  
3 on top of that.

4 Senator Mitchell. The problem is, as you know, Mr.  
5 Jones, to say to a person they are eligible for extensive  
6 retraining, but no income benefits to sustain you during  
7 that period renders the training for most people totally  
8 impracticale. They have got to do something to survive in  
9 that period.

10 The Chairman. Senator Rockefeller?

11 Senator Rockefeller. Mr. Chairman, in my judgment,  
12 Senator Mitchell is exactly on target, and as he points out,  
13 sometimes people can be called back for a long period of time,  
14 and sometimes they can be called back--like in the steel  
15 industry--for a very short period of time. And what is  
16 happening is they are seeing an exhausting of benefits,  
17 which in fact they have never actually used. And it is  
18 antithetical to the purpose of what we are trying to do,  
19 and it is totally unfair to the workers.

20 The Chairman. Senator Packwood?

21 Senator Packwood. I don't understand what happens,  
22 George, if a person is laid off and he or she collects  
23 benefits under this and then goes back to work for three  
24 or four months and then gets laid off permanently. Do the  
25 first benefits count, or do you always get 104 weeks from the



1 time of last layoff, no matter what?

2 Senator Mitchell. Mr. Jones, you can answer that.

3 Mr. Jones. Senator, it is just the opposite here.

4 What is happening here is there is a cost that is running  
5 from the first layoff.

6 Senator Packwood. I understand that.

7 Mr. Jones. And if he works in between time, he can  
8 receive benefits both before that or after it in the 104  
9 weeks. Once the 104 week clock runs out, he is stopped.  
10 If he, in fact, worked all the way up to the 104 weeks,  
11 he would then receive no further benefits, as the Senator  
12 pointed out.

13 Senator Packwood. I don't quite understand what the  
14 Senator is stating. Say it again; I am not following this.

15 Senator Mitchell. Let me try again. A plant lays off a  
16 large number of workers--take a shoe factory in Maine--and  
17 is certified as eligible. The period within which those  
18 employees are eligible for trade adjustment assistance  
19 benefits begins to run at that time. Two weeks later, the  
20 plant recalls Worker A, saying we have some work and we  
21 are going to try to keep this going as long as we can.

22 He then works for 102 weeks. Meantime, the plant is  
23 gradually phasing down, and the production levels are  
24 fluctuating. If I am misstating this, Mr. Jones, you  
25 correct me.

1           Now, Worker A applies for Trade Adjustment Assistance  
2 benefits; but under the law, as interpreted by the Department  
3 since 1981, since the termination of his eligibility  
4 commenced with the first layoff, he is ineligible for  
5 any benefits. He is not eligible for the benefits.

6           Even though he has not availed himself of it, what he  
7 wanted to do in that interim period was work as much as  
8 he could.

9           Senator Packwood. That was my question. If he has  
10 availed himself of it, if he has been off for three or four  
11 or five months and he has taken benefits during those three  
12 or four or five months, and then he is rehired. Does the  
13 104 weeks start perpetually from the latest rehire, even  
14 though he has collected the benefits prior to that?

15           Senator Mitchell. I think that is the aggregate amount  
16 he can get.

17           Mr. Jones. That is correct.

18           Senator Mitchell. In other words, it doesn't increase  
19 it beyond 104 weeks.

20           Senator Packwood. All right.

21           The Chairman. All right. The amendments are proposed.  
22 Is there further question?

23           Senator Chafee. Mr. Chairman, let me just say about  
24 what we are doing this morning that this is very reminiscent  
25 to me of the Black Lung Program that we casually got into

1 about 10 years ago. Everybody on this committee has  
2 listened to the testimony of Mr. Strauss and others who  
3 say the single greatest cause of the trade deficit are  
4 the Federal deficits, and we ought to do something about  
5 them.

6 But now, we seem to be swept up in an atmosphere that  
7 anything goes as far as the trade adjustment assistance;  
8 and indeed, we are stretching everybody to the limit of  
9 their imaginations to come up with greater extensions of  
10 this program. First of all, today we have made it an  
11 entitlement. We all deplore entitlements, in many instances;  
12 but now we have made this an entitlement. We voted down  
13 a cap.

14 Second, we have included a vast number of other workers  
15 that were never even considered when the original program  
16 was devised. That is the so-called secondary workers, and  
17 we have broadened that so that we are including about  
18 everybody who could possibly be affected.

19 Third, we have extended to considerable length the  
20 period of eligibility; and although everybody says the  
21 final point is there is no requirement to expeditiously  
22 join a retraining program. It wasn't enough to have it  
23 10 weeks; 15 weeks was brushed aside. And Mr. Chairman, I  
24 just think we are proceeding here blithely on a path that  
25 is going to be of considerable danger to our efforts in this

1 country to not only do something about the retraining, but  
2 also to establish a sound basis for the fiscal future of  
3 our nation.

4 And I have been very sympathetic with Trade Adjustment  
5 Assistance, and I think it can be improved; but I just want  
6 to say that I am opposed to what is taking place here today.

7 Senator Moynihan. Mr. Chairman, may I make a very brief  
8 response?

9 The Chairman. Senator Moynihan?

10 Senator Moynihan. In the spirit of openness and candor,  
11 and lack of rancor that the Senator from Rhode Island brings  
12 to these discussions, I was an Assistant Secretary of Labor  
13 in the Kennedy Administration when the -- Kennedy round was  
14 adopted; and at that time, we began discussing--and Mr.  
15 Jones will remember--he is such a young man--

16 (Laughter)

17 Senator Moynihan. This whole question of trade  
18 adjustment, and from the first it was assumed that you  
19 would want to involve secondary workers. There is much  
20 unemployment through the consequence of the closing of  
21 most manufacturers, and it depends on a great range of  
22 satellite corporations. And it would be illogical to think  
23 of just the one--you know, just the automobile plant and  
24 not the place that provided the carburetors and the tires  
25 and this and that. So, it is not a new notion.

1 In regard to entitlement, we have gone through the  
2 experience of not keeping our commitment; and now we are  
3 going to see that we do. I think we could have avoided  
4 this if we had avoided earlier actions, and there you are.

5 And on the question of this business of the time of  
6 eligibility, can I say--and Mr. Jones, you would be a  
7 better authority--but it is my impression that for a great  
8 many industries that are succumbing to trade changes, the  
9 experience is sporadic. You stop a run; you start another.  
10 You open; you close. You are up; you are down. And finally,  
11 it is clear that you are not going to be able to do it.

12 So, the worker is getting an uncertain signal.  
13 Management is uncertain; and we are just responding to that,  
14 are we not? Or tell me if you think otherwise.

15 Mr. Jones. I don't think that is quite as common a  
16 case as we would like to think it is for trade certified  
17 people. It is for general dislocations that are occurring,  
18 but the people eligible in this program, we tend to have a  
19 fewer number of those cases.

20 Senator Moynihan. But we do have some.

21 Mr. Jones. Oh, certainly.

22 Senator Moynihan. It is a normal phenomenon of a  
23 plant not working out.

24 Mr. Jones. It certainly is, Senator. I couldn't agree  
25 more with your concern for secondary workers. Our concern

1 here is that they not be put into the category of this  
2 highly enriched program, but that they be under the Worker  
3 Adjustment Program, get them into retraining and into the  
4 work force. In this program, when you address secondary  
5 or tertiary workers--as your oil and gas provision would--you  
6 are expanding a very enriched benefit to a very broad  
7 population of people; and the history is replete that people  
8 will stay out of training while those benefits are there  
9 and not return to the work force.

10 I think that issue will come before the Senate when these  
11 two bills come together; and it is a very, very important  
12 one.

13 Senator Mitchell. Mr. Chairman, I would just like to  
14 say that is not this amendment. He is talking about previous  
15 ones.

16 (Laughter)

17 The Chairman. We are refighting something that was  
18 decided earlier.

19 Senator Matsunaga. Mr. Chairman, if I might give  
20 philosophic consolation to the Senator from Rhode Island.  
21 With the passing of time, new problems arise requiring new  
22 solutions; and if we are not part of the solution, we are  
23 part of the problem.

24 The Chairman. Thank you, Senator.

25 Senator Chafee. I hope we have learned something from

1 experience. That is not asking too much, even of the Senate.  
2 And one of the virtues of putting a cap on it is you then  
3 come forward and reexamine the program; but that vote has  
4 been taken.

5 I will tell you: This program is going to come back to  
6 haunt us and, particularly, as every member I believe of  
7 this committee is concerned about the deficits of the nation  
8 and what we are doing to our children. I think Speaker  
9 Wright phrased it better than anybody: When we are living  
10 on a credit card economy and sending the bill to our  
11 children and we are going out with a great big credit card  
12 today and going to send a great big additional bill to our  
13 children.

14 The Chairman. If there are no further comments, the  
15 amendments have been proposed. You are proposing them in  
16 a block. Is there any objection to that?

17 (No response)

18 The Chairman. If not, all in favor of the amendments  
19 as stated make it known by saying "Aye."

20 (Chorus of ayes)

21 The Chairman. Opposed?

22 Senator Packwood. No.

23 Senator Chafee. No.

24 Senator Packwood. Senators Heinz, Wallop, and --

25 The Chairman. Let's call the roll.

1 The Clerk. Mr. Matsunaga?  
2 Senator Matsunaga. Aye.  
3 The Clerk. Mr. Moynihan?  
4 Senator Moynihan. Aye.  
5 The Clerk. Mr. Baucus?  
6 Senator Baucus. Aye.  
7 The Clerk. Mr. Boren?  
8 (No response)  
9 The Clerk. Mr. Bradley?  
10 Senator Bradley. Aye.  
11 The Clerk. Mr. Mitchell?  
12 Senator Mitchell. Aye.  
13 The Clerk. Mr. Pryor?  
14 Senator Mitchell. Aye, by proxy.  
15 The Clerk. Mr. Riegle?  
16 The Chairman. Aye, by proxy.  
17 The Clerk. Mr. Rockefeller?  
18 Senator Rockefeller. Aye.  
19 The Clerk. Mr. Daschle?  
20 The Chairman. Aye, by proxy.  
21 The Clerk. Mr. Packwood?  
22 Senator Packwood. No.  
23 The Clerk. Mr. Dole?  
24 (No response)  
25 The Clerk. Mr. Roth?



1 (No response)

2 The Clerk. Mr. Danforth?

3 Senator Packwood. Aye.

4 The Clerk. Mr. Chafee?

5 Senator Chafee. No.

6 The Clerk. Mr. Heinz?

7 Senator Packwood. Aye.

8 The Clerk. Mr. Wallop?

9 Senator Wallop. No.

10 The Clerk. Mr. Durenberger?

11 Senator Packwood. Aye.

12 The Clerk. Mr. Armstrong?

13 (No response)

14 The Clerk. Mr. Chairman?

15 The Chairman. Aye.

16 The vote is?

17 The Clerk. 13 yeas, 3 nays.

18 The Chairman. The amendments have carried. I believe

19 that completes the amendments to be offered today on that

20 particular section, and we have really made some progress.

21 Senator Chafee, did you have technical amendments that you

22 wanted to offer before we close here?

23 Senator Chafee. Could we take that up briefly next time?

24 Would that be all right?

25 The Chairman. Yes, of course. If there is nothing

1 further to be offered? Yes?

2 Senator Moynihan. Mr. Chairman, may I make a suggestion?

3 We have done something quite extraordinary this morning.

4 We have taken a major bill that you have intent on making

5 law, and we have put into it an entitlement for trade

6 adjustment assistance and a voucher to purchase education

7 for such workers. I think this is a very big morning, and

8 I would like to thank you for doing it.

9 The Chairman. Thank you very much, Senator. We have  
10 made substantial progress. Tomorrow, we will be discussing

11 Section 301 and hopefully, the day after, Section 201. We

12 will meet at 9:30 tomorrow morning.

13 (Whereupon, at 12:28 p.m., the meeting was recessed,  
14 to be reconvened on Wednesday, April 29, 1987 at 9:30 a.m.)

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## C E R T I F I C A T E

1  
2 This is to certify that the foregoing proceedings of  
3 an Executive Session of the Committee on Finance, held on  
4 April 28, 1987, were transcribed as appears herein and  
5 that this is the original transcript thereof.

6  
7  
8   
9 WILLIAM J. MOFFITT  
10 Official Court Reporter

11  
12  
13  
14  
15 My Commission expires April 14, 1989.

4/28/87

## MITCHELL AMENDMENT

### INTELLECTUAL PROPERTY PROTECTION AND MARKET ACCESS

The amendment would establish a procedure whereby the USTR is to use the National Trade Estimates to identify a list of "priority foreign countries" which deny adequate and effective protection of intellectual property rights, or fair and equitable market access to US companies that rely on intellectual property protection. The "priority" countries would be selected according to those which have the most onerous and significant unfair acts and those which offer the greatest potential for increased US exports. The priority list would be selected and published in the Federal Register within 30 days of issuing the NTE.

After a country is identified as a priority foreign country, USTR would have 30 days to conduct an investigation under Section 302. Initiation of the investigation may be deferred if: a) the USTR determines that the foreign country in question has entered into good faith negotiations to remedy the acts that gave rise to the investigation, or b) if the USTR determines that the investigation would be detrimental to US national economic interests.

For investigations that are pursued, the USTR would have six months to make recommendations to the President for possible action. This time period could be extended another six months if the USTR determines the foreign country is making substantial progress in implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights and fair and equitable market access.

Following the USTR recommendation, the President would have 30 days to take the action in accordance with the restrictions established in S. 490 with respect to Section 301 cases involving "unreasonable practices". That is, action would not be mandatory and the President could decline to follow the USTR recommendation where it is not in the "national economic interest".

The language described above is identical to the provisions in the House bill except that "fair and equitable market access" is added as a condition under the bill in addition to House language that applies to "adequate and effective protection" of intellectual property.

The Caribbean Basin Initiative would be amended to permit the President to take proportional action against qualifying countries, according to the scope of their acts and policies that deny protection or market access to intellectual property. Currently, the President does not have authority to withdraw benefits from CBI countries on a basis equal to the scope of their offenses. He must completely disallow CBI benefits if he takes any action at all. The amendment permits proportionality, as is now provided under GSP, and thus greater flexibility in dealing with such situations.

MITCHELL INTELLECTUAL PROPERTY AMENDMENT

The Mitchell intellectual property amendment is supported by the following organizations and their member companies:

Computer Software and Services Industry Assoc. (ADAPSO)

Computer and Business Equipment Manufacturers Assoc. (CBEMA)

Motion Pictures Assoc. of America, Inc. (MPAA)

Assoc. of American Publishers (APA)

American Film Marketing Assoc. (AFMA)

National Music Publishers Assoc. (NMPA)

Council on Competitiveness

Corning Glass

Pharmaceutical Manufacturers Assoc. (PMA)

4/28/87

**SECTION 1. TRADE ADJUSTMENT ASSISTANCE TO OIL AND GAS INDUSTRY.**

(a) **WORKERS.**—Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended to read as follows:

**“SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.**

“(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

“(1) a significant number or proportion of the workers in such workers’ firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated,

“(2) sales or production, or both, of such firm or subdivision have decreased absolutely, and

“(3) increases of imports of articles like or directly competitive with articles—

“(A) which are produced by such workers’ firm or appropriate subdivision thereof, or

“(B) in the case of workers of a firm in the oil or natural gas industry, for which such workers’ firm, or appropriate subdivision thereof, provides essential parts or essential services, contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

“(b) For purposes of subsection (a)(3)—

“(1) The term ‘contributed importantly’ means a cause which is important but not necessarily more important than any other cause.

“(2) Natural gas shall be considered to be competitive with crude oil and refined petroleum products.

“(3) Any firm, or subdivision of a firm, which—

“(A) engages in the exploration for oil or natural gas,

“(B) produces or extracts oil or natural gas, or

“(C) processes or refines oil or natural gas, shall be considered to be a part of the oil or natural gas industry and to be a firm providing essential services for such oil or natural gas and for the processed or refined products of such oil or natural gas.

“(4) Any firm which provides essential parts, or essential services, to another firm that conducts activities described in paragraph (3) with respect to oil or natural gas, as its principal trade or business, shall be considered to be a part of the oil or natural gas industry and to be a firm providing essential services for such oil or natural gas and for the processed or refined products of such oil or natural gas.”.

(b) FIRMS.—Subsection (c) of section 251 of the Trade Act of 1974 (19 U.S.C. 2341(c)) is amended to read as follows:

**“(c)(1) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—**

**“(A) a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,**

**“(B) sales or production, or both, of such firm have decreased absolutely, and**

**“(C) increases of imports of articles like or directly competitive with articles—**

**“(i) which are produced by such firm, or**

**“(ii) in the case of a firm in the oil or natural gas industry, for which such firm provides essential parts or essential services,**

**contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.**

**“(2) For purposes of paragraph (1)(C)—**

**“(A) The term ‘contributed importantly’ means a cause which is important but not necessarily more important than any other cause.**



“(B) Natural gas shall be considered to be competitive with crude oil and refined petroleum products.

“(C) Any firm which—

“(i) engages in the exploration for oil or natural gas, .

“(ii) produces or extracts oil or natural gas,

“(iii) processes or refines oil or natural gas, or

“(iv) provides essential parts, or essential services, to another firm that conducts activities described in any of the preceding clauses as its principal trade or business,

shall be considered to be in the oil or natural gas industry and to be a firm providing essential services for such oil or natural gas and for the processed or refined products of such oil or natural gas.”.

**SEC. 2. EFFECTIVE DATE.**

(a) **IN GENERAL.**—The amendments made by this Act shall apply with respect to petitions for certification which are pending on, or filed after, the date of enactment of this Act.

(b) **COVERAGE OF CERTAIN CERTIFICATIONS.**—Notwithstanding section 223(b) of the Trade Act of 1974, or any

other provision of law, any certification made under subchapter A of chapter 2 of title II of such Act which—

(1) is made with respect to a petition filed before the date that is 90 days after the date of enactment of this Act, and

(2) would not have been made if the amendments made by section 1 had not been enacted into law,

shall apply to any worker whose last total or partial separation from the firm, or subdivision of the firm, described in section 222(a) of such Act occurs after September 30, 1985.

4/28/87

ROCKEFELLER -- HEINZ AMENDMENTS

TRADE ADJUSTMENT ASSISTANCE PROVISIONS OF S. 490

1. **Coordination:** Requires the Secretary of Labor to promote and assist in coordination between administrators/providers of trade adjustment assistance and administrators/providers of other federally supported worker readjustment and training programs. Specifies that the Department of Labor, using its regional offices, provide technical assistance at the state and local level to encourage coordination and cooperation so that displaced workers obtain rapid, effective readjustment and training services.
  
2. **Early Training Option:** Clarifies that workers may enroll in training by obtaining and using their voucher under the trade adjustment assistance program at any time following certification for trade adjustment assistance. This amendment is to ensure that TAA-certified workers are provided the option to enter approved training during their initial "post-layoff" period when they are drawing UI benefits-- so long as they meet the conditions set forth by the trade adjustment assistance program, they may then begin to receive their full trade adjustment allowance upon exhaustion of their UI benefits.
  
3. **"Comingling" of Funds for TAA Training:** Specifies that workers may participate in training which draws on funds from the private sector and/or other federal education and training programs such as Vocational Education, Adult Education, and JTPA. Retains prohibition against "double-funding" of TAA training. Purpose of this amendment is to authorize (i.e. optional not mandated) program providers and workers to leverage other funding sources to supplement or pay a portion of approved training for TAA-certified workers. It is hoped that this will enhance the financial role of former employers in assisting trade-displaced workers, foster maximum use of government sources of worker retraining funds, and enable some workers to enroll in more extensive or advanced training which has a cost in excess of the \$4000 voucher "cap."

4/28/87

MITCHELL -- HEINZ AMENDMENT

TRADE ADJUSTMENT ASSISTANCE

- 1) Separation From Employment. Clarifies definition of separation from employment for purposes of determining eligibility period for benefits. Provides that the most recent incident in which the individual is separated from employment determines eligibility period rather than first separation.
- 2) Breaks in Training Period. Provides that a worker shall be treated as participating in a training program notwithstanding a break between training of up to two weeks.
- 3) Length of Training Program. Prohibits Secretary of Labor from establishing an absolute limitation on the length of a training program. Requires Secretary to consider whether the training provided is of suitable duration to achieve the desired skill level within a reasonable time. Labor Department regulations now limit training programs to 104 weeks. This does not affect the amount of benefits.
- 4) Notification of Trade Adjustment Assistance to Workers. Requires that the Department of Labor notify eligible workers of their benefits through the mail and notice in general circulation newspapers.
- 5) Waiver of Time Limitations. Permits individuals affected by current law interpretation of the eligibility period relating to separation from employment to be eligible for benefits.

Mitchell -- Heinz

Trade Adjustment Assistance Amendments  
Summary of Provisions

1) Separation From Employment This provision deals with the statutory requirements that must be met for an individual to qualify for benefits. The issue is whether an affected worker's eligibility period is based on that individual's first separation from employment following the date the firm was certified as impacted by imports or the last separation from employment before application for program benefits.

Under the Trade Adjustment Assistance program an individual is eligible for benefits only during a certain period that relates to the individual's unemployment insurance period and the date that the firm has been certified as impacted by imports. Thus, a crucial factor in determining an individual's eligibility for trade adjustment benefits is when that individual is considered to have been separated from his or her job for purposes of establishing an unemployment insurance period.

As a result of a 1981 statutory change, this question of separation from employment is being interpreted in such a way as to deny many workers the benefits to which they should be entitled by Congressional intent. For many other workers, this technicality has resulted in a reduction of the benefits to which they are otherwise entitled.

This problem occurs in industries which lay off workers for temporary and sporadic periods during which the plant is certified under the trade adjustment assistance program. As the production needs of the plant increase, many workers may be rehired for temporary periods before being finally laid off. The Department of Labor interpretation causes the eligibility period for these workers to begin to run from their first separation from employment even though they may have been rehired. Then, when they have finally and irrevocably lost their jobs, they have also lost much, if not all, of their trade adjustment assistance benefits. By a technicality in the statute, many workers now lose most or all of their eligibility for benefits while they are still employed at the trade impacted firm.

2) Breaks in Training This provision deals with the problem of short semester breaks or vacations. The Department of Labor interprets current law to prevent the payment of benefits during periods an individual is enrolled in a training program but is on semester break or vacation. This unfairly penalizes individuals who cannot obtain alternative employment

during short term breaks in training programs. The amendment provides for the continuation of benefits where the break in training does not exceed two weeks. This does not increase the number of weeks of benefits, it simply provides for a more flexible payment period.

3) Length of Training This provision would permit training programs to be as long as is reasonably necessary to train a worker for suitable employment. Although there is not now a statutory limit on the length of training, the Secretary of Labor has placed a 104 week limit on the duration of eligible training programs in the regulations.

Often times, this is not a sufficient time period to train a worker for employment in substantially equivalent jobs. The effect is to prevent many displaced workers in highly skilled occupations from acquiring the level of training that can equip them for new jobs comparable to the job that was lost to imports.

4) Notification of Trade Adjustment Assistance To Workers Although current law requires the Secretary of Labor to provide information to workers about the program, this notification is often insufficient to inform displaced workers of their eligibility for benefits, particularly when unorganized workers do not live near their place of employment. The provision requires the Department of Labor to mail notices to eligible workers and to publish notice in general circulation newspapers in the area of the certified plant.

5) Waiver of Time Limitations This provision permits workers who otherwise qualify for the program and are in approved training programs to qualify for benefits notwithstanding the lapse of the time limitations that would otherwise govern eligibility. This is intended to permit displaced workers affected by the last separation from service interpretation to become eligible for benefits.