

1 EXECUTIVE COMMITTEE MEETING

2 WEDNESDAY, MAY 6, 1987

3 Senate Finance Committee

4 Washington, D.C.

5 The meeting was convened, pursuant to recess, at 9:55 a.m.
6 in Room SD-215, Dirksen Senate Office Building, the Honorable
7 Lloyd Bentsen presiding.

8 Present: Senators Bentsen, Moynihan, Baucus, Bradley,
9 Riegle, Rockefeller, Packwood, Danforth, Chafee, Heinz,
10 Durenberger, and Armstrong.

11 Also present: Bill Wilkins, Staff Director; Jeff Lang,
12 Chief, International Trade Counsel; Josh Bolten, Trade
13 Counsel, Minority; Greg Jenner, Karen Phillips and Brad Figel,
14 Trade Staff, Minority.

15 Also present: Alan Holmer, Chief Counsel, U.S.T.R.;
16 Alan Woods, Deputy U.S.T.R.; Gil Kaplan, Deputy Assistant
17 Secretary, Countervailing Program, U.S. Department of Commerce.

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1 The Chairman. The hearing will come to order. Please be
2 seated -- those who are standing who can find seats.

3 Let me once again say how appreciative I am of the work
4 that was done yesterday, and again until 1:00 this morning,
5 in trying to resolve some of these concerns and some of these
6 problems.

7 We had lengthy discussions with the Administration
8 yesterday, discussing some of the concerns of dumping, and
9 countervailing duty subsidies, and I think it made some headway.
10 It resolved some of the differences in opinion, without making
11 final decisions. Hopefully, we can make some of those today.
12 I am sure that we won't have total consensus on each of them.

13 Let me state we had earlier said something about having a
14 meeting at 2:30 this afternoon. We will not be doing that;
15 I understand that the Republican Party has a caucus at 2:00; so
16 we will look to a meeting here hopefully at 4:00. Let us
17 understand we have a meeting here at 4:00 unless the members are
18 advised otherwise.

19 Mr. Lang, would you discuss some of the issues that we
20 discussed yesterday, insofar as dumping and subsidies are
21 concerned?

22 Mr. Lang. Yes, sir.

23 We have distributed to members a sheet, which has no
24 title on it but just begins with an item #1, Nonmarket Economy
25 County Dumping. I will work through that sheet.

1 At the table with me, in addition to Mr. Holmer and
2 Mr. Woods from the Trade Representatives Office, is Mr. Kaplan,
3 Gil Kaplan, the Deputy Assistant Secretary in charge of the
4 Dumping and Countervail Program at the Department of Commerce.

5 If you want to follow these matters in the spreadsheet,
6 they begin at spreadsheet page 72. Generally, the spreadsheet
7 follows the document I will be attempting to describe; so, if
8 you want to follow at spreadsheet page 72, you can see the
9 comparative descriptions of present law and whatever is in
10 the House bill and the Senate bill.

11 Mr. Chairman, the first provision on Dumping and
12 Countervailing in the Bentsen-Danforth bill is nonmarket
13 economy dumping. The problem here is that under current law
14 the Department has an administrative problem. In order to
15 figure out whether a nonmarket economy is dumping, they have
16 to choose a surrogate country to compare with the nonmarket
17 economy. It is very difficult. They think it ought to be
18 changed. The Committee has previously reported one type of
19 change; the Bentsen-Danforth bill includes another type of
20 change.

21 Under the suggestions we are making to you this morning,
22 the Committee bill would continue in effect; however, there
23 would be two changes in the way the Committee bill would
24 operate:

25 First, there would be an interpretation of the words

1 "comparable merchandise" to assure that the Commerce
2 Department can take into account appropriate quality differences
3 between the products exported by the nonmarket economy and
4 whatever the benchmark product is, and make adjustments to
5 assure comparability.

6 The second provision has to do with a special provision
7 of the nonmarket economy section of the Bentsen-Danforth bill.
8 There the bill provided that, where a product was a fungible
9 product, instead of using the benchmark you would build up the
10 cost of the product in the nonmarket economy, using so-called
11 "factors of production" -- that is, you would compare the
12 cost of labor in a comparable country with the cost of labor
13 in the Communist country, and so on.

14 As this was discussed last night, the concern arose that
15 any benchmark price used in such cases might be a dumped price,
16 and therefore it could not be used as the benchmark, because
17 you don't want to set fair market value at a price you know
18 to be dumped already.

19 The conclusion is that, in all cases where the Commerce
20 Department receives an allegation that the benchmark price is
21 itself a dumped price, they will investigate the matter on
22 two bases: First, if they have an outstanding dumping order
23 with regard to that product from the benchmark country, they
24 will go to factors of production; and, second, if they don't
25 have an outstanding dumping order, but in their estimation the

1 benchmark price may be a dumped price, they will investigate
2 the matter further, make a determination and, if they conclude
3 finally that the benchmark price is dumped, they will use
4 factors of production.

5 That is the staff proposal with respect to nonmarket
6 economy dumping.

7 The next proposal has to do with diversionary dumping.
8 Here, the problem is that under current law it is difficult
9 to reach a situation in which a component of a final product
10 is not dumped directly in the United States, the component is
11 dumped in some foreign market where value is added to it and a
12 final product is imported into the United States, taking
13 advantage of the dumping. The problem is that it is extremely
14 difficult to calculate the number so that you can offset the
15 dumping that inheres in the final product.

16 The staff recommendation is to drop the provision in
17 S. 490 and instead set up a program of four activities
18 intended to reduce the risk of diversionary dumping, attack
19 it earlier, and otherwise try to control it, because it seems
20 very difficult to attack directly.

21 The first element of the program is to take the matter
22 to GATT as a priority item in the new Round and attempt to get
23 international consensus that diversionary dumping can be
24 attacked directly in some way through antidumping and
25 countervailing duty laws.

1 The second is to adopt a bill introduced by Senator Heinz
2 called a "Point of Melt" provision. This is not actually a
3 dumping and countervailing duty provision, but -- I might add
4 Mr. Kaplan to help me a little bit here -- but the idea is
5 that, in cases involving steel, you would look at where the
6 steel was poured in order to determine whether it is within the
7 scope of the President's existing quota program.

8 The President currently has a program in which he has
9 arrived at voluntary restraint agreements, export restraint
10 agreements, with a number of countries around the world. It
11 is possible in each of those cases for a kind of diversion to
12 occur -- that is, if the program covers for example steel
13 sheet, and the sheet is produced in a voluntary restraint
14 country such as Brazil, and Brazil, instead of exporting the
15 sheet to the United States, exports it to Trinidad, which I
16 think is not a restraint country, and Trinidad advances the
17 value of the sheet by making it into line pipe or oil country
18 tubular goods or something like that, and those come in, they
19 are not subject to the restraint program, and therefore more
20 steel -- in a finished form -- is entering the United States
21 than the restraint program would otherwise have anticipated.

22 The purpose of the Point of Melt provision is to attribute
23 the advanced form of the product to the country that has signed
24 the voluntary restraint.

25 The third provision of this anti-diversion --

1 Senator Chafee. Mr. Chairman, could I ask a question, or
2 do you want us to reserve questions?

3 The Chairman. Let us do ask questions as we go along.

4 Senator Chafee. All right.

5 In this particular provision, Mr. Lang, can there be a
6 transformation of the steel sheet? Suppose it is going into
7 toasters? Where are we then?

8 Mr. Kaplan. I think there could be a transformation; but
9 the key points, Senator Chafee, is that the Administration
10 would have authority to consider that under the voluntary
11 restraint from the originating country, but it would not be
12 required to. So, we would be using appropriate discretion.

13 Senator Chafee. In other words, if it was mandatory you
14 could be sent on an incredible wild goose chase.

15 Mr. Kaplan. Yes.

16 Senator Chafee. The small part in the automobile.

17 Mr. Kaplan. That is right. But what this provision seeks
18 to do is handle those cases where offshore fabrication of steel
19 that otherwise would be VRA steel springs up, in order to get
20 around those voluntary restraints, in effect.

21 Senator Chafee. Thank you.

22 Thank you, Mr. Chairman.

23 The Chairman. Surely.

24 Mr. Lang. The third component of this provision is to
25 adopt a provision of S. 490, the Bentsen-Danforth bill, which

1 relates to diversionary dumping having to do with something
2 called "downstream monitoring." The idea of downstream
3 monitoring is that the Department is required to look at
4 downstream products when it appears they might be the
5 beneficiary of diversionary dumping, and try to determine
6 whether the law can be applied to those products.

7 Under this program, there is a selective downstream
8 monitoring program. The selection would be made by the
9 Commerce Department on one of three bases: First, that the
10 product concerned is the subject of an existing restraining
11 program, such as steel or semiconductors or something like
12 that; second, they would be allowed to downstream monitor if
13 they found a great number of cases on related products -- again,
14 the semiconductor case might be an example -- and the third
15 situation is a situation in which you have multiple offenders.
16 We have described this in the generic language of Senator
17 Baucus's bill on multiple offenders, but the basic idea is, if
18 you find that you have a product in which the same country or
19 same producers are repeatedly the subject of antidumping
20 investigations in a series of products, you could begin the
21 downstream monitoring. The idea here is to get ahead of the
22 problem, to add a little speed to the process, to catch up
23 with it as best you can.

24 The fourth element of this antidiversion program would be
25 an expansion of the Administration's proposal with regard to

1 anticircumvention. Under the Administration bill, they would
2 attempt to avoid circumvention of antidumping orders by
3 having the power to expand the scope of those orders to include
4 products that are closely related to a product which is
5 already the subject of an order. For example, if an order
6 covers 750 c.c. motorcycles and they discover that the foreign
7 producer is avoiding the order by producing a 748 c.c.
8 motorcycle, they can expand the scope of the order to the new
9 product.

10 What the Administration has agreed to do is expand the
11 scope of that program to try and reach some of the problems --
12 although it certainly will not reach all the problems -- that
13 come up in the diversionary dumping context.

14 I might just let Mr. Kaplan explain how the Administration
15 would expand the scope of this anticircumvention provision that
16 the Administration has recommended to accommodate these
17 concerns.

18 Mr. Kaplan. Basically, there were two restrictions on
19 when we could apply this anticircumvention proposal as
20 originally written: One said that, if the further advancement
21 of a product -- either in the United States, in the home
22 market, or in a third country -- were done by a related
23 party, we could apply this provision. We have agreed to say
24 that, if the further advancement is done by either a related
25 or an unrelated party, as long as the goods basically stay

1 within the same class or kind of merchandise, we would be able
2 to apply this anticircumvention provision.

3 Second, we have very limited language in the original
4 proposal, saying that substantially all of the components had
5 to come from the original exporter. We have dropped that
6 "substantially all" language to give us a little more leeway as
7 to when we can apply the anticircumvention provision; so, we
8 would be able to capture more kinds of cases which begin to
9 approach the diversionary dumping kind of problem.

10 Mr. Lang. Now, those are the four elements that the staff
11 is proposing by way of a replacement for the provision that is
12 currently in the Bentsen-Danforth bill on diversionary dumping.

13 The Chairman. At that point, let me intervene, Mr. Lang.

14 What you see as he goes through these is the amazing
15 complexities of administration and the concerns and the problems
16 of trying to derive at correcting what we think of as abuses;
17 and what we have dealt with in 490 is what we thought were the
18 main ones.

19 We have to remember that what you are seeing now is a
20 law that was worked over extensively in 1979 by this Committee
21 and by the Congress, and a great deal of headway was made at
22 that time. This has been proven by the fact that you have had
23 some 625 cases initiated since then, when you had a handfull
24 before that. This is probably the most used section of the
25 trade laws insofar as cases filed, I would assume, when we get

1 into the dumping and the subsidies sections.

2 I think the other part that we have to remember is, first,
3 that it is working fairly well, and we have tried to address
4 just those places where we are having the most concerns and
5 the most problems.

6 But the other thing that we have to remember, I think, is
7 that we want to be sure that we are complying with GATT as we
8 do these things, that if we don't, we lose a lot of our
9 leverage in negotiating some of these items. So, I think that
10 has to be a primary concern as we decide what to do in this
11 regard.

12 I would like for us to deal first with the four items
13 that we have discussed and see what the reactions of the
14 Committee happen to be concerning these proposed solutions,
15 after our discussions of yesterday.

16 We have to remember, too, that as we deal with this,
17 Commerce has a responsibility there, and they are the folks
18 dealing with it every day and those who have the experience in
19 the area. So, I think their comments are quite important to
20 us in trying to resolve these issues.

21 Senator Packwood. Mr. Chairman?

22 The Chariman. Yes?

23 Senator Packwood. Having gone through this trade bill, I
24 am inclined to agree with you that these two sections are the
25 most complex. They are tougher than 201 and 301 and

1 negotiating authority.

2 I think you have reached a pretty good compromise. I am
3 not sure the Administration is happy with it all; but,
4 considering again the different factors in this Committee, I
5 think the balance that you have struck is good and that we
6 ought to adopt it.

7 The Chairman. Are there further comments?

8 Senator Armstrong. Mr. Chairman?

9 The Chairman. Yes?

10 Senator Armstrong. This is not a comment, it is a
11 question. After listening to the discussion yesterday and
12 then reading the write-up that has been presented to us this
13 morning, I am not quite sure I understand how this multiple-
14 offenders monitoring is to take place.

15 The Chairman. Well, I did not get to that yet.

16 Senator Armstrong. Oh, I'm sorry. I thought you were
17 addressing that as part of the points you were making.

18 The Chairman. Have we gotten to that?

19 Mr. Lang. No, you haven't gotten to that.

20 The Chairman. That is why I stopped with the four items.

21 Senator Armstrong. I will withhold.

22 The Chairman. And then we will get to that one.

23 Are there further comments on the floor?

24 Senator Baucus. Mr. Chairman?

25 The Chairman. Yes.

1 Senator Baucus. Mr. Chairman, I think this is a fairly
2 reasonable package. There are a lot of differences. Each of
3 us writing his own trade bill is just like writing his own
4 budget; we do it differently.

5 As someone once said in asking a Senator of his position
6 on the budget, his particular way of writing the budget
7 resolution, he doesn't even know if he himself could agree with
8 his own budget resolution. I think that is somewhat true here
9 with trade.

10 I do have a couple of questions, though. As we were
11 discussing yesterday, one of the benchmarks for determining a
12 nonmarket economy sale was originally the largest volume of
13 sales that a comparable market economy may be engaged in, in
14 trying to determine what the nonmarket sales price should be.
15 I am wondering, in the first paragraph on this package, if the
16 inclusion of the quality adjustments that the administrating
17 authority must look at is intended to get at that question,
18 at least so far as it applies to countries like China and
19 similar countries that do produce a lot of products at a much
20 lower cost; but if, based upon the earlier test as it was
21 written in 490, if we would be in an even worse position today
22 than under this bill, than would be the case currently.

23 I mean, is that phrase intended to deal with that problem?

24 Mr. Kaplan. Yes, it is, Senator Baucus. We were all
25 concerned about the problem of a very high-quality good -- say

1 the Toyota Camry or something -- ending up being the
2 most closely comparable merchandise from the largest-volume
3 exporter, which would largely be Japan for automobiles. So,
4 if you had an automobile coming from a nonmarket economy that
5 was very low in quality, you might be thrown into a very
6 high quality benchmark.

7 This language, permitting us to make quality adjustments,
8 would hopefully permit us to deal with that problem in a way
9 which would not shut out trade with China.

10 Senator Baucus. So, if China were to begin to produce
11 automobiles, for example, the standard would not be the price
12 or cost of automobiles in Japan?

13 Mr. Kaplan. If it ended up that that were the only
14 possible surrogate, we would have the authority to make quality
15 adjustments to make the two in some way a fairer comparison.

16 The Chairman. There seems to me to be another point, too,
17 because I was troubled in trying to find some way of having
18 a judgment and fixing a fair price. Obviously what we are
19 doing now is exceedingly cumbersome under the law. But it
20 seemed to me that this was the more practical.

21 In addition to that, a domestic country would have to
22 prove injury, wouldn't they?

23 Mr. Kaplan. Yes.

24 The Chairman. And that can be quite difficult itself.

25 I personally think that we have come up with a reasonable

1 compromise in a very difficult area, and I appreciate the
2 participation of all the many members that took part, and that
3 of the staff.

4 Are there other questions concerning this?

5 (No response)

6 Senator Packwood. I will make the motion.

7 The Chairman. The motion has been made. All in favor of
8 the motion make it known by saying Aye.

9 (Chorus of Ayes)

10 The Chairman. Opposed?

11 (No response)

12 The Chairman. All right.

13 Now let us deal with the question of the multiple
14 offenders. Is that next?

15 Mr. Lang. Yes.

16 Mr. Chairman, we are now at the top of page 3 on the
17 document handed out at the beginning of the markup, which has
18 no title but just begins "Nonmarket Economy Country Dumping."
19 It is number 2(a) because in a way this is a different kind of
20 diversionary dumping. Senator Baucus has pointed out that
21 there is not only a problem of a product which has advanced in
22 value abroad before it comes into the United States, and
23 thereby in some sense it circumvents the United States
24 dumping law; there is also a problem when a foreign
25 manufacturer makes a series of closely-related products that

1 are exported to the United States, and he exports them
2 seriatim, getting market share quickly before the dumping
3 law can catch up with the problem.

4 There have been a number of different proposals by a
5 number of experts in the field dealing with this problem
6 called "multiple offender" -- that is, one company continually
7 dumping a series of related products.

8 The staff proposal on the solution there is something like
9 the monitoring we have suggested for downstream dumping, and
10 essentially -- I might have to rely on Gil Kaplan to give us
11 a little more of the detail, but just to summarize --
12 essentially the idea would be that, when it is alleged that
13 dumping is occurring in a series of closely-related products,
14 then after the second dump, the domestic industry that is
15 adversely affected by the practice can get the Government to
16 define that class of products in which this multiple offending
17 is occurring. And thereafter, if a third dump takes place,
18 the Commerce Department can move more aggressively on the
19 problem.

20 Gil, you might want to tell us, mechanically, exactly
21 how that works.

22 Mr. Kaplan. After the third dumping case, where we had
23 found a margin of greater than 10 percent from the same party
24 within the related-product category, we would be required to
25 monitor the rest of that related-product category; and, if we

1 had a reasonable evidence that there was dumping, we would
2 be required to self-initiate cases on those related products.

3 In those cases, we would not be permitted to extend any
4 of the statutory deadlines without the permission of the
5 domestic parties.

6 Senator Bradley. "Related party" means -- ?

7 Mr. Kaplan. Related product.

8 Senator Bradley. If a company or a country, or what?

9 Mr. Kaplan. This all refers to a company, not a country.
10 It is a multiple-offender provision related to companies which
11 engage in multiple incidents of dumping.

12 Senator Bradley. So that a company would have to commit
13 three dumping actions before triggering this?

14 Mr. Kaplan. Yes.

15 Well, there are different phases of it. What I was just
16 describing in terms of the self-initiating and the mandatory
17 monitoring for the rest of the category would be three
18 incidents. After two incidents, a domestic party could
19 request that we monitor other products from that particular
20 company that were in the product category. And "product
21 category" is defined to mean products of similar use and
22 similar description.

23 Senator Bradley. And you would then monitor and
24 self-initiate what?

25 Mr. Kaplan. The self-initiation would only click in after

1 the third incident, after three incidents of dumping, at more
2 than 10 percent. If we saw a reasonable likelihood that another
3 product was being dumped, we would be required to self-
4 initiate a case.

5 Senator Bradley. You would automatically self-initiate a
6 case against the company?

7 Mr. Kaplan. Yes, but it may end up having to cover all
8 products in that class or kind of merchandise from the country,
9 actually.

10 Senator Bradley. So, is it "country" or "company"?

11 Mr. Kaplan. The monitoring itself is company monitoring.

12 Mr. Lang. Senator Bradley, generally in Customs Law the
13 Government proceeds against articles as if the article was a
14 defendant. And in dumping, the United States can be selective
15 -- that is, it can proceed against only the product that is
16 tainted with the unfairness. So, in this case the Government
17 would proceed against the products within this category,
18 imported from that company. You would identify the company
19 because it had repeatedly or multiply offended the law.

20 Senator Bradley. But what I am trying to determine is,
21 after the third violation what happens? I am company-x, I am
22 French Company-X. I have three different products. Each one
23 of them was a dumping case. The third event takes place; now
24 what happens?

25 Mr. Lang. Okay. If all three of the cases were

1 affirmative dumping finding, an injury finding, a margin of
2 10-percent or more -- which is a fairly large margin -- and
3 you send in a fourth product in that same product category,
4 the Government will move against that product as if a dumping
5 allegation -- ?

6 Mr. Kaplan. No, first we would just monitor it.

7 Mr. Lang. First you would monitor. I'm sorry.

8 Mr. Kaplan. We would just monitor the rest of the
9 products within that product category. And if we found a
10 reasonable likelihood that any of those were being dumped, we
11 would be required to self-initiate a case against them.

12 Senator Bradley. All right. Could you do it with specific
13 times and specific actions? There is a third dumping case,
14 injury: 10 percent, action. Now you monitor. What do you
15 do? And for how long?

16 Mr. Kaplan. What we do is probably receive Customs data
17 on procing of that product and other data, either from the
18 foreign manufacturer or from the domestic industry, as to
19 exactly what is going on with respect to the pricing of that
20 product, and injury data related to whether that product, that
21 fourth product, in effect, is injuring the United States
22 industry.

23 Senator Bradley. And it has to be a similar product?

24 Mr. Kaplan. It has to be within the product category,
25 which is basically, as stated --

1 Senator Bradley. Just give an example of product
2 category.

3 Mr. Kaplan. Well, if you had a case on eproms, a kind of
4 semiconductor, and you had had two other kinds of
5 semiconductor cases, and then you had some other kind of
6 semiconductor, I would say.

7 Senator Bradley. Okay. You then start to monitor, which
8 means you get price data. How long?

9 Mr. Kaplan. Frankly, I am not sure, in this conceptual
10 mark, that we have looked exactly at how long that monitoring
11 would continue. We would have to come up with some reasonable
12 period of time.

13 Senator Bradley. All right. So, you don't yet know how
14 long you are going to monitor. Let us say that you monitored
15 X-days, years. What happens then?

16 Mr. Kaplan. It would be some number of years. If during
17 the course of that monitoring we find that that product that
18 we are monitoring -- that there is a reasonable likelihood
19 that that is being dumped, based on evidence we have regarding
20 pricing and regarding injury, we would be required to self-
21 initiate a dumping case to see whether in fact there was
22 dumping and whether it would be appropriate to put a dumping
23 margin on with respect to that product.

24 Senator Bradley. All right.

25 Now, the difference between this procedure and the present

1 procedure is what?

2 Mr. Kaplan. Well, there is not present procedure that
3 really relates to multiple-offender monitoring at the moment.

4 Senator Bradley. Yes. But I am trying to figure out
5 what is the difference between a fourth semiconductor component
6 coming in and having yet another dumping case, versus this
7 process.

8 Mr. Lang. If I can just intervene, I think the problem
9 here, Senator Bradley, is that the domestic industry waits
10 until it finds out that the new fourth product is being dumped.
11 And it gathers the information. It finds out what is happening
12 in the market -- usually very indirectly. It doesn't start
13 collecting Customs data; often it doesn't know the product is
14 there. The classic case I think is probably semiconductors,
15 where they detected dumping in a comparatively simple chip, and
16 then it occurred in a more complicated chip, and then a more
17 complicated chip with a widget on the end, or something like
18 that. And the industry was always behind the curve.

19 Senator Bradley. So that the Government immediately jumps
20 in to get the price data? That is the difference?

21 Mr. Lang. Yes. And the Government, if it finds a
22 reasonable likelihood that dumping is occurring, moves on its
23 own; it doesn't need a private petition.

24 Senator Bradley. But isn't one of the key things here
25 the time?

1 Mr. Lang. Yes. Hopefully, the whole program saves time.
2 Senator Bradley. But it won't save time unless you put a
3 specific time period for the monitoring; otherwise, you could
4 monitor it for years.

5 Mr. Lang. Yes. I think it is reasonable to suggest that
6 we should put an outer limit on how much monitoring there is;
7 in other words, it shouldn't go on indefinitely.

8 Senator Bradley. Yes.

9 Mr. Lang. It does seem to me that is a useful
10 suggestion.

11 Mr. Kaplan. I think that is fine.

12 The Chairman. Are there further questions on this
13 particular provision?

14 Senator Danforth. Mr. Chairman?

15 The Chairman. Of course. Senator Danforth.

16 Senator Danforth. Let me ask you, is this it for
17 multiple offenders? Is that all?

18 Mr. Lang. There is one other provision that relates to
19 the subject, Senator Danforth, and that has to do with
20 critical circumstances which might provide some assistance here.
21 You will find the subject described beginning near the top of
22 page 4.

23 When the dumping code was signed in 1979, it provided that
24 the United States could not attack the imported product for
25 more than a period of 120 days, and what that consisted of was

1 what is called "Withholding of Appraisalment" or "Suspension
2 of Liquidation." It means that the Government does not make
3 a final decision on what duties to collect and holds everybody
4 in suspense -- collects a bond or something like that, or asks
5 for a cash deposit.

6 In order to deal with the problem of sudden surges of
7 dumping, the Code provided that in critical circumstances you
8 could provide retroactive relief for 90 days by suspending
9 liquidation backwards.

10 The provision was written into the bill in accordance with
11 the Code by the Committee when it implemented the Code in the
12 1979 Act; but it has never actually worked in practice, because
13 it has been almost impossible to get injury determinations out
14 of the International Trade Commission.

15 > So, on page 4 you see some standards which staff believed
16 would make it more likely that the Commission is going to be
17 able to find injury in those cases. They have to do with the
18 timing of the request, and also with the actual injury
19 determination criteria, for the International Trade
20 Commission. And you can see them under number 5 -- they are
21 numbers 1, 2, and 3 on page 4.

22 The effect of this for the multiple-offender situation is
23 hopefully that you move a little faster and you can actually
24 make the 90-day provision do what the Committee intended it to
25 do when it implemented the Code provision, which it has never

1 done.

2 Senator Danforth. Let me just ask you a question, if I
3 can, Jeff, about the real world. Let us say that I am an
4 American manufacturer of nameplates, and that there is a
5 foreign manufacturer of various different types of nameplates,
6 and there is a long history of dumping -- they have made
7 nameplates just like this nameplate and dumped them.

8 Then there was a second case, and they made shorter
9 nameplates and dumped them. Then there was a third case, and
10 they made say blue nameplates and dumped them.

11 Now, as I understand it under this procedure, after the
12 third dumping, then there is going to be monitoring and
13 self-initiation, right?

14 Mr. Lang. Right.

15 Senator Danforth. And also after the third dumping there
16 is going to be -- or is it in all cases, the application of
17 this "critical circumstance"?

18 Mr. Lang. The critical circumstance is in all cases.

19 Senator Danforth. All right. Now, what satisfaction does
20 that give the American manufacturer of nameplates? In other
21 words, my understanding is that under GATT the remedy for
22 dumping is not a penalty but is, instead, only the imposition of
23 margins. That is the term of art, right?

24 Mr. Lang. That is the term of art. It means an offset.

25 Senator Danforth. In other words, there is an offset in

1 the difference between the price that it sold and what the
2 fair price is.

3 Mr. Lang. Yes.

4 Senator Danforth. So there is no penalty. If you are
5 caught after four tries, all that happens is that you sell it
6 at the fair price, not anything else. So there is no reason,
7 particularly, for anybody not to try to get away with it,
8 right?

9 Mr. Lang. Right.

10 Senator Danforth. Now, how would this satisfy the victim
11 of the multiple offender? How does this process satisfy the
12 victim of the multiple offender? Even under this, even the
13 fourth time, you say, "Well, the Government" -- the Government
14 -- "will initiate the case." That doesn't seem to help much,
15 because the injured party would say, "I would just as soon
16 initiate it -- I mean, that doesn't help me to have somebody
17 else initiate it."

18 The Chairman. Mr. Kaplan, you live with this problem, as
19 I understand it. If you want to make your comments at any
20 point there in answering the Senators' concerns, we would be
21 happy to have it.

22 Mr. Kaplan. Senator, I think there are three or four
23 ways this provision would provide very significant relief to
24 people who had been subjected to a multiple-offender kind of
25 situation:

1 First, I can tell you from experience that a foreign
2 producer likes nothing less than having the Department of
3 Commerce and the dumping people watching them like hawks as
4 to what they are doing in this country. They will go to any
5 lengths to try to get rid of a case, including calling the
6 President of the United States. The last thing they want is
7 a dumping case on them. A dumping case means that all of
8 their goods are never fully cleared through Customs until
9 a year or two after we complete our appraisement process,
10 basically. It means that there may be enormous margins coming
11 back to --

12 The Chairman. Do you mean that stuff is there on the
13 docks?

14 Mr. Kaplan. No, it is not on the docks.

15 The Chairman. Where is it?

16 Mr. Kaplan. The goods can come in, but the final bill
17 as to what the importer has to pay is not determined until
18 we finish our dumping review and look at each one of those
19 entries and see whether they have been dumped and the amount
20 of dumping that has been engaged in.

21 So that provides enormous uncertainty in the marketplace,
22 and foreign exporters are very unhappy about it; they don't
23 want to be subjected to that.

24 Senator Bradley. And it tends to freeze trade.

25 Mr. Kaplan. It causes a problem for them, yes.

1 Senator Danforth. What does?

2 Mr. Kaplan. The fact that the importer does not know
3 exactly how much he is going to have to pay to the Government
4 in duty.

5 Senator Danforth. But what freezes him is that there is
6 a case, right?

7 Mr. Kaplan. Yes.

8 Senator Danforth. I don't see how this process furthers
9 that.

10 Mr. Kaplan. Well, what it means is that he is going to
11 be subjected to monitoring to see whether new cases should be
12 started, and then a possible self-initiation of those cases if
13 there is any reasonable likelihood by the Government.

14 The self-initiation is also something the U.S. producers
15 generally want and exporters don't want, because it tends to
16 indicate the Government has a very serious concern about the
17 case.

18 Senator Danforth. Well, one of the arguments that is made
19 by Senator Specter, who has wanted to bring dumping cases into
20 the Federal Courts -- an idea which I have never thought was
21 a very good idea -- is that dumping cases can go on for a very
22 long time. What he wants is a process by which a manufacturer
23 in the United States can go into Federal Court and get a
24 temporary restraining order against the dumping. And his
25 argument is that that is a very fast remedy; it is a summary

1 remedy. It is a very fast remedy.

2 How does this process deal with Senator Specter's problem?

3 How does this really say to the foreign dumper, "Stop"?

4 Mr. Kaplan. As a result of the monitoring you will have a
5 lot of data up front and be able to start cases more quickly
6 than you would without this monitoring program, in effect. So,
7 you probably won't even be the year or two down the road that
8 would necessitate a TRO, because you will be earlier in the
9 process of a possible dumping.

10 Second, if you have this critical-circumstance provision
11 and it provides more likelihood of retroactive, in effect,
12 suspension of liquidation, or retroactive imposition of these
13 duties, that will be helpful.

14 Senator Danforth. Anything else?

15 Mr. Kaplan. Certainly we are not permitted to extend
16 these cases without the permission of the domestic party.

17 Senator Danforth. You are not permitted to what?

18 Mr. Kaplan. Extend the length of these --

19 Senator Danforth. Well, let me ask you this. Say I am
20 the nameplate manufacturer in the United States, and all of
21 these nameplates are arriving on the dock. And I am about to
22 go out of business. You know, I don't think I can hold on for
23 six months with these dumped nameplates arriving on the dock.

24 I come to you. You are my lawyer, and I come to you and
25 say, "You have got to stop this. You have just got to stop

1 this." Now, with Senator Specter's provision you could do it.
2 I mean, you could go to court, and you could get a restraining
3 order -- wake the judge up in the middle of the night and get
4 a temporary restraining order.

5 But you have this process that you have just outlined, and
6 I come to you, the nameplate manufacturer, and I say, "You
7 have got to help me, and you have got to act fast, because I
8 am going under." What do you do?

9 Mr. Kaplan. Well, you would start this case, possibly by
10 self-initiation if it is this third kind of process, and you
11 would have relief, potentially, within two or three months if
12 the critical-circumstance provision went into effect. And
13 that is about the minimum period of time you can do it and
14 really have any sense of whether there is real dumping or not.

15 Senator Danforth. Now, how does the critical-circumstance
16 process help me?

17 Mr. Kaplan. It immediately -- or within that few-month
18 period -- requires the payment or the posting of a bond for
19 the amount of the dumping margin, in effect. The prices would
20 immediately have to jump up, or the importer would end up in
21 effect paying the dumping duty.

22 Senator Danforth. Does that apply to everybody, or only
23 the multiple offender?

24 Mr. Kaplan. Everybody.

25 Senator Danforth. In the case of the multiple offender,

1 how are we helped? I mean, here is this nameplate guy over in
2 Taiwan or something, and he just keeps producing the
3 nameplates and dumping them, over and over and over again -- a
4 slightly different kind of a nameplate. How do you further
5 the cause with respect to that person for a fast remedy? For
6 a fast remedy?

7 Mr. Lang. Senator Danforth, maybe I can be a little bit
8 helpful on this. There are a couple of things that will apply
9 in the case you have given us.

10 First, the antidiversion provisions that we described a
11 few minutes ago have a circumvention provision designed to deal
12 with your nameplate case. And because that doesn't require
13 three dumps to occur, you can expand an existing order. And
14 so, when you change from that kind of nameplate to the lower
15 quality nameplate or a different nameplate, presumably Commerce
16 could move even faster on that problem.

17 The second thing, I think, to understand about critical
18 circumstances is that the flow of the goods and the collection
19 of the duty are parallel processes; they are not the same
20 process. And the collection of the duty occurs generally later
21 than the actual action of the Customs Service, allowing goods
22 to flow into the stream of commerce. That is why critical
23 circumstances, which has not worked before, if made to work
24 under these provisions might make an earlier difference to
25 these people.

1 The third problem to consider -- and I am sure you know
2 this better than I do, having been in courtrooms longer than
3 I have been -- is that TROs are not that easy to get; you have
4 to show irreparable harm, as I recall, and I think likelihood
5 of success on the merits. I don't know what your experience
6 has been, but I have tried waking judges up, and sometimes it
7 is rather difficult.

8 (Laughter)

9 Mr. Lang. So I am not sure you -- I don't mean to
10 undermine the point. The point is, I am not sure this process
11 is fully comparable with a judicial process. It is an
12 administrative process. Admittedly, it is a prospective
13 remedy. That is a limitation that is in the nature of the
14 dumping law, rather than something that can be compared to a
15 domestic problem.

16 Senator Danforth. I just have two other questions. If
17 you were in my shoes -- a nameplate manufacturer -- would you
18 view this proposed change in the law as being a major
19 improvement?

20 Mr. Lang. I would view it as an attempt to make the law
21 do what it promised to do; but it isn't going to give you
22 damages, it isn't going to give you retroactive relief, and it
23 isn't going to give you relief the day you find that problem,
24 because that is not the kind of relief the dumping law gives.

25 The problems that this staff proposal would attempt to

1 resolve are problems mainly caused by the dumping law not
2 doing what it is supposed to do -- not that they are problems
3 beyond what the dumping law was supposed to do.

4 Senator Danforth. Would you say this is a great
5 improvement?

6 Mr. Lang. I would say it is an improvement over current
7 practice.

8 Senator Danforth. All right. Let me ask you one other
9 question, or let me ask Mr. Kaplan or maybe Mr. Woods -- I don't
10 know, whoever from the Administration wants to answer this.

11 Right now under GATT, the only thing that can be
12 accomplished with antidumping laws is an offset. An attempt
13 to legislate a penalty would be violative of GATT. Should we --
14 or maybe the bill does, I don't know -- should we provide as a
15 negotiating objective some sort of tightening of this, or for
16 the imposition of a penalty in the case of multiple offenders?
17 I mean, should we take the position that under international
18 agreement someone who constantly pushes the system and is
19 willing to be caught, and then tries it again, should end up
20 doing something other than just paying an offset? That there
21 should be some sort of penalty imposed?

22 Mr. Woods. Senator, as a matter of fact, when the
23 Administration transmitted its legislation to the Congress, we
24 made it clear that that was one of the objectives we would have
25 in the Uruguay Round of GATT negotiations. We have agreed that

1 this is a problem which must be addressed, which should be
2 addressed in GATT, and it is our intention to do so as it has
3 been prior to this legislation.

4 Senator Danforth. So, you don't need anything further
5 in the bill with respect to this objective?

6 Mr. Woods. No, I don't believe we do.

7 Senator Danforth. And it is your intention to try to get
8 something accomplished in GATT to provide for a penalty in the
9 case of multiple offenders?

10 Mr. Woods. For recidivist dumpers, that is the way we
11 have described it, Senator.

12 Senator Danforth. For what?

13 Mr. Woods. Recidivist dumpers.

14 Senator Danforth. Yes. Okay.

15 (Laughter)

16 The Chairman. All right, are there further questions
17 concerning this?

18 Senator Heinz. Mr. Chairman?

19 The Chairman. Yes. Senator Heinz.

20 Senator Heinz. I do have some questions on number 2,
21 as you have identified it here, under "Diversionary Dumping."

22 The Chairman. Could we hold them to the multiple offenders
23 at this point, and then get back to the other?

24 Senator Heinz. Certainly, Mr. Chairman.

25 The Chairman. I would like to resolve this if we can.

1 Senator Baucus. Mr. Chairman?

2 The Chairman. Yes, Senator Baucus.

3 Senator Baucus. I appreciate this conversation very
4 much. It is a refinement on the conversation we had yesterday
5 afternoon on multiple offenders. I think we have made a lot
6 of progress.

7 As you know, Mr. Chairman, my original approach in my bill
8 was to provide a private right of action in the third instance,
9 after a company, say a Hitachi, was caught redhanded a few
10 times. We have worked out now some of the problems that
11 private right of action would take. One is, it might be
12 GATT-illegal. There is a 1916 predatory pricing statute that
13 the American manufacturer could use to bring an action against
14 a dumper, but there is a slight question about the legality
15 under GATT.

16 I think Senator Bradley aptly pointed out that perhaps
17 the version we now have should be tightened up with a
18 deadline, so that we move more quickly. I think that is a
19 refinement that we perhaps could make here. I don't know if
20 this is the appropriate forum to make that suggestion or to
21 follow up on the Senator's suggestion.

22 And as the Senator from Missouri pointed out, these are
23 bad actors, these dumpers. If Hitachi, for example, is caught
24 dumping seven times in 10 years, I think it is sufficient time,
25 and NEC also is caught dumping seven times in 10 years. It

1 just seems to me that the current dumping procedures are not
2 adequate.

3 This version does tighten it up, I think considerably; but
4 I frankly think it does not go far enough. We do have a
5 GATT problem, and to have as a negotiating objective some
6 penalties for recidivist dumpers I think is a very admirable
7 goal.

8 I think we have done about as well as we can at this
9 point, and I endorse it.

10 The Chairman. Senator Moynihan?

11 Senator Moynihan. Mr. Chairman, just to record this, that
12 in our conversations yesterday, we ought to be clear as we
13 go forward that American firms are the subject of a very
14 considerable number of dumping actions in other countries.

15 This is anecdotal, but for what it is worth, I have been
16 involved with the subject for a very long while. Harry
17 Hawkins, who devised these rules under Cordell Hull, first took
18 me through this subject, and I wrote a paper for him on dumping.
19 He said it was not unreadable.

20 (Laughter)

21 Senator Moynihan. But the degree to which we perceive
22 sort of governmental patterns in what in fact are simply
23 business activities, business strategies, the business that
24 Senator Packwood observed that, you know, you have made
25 100,000 copies of some particular product, and they didn't work

1 out very well, and so you are left with 30, and you start
2 selling them well below cost because you can't sell them at a
3 profit; the strategies of entering a market and creating
4 market share, and then raising prices in the aftermath -- these
5 are among the hundreds of thousands of business decisions
6 that get made. And the effort to spot something particularly
7 illegal in them, it seems to me, if you see the numbers of
8 actual cases compared to the numbers of actual events, you
9 realize how miniscule all of this is.

10 Could I ask Mr. Woods, in all truth, didn't we just dump
11 4 million tons of wheat on Communist Russia?

12 Mr. Woods. Well, I believe we probably sold that wheat
13 at less than the price you might find for that same product
14 in the market in the United States.

15 Senator Moynihan. You will go far in diplomacy, sir.

16 (Laughter)

17 Senator Armstrong. Mr. Chairman, if the Senator will
18 yield, could we just ask the logical follow-on question:
19 Did we in fact harm the Soviet Union by doing so?

20 Mr. Woods. Did we what?

21 Senator Armstrong. Did we harm the Soviet Union by selling
22 this wheat to them but below the domestic price, or by dumping
23 it?

24 Senator Packwood. This may be the most newsworthy answer
25 you give, Mr. Woods.

1 (Laughter)

2 Senator Moynihan. All right, 30 seconds.

3 The Chairman. Now we are going to test that diplomacy.

4 Senator Bradley. The short answer is, they are not a
5 member of GATT, so it is irrelevant.

6 (Laughter)

7 Mr. Woods. Thank you, Senator.

8 Senator Armstrong. Well, I think the question really is
9 relevant. In your opinion, did we hurt the Soviet Union?

10 Mr. Woods. Let me say -- I will give an economist's
11 answer, because it does have an economist's answer. You know,
12 the economists say, "On the one hand" -- "On the other hand."

13 On the one hand, it did not hurt the Soviet Union, so
14 there would have been no injury. You know, it was a
15 government purchase in this circumstance, so presumably the
16 government of the Soviet Union could decide not to. On the
17 other hand, by buying subsidized wheat, wheat at less than the
18 value that we sell it possibly here, they reduced their own
19 incentive to increase their own production. Were they harmed
20 by that?

21 Senator Moynihan. Well, did it hurt America? We don't
22 have all that wheat. Does Australia have a case against us?

23 Mr. Woods. Australia wasn't a party to the sale.

24 Senator Moynihan. But Australia might have sold them its
25 if we didn't subsidize ours.

1 Mr. Woods. In this whole area of agriculture, the rules
2 relating to agricultural sales are very, very fuzzy. And that
3 is the reason why we have emphasized the need to become more
4 precise and have a better handle on agriculture in the new
5 round of trade negotiations.

6 The Chairman. I think those are some good examples that
7 have been cited, and I am appreciative of them. Let me state
8 that we have a vote at 12:00 on the floor on the Child's
9 Amendment to the Budget Resolution. When I had stated about a
10 4:00 meeting here, I would like for the members -- members
11 only -- to meet me at 3:30 in the Chairman's Office in 219.
12 I hope you can be prompt; I know you have other demands on your
13 time. But I won't hold you long there, and then we will move
14 into this meeting.

15 Now, Senator Armstrong, you had some comment.

16 Senator Armstrong. Thank you Mr. Chairman. Just a
17 footnote to what we have been talking about.

18 It seems to me that what we have really lost touch with --
19 and I don't know that we can ever get back in focus -- is the
20 question of what is the abuse we are trying to correct.

21 If, for example, some country decided that it wanted
22 perpetually to supply us nameplates, Jack, below cost, that
23 would be very inconvenient for domestic manufacturers of
24 nameplates. But I am not so sure that our country is injured
25 by that. It appears to me that if they wanted to practically

1 give them away, or in fact if they actually did give them
2 away, as Senator Moynihan pointed out yesterday, there are a
3 lot of worse things than having a steady supply of underpriced
4 goods coming into the country.

5 So, what is it we are trying to do? I fear that, in all
6 of this, there is a kind of -- to me, as a businessman,
7 Mr. Chairman, -- there is a kind of unreality about all of
8 this, as if businessmen thought in the terms that are being
9 discussed here in this room. And they just don't. That just
10 isn't the way it happens.

11 So, I guess to the extent that these rules and the
12 legalisms that we are formulating, and the bureaucratic
13 procedures that are in place are applied only to a tiny
14 fraction of the transactions in international trade, it doesn't
15 hurt too much.

16 But to the extent that this mindset takes root, it really
17 becomes very hurtful. I don't have a specific proposal to
18 correct the problem that I have identified, but I would at
19 least mention it, and I am trying to think of one, because we
20 are getting ourselves into a situation where, increasingly, we
21 are imposing a mentality that is inappropriate to the real
22 world situation.

23 Senator Heinz. Mr. Chairman, I would like to respond to
24 that, because I think somehow the discussion has gotten off the
25 track in a very major way, and we are losing sight of what we

1 are trying to do, Bill or Pat, with these laws.

2 The whole idea of course is to try to have a market-based
3 system. If you don't have a market-based system, our system of
4 free enterprise will not survive.

5 So, both the antidumping laws and the countervailing duty
6 laws are aimed at disciplining the system, so it is a market
7 system.

8 Now, obviously in the case of subsidies we all understand
9 what the problem is: A government is intervening. And I don't
10 sense there is any of the ambivalence about countervailing
11 against subsidies that there seems to be about why we should
12 attack dumping practices.

13 I think it is easy to create an argument of reductio
14 ad absurdum if you say, well, there are lots of business
15 practices -- a business that has too many widgets and they
16 want to get rid of them, and you say, "Sell them." That
17 happens all the time; we all end up with surplus paper clips
18 and commodities and so forth, like that. And nothing that we
19 are talking about here in the real world is going to have any
20 effect on that, because what you are really talking about where
21 dumping is concerned is a practice that can only take place
22 where there is a protected market.

23 The Chairman. Gentlemen, I agree with the real world,
24 and now I would like to get you to real time. We have some
25 very eloquent, articulate Senators discussing the ideological

1 points, but I like to discuss this another --

2 Senator Heinz. I just hope, since we have had about
3 15 minutes of ideology, that we might have one more minute,
4 which is simply to bear in mind that when there is a persistent
5 practice of dumping, it can only happen because the home
6 market from which the dumped market is originating is a
7 protected market. And if you can in effect force that person
8 to behave the way he or she would have to behave if they
9 weren't a protected market, you are strengthening the market-
10 based system.

11 The Chairman. Thank you.

12 Senator Wallop. Mr. Chairman, could I just ask one
13 question?

14 The Chairman. Yes.

15 Senator Wallop. Is it the criteria in this amendment --
16 this is directed to the amendment -- that before dumping is
17 found to be the case, that the home market is protected?

18 The Chairman. That what?

19 Senator Wallop. That the home market is a protected
20 market? Is it a criteria to define dumping?

21 Mr. Woods. No.

22 Senator Wallop. Well, then, the argument falls.

23 Senator Heinz. No, it just is not a criteria. It happens
24 to be a fact of life. You know, we don't find that
25 governments are in surplus that are subsidizing, either.

1 The Chairman. Gentlemen, can we get a vote on this
2 amendment as it has now been changed and modified and reported
3 by staff? And the additional things that have been addressed
4 by Commerce?

5 Senator Heinz. Mr. Chairman, you are asking for a vote
6 on the whole package?

7 The Chairman. No. We have already voted on the other
8 amendments, and we will get back to it, since apparently you
9 have a question. But we are now talking about the vote on the
10 monitoring of multiple offenders. Are we ready?

11 Senator Baucus. I make the motion, Mr. Chairman.

12 The Chairman. A motion has been made to move the adoption
13 of it by Senator Baucus. All in favor of the motion as stated,
14 make it known by saying Aye.

15 (Chorus of Ayes)

16 The Chairman. Opposed?

17 (No response)

18 The Chairman. The motion carried.

19 Now, Senator Heinz, I believe you had a question to bring
20 up on diversionary dumping.

21 Senator Heinz. Yes, Mr. Chairman.

22 The Chairman. I might state, Senator, that earlier this
23 morning we went over those, and we have voted on them. But
24 your remarks are pertinent, and we would be pleased to have
25 them.

1 Senator Heinz. So at this point this has been adopted,
2 but it is subject to amendment?

3 The Chairman. The four have been adopted, and we have
4 moved on to this other amendment on multiple offenders, and we
5 have done that. But we have a rule in this Committee that we
6 can revisit those. So, with that in mind, if you have some
7 question, we would be happy to hear it.

8 Senator Heinz. I think I have an amendment to the new
9 text, Mr. Chairman.

10 The Chairman. On which provision? On diversionary dumping?

11 Senator Heinz. On diversionary dumping.

12 The Chairman. Will the Senator state it?

13 Senator Heinz. First, I need to just be clear on what the
14 definition of "small" is. Is "small" 49 percent? Can we make
15 it 49 percent? Or less?

16 Mr. Kaplan. Senator, I don't know that we would have the
17 same definition in every instance. I think we would be
18 reluctant to give an actual number, because it may vary on a
19 case-to-case basis.

20 Senator Heinz. Now, I gather that the EC defines "small"
21 as "not more than 40 percent of the value."

22 Mr. Kaplan. I have read that EC proposal three of four
23 times, and I can't understand how they define it.

24 Senator Heinz. Well, I would like to amend the proposal
25 to make it clear that "small" is not more than 40 percent of

1 the value.

2 The Chairman. Let me ask, what does that mean, then?

3 Suppose you had a situation of a subsidiary of a foreign
4 company that has started over here with the idea that they would
5 incrementally add to what was done domestically in this
6 country. And suppose in the beginning that what they added
7 here was under that 40 percent; but, as they built up the
8 installation here, and the plant here, they had plans to add
9 more. Would such a limitation preclude them or result in a
10 decision where they didn't do it?

11 I have some concern about how that might work. I would
12 like for the staff to comment, or Mr. Kaplan. What is your
13 reaction to such a limitation?

14 Mr. Kaplan. It seems to me it would expand the provision
15 beyond what we believe is appropriate. It would also in some
16 instances, perhaps, restrict some things we may think are
17 appropriate; because, when you start doing these actual
18 calculations, you get into problems as to whether you should
19 include various kinds of selling expenses and things, and
20 really looking at value-added. And thirdly, when you get that
21 far down the road, when you are talking about 40 percent, you
22 are getting into very serious questions regarding the GATT
23 legality of the whole thing. So, we would oppose it.

24 The Chairman. Mr. Lang, do you have a comment concerning
25 it?

1 Mr. Lang. The Administration offered to expand their
2 anticircumvention proposal in certain ways, and this reflects
3 that expansion.

4 The definition of "small" always meant to us a relatively
5 small change in the nature of the product; although, it was
6 never defined. We were given examples of products that were
7 very little advanced in value -- a television set, a chassis
8 assembled into a final set, that kind of thing. I am not
9 aware of the European practice, so I am not in a position to
10 judge whether we would be mirroring that practice precisely.

11 Senator Heinz. Let us try it on cases, to see if we can
12 understand how this works. Let us go back to the acrylic fiber
13 and yarn issue, where a Japanese manufacturer which has been
14 found to be dumping acrylic yarn in the United States -- if you
15 don't have a finding of dumping, this would not apply -- they
16 decide that what they will do is sell the acrylic fiber in a
17 third country to either a captive corporation or a noncaptive
18 corporation, as the case may be, and that is transformed, spun,
19 into yarn, and the yarn is sold in the United States at a
20 price very close to what the dumped yarn was sold for in the
21 United States. But it is coming from a third country.

22 Now, what happens under the Chairman's proposal, as
23 modified?

24 Mr. Kaplan. I think we might have to know more about
25 the nature of the fiber an yarn business.

1 Senator Heinz. Let us assume that the acrylic fiber was
2 39 percent of the value-added, that it was not very "small"
3 and that it was not the whole ballgame.

4 Mr. Kaplan. It sounds like that would be going too far.

5 Senator Heinz. So under those circumstances, you would
6 not find "diversionary dumping"?

7 Mr. Kaplan. Yes, from what you are describing, I think
8 so. I think we would not.

9 Senator Heinz. You would not. Now, does that make any
10 sense at all? I mean, clearly it is circumvention. The more
11 acrylic yarn that can be sold at the same dumped price to the
12 third country and transformed into yarn, the more fiber that
13 that happens to, the more the offending country of the first
14 part, Japan, is simply getting around our laws. That can't
15 be right.

16 And in modifying this proposal, you have got it modified
17 to the point where you can't do anything about that. And that
18 can't be right.

19 Mr. Kaplan. I think there are instances that this
20 proposal does not cover, which a full-fledged diversionary
21 dumping proposal -- which we strenuously oppose -- probably does
22 cover. You are correct about that.

23 Senator Heinz. Well, how can we change this so that it
24 covers what we all agree is -- at least I think we agree.
25 Maybe you don't agree. Maybe you don't think what I have just

1 described is in effect diversionary dumping, maybe you don't
2 think it is getting around the rules of the game.

3 Mr. Woods. Senator, if I may -- in the example that you
4 have used, you have used an example of a fiber on which we have
5 a dumping finding, and that that fiber is then sold into
6 another country where it is made into a product, where in your
7 example it is 39 percent of the value of that product. And
8 then the end product -- in your instance, yarn -- comes to
9 the United States. Well, what has happened there is that
10 61 percent of that product has been value-added to that
11 39 percent that has a dumped input, in your example. That is a
12 big percentage, 61 percent.

13 In the example that you use, it is a pretty simple
14 product, and I am sure it is carefully selected for that
15 reason. Other products are not so simple -- steel in an
16 automobile.

17 Senator Heinz. I don't think anyone is challenging that.
18 How about flat-rolled steel from Japan, against which a dumping
19 margin has been found, that is shipped to a third country and
20 transformed into pipe and tube? That happens every day; it is
21 happening in Canada right now. Those are the kinds of common,
22 garden-variety everyday cases we are talking about.

23 The use of dumped steel in an automobile -- which, by the
24 way is getting to be a smaller and smaller proportion of an
25 automobile -- would probably be covered by your proposal,

1 because the amount of steel involved in an automobile is
2 small. I don't know what "small" is in this amendment, but
3 if you are worried about the automobile, I would guess that
4 your proposal covers the automobile. But I don't think it
5 covers the circumstances that most of our industries face.

6 The Chairman. Let me ask, would you think that the
7 country of origin in the point of milk might be applicable in
8 this situation?

9 Mr. Woods. In the steel case, there is no question about
10 that. That does cover that.

11 Senator Chafee. That would be covered by the Foreign Milk
12 Bill.

13 Mr. Woods. By Senator Heinz's provision, in that instance,
14 yes.

15 The Chairman. Let me state, Senator, that I really would
16 like to get this resolved up or down and bring it to a vote.
17 The provision as is in 490, as I recall, is in the House bill.

18 Mr. Lang. On diversionary dumping.

19 The Chairman. On diversionary dumping.

20 Senator Heinz. Mr. Chairman, I think this is an
21 absolutely critical provision, because what we have learned in
22 eight years is that people are getting very smart at getting
23 around our antidumping and countervailing duty provisions.

24 The Chairman. Senator, I don't question but what it is
25 important; that is the reason we put it in 490 to begin with.

1 I am also deeply concerned about anything that might be
2 interpreted as GATT-illegal. That concerns me, too.

3 Senator Heinz. I have made a proposal, Mr. Chairman, that
4 we define "small" as "not more than 40 percent of value" in
5 an effort to try to cover this.

6 Now, my problem is that the Administration seems to be
7 arguing against the examples, saying, "Well, your problem is
8 that 39 percent is too small. If it was 79 percent, then we
9 would agree with you." At least, that is what Alan Woods was
10 saying. You know, "Senator, the problem is that the acrylic
11 fiber is only 39 percent; that 61 percent of the value was
12 added elsewhere, and somehow that creates a problem." That is
13 what Alan said. I don't know what he meant, but that is what
14 he said.

15 Mr. Woods. I think I was trying to make the reverse
16 point, which was that substantial value was added, that you
17 can't necessarily apply the standard to the product that has
18 had substantial value added to it as you do to the original
19 dumped product.

20 The point here, and the use of the term "small," is that
21 it allows us some flexibility -- I will grant you that,
22 Senator -- and "small" on a product-by-product basis is going
23 to be different. That is an aspect of this that we like, in
24 that it does give us some flexibility.

25 Now, it could be, after we have administered a law that

1 has just got "small" in it for some years, and after we have
2 gone through the Uruguay Round -- where you notice in Item B it
3 has become a negotiating objective -- we would be able to come
4 back and refine that at a later time.

5 But at this point in time, we think "small" covers the
6 subject.

7 Senator Heinz. Could someone tell me what "small" means,
8 then? Is it 49 percent, or less?

9 (Continued on following page)

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HARD

1 Mr. Woods. Is it situational, Senator? I mean, that is
2 the point I was trying to make.

3 Senator Heinz. Mr. Chairman, maybe we could say in report
4 language what "small" is, but I find it unreasonable that some
5 say that small is situational.

6 The Chairman. Why don't we do that, and do it in the
7 report language?

8 Senator Heinz. And can we say that small is 49 percent
9 or less? That gives them a lot of flexibility, doesn't it?

10 The Chairman. What does the Administration have to say
11 about that?

12 Mr. Kaplan. I think we would be reluctant to set any
13 specific number, but it is something we could try to work
14 through in the report language.

15 The Chairman. You have a great deal of discretion, of
16 course, don't you?

17 Mr. Kaplan. Yes, we do; but once you put a provision like
18 this in here and you have the possibility of enormous domestic
19 political pressure pushing you to do things which may be
20 beyond the limits of reasonable discretion and GATT legality.

21 The Chairman. One thing you know that I continue to
22 emphasize is that I want to be sure we don't have the serious
23 question of GATT legality.

24 Senator Heinz. I don't know how putting report language
25 creates a GATT problem.

1 Mr. Kaplan. It is not the language itself; it is how the
2 provision is enforced, and this provision in itself, which
3 goes well beyond the Administration's proposal, raises GATT
4 issues and to try to define it as 49 percent raises even
5 more.

6 Senator Heinz. Let's make it 40 percent or something
7 more than 40 percent.

8 Senator Packwood. Mr. Chairman?

9 The Chairman. Yes, Senator Packwood?

10 Senator Packwood. At the risk of coming down on the side
11 of the Administration, "small" is a negotiating word and it
12 gives you some room. If you put in conference, 40 percent or
13 45 percent, that isn't normal wiggle room conference language.
14 We are saying we really meant this to be 40 percent. We
15 might have otherwise put in a package to read this thing as
16 40 percent; I just don't think we should.

17 Senator Heinz. Why don't we put something in the report
18 language, though?

19 Senator Packwood. That is what I mean. If we put it in
20 report language with a specific figure, you are all but saying
21 that is what we mean by the law. In essence, you are saying
22 we didn't quite have the votes to put it in the statute, but
23 we put it in the report language where we accommodate each
24 other; and then you write a very specific figure. That is a
25 very specific pointer.

1 Senator Bradley. You could say more than 20 and less than
2 60 except in exceptional circumstances.

3 (Laughter)

4 Senator Heinz. Bob Packwood, what would be your answer
5 if you were here--and I don't know that you were--to the
6 problem of the Japanese acrylic fiber that is made -- in
7 a third country?

8 Senator Packwood. If I was, I think --

9 Senator Heinz. I won't detain the committee further
10 on that. Mr. Chairman, I think this provision--unless
11 miracles happen to it in conference--has become worthless.

12 There is one other issue I want to raise, though, which
13 is one of the factors to consider and whether or not to apply
14 this is whether the parts or components were exported by a
15 company related to the company performing the completion.
16 Now, why does that need to be in there? Why should it make
17 any difference that acrylic yarn is being sold by Mitsubishi
18 in Japan to either Mitsubishi in Singapore or Sumatomo in
19 Singapore?

20 Why should that be a factor to consider?

21 Mr. Kaplan. Senator, it is something again we would
22 consider. Again, it is not something which is mandatory.

23 Senator Heinz. I understand that, but why should it be
24 a factor at all?

25 Mr. Kaplan. If the entity as a whole is engaging in price

1 discrimination and selling their goods even to a third country
2 at a dumped price, it seems more logical to expand the order
3 to cover the goods going through a third price than if it is
4 a totally related--going through a third country--than if it
5 is a totally unrelated party in a third country.

6 Senator Heinz. Why?

7 Mr. Kaplan. Again, it goes back to the theory of
8 dumping, which you were talking about a little while ago and
9 the idea that dumping is price discrimination by a company.
10 And if there are two or three intermediaries' transactions
11 between unrelated parties, that tends to nullify any
12 significant effect of the dumping. But if they are all
13 related, then you have that core of price discrimination
14 which is a fundamental dumping problem.

15 Senator Heinz. And where dumping is the result of
16 protected markets, as opposed to price discrimination, it is
17 all right?

18 Mr. Kaplan. I think usually the price discrimination is
19 possible because of the protected market.

20 Mr. Woods. Although, if I may intervene there, it is
21 worth noting that we have been talking about the fact that
22 there are more dumping cases brought against U.S. companies
23 than the companies of any other country in the world.

24 Now, I would hesitate to say that the sense I have had
25 at these hearings is that we are not considering ourselves

1 a protected market.

2 Senator Heinz. I think that is right; and maybe those
3 dumping cases, nothing is going to come of them. Or maybe
4 there are some good cases, in which case we deserve it. I
5 don't know. But if you believe in the market system, you
6 have got to let the chips fall where they may.

7 Mr. Woods. But a protected market is not per se --

8 Senator Heinz. The best news I have heard of is that
9 U.S. Steel is being accused of dumping steel in some foreign
10 market. Hell, I didn't know we sold any steel in any foreign
11 markets. That is good news.

12 (Laughter)

13 The Chairman. Senator, if you have an amendment --

14 Senator Heinz. My amendment would be to strike the
15 reference to whether the part or component were exported by
16 a company related to the company performing the completion.

17 The Chairman. And the Administration opposes the
18 amendment. The amendment has been proposed. All of those
19 in favor of the amendment make it known by saying "Aye."

20 (Chorus of ayes)

21 The Chairman. Opposed?

22 (Chorus of noes)

23 Senator Heinz. I don't think I would want a recorded
24 vote.

25 The Chairman. All right.

6
1 (Laughter).

2 The Chairman. Now, I would like a reaffirmation of the
3 first four votes we had this morning, now that we have a
4 quorum; there was some question of a quorum. All of those
5 in favor of that motion taken this morning make it known by
6 saying "Aye."

7 (Chorus of ayes)

8 The Chairman. Opposed?

9 Senator Heinz. No.

10 The Chairman. The motion is carried. Thank you. Mr.
11 Lang, what is the next item on the agenda?

12 Mr. Lang. The next item is on page 3 of the Staff
13 Proposal. It is item 3 called Sham Transactions. Here, the
14 problem was also circumvention of the law, and the proposal
15 is to retain the S. 490 provision but make it effective
16 prospectively and to provide report language, which is
17 reflected at the bottom of page 3.

18 The problem here is whether the foreign seller and its
19 domestic subsidiaries have notice of the existence of the
20 dumping order that they are trying to evade. Our understanding,
21 which is not reflected in this document but was intended to be
22 reflected here, was that they had actual notice of an actual
23 order. That would be a change from S. 490 where it was
24 constructive notice of a potential order. The thinking is that
25 that is too tenuous a connection to assert that someone has

1 engaged in a sham transaction, that is a transaction
2 constructed precisely to circumvent the antidumping law,
3 and therefore, the proposal you see at the bottom of page 3
4 would have that actuality principle in it.

5 The Chairman. Does the Administration have a comment on
6 that?

7 Mr. Kaplan. We believe those changes are moving in the
8 right direction. We had some overall problems with the
9 provision, but after the change, it is a lot better.

10 The Chairman. Are there further questions concerning
11 this?

12 (No response)

13 Senator Packwood. I move the amendment be adopted.

14 The Chairman. A motion has been made that they be
15 adopted. All those in favor make it known by saying "Aye."

16 (Chorus of ayes)

17 The Chairman. Opposed?

18 (No response)

19 The Chairman. The motion is carried.

20 Senator Bradley. Mr. Chairman?

21 The Chairman. Senator Bradley?

22 Senator Bradley. On the Sham Transactions, I would just
23 like to clarify one point. If you have a foreign producer
24 that sells a good in its market, say, for \$70 and then sells
25 it to one of our importers at \$70; and the importer has some

1 financial difficulties, distress, is about to go out of
2 business, whatever. And they then sell it in a panic sale
3 for \$50. Does that make the importer's purchase a sham
4 transaction?

5 Mr. Lang. There are two reasons this provision wouldn't
6 apply to that situation. First, the two parties are not
7 related; and second, it is not avoiding the dumping law.
8 The purpose is not to avoid the dumping law.

9 Senator Bradley. So, if there is a business stringency?
10 It has to be that the company is going out of business or
11 that it simply wants to increase its profit margin?

12 Mr. Kaplan. The standard first does reference the idea
13 of a sham transaction as something that is set up solely to
14 somehow create a sham.

15 Senator Bradley. All right. So, if it takes place in
16 the normal conduct of business, the sole purpose of which is
17 not this kind of sham, then it would be permissible for that
18 company to sell at less than it bought the goods for?

19 Mr. Kaplan. Yes.

20 Senator Bradley. All right.

21 The Chairman. Fine. Mr. Lang, if you will proceed, we
22 have a number of them; and most of them I think are without
23 controversy. Let's proceed; and any member who has a question
24 as we move along, please advise us. It is apparent in the
25 manner we are moving that we may be here quite late tomorrow

1 night. So, please keep that in mind. Go ahead, Mr. Lang.

2 Mr. Lang. Mr. Chairman, the next item on this list of
3 staff proposals is at the top of page 4, Number 4, Fungible
4 Products. Those Senators following in the spreadsheet would
5 find this at spreadsheet page 79. And here the problem was
6 that the provision in the Senate bill wouldn't change
7 anything; and therefore the proposal is to adopt the language
8 that is in H.R. 3 regarding material injury.

9 You can find that in the center column under H.R. 3 on
10 page 83 of your spreadsheet. Our understanding is that the
11 Administration would have no objection. The purpose here is
12 to assure that when the ITC is deciding whether there is
13 injury in these investigations, they take the statutory
14 criteria into account. In every case, they take every
15 criterion into account.

16 And you can see the limitations in the H.R. 3 column on
17 page 83 of the spreadsheet. I don't think this is objectionable
18 to the Administration.

19 Mr. Kaplan. That is correct.

20 The Chairman. All right. Let's move right on ahead.

21 Mr. Lang. The critical circumstances provisions, which
22 I had discussed with Senator Danforth earlier, are shown on
23 page 4, Item 5. They would make revisions to the material on
24 critical circumstances shown on page 80 of the spreadsheet.

25 Essentially, they would allow you to get into a critical

1 circumstance or situation earlier, and it would make it more
2 likely that the International Trade Commission would consider
3 the code criteria in order to make an injury finding to
4 support the critical circumstances determination.

5 At the bottom of page 4, Item 6, the definition --

6 The Chairman. Let me intervene at that point. Insofar
7 as the previous two items, Fungible Products and Critical
8 Circumstances, we have heard no objection cited by anyone
9 including the Administration. May we have a motion for the
10 approval of those two?

11 Senator Baucus. I so move.

12 Senator Bradley. I second it.

13 The Chairman. All in favor make it known by saying "Aye."

14 (Chorus of ayes)

15 The Chairman. Opposed?

16 (No response)

17 The Chairman. The motion is carried.

18 Mr. Lang. At the bottom of page 4, Mr. Chairman, Item 6
19 is a provision supported by a number of members of the committee
20 having to do with a single continuous line of production.
21 Senator Baucus, I believe, has introduced legislation on this
22 subject. There is a provision in the House bill, and the
23 proposal is to adopt this provision. The problem here is
24 a problem of applying the law in an agricultural industry.

25 The question is who is eligible to be a petitioner in an

1 antidumping investigation for purposes of determining which
2 industry has been injured. Under the antidumping code, the
3 requirement is that the imported product not be subjected to
4 the duty unless the industry producing the like product in
5 the United States is the one injured.

6 The classic case is where the imported product is a hog
7 and the domestic industry produces hog meat. The question is:
8 Are the hog meat producers part of the domestic industry?

9 And the ITC has developed a concept over the last several
10 years of a single continuous line of production, which you
11 can see reflected in the House column, H.R. 3, on page 81
12 of the spreadsheet. So, the intention would be to adopt the
13 House provision in this regard.

14 Senator Moynihan. Mr. Chairman?

15 The Chairman. Yes, Senator Moynihan?

16 Senator Moynihan. In the spirit of candor, I am going
17 to say to you that I would like us to consider report
18 language, the entire purpose of which I do not fully
19 understand.

20 (Laughter)

21 Senator Moynihan. But it has to do with grapes.

22 Senator Packwood. Grapes?

23 Senator Moynihan. And we know it has to do with grapes
24 because it doesn't mention grapes.

25 (Laughter)

1 Senator Moynihan. If Mr. Lang would bear with me, I think
2 he knows about this because the intent of the statutory
3 changes is to codify Commission practice in prior cases in
4 which a single continuous line of production was found to
5 exist, including orange juice, lamb meat, raspberries, and
6 tomatoes. The term "substantially or completely devoted" does
7 not necessarily imply a fixed percentage, but should be
8 interpreted to be consistent with the prior Commission
9 determinations and the circumstances of the individual
10 investigations. I believe you are familiar with that, sir?

11 Mr. Lang. Yes, Senator Moynihan. Our understanding of
12 the House provision is that it is intended to codify existing
13 Commission practice, and we would try to reflect that in the
14 language.

15 Senator Moynihan. And if we could have report language
16 saying that, I would appreciate it, Mr. Chairman.

17 The Chairman. Do you see any problem with that?

18 Senator Chafee. I would be curious as to what the
19 Administration's reaction is to this.

20 Mr. Holmer. This is fine with the Administration, but
21 the ITC may have a problem with tomatoes.

22 Senator Moynihan. Done.

23 (Laughter)

24 Senator Bradley. Wait, wait.

25 Senator Chafee. Jettison the tomatoes; how about that?

1 (Laughter)

2 Mr. Holmer. We can drop the tomatoes.

3 Senator Bradley. Why are we dropping the tomatoes?

4 Senator Moynihan. We are trying to make a deal here.

5 (Laughter)

6 Senator Moynihan. This is called free enterprise. Oh,
7 there are tomatoes in New Jersey; I am sorry.

8 (Laughter)

9 Senator Moynihan. Mr. Chairman, I would like to suggest
10 that there is a general understanding that this would be
11 useful, and the language should be developed.

12 Senator Chafee. Without the tomatoes?

13 The Chairman. Let me proceed here.

14 Mr. Lang. Our understanding, Mr. Chairman, is that we
15 would be codifying current practice at the ITC. I am not
16 sure we know the results in each of these cases, but we would
17 check out the cases and try to confirm Senator Moynihan's
18 understanding that we are codifying the existing practice.

19 The Chairman. And how the tomatoes come out in the deal.

20 Mr. Lang. Yes, the tomatoes will come out unless --

21 The Chairman. Now, wait a minute. I want to know about
22 that.

23 Senator Moynihan. Maybe we ought to keep the tomatoes.

24 The Chairman. What happens if we leave it just as we
25 proposed it?

1 Mr. Woods. I think we understand Senator Moynihan's
2 purpose, and we don't have any problem with the purpose.
3 His examples may present individual problems. For example,
4 with the raspberries, I understand there was no vine
5 established, so it doesn't serve as an illustrative example
6 of what he is proposing as we understand it. So, if we can
7 work our way through that --

8 The Chairman. All right, but it is still codification of
9 present practice?

10 Mr. Woods. Correct, sir.

11 The Chairman. All right. Is there any objection?

12 (No response)

13 The Chairman. All right.

14 Mr. Lang. On page 5 at the top of the page --

15 The Chairman. Let me state that we have now moved through
16 the definition of the agricultural industry. May I have a
17 motion on that, please?

18 Senator Packwood. So moved.

19 The Chairman. All in favor of the motion stated make it
20 known by saying "Aye."

21 (Chorus of ayes)

22 The Chairman. Opposed?

23 (No response)

24 The Chairman. The motion is carried.

25 Mr. Lang. Mr. Chairman, at the top of page 5, Item 7 has

1 to do with the problem of the Commerce Department defining what
2 is a subsidy when the product involved is generally available
3 in a foreign country. The United States' position
4 internationally on this question is that a subsidy is
5 countervailable either if it is a domestic subsidy or an
6 export subsidy if it is made available selectively to a
7 defined group in the country that exports, rather than to
8 the society as a whole. Roads and schools are, in a sense,
9 a subsidy, but because they are generally available the United
10 States doesn't countervail against them.

11 This has been a subject of considerable debate over the
12 last several years, but recently the Court of International
13 Trade decided in a case under the current law that, while the
14 general availability standard was appropriate, it should be
15 applied as a matter of fact rather than as just a matter of
16 interpreting foreign law. For example, in the case that was
17 concerned, if the Government of Mexico produces residual oil
18 which it makes available for anyone who wants to buy it at
19 very low prices but in fact it is really only used by producers
20 of carbon black, which is then exported to the United States,
21 that product which in law or in name might be generally
22 available in a society, the court held, was in fact only
23 available to a limited group of producers.

24 So, this interpretation of the general availability
25 standard has acquired less controversy than other areas of

1 this subject. And the staff proposal is that the committee
2 would be well within current law if it codified this decision.

3 We have said here "Department of Commerce practice."
4 What we really mean is codify the Cabot decision; that was the
5 decision that I was referring to.

6 The Chairman. Is there a question?

7 Senator Baucus. Yes. Mr. Chairman, that is the only
8 problem I have with this. He said what we really mean is
9 to codify the Cabot decision, and I suggest the language be
10 changed to reflect that.

11 Mr. Lang. Very well.

12 Senator Baucus. Because that is, in fact, I think what
13 our understanding was.

14 Mr. Lang. I don't think the Administration has an
15 objection to that.

16 The Chairman. Is there any objection on the part of
17 the Administration?

18 Mr. Kaplan. No, Mr. Chairman.

19 The Chairman. Is there further question?

20 Senator Moynihan. Mr. Chairman, just an observation,
21 nothing more. The difficulty we deal with, as Mr. Lang said:
22 Is the provision of public schooling a subsidy? If you have
23 junior colleges, is that subsidizing manufacturing?

24 The Chairman. Is there a motion?

25 Senator Packwood. I move for adoption.

1 The Chairman. All of favor of the motion as stated
2 make it known by saying "Aye."

3 (Chorus of ayes)

4 The Chairman. Opposed?

5 (No response)

6 The Chairman. Please move along then, Mr. Lang.

7 Mr. Lang. Mr. Chairman, the next item, Item 8, on page
8 5 concerns a problem raised by Senator Riegle in which a
9 product is being dumped abroad in a number of other countries
10 so that it becomes almost predictable that, when the product
11 is exported to the United States and is dumped--that is
12 not determined by this amendment; the dumping would have to
13 be separately determined administratively--it is likely to
14 cause injury. Under current law, there are two bases for
15 determining injury in any dumping investigations.

16 The first is material injury to the industry producing
17 the like product; and the second, also in current law, is a
18 threat of material injury to the industry producing the like
19 product. Under this proposal by the staff, the International
20 Trade Commission would be required to consider in determining
21 whether there was a threat of material injury the fact of
22 existing antidumping orders in foreign markets.

23 And it is our understanding that we would reflect in
24 report language a situation that has occurred in the world
25 where there are foreign antidumping orders outstanding with

1 respect to specific products that indicate that the threat
2 situation does obtain.

3 The Chairman. May I have the Administration's comment
4 on this provision?

5 Mr. Holmer. As described by Mr. Lang?

6 The Chairman. Yes.

7 Mr. Holmer. And based on our discussion with Senator
8 Riegle's staff, we have no objection to this provision.

9 The Chairman. Senator Riegle, do you have a comment?

10 Senator Riegle. No, Mr. Chairman, except for the fact
11 that we have reached an agreement on it.

12 The Chairman. May I have a motion?

13 Senator Chafee. Could I just ask one quick question,
14 Mr. Chairman? I agree with Senator Riegle's proposal yesterday
15 and his concerns, and it seems so fundamental. Was there
16 nothing in the existing law that could address the problem
17 that he raised?

18 Mr. Lang. The factors that the International Trade
19 Commission are instructed by current law to consider are not
20 exclusive, Senator Chafee. They are to consider all relevant
21 economic circumstances including, but not limited to, and then
22 there is a list. There is some feeling in domestic industry
23 that this is a factor they should have been considering and
24 have not or did not.

25 Senator Chafee. And this just codifies it?

1 Mr. Lang. Yes.

2 Senator Chafee. Thank you, Mr. Chairman.

3 The Chairman. Thank you.

4 Senator Chafee. Do you want to make the motion?

5 Senator Riegler. Go ahead. I would be delighted to have
6 the Senator from Rhode Island make it.

7 Senator Chafee. I so move.

8 The Chairman. All those in favor make it known by saying
9 "Aye."

10 (Chorus of ayes)

11 The Chairman. Opposed?

12 (No response)

13 The Chairman. The motion is carried.

14 Mr. Lang. Now, Mr. Chairman, on page 5, Items 9(a) and
15 9(b) are related questions, even though they are different
16 elements of a similar problem. Senator Danforth has raised
17 this question. The first amendment would clarify that the
18 countervailing duty law apply to leases. You have a problem
19 in applying the countervailing duty law with respect to large
20 capital items, that the items are often leased, or there is
21 a combination of a lease and a chattel mortgage, or some other
22 complex arrangement.

23 It doesn't occur in fungible commodities or in consumer
24 goods; but when you are dealing with a large piece of capital
25 equipment like a power generator or airplanes or something

1 Like that, you do have the problem of whether leases apply.

2 And our understanding is that the Administration would
3 accept the provision we have described in 9(a) with respect
4 to that.

5 Related to this situation is a criterion for determining
6 injury and threat of injury. It has to do again with
7 industries producing large capital goods. I think the item
8 in question here might have been aircraft, but it would apply
9 to any large capital item--and it might apply to pharmaceuticals
10 --in which a lot of research and development goes into product
11 innovation; and therefore, that industry--the companies in
12 that industry--need large margins in order to be able to
13 finance the innovation that keeps them ahead of the market.

14 And if you determine that just making a profit demonstrates
15 that the firms in the industry are not injured, you are in a
16 sense cutting them off from the margins they need to engage
17 in the innovation that makes them both domestically and
18 internationally competitive.

19 So, what this amendment in 9(b) would provide is that the
20 ITC is to consider the impact of dumped and subsidized goods
21 on the industries' implementation of existing research and
22 development plans. It doesn't apply to something the industry
23 might do; but if it can make showings of plans it actually has
24 on the board that would be prevented from being carried out by
25 the dumping, that could be considered by the ITC in determining

1 whether there was injury or threat of injury.

2 The Chairman. Does the Administration have an objection
3 to these changes?

4 Mr. Kaplan. No objections.

5 The Chairman. No objections. Are there further
6 questions?

7 Senator Bradley. Mr. Chairman, is this Number 9?

8 The Chairman. 9(a) and 9(b).

9 Senator Bradley. Is this in any way a GATT violation?

10 Mr. Lang. No. Our instructions were to avoid that sort
11 of thing.

12 Senator Bradley. All right.

13 The Chairman. All right. Is there a motion? May I
14 have a motion on this?

15 Senator Packwood. So moved.

16 The Chairman. All in favor of the motion as stated make
17 it known by saying "Aye."

18 (Chorus of ayes)

19 The Chairman. Opposed?

20 (No response)

21 The Chairman. All right. Mr. Lang, if you would move
22 along, please?

23 Mr. Lang. Item 10 on page 5 concerns a matter suggested
24 to the committee by Senator Heinz. Under current law,
25 Government importations are not subject to countervailing

1 duties. Under this provision, it would clarify that all
2 importations are subject to the antidumping and countervailing
3 duty law with two exceptions having to do with concerns of
4 the Defense Department.

5 The first is that if the duties would be inconsistent
6 with an existing Memorandum of Understanding--and the United
7 States has these Memoranda of Understanding for a number of
8 NATO allies--then the provision would not apply. And in
9 addition to assure that even if a Memorandum of Understanding
10 doesn't exist, the provision wouldn't adversely affect
11 relations in these defense matters.

12 The second exception listed near the bottom of page 5
13 is that it would not apply for products for which there is
14 no private domestic market.

15 Senator Heinz. Jeff, that is not bad, but let me ask
16 you about this. What is to prevent the Defense Department from
17 just drafting overly broad Memoranda of Understanding, just
18 in order to be able to continue to buy cheap goods?

19 Mr. Lang. You will notice the word "existing," Senator
20 Heinz, at the end of the line in Item 1. That is intended to
21 deal with that specific concern.

22 Senator Heinz. All right.

23 Senator Chafee. Take the other side of the coin then.
24 I mean, clearly, the Defense Department will be going into
25 other Memoranda of Understanding. Shouldn't they have the

1 same protection that they have here? Does this mean that if
2 there is a future Memorandum of Understanding, it would not
3 qualify as an exception?

4 Mr. Lang. It would mean that.

5 Senator Chafee. I don't think we want to do that, do
6 we?

7 The Chairman. Mr. Holmer, do you have a comment on this?

8 Mr. Holmer. Yes. Senator Chafee, in the original version
9 in H.R. 3, the Defense Department had very strong concerns
10 about. Those have been at least partially addressed--pretty
11 substantially addressed--by the exception that is included
12 in the chairman's proposal. If you wanted to address their
13 concerns in totality, it would probably be to delete the
14 word "existing."

15 Mr. Lang. The second proviso was --

16 Senator Chafee. Now, wait a minute. Can we just finish
17 that, please? This bothers me, Mr. Chairman. Every Memorandum
18 of Understanding isn't per se bad, nor in the future; but what
19 we are saying here is that would be no exception for the
20 future. In other words, we are just taking care of the
21 grandfathering, as it were, as I understand this.

22 Senator Heinz. No, that is not right. Jeff needs to
23 explain the second proviso.

24 Mr. Lang. The second item, Senator Chafee, was designed
25 to take care of that problem. That is, if in the future a

1 product were not covered by a Memorandum of Understanding, but
2 it is a product for which there is no private market, the
3 exception would continue to apply.

4 Senator Chafee. Yes, I understand that. Like you have
5 some fighter aircraft and you amortize the development costs
6 over 900 airplanes, so the first 40 you might well be
7 dumping if you sell them abroad. There is no problem there,
8 but I just worry about one; and what you are doing in effect
9 is eliminating one as an exception for future memorandums
10 that will not be an exception.

11 Mr. Lang. Except for the extent you are in two, which
12 presumably would cover a lot--if not all--of Defense Department
13 purchases.

14 Senator Heinz. There are basically two kinds of items.
15 There are items which are freely traded, and they are
16 available; and there are items that are defense items that
17 are only sold government to government. And what we are
18 saying the policy here is that we are not going to mess up
19 any existing arrangement as long as it is in place.

20 A Memorandum of Understanding that exists could exist
21 for the next 500 years, but the policy in the future is that,
22 if there is an item that is freely traded and available, we
23 are going to treat it like any other item, even if the
24 Government is the purchaser?

25 Mr. Lang. Yes, sir.

1 Senator Chafee. So, if the United States wanted to buy
2 dumped French coal to supply for our barracks in West Germany,
3 they couldn't do it?

4 Mr. Lang. It wouldn't be imported, so that is not quite
5 the situation; but you might be able to find a regular
6 commercial product --

7 Senator Heinz. If the Pentagon had a power plant out
8 here and they wanted to buy dumped French coal and bring it
9 into the United States, they would have to pay duties on it;
10 and they should.

11 Mr. Lang. They would have to meet the injury test.

12 Senator Heinz. Yes.

13 Senator Chafee. Who has talked to the Defense Department
14 on this thing?

15 Senator Heinz. Mr. Chairman, I think the issue is pretty
16 clear.

17 Senator Chafee. Well, I don't think the issue is very
18 clear; that is why I am asking the question. I mean, doesn't
19 anybody talk with the Defense Department when you are dealing
20 with something of this magnitude?

21 Mr. Woods. Senator, we have had discussions with the
22 Defense Department, and I think Mr. Holmer's remarks covered
23 what their views are, that this is a substantial improvement
24 from the earlier language, although they would still have some
25 concerns. We have not talked to them about this specific

1 language. However, the issue that you raised is precisely, I
2 am sure with them, the issue.

3 Senator Chafee. Mr. Chairman, is there opportunity to
4 just set this aside and hear on it this afternoon? We are
5 going to meet again. I would only ask that we at least hear
6 what the Defense Department has to say.

7 Senator Matsunaga. If the Senator will yield, perhaps
8 we could get a clarification as to whether or not both of
9 these exceptions must be met before the exception is granted.

10 Mr. Lang. Either one.

11 Senator Matsunaga. Then, there would be a problem.

12 Senator Heinz. It is either one, isn't it, Jeff?

13 Mr. Lang. Yes.

14 Senator Heinz. Yes.

15 Mr. Lang. Either one would give the President the
16 opportunity not to apply the antidumping law. That makes
17 the exception broader.

18 The Chairman. Yes. I frankly don't see the problem.
19 It seems to me it has been well addressed.

20 Senator Chafee. We are moving here --

21 The Chairman. Let me say, Senator, I would like to bring
22 this to a vote. If you have a question, we can revisit it
23 after you have had further discussions if you want to with
24 the Defense Department. But I think they have discussed it
25 with the Defense Department. They feel they have moved

1 substantially in the direction of what they are concerned
2 about to take care of it.

3 Senator Chafee. Well, Mr. Chairman, it is much harder
4 to reverse votes than trying to avail in the initial instance.
5 So, I haven't been too successful in the scoring --

6 (Laughter)

7 The Chairman. May I have a motion on this?

8 Senator Heinz. So moved.

9 The Chairman. All in favor of the motion as stated make
10 it known by saying "Aye."

11 (Chorus of ayes)

12 The Chairman. Opposed?

13 Senator Chafee. No.

14 The Chairman. The motion is carried. All right, let's
15 move on to the next one.

16 Mr. Lang. At the bottom of page 5, Mr. Chairman, Item
17 11 has to do with a rather complicated matter involving 90-day
18 review authority. Essentially, the problem here is when the
19 Commerce Department decides that they will actually require
20 the deposit of duties rather than simply a bond to ensure
21 the payment of duties.

22 The Commerce Department tells us that currently they are
23 not allowing the bond instead of the direct deposit of the
24 duties. However, current law would allow them to do that,
25 and this provision sets up criteria that would be narrow

1 compared to current law.

2 The Chairman. Is there any objection to that by the
3 Administration?

4 Mr. Kaplan. No.

5 The Chairman. Or is there any question concerning that?

6 Senator Packwood. I move for the adoption.

7 The Chairman. All in favor of the motion as stated make
8 it known by saying "Aye."

9 (Chorus of ayes)

10 The Chairman. Opposed?

11 (No response)

12 The Chairman. The motion is carried.

13 Mr. Lang. On the top of page 6, Item 12, Mr. Chairman,
14 concerns a policy the United States has had since the end of
15 the Tokyo Round of extending the injury test to developing
16 countries who make commitments to remove their export
17 subsidies. The concern here, expressed by Senator Heinz and
18 others, is that if the countries are not living up to the
19 commitments, then they should lose the injury test.

20 This provision clarifies that the U.S. Trade
21 Representative has authority to revoke the injury test, that
22 is to inform the ITC and the Commerce Department that that
23 benefit is no longer available to other countries if they
24 violate a subsidies code commitment; and there is language
25 which you can see at the end of the first paragraph on page 6.

1 The problem here at the staff level was to give the
2 Administration enough flexibility to take account of
3 circumstances and not apply the provision rigidly but,
4 nevertheless, to aggressively attack the problem of commitments
5 that have not adhered to by the developing countries by
6 withdrawing the benefit they got in return for making the
7 commitment.

8 The Chairman. Are there further questions? Yes, Senator
9 Heinz?

10 Senator Heinz. Jeff, what you say then, in the actual
11 bill language, is what? How have you tried to balance, on
12 the one hand, enough discretion in looking at the situation
13 with direction to doing something if the situation is bad?

14 Mr. Lang. Senator, what we would anticipate you would
15 have us do is reflect the first sentence of Item 12 in
16 statutory language and the second sentence--or something like
17 it--in report language, so as to give the USTRs the flexibility
18 they need and, at the same time, the guidance they need.

19 Senator Heinz. What is the problem with giving USTR
20 the flexibility to decide whether or not a country has
21 announced that they will not honor their commitments or that
22 the country is in violation of commitment obligations--that
23 is substantially in violation of commitment obligations--with
24 respect to code inconsistent export subsidies and say you
25 have to make the finding? And if you make a finding that

1 somebody has just lied to us--broken their word, backslid--
2 virtually in entirety--that at that point the revocation of
3 the injury test is mandatory? What is the objection to that?

4 Mr. Lang. Maybe we ought to let the Administration
5 speak to that, but they did have reservations about that.

6 The Chairman. Mr. Holmer, do you have a comment on that?

7 Senator Heinz. What is the objection to that? It seems
8 to me that a deal is a deal only if both sides keep it.

9 Mr. Holmer. As you know, we opposed your amendment
10 yesterday; based on discussions with your staff until 1:00
11 in the morning last night, we think we have language that
12 at least substantially minimizes our opposition. But the
13 concern that we have is that there may be situations where
14 you have a country that, for some reason, is not able to
15 fully implement what it is that they agreed to because of
16 implementing legislation or some other factor. And what they
17 are able to do is to have for a temporary period accomplish
18 the same thing.

19 For example, we found that in an Indonesian situation
20 where they were not able to meet the precise wording of the
21 commitment, but they were able to slash their export
22 subsidies in a manner that we found had the same effect as
23 the commitment. That is why we need to have --

24 Senator Heinz. I don't have any objection. The original
25 amendment I had, I would argue, gave you exactly that

1 flexibility--to find that if someone was really trying, fine.
2 You wouldn't have to find that they had trashed their
3 commitment. I am not adverse to having a high standard of
4 literally trashing their commitments; but after you make that
5 kind of a finding, I think that the revocation should be
6 mandatory. So, I understand what you said, but it doesn't
7 answer the question as to why you have problems with what
8 I think the original amendment really did.

9 Mr. Holmer. We just feel that this language that we
10 worked out with your staff late last night more clearly
11 addressed the intention that I think we both shared with
12 respect to the commitments.

13 Senator Heinz. All right. I won't pursue it any further.
14 Maybe I can figure out a way of working with you to further
15 shape it up. It just seems a little sloppy.

16 Mr. Holmer. We would be happy to do that, Senator.

17 The Chairman. Are there further questions on that?

18 Senator Bradley. Mr. Chairman, one quick question. If
19 a country loses the injury test because it has violated
20 subsidies, etcetera, if later they abide by it and decide to
21 honor it, do they get the injury test back?

22 Mr. Lang. USTR has the authority under current law to
23 extend the injury test to countries that make a subsidies code
24 commitment. I would suspect that, if they withdrew the injury
25 test because a country wasn't adhering to the commitment, the

1 country would have an uphill battle negotiating a new
2 commitment; but I suppose it is possible--well, it is
3 certainly under their authority under current law, as I
4 understand it. I just think it might be difficult to
5 negotiate the agreement.

6 But that they have the authority to give them the
7 commitment is clear from current law because they are already
8 doing it.

9 Mr. Holmer. I would agree with that completely.

10 Senator Bradley. What would be your intention?

11 Mr. Holmer. If it was an agreement that was entered into
12 prior to the time that we toughened up our commitments policy,
13 it may be that we would want to have a tougher commitment that
14 was entered into by the country that subsequently breached
15 that agreement. But certainly, the intention would be to
16 attempt to use the carrot that the Congress has given us to
17 try to get increased discipline over export subsidies by
18 granting a country the injury test.

19 Senator Bradley. So, the injury test could be returned
20 to the country?

21 Mr. Holmer. Yes.

22 The Chairman. All right. Let's move on to the next one.

23 Mr. Lang. On page 6, Item 13, Mr. Chairman, is a
24 related situation. In those cases in which the United States
25 negotiated these commitments with developing countries, there

1 were outstanding in some cases countervailing duty orders that
2 had not been through the rigors of an injury test before the
3 order was entered; and those orders remain in effect even
4 though the domestic industry has not had to prove that it
5 was injured in order to get the order into place because a
6 commitment was made at a later time.

7 This issue is the subject of conflicting legislation.
8 Some legislation proposed by the Administration would provide
9 the injury test in all of these cases, and some would prohibit
10 it. The issue has now gone into Federal court, and our
11 suggestion is that the committee stay its hand while the
12 matter is under judicial scrutiny.

13 Senator Moynihan. So moved.

14 The Chairman. Any questions concerning it?

15 (No response)

16 The Chairman. If not, all in favor of that--and would you
17 include Item 12 also--if that is agreeable to the two--

18 The two items are included. All in favor of the motion
19 as stated make it known by saying "Aye."

20 (Chorus of ayes)

21 The Chairman. Opposed?

22 (No response)

23 The Chairman. The motion is carried. Items 12 and 13
24 are approved.

25 Mr. Lang. Mr. Chairman, the last item, Item 14 on page

1 6, concerns the procedures with respect to lawyers who
2 participate in these antidumping and countervailing duty
3 investigations. Frequently, in these investigations, the
4 petitioners and respondents have to submit sensitive company
5 information to the agencies, and that information cannot be
6 released to the clients themselves but are released to the
7 lawyers under protective orders similar to the protective
8 orders used in Federal District Court, with appropriate bar
9 sanctions and so on.

10 The first paragraph is designed to assure that the
11 protective order system will work at the International Trade
12 Commission as well as at the Commerce Department. There is
13 some feeling in the bar that the information is more difficult
14 to get under protective order at the International Trade
15 Commission. The last sentence is to assure that the Commission
16 applies the sanctions of reporting to bar associations and
17 preventing lawyers from practicing before agencies if they
18 don't abide by the protective order.

19 The second paragraph of Item 14 is designed to assure
20 greater reliability of information supplied to these agencies
21 under lawyers' signatures. Here, the analog is again to
22 private judicial proceedings in which lawyers certify that
23 factual information they submit is true and correct to the best
24 of their knowledge and belief.

25 So, they are both provisions having to do with the powers

1 and obligations of attorneys in these practices.

2 Senator Danforth. I so move, Mr. Chairman.

3 The Chairman. All right. All in favor of the motion
4 as stated make it known by saying "Aye."

5 (Chorus of ayes)

6 The Chairman. Now, let me state again that we have a
7 3:30 meeting in the chairman's office, Room 219, for members
8 only, and that will be just an informal discussion. Yes?

9 Senator Danforth. One other question on dumping before
10 we leave. As I understand it, there was some discussion
11 yesterday at the staff meeting relating to estimating the
12 home market price for the purpose of antidumping
13 investigations when the product involved is sold in more
14 than one form. Do you know what I am talking about?

15 Mr. Lang. Granular?

16 Senator Danforth. The question is specifically if a
17 product is sold both as a powder and as a tablet, whether
18 the investigation relating to one form of it encompasses the
19 other form of it?

20 Mr. Lang. Yes. Does the Administration have reservations
21 about this?

22 Mr. Kaplan. There are a number of drafts of that going
23 around. There is a proposal to change some of the language
24 to make it discretionary, which we do not object to.

25 Mr. Lang. I think I need to look at that.

1 Senator Danforth. Can we keep this one open, Mr.
 2 Chairman? It is on the dumping issue. I thought it had
 3 been worked out, and apparently it has not been worked out.

4 The Chairman. Senator, we have a rule that we can
 5 revisit these things, so let's put it on that basis.

6 Senator Danforth. All right. Thank you.

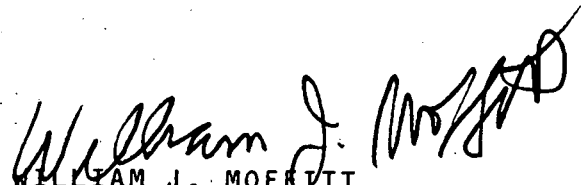
7 The Chairman. All right.

8 (Whereupon, at 12:10 p.m., the meeting was recessed,
 9 to be reconvened this same day, May 6, 1987, at 4:00 p.m.)

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C E R T I F I C A T E

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 2 This is to certify that the foregoing proceedings of an
 3 Executive Session of the Committee on Finance, held on
 4 May 6, 1987, were held as appears herein and that this is
 5 the original transcript thereof.

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

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

SENATOR MOYNIHAN**SUGGESTED REPORT LANGUAGE ON PROCESSED AGRICULTURAL PRODUCTS**

The intent of the statutory change is to codify Commission practice in prior cases in which a "single continuous line of production" was found to exist, including orange juice, lamb meat, raspberries, and tomatoes. The term "substantially or completely devoted" does not necessarily imply a fixed percentage, but should be interpreted consistent with these prior Commission determinations and the circumstances of the individual investigations.

1. Nonmarket economy country dumping

Amend S. 490 to:

Clarify in the legislative history that the Administering Authority may make quality adjustments. In interpreting the term "comparable merchandise", the Committee intends that the Administering Authority should make appropriate quality adjustments where possible to ensure that the imports from the largest volume exporter being compared to the merchandise under investigation from the nonmarket economy may reasonably be compared.

Drop the fungible product provision and add language regarding circumstances in which the Administering Authority will determine foreign market value based on constructed value using factors of production to avoid situations when all imports may be dumped. Specifically, the provision is amended to provide that, where the Administering Authority receives an allegation that the benchmark price is a dumped price, then it will examine the benchmark price to estimate if the benchmark price is a dumped price and, if so, will use a factors of production approach. To determine whether the benchmark is dumped, the Administering Authority will first examine whether there is an existing antidumping order or finding on the benchmark product. Such an order or finding shall constitute evidence that the benchmark product is being dumped. In cases where there is no outstanding antidumping order or finding, the Administering Authority will determine whether it has any other reason to believe that the benchmark product is being sold below its constructed value and, if so, will use a factors of production approach.

2. Diversionsary Dumping

Drops S. 490 provision. Adds:

a) Steel Imports:

Provides explicit authority to enforce quantitative restrictions on steel imports when the steel product is exported from an arrangement country and transshipped or transformed in a nonarrangement country before entering the United States. Authorizes the President to treat any steel product that is manufactured in a country that is not party to a bilateral arrangement (a "nonarrangement country") from steel which was melted and poured in a country that is not party to a bilateral arrangement (an "arrangement country"), for purposes of the quantitative restrictions under that arrangement as if it were a product of the arrangement country.

b) Anti-Diversion - Dumping and Countervailing Duties

If a product subject to an antidumping or countervailing duty order is completed or assembled in the U.S., the order may apply to the parts or components, provided that the value-added in the U.S. is small. In considering whether the order will cover such advancement of the product in the United States the Administering Authority shall consider such factors as the pattern of trade, whether the parts or components were exported by a company related to the company performing the completion, and whether, subsequent to the issuance of the order, shipments of components have increased.

When the Administering Authority deems such action appropriate to prevent evasion of an antidumping or countervailing duty order, Commerce may include in such order imports of the class or kind of merchandise that were completed or assembled in a third country, provided that the value-added in the third country is small. The Administering Authority will consider such factors as the pattern of trade, relationship between the producer and third country processor, and whether shipments of components to the third country have increased.

Creates a presumption that articles altered in form of appearance in minor respects from products subject to an antidumping or countervailing duty order or investigation shall be included in such order or investigation, whether or not included in the same tariff classification, unless the Administering Authority determines it unnecessary to do so.

c) Downstream Monitoring -

Adds procedures for the monitoring of imports of downstream products in order to identify diversionary practices resulting from significant antidumping or countervailing duties on component parts. Monitoring programs would be instituted upon petition and when there is a reasonable likelihood that imports of the downstream product will increase as a result of diversion and when one of the following selective factors applies: (1) there is an existing monitoring program for the component product (i.e., steel), (2) there are a large number of cases on related products from the same country, or (3) there are two or more cases against the same company on products which are similar in description and use.

d) Negotiating Objective -

It shall be a negotiating objective of the Uruguay Round to permit the imposition of duties to offset diversionary dumping.

2a. Monitoring of multiple offenders.

Revises provision on multiple offenders in S. 490 as follows:

Provides procedures for monitoring and investigating dumping by foreign companies that have repeatedly been found to be dumping. After a dumping margin is determined, an eligible domestic entity may petition the Secretary of Commerce requesting that a product monitoring category consisting of products of similar description and use be established. Commerce shall submit the petition to the International Trade Commission. The ITC, after publishing notice and providing an opportunity for presentation of views, shall within 90 days establish a product monitoring category consisting of products of similar description and use.

Multiple Offenders.--After a product category is established, any eligible domestic entity may request Commerce to monitor the importation into the U.S. of a class or kind of product within the category that is produced by an offender who has been found to be dumping twice within the product category with a margin greater than 10%. Commerce must decide whether there is a reasonable likelihood that sales at less than fair value (dumping) in the U.S. of such class or kind of merchandise may occur. If so, Commerce must monitor imports of such merchandise. For an offender who has been found to be dumping three times within a product category with a margin greater than 10%, if monitoring results in information indicating a reasonable likelihood that a class or kind of merchandise is being dumped, Commerce is required to initiate a dumping investigation unless a substantial proportion of domestic producers of the product request that it not be initiated.

No extensions of deadlines in investigations initiated under this section shall be granted except with consent of domestic parties.

See also Critical Circumstances and Downstream Product Monitoring.

3. Sham Transactions

-- Retain S. 490 provision.

-- Provision would be effective for all orders resulting from investigations initiated after the date of enactment.

-- Include report language to clarify that the Department of Commerce should not interpret the relevant factors in an overly narrow manner.

4. Fungible Products

-- Drop S. 490 provision.

-- Adopt language from H.R. 3 regarding material injury (see p. 83 of the Committee spreadsheet).

5. CRITICAL CIRCUMSTANCES -- The amendment would make three revisions to current law, as follows:

1. Authorize the Commerce Department to request expedited monitoring information from the U.S. Customs Service if there is a reasonable basis to suspect critical circumstances. This information would be used to monitor import surges.
2. Authorize the Commerce Department to make a preliminary determination of critical circumstances prior to the time of the preliminary determinations of subsidization or less than fair value sales under sections 703(b) and 733(b).
3. Clarify the critical circumstances injury criteria to focus the FTC's inquiry on efforts to circumvent an antidumping or CVD proceeding by rushing in large quantities of imports prior to the preliminary determination and on foreign economic conditions that create a likelihood of recurrent dumping of massive imports.

6. Definition of Agricultural Industry

-- Adopt provision from H.R. 3 (see p. 81 from Committee spreadsheet).

7. Definition of Countervailable Subsidy

-- Codify current Department of Commerce practice regarding generally available subsidies vs. subsidies to a specific industry.

8. Foreign Antidumping Orders as a Factor in Determining Threat of Material Injury

-- Requires ITC to consider, in determining threat of material injury, the existence of antidumping orders in foreign markets on the merchandise under investigation.

9a. Leases Under the Countervailing Duty Law

This amendment would clarify that the countervailing duty law applies to all leases, including those that are not equivalent to a sale.

9b. Additional Criterion for Injury and Threat Thereof -- Research and Development

This amendment would direct the ITC to consider the impact of dumped or subsidized imports on the industry's implementation of existing research and development plans in assessing injury and threat.

10. Governmental Importations

This provision would clarify that governmental importations, even if classified under TSUS Schedule 8, are subject to antidumping and countervailing duties.

This provision is subject to only two exceptions:

- (1) where duties would be inconsistent with existing Department of Defense Memorandums of Understanding; and
- (2) products as to which there is no private market.

11. Limitations on 90-Day Review Authority in Antidumping Cases

The Amendment: The amendment would add three new criteria for the institution of expedited reviews of antidumping order, and allow for written comments by interested parties before the decision is made to conduct such a review: (1) the case was considered under normal antidumping time lines; (2) evidence is presented that the anticipated margin would change; and, (3) the review would be based on representative sales during the period.

12. Subsidies Code Commitments Policy

This provision clarifies that the USTR has authority to revoke the injury test for any country that violates a Subsidies Code commitment. The USTR would be expected to revoke the injury test for any governments which have announced that they will not honor their commitment obligations or which the USTR determines are in violation of commitment obligations with respect to Code-inconsistent export subsidies.

13. Injury Test in "Old" Countervailing Duty Cases on Duty Free Imports

-- Include report language to the effect that the Committee is taking no action pending resolution of cases under judicial review.

14. ACCESS TO INFORMATION AND CERTIFICATION OF SUBMISSIONS

The International Trade Commission would be required to release all confidential information to counsel for the parties obtained during a dumping or countervailing duty investigation, subject to an administrative protective order. The ITC would be directed to impose strict sanctions for violations (other than inadvertant violations) of such orders.

In addition, counsel submitting factual information in any dumping or countervailing duty proceeding would be required to certify that such information is accurate and complete to the best of that person's knowledge.