

1 EXECUTIVE COMMITTEE MEETING

2 THURSDAY, MAY 7, 1987

3 Committee on Finance

4 Washington, D.C.

5 The meeting was convened, pursuant to recess, at 9:10 a.m.  
6 in Room SD-215, Dirksen Senate Office Building, the Honorable  
7 Lloyd Bentsen presiding.

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

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

16 Also present: Alan Woods, Deputy U.S.T.R.; Alan Holmer,  
17 Chief Counsel, U.S.T.R.; Gil Kaplan, Deputy Assistant  
18 Secretary, Countervailing Program, U.S. Department of  
19 Commerce; Barbara Steinbock, International Economist,  
20 International Trade Administration, U.S. Department of  
21 Commerce; and Stephen Basha, Assistant Chief Counsel for  
22 Enforcement, U.S. Customs Service.

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1           The Chairman. Those who are standing please be seated,  
2 and those who are conversing please cease; and we will get  
3 under way.

4           Now, one of the last items that we were discussing as  
5 we finished up yesterday was Senator Danforth's concern; and  
6 he had an amendment, as I recall, relating to the creation of  
7 a fictitious market.

8           Mr. Lang. Yes..

9           The Chairman. Mr. Lang, would you report on that  
10 amendment?

11          Mr. Lang. Yes, Mr. Chairman. Senator Danforth's  
12 amendment is intended to deal with the situation in which a  
13 product can be sold internationally in several different forms  
14 --granular, pellet, tablet. The concern is that in an  
15 antidumping proceeding, the product could be converted into a  
16 different or into several different forms in order to manipulate  
17 the home market price or the fair market value of the product.

18          For example, if the product is sold in the United States  
19 in a granular form and in the foreign exporter's market in  
20 a granular form, then the Commerce Department would ordinarily  
21 compare the price of the product in the two markets in the  
22 same form. So, to avoid the effect of the dumping law, the  
23 foreign manufacturer might convert the product into an  
24 equally usable tablet or pellet form and avoid a comparable  
25 fair market price.

1           Our understanding is that Senator Danforth's amendment  
2 would allow the Commerce Department to consider whether, in  
3 cases involving products that are sold in multiple forms, the  
4 home market prices of the product identical to the product  
5 that is sold in the United States is being artificially set  
6 to reduce the dumping market and take that into account.

7           We discussed it last night among the staff group. I am  
8 not aware of Senators who oppose the amendment.

9           The Chairman. How about the Administration? Do you have  
10 a comment concerning it?

11          Mr. Kaplan. We have worked out language with the staff  
12 which is acceptable on this amendment.

13          The Chairman. Are there any objections to it?

14          (No response)

15          The Chairman. May I have a motion then?

16          Senator Packwood. I so move.

17          The Chairman. Is there objection?

18          (No response)

19          The Chairman. All in favor make it known by stating "Aye."

20          (Chorus of ayes)

21          The Chairman. The motion is carried. Now, the next  
22 point we had was on the question of the negotiating authority,  
23 and we are trying to develop a consensus because several of  
24 the members had concern over this particular issue.

25          Would you go through those? And perhaps we can consider

1 them.

2 Mr. Lang. Yes, sir. Several members have negotiating  
3 objectives for the Uruguay Round and other negotiations that  
4 they would like added to the list of negotiating objectives  
5 which already appear in the Bentsen-Danforth bill. I will  
6 run through the objectives as we understand them.

7 The first was suggested by Senator Baucus, dealing with  
8 tariff disparities, would amend the list of negotiating  
9 objectives to include the reduction of disparities between  
10 low or duty-free U.S. tariffs and higher foreign tariffs on  
11 competitive U.S. exports.

12 The second objective was suggested by Senator Roth. The  
13 objective is to be carried forward from one that appeared in  
14 the list of objectives in the 1974 Act, having to do with  
15 border tax adjustments. The problem here is that, under the  
16 GATT, the treatment of indirect taxes and direct taxes is  
17 different; and the effect is to allow taxes on the sale of  
18 products--consumption taxes--to be deducted on exports and  
19 added to imports in such a way as to encourage exportation  
20 and discourage importation.

21 And the objective in 1974 was the seek a GATT agreement  
22 on border tax adjustments. No agreement was achieved. Senator  
23 Roth is proposing that the same objective be carried forward  
24 into the new round.

25 The third objective suggested by Senator Bradley is in

1 two parts. First, he would propose an objective on better  
2 surveillance of the use by GATT contracting parties of  
3 emergency safeguard protection--that is, essentially escape  
4 clause protection--to ensure that it doesn't discriminate  
5 between different suppliers, that it is time limited, and that  
6 it is linked to adjustment efforts. And second, an objective  
7 of obtaining a timetable in procedures to bring into  
8 conformity with GATT rules on voluntary export restraints,  
9 that is, actions -- No?

10 Senator Bradley. No. The second one deals with  
11 transparency.

12 Mr. Lang. Oh. The objective on transparency was to  
13 attempt to get concensus that governments would expose their  
14 import protection efforts to international scrutiny through  
15 publication of an annual --

16 Senator Bradley. No, no. It is just more transparency  
17 in trade policy making of contracting parties, simply to  
18 clarify the costs and benefits to each contracting party of  
19 its own trade actions.

20 Mr. Lang. All right.

21 Senator Bradley. It is very general.

22 Mr. Lang. I am told we are working from the wrong piece  
23 of paper here.

24 Senator Bradley. Oh, all right.

25 Mr. Lang. Those are the three objectives on which there

1 was no objection at the staff level.

2 The Chairman. Mr. Lang, do we have a concensus on these?

3 Mr. Lang. We are not aware of any objections, Mr.

4 Chairman. The Administration has asked to see the paper.

5 The Chairman. Oh, all right.

6 Mr. Woods. We have no objection, Senator.

7 The Chairman. All right. Are there further comments?

8 (No response)

9 The Chairman. If not, can we have a motion that these  
10 be adopted?

11 Senator Bradley. Mr. Chairman, I so move.

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

14 (Chorus of ayes)

15 The Chairman. Opposed by a similar sign?

16 (No response)

17 The Chairman. The motion is carried.

18 The next point on our agenda, Mr. Lang?

19 Mr. Lang. Mr. Chairman, the next point would concern  
20 Section 108 of the bill, which concerns currency manipulation.  
21 Let me see if I can find the spreadsheet page for this.

22 The Chairman. This is one that Senator Baucus and  
23 Senator Moynihan and, I am sure, Senator Bradley have offered?

24 Mr. Lang. Yes, sir. It appears on spreadsheet page 25.

25 Mr. Chairman, the provision that appears on spreadsheet page

1 --I am sorry, I don't think I have the right page for you here.

2 Senator Chafee. Mr. Chairman, are we now on new  
3 amendments?

4 Mr. Lang. No, we are still trying to clarify the  
5 negotiating authority. I am sorry, Mr. Chairman.

6 The Chairman. Are we back to negotiating authority?

7 Mr. Lang. Yes. This is a separate authority for the  
8 President to negotiate with respect to countries that peg  
9 their currency.

10 The Chairman. Oh, we are back now to the currency  
11 negotiations?

12 Mr. Lang. That is right.

13 The Chairman. That I have discussed and that Senator  
14 Baucus and Senator Moynihan have been quite involved in.

15 Mr. Lang. This provision was originally introduced  
16 separately by Senator Moynihan. You can see it described in  
17 the spreadsheet on page 4 in the right-hand column; it is  
18 Item (b)iv, Currency Exchange Rates.

19 And under the provision, the President was required to  
20 take actions to initiate bilateral negotiations with Hong Kong,  
21 Korea, Taiwan, and other countries that peg their currencies  
22 to the U.S. dollar for the purpose of obtaining agreements  
23 to assure that those countries revalue their currencies to  
24 reflect economic fundamentals.

25 There was a discussion at the staff level about this last

1 night, but I am told that Senator Baucus would like to say  
2 something about the matter before we go on.

3 The Chairman. Senator Baucus, are you seeking  
4 recognition?

5 Senator Baucus. Thank you, Mr. Chairman. Essentially,  
6 this, as Mr. Lang said, is an amendment from the Senator  
7 from New York, Senator Moynihan, who introduced the bill which  
8 I cosponsored. It is his bill attempting to address the  
9 question of currency manipulation by countries other than  
10 the United States, Japan, and Germany, even though the Japanese  
11 yen has appreciated so much lately, the deutchmark--as the  
12 currency of many other countries--has not. In fact, about  
13 half of the value of trade the United States has with other  
14 countries is with currencies other than the deutchmark and  
15 the yen. The thought is that we should try to address that  
16 in some way.

17 I have offered an amendment to the basic provisions of  
18 the bill; the provisions of the bill are essentially those of  
19 Senator Moynihan. One is a modifying amendment, and one is,  
20 I think, a strengthening amendment. The modifying amendment  
21 essentially points out that many countries peg their exchange  
22 rate to the dollar, but they have to. I mean, these are  
23 currencies that are thinly traded from smaller countries.

24 And in those cases where a country pegs for a certain  
25 length of time, it is probably inappropriate for the United



1 States to in any way indicate that that is unfair or improper.  
2 Rather, we are trying to address the question of unfair  
3 manipulation, that is, when a country manipulates its rates  
4 in order to gain a trading advantage which is not in line  
5 with fundamentals, that is investment policies in the country  
6 or fiscal policy or whatever.

7 And it is fairly clear that some countries tend to engage  
8 in this kind of manipulation to gain an unfair trading  
9 advantage. So, the first amendment was a modifying amendment  
10 to basically delete the reference to pegging--as pegging is  
11 proper in some instances--and rather for our country to begin  
12 negotiations with those countries that manipulate.

13 The strengthening amendment--the second amendment--is  
14 basically this. I originally offered an amendment which  
15 provided that if currency in negotiations with a country that  
16 ostensibly manipulates do not get anywhere--say after a period  
17 of time, six months or a year--that then the USTR is directed  
18 to begin trade negotiations with that country to try to work  
19 out some concession in the amount of the unfairness, that is  
20 in the amount that the manipulation seems to give that  
21 country an unfair trading advantage.

22 It is my understanding that recently--last night--some of  
23 the staff of some of the members of this committee objected  
24 to that last portion for various reasons; I don't know why.

25 My thought is that we should at the very least begin

1 trade negotiations if currency negotiations don't get anywhere.  
2 My amendment only stops there at trade negotiations, that  
3 is if negotiations are unfruitful--if nothing happens, no  
4 agreement is reached--my amendment only provides that the USTR  
5 and Treasury report the results to the Congress. That is it,  
6 no more. There are no teeth in it; there is no attempt to  
7 retaliate. There is no mandatory action, no discretionary  
8 action that the President should or should not take.

9 It is only to report the status of the negotiations, an  
10 attempt to try to move a resolution of the issue, recognizing  
11 that this is a very difficult question. You don't want to  
12 tell countries what their exchange rates should or should not  
13 be. So, that is why I stopped only at directing the  
14 negotiations to begin, but not requiring any action be taken  
15 or even indicating any action should be taken.

16 It is my thought that that is a fair resolution of the  
17 issue.

18 The Chairman. Do I understand correctly, Mr. Lang, that  
19 that was not a part of consensus that was reached last night?

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

21 The Chairman. And what was the objection?

22 Mr. Lang. There are several concerns, Mr. Chairman. The  
23 first was that a trade negotiation would be going on in any  
24 event, and some offices were concerned that this would result  
25 in some kind of separate or parallel negotiation. But the

1 basic problem was to try to find a way that the currency  
2 discussions and the trade discussions would complement and  
3 reinforce each other. And several offices discussed this  
4 matter last night and came up with some specifications which  
5 I think they are ready to hand out to you, which we understood  
6 were acceptable to all the offices. Maybe that is not the  
7 case.

8 The Chairman. Does the Administration have any comment  
9 on this, on this last suggestion?

10 Mr. Lang. I think they need to get the piece of paper.

11 Mr. Woods. I don't believe we have seen this.

12 Mr. Lang. Maybe I should run through this piece of  
13 paper while it is being handed out. Under what was discussed  
14 last night, essentially what would happen is the President  
15 would determine during the course of trade negotiations that  
16 are authorized under the bill whether currency manipulation  
17 --as Senator Baucus has defined it--is taking place.

18 That is a sharper definition than exists now in the  
19 Bentsen-Danforth bill of currency manipulation. The idea that  
20 Senator Baucus added make currency manipulation very much like  
21 an unfair trade practice. It involves blocking investment so  
22 that a country runs up large reserves. It involves other  
23 practices that make the currency manipulation possible,  
24 contrary to the economic fundamental.

25 When the President, as he is conducting trade

1 negotiations, comes upon this situation, the staff thinking is  
2 that it is likely the manipulation may undermine the trade  
3 concessions you get because whatever you get by way of  
4 concessions from a country that is manipulating its currency  
5 might be overcome by the fact that they are manipulating the  
6 currency, and you won't get the access to that --

7       The Chairman. Now, Mr. Lang, I totally agree with that.  
8 I have been deeply concerned with the issue. We have looked  
9 at the situation where the Taiwanese, for example, have an  
10 enormous capital surplus and an enormous trade surplus; and  
11 we have had very little cooperation in the adjustment. And  
12 if you look at your inflation factor, actually they have  
13 become more competitive by currency than they were before.

14       And we have, to some degree, the same kind of a problem  
15 with the South Koreans, with the South Korean won pegged to  
16 our dollar. And we have some of that problem in other parts  
17 of the world, and I think what we have seen in the initiation  
18 by Senator Moynihan and Senator Baucus and Senator Bradley  
19 is a major step forward; and I think that is a contribution.

20       There is no question but what you could be gaining on  
21 the one hand in a trade negotiation and, at the same time,  
22 lose it all in a country that had the capability of controlling  
23 its currency, as you have that kind of a situation in Taiwan.

24       Mr. Lang. Right.

25       The Chairman. And it would all be for naught. So, I

1 quite agree that we should address it. I think progress has  
2 been made in that regard. I still don't understand the  
3 problem of Senator Baucus' addition to it.

4 Mr. Lang. The problem, Mr. Chairman, was also one of  
5 jurisdiction.

6 The Chairman. All right, now you are beginning to get  
7 to it.

8 (Laughter)

9 Mr. Lang. When we started out with a currency  
10 negotiation, the whole basis of the provision sounded in  
11 currency matters, rather than in trade matters. We have  
12 reconstructed the thing so that you start out with the trade  
13 provision, and you make a finding that the currency problem  
14 is undermining what you are trying to do in trade. It seemed  
15 to us that that was a way to assure that what you were doing  
16 here was much more within the committee's jurisdiction than  
17 starting out with currency from the top.

18 The Chairman. All right.

19 Mr. Lang. And this is something that the committee has  
20 done in the past in the balance of payments provisions in  
21 the 1974 Act. They reversed the order so that, if balance of  
22 payments problems were undermining what you were trying to do  
23 in trade, then you could take a trade action. This does the  
24 same thing.

25 The Chairman. Let me come at it another way. I

1 zealously fight and work, as do other members of this  
2 committee, to protect the jurisdiction of this committee.

3 And by the same token, I don't want to get into the other --

4 Senator Baucus. Mr. Chairman?

5 The Chairman. If I may, Senator? I am wondering if this  
6 cannot be addressed by your working with the Banking  
7 Committee to add that, and we could go with it with a floor  
8 amendment and work out any differences.

9 Senator Baucus. I was going to address that point. The  
10 fact is that the approach I have taken is virtually identical  
11 to the approach that I think two Senators on the Banking  
12 Committee are also taking. That is, our amendment has elements  
13 of the jurisdiction of this committee and elements of  
14 jurisdiction of the Banking Committee. The bills in the  
15 Banking Committee have elements of jurisdiction of the Banking  
16 Committee and elements of jurisdiction of this committee.  
17 It is just one of those silly situations that we can work out.

18 The Chairman. Senator, can we go with the concensus  
19 arrived at last night, and then staff work with the Banking  
20 Committee and you and Senator Proxmire and see if we can't  
21 come up with something in the way of a floor amendment?

22 Senator Baucus. We can do that, but I might say that the  
23 part that I am trying to add very much is in our jurisdiction;  
24 that is the trade part. So far, currency negotiations just  
25 haven't worked, and I am just trying to give a little nudge to

1 help reach some resolution in currency negotiations. So,  
2 the part I want to add is under the jurisdiction of this  
3 committee.

4 Senator Wallop. Mr. Chairman?

5 The Chairman. Senator Wallop?

6 Senator Wallop. If I may, one possible flaw in what you  
7 have just recommended is that, having done it to the  
8 satisfaction of the Banking Committee, you might have forever  
9 ceded that trade role from this committee.

10 The Chairman. No, no, no. Then, staff has not done a  
11 good job and neither has Senator Baucus.

12 (Laughter)

13 Senator Wallop. I just want to warn you to look over the  
14 horizon while searching for this compromise.

15 The Chairman. Right.

16 Senator Bradley. Mr. Chairman?

17 The Chairman. Yes?

18 Senator Bradley. Does the draft before us now--the version  
19 that you are suggesting to Mr. Lang--reflect that it is not  
20 just manipulation but manipulation in conjunction with other  
21 actions that undervalue the currency?

22 Mr. Lang. Yes, it does, Senator Bradley. If you will  
23 look in the second paragraph called "In general," those kinds  
24 of suggestions are included. That is, the President determines  
25 not only manipulation but barriers to investment, discouraging

1 internal investment, pattern of other acts, policies, or  
2 practices for the purposes of preventing effective balance  
3 of payments adjustments, and gaining unfair competitive  
4 advantage. This is the kind of thing that was in the 1974  
5 Act and that you staff and Senator Moynihan's staff suggested  
6 last night.

7 So, our purpose here was to give you something that you  
8 could report out that would be clearly within the committee's  
9 jurisdiction; and then, if you wanted to work something out  
10 with the Banking Committee at the later stage, you would be  
11 in a position to do that.

12 The Chairman. What is the problem with that? Why don't  
13 we do that?

14 Senator Baucus. Fine, Mr. Chairman. As I understand it,  
15 we will accept the agreement that was worked out last night.

16 The Chairman. That is great.

17 Senator Baucus. And then, in addition, work with the  
18 Banking Committee.

19 The Chairman. That is fine. Good. May we have a motion  
20 then?

21 Senator Packwood. I so move.

22 The Chairman. All in favor of the motion as stated make  
23 it known by saying "Aye," and that is the concensus we have  
24 been discussing this last night. And we will see what we can  
25 do to work out between the staffs, Senator Baucus, and those



1 members who are concerned on the Banking Committee and put  
2 an amendment on the floor.

3 (Chorus of ayes)

4 The Chairman. Opposed?

5 (No response)

6 The Chairman. Good. The next item on the agenda? And  
7 let me congratulate those members. I think that is a job  
8 well done, and I am very appreciative of it. Go ahead, Mr.  
9 Lang.

10 Mr. Lang. Mr. Chairman, the committee has now completed,  
11 as far as we know, amendments to the major sections of the  
12 bill. However, a number of members had free-standing  
13 amendments that they wanted to offer, and we have placed them  
14 in two categories at the staff level where we think there is  
15 consensus on these amendments?

16 The Chairman. What is that--good and bad?

17 Mr. Lang. No, sir.

18 (Laughter)

19 Mr. Lang. No. The first category are five or six  
20 amendments which members have been pressing in the committee  
21 for some time of importance, of which we are not aware of  
22 any objections. And the second class of amendments are  
23 some 80 or 90--I think it is--miscellaneous tariff bills,  
24 which we have determined through agency comments and public  
25 comments are not controversial.

1           Perhaps I could first describe the group of amendments  
2 on fairly major subjects on which there appears to be no  
3 objection.

4           Senator Chafee. Mr. Chairman, at some time, I would  
5 like to just briefly have the Administration respond to my  
6 concerns yesterday about the Defense Department purchases  
7 that we discussed. Now would be good, but I don't want to  
8 interfere with your train here--how you want to do it--but I  
9 would like to have them briefly respond to those concerns.

10          The Chairman. As I noticed, it looks to me like they  
11 might want a few minutes to think about that one--even after  
12 last night. And if we could, let's proceed on this and then  
13 get back to what you are speaking of, if you have no  
14 objections. All right, go ahead, Mr. Lang.

15          Mr. Lang. The subjects of the first staff proposal are  
16 the following. First, the proposal is to add the text of  
17 the Danforth-Bentsen Telecommunications Bill, which was  
18 introduced this year as S. 596. This is almost identical to  
19 the bill recorded by the committee favorably in 1985.

20          The second component of the staff proposal is a bill  
21 proposed by Senator Matsunaga having to do with the  
22 regulation of duty-free stores. Duty-free stores are stores  
23 operated mainly at airports in the United States. They import  
24 goods and sell them to travelers, and they import the goods  
25 duty-free, that is, in effect the duty-free store is a kind of

1 bonded warehouse for imported goods which are sold to  
2 departing airplane passengers who leave the United States  
3 for other points. The goods never actually enter the stream  
4 of commerce.

5 The purpose of Senator Matsunaga's amendment is to  
6 convert the regulation of duty-free stores from a matter of  
7 administrative orders to a statutory status. His amendment,  
8 according to the Customs Service, merely codifies the existing  
9 duty-free store regulation; and we have asked a representative  
10 of the Customs Service to be here in case members have  
11 questions about Senator Matsunaga's provision.

12 The next provision is one proposed by Senator Moynihan,  
13 which also appears in the House bill. It is an expression of  
14 the sense of Congress; it is not a mandatory statute. It is  
15 just resolution language, that the Administration should  
16 proceed vigorously with the so-called MOSS Talks, meaning  
17 market-oriented, sector-specific talks on automobile parts,  
18 with Japan.

19 The third provision of this staff proposal is a resolution  
20 on the pro bono provision of legal services in trade cases  
21 which have been introduced by Senator Heinz, as S. Con. Res.  
22 45. This resolution urges the private bar to undertake a  
23 program of providing pro bono assistance in trade cases where  
24 the expense of proceeding for domestic industries would be  
25 beyond their means.

1           And the last provision of this concensus amendment would  
2 be two additions to the national security provisions of the  
3 bill proposed by Senator Roth. The first amendment would  
4 carry forward a provision that is now on the House bill to  
5 provide authority to enforce voluntary export restraints with  
6 respect to machine tools. Under current law, in the national  
7 security area, the President is authorized to provide import  
8 relief in cases where the importation of a product threatens  
9 to impair the national security of the United States.

10           In 1986, President Reagan was about to make the  
11 determination under that statute, that it applied with respect  
12 to imported machine tools and was then able, instead of  
13 putting import controls on directly, to negotiate a series  
14 of agreements with countries that export machine tools to the  
15 United States to restrain their exports to a level that he  
16 felt would not threaten to impair the national security.

17           However, no general authority exists in the United States  
18 to enforce these voluntary export restraints by requiring a  
19 certificate at the port of entry from the foreign government  
20 that the product being exported has been subjected to their  
21 export restraint. So, for example, when the President put a  
22 program into effect in 1984 of voluntary export restraints with  
23 respect to steel, he asked for authority from the Congress to  
24 be able to enforce the voluntary export restraints.

25           Senator Roth's first suggestion is to provide, as the

1 House has, specific authority to the President to enforce the  
2 voluntary export restraints that he has already placed on  
3 imported machine tools.

4 Senator Wallop. Mr. Lang, can I ask a question?

5 Mr. Lang. Yes, sir.

6 Senator Wallop. I sense a sort of an intellectual  
7 dysjunct here. I don't know how you can enforce a voluntary  
8 restraint.

9 (Laughter)

10 Mr. Lang. Oh, the problem, Senator, is that when a  
11 foreign government signs an agreement with the United States  
12 to limit its exports to the United States, it usually limits  
13 those exports through an export licensing system; and that is  
14 the product may not be exported from a country to the United  
15 States unless it has that export license.

16 Then, when the product arrives in the United States, the  
17 export license from the foreign government is presented to the  
18 Customs Service and they know that the product has been  
19 exported in accordance with the voluntary export restraint.

20 If the document is not available, they would deny entry  
21 to the product. The problem is they have no general authority  
22 to deny entry to a product that has been exported without the  
23 permission of the foreign government; and that can frequently  
24 happen. For example, if a country makes machine tools that  
25 are subject to the voluntary export restraint, it may lay the

1 product to be exported to England, and then redirect the  
2 export to the United States. If the Customs Service doesn't  
3 find the appropriate export license, under current law it  
4 doesn't have an authority to refuse entry to the product,  
5 even though it is inconsistent with the voluntary export  
6 restraint.

7 Senator Wallop. So, it is a sort of American volunteer  
8 enforcement force.

9 Mr. Lang. Helping the foreign government enforce the  
10 agreement, if you will.

11 Senator Wallop. For which we pay. I understand what  
12 you are trying to say, but it is a sort of bizarre concept;  
13 but it no more bizarre than some of the other ones we have  
14 constructed in here.

15 (Laughter)

16 Mr. Lang. The second part of Senator Roth's amendment  
17 also concerns the national security area. It is intended to  
18 clarify that the President's range of options for action in  
19 the national security area includes the authority to negotiate  
20 voluntary export restraints; and in order to prevent open-ended  
21 negotiations under this authority, it puts a six-month time  
22 limit on the negotiation of the voluntary export restraints  
23 and also provides the President general authority only in  
24 the national security area to enforce these voluntary export  
25 restraints. So, the effect is that, if the President wants,

1 instead of putting quotas on or to put duties on in order  
2 to protect the country against a threat of impairing the  
3 national security through imports, he can use voluntary  
4 export restraints rather than those more traditional trade  
5 remedies.

6 So, those are the five components of this staff  
7 recommended package on big subjects.

8 The Chairman. Let me comment particularly on Senator  
9 Danforth's telecommunications bill, which I am co-sponsoring  
10 and which has passed this committee. I think that exemplifies  
11 where you have a situation where we have not taken into  
12 consideration trade, as we do regulatory things, in our  
13 government. And I am not talking just about this  
14 Administration; I think that has been the history of  
15 Administrations. We haven't felt it needed that kind of a  
16 priority. So, as we deregulated in telecommunications, we  
17 did not do as the Japanese did, where they gave very serious  
18 consideration to what was going to happen to trade and phased  
19 it that way.

20 Now, we are looking at the same kind of a situation  
21 developing in Germany. Now, here we just said: Okay, fellows,  
22 come have at it. AT&T is not going to buy any more controlled  
23 products from Western Electric. Come in and have at the market.

24 That was a time when we had something to trade for  
25 concessions to open up their markets, so we could back more to

1 something that resembles free trade; but the two were not  
2 coupled together. So, what the objective of this legislation  
3 is is to try to open up those markets, and I think it is  
4 excellent legislation. I am pleased to be a co-author of  
5 the bill.

6 Senator Danforth. Thank you very much, Mr. Chairman.  
7 I appreciate it. This is something that this committee has  
8 acted on before unanimously, and it does, as you say, deal  
9 with a unique situation, and it is market opening; and it  
10 provides us with the only leverage we could possibly have  
11 to provide fairness in telecommunications.

12 This is identical--as Jeff Lang said--word for word  
13 identical with the previous bill. And I think we should treat  
14 it as such. My hope would be that the report language would  
15 be the same as the 1985 bill, with three exceptions.

16 First, it would update the history of the situation since  
17 the 1985 bill. Second, it would reiterate the committee's  
18 intent that, should retaliations or offsets be necessary, the  
19 President should avoid penalizing domestic users to the extent  
20 possible. And finally, it should clarify that the bill covers  
21 trade issues involving telecommunications satellites and  
22 related services. So, those would be my three suggestions  
23 for the only changes that would be necessary in the report  
24 language.

25 Otherwise, I think that this is really identical--and the



1 bill is, in fact, identical--to what we agreed to in 1985.

2 The Chairman. Would the Administration care to comment  
3 on that?

4 Mr. Woods. Yes, thank you, Senator. We would oppose this  
5 provision. We have got a number of concerns about it, the  
6 fact that it is initially sector-specific. We must say in  
7 that regard we certainly do endorse the objectives, as you  
8 said, of what this bill intends to do. However, we feel it  
9 is overly restrictive. We have to establish the objectives  
10 for the negotiations up front before the negotiations begin.

11 If we do not succeed in achieving all of those objectives,  
12 there are rigid deadlines for the negotiations which would  
13 then require mandatory retaliation. In other words, if we get  
14 a good agreement that doesn't meet all our objectives, we would  
15 then have to retaliate. Most of our trading partners--I don't  
16 think or believe--would like to negotiate with us under those  
17 circumstances.

18 We believe that the problems with it are as follows. It  
19 requires mandatory retaliation. We believe it may violate the  
20 GATT. And it subjects U.S. exporters in the telecommunications  
21 industry to counterretaliations. I understand that this is a  
22 very popular provision in this committee; so I am not taking  
23 a popular position, but we hope that you will consider it  
24 carefully, and it might be a matter that we will have further  
25 opportunity to discuss in conference.

1 The Chairman. Thank you. Are there additional comments?

2 Senator Chafee. Mr. Chairman, I just want to say that we  
3 have been through this. We spent a lot of time on this. As  
4 was mentioned, we passed it in previous years. I think it is  
5 a good measure. Frankly, it wasn't quite as strong as the one  
6 I had in a couple years ago. I think it addresses a very, very  
7 severe problem that we face that we have been taken to the  
8 cleaners on. So, therefore, I am always glad to hear the  
9 Administration's views; but in this case, I think we should  
10 note them with some concern and proceed on.

11 Senator Wallop. Mr. Chairman?

12 The Chairman. Yes, Senator Wallop?

13 Senator Wallop. Mr. Chairman, as I have watched the  
14 progress of all of this and I have listened; and I have watched  
15 our progress in the world of negotiations, I can understand  
16 the political need for rigidity. I really can, and I  
17 understand what Senator Chafee has just said, and I clearly  
18 understand the nature of the problem that we face.

19 But sometimes, in satisfying our political needs, we end  
20 up with a resolution of the trading need that is less than  
21 satisfactory. I think in this instance Mr. Woods' comments  
22 ought to be listened to by the committee. And we should weigh  
23 at least one more time the rigidity, including mandatory  
24 deadlines and targets, before you set out because it is in  
25 first effect an ultimatum; and it subjects us to ultimata in

1 return from other countries or the same countries on other  
2 kinds of issues. And I don't know how one can describe then  
3 negotiation as an ultimatum.

4 But more importantly, as we reach the time when the  
5 negotiating objectives are nearly complete, in an industry  
6 which has sore need of relief, that has 85 percent of its  
7 relief in hand, it ends up with no relief because of the  
8 rigidity of the provisions that we have, for political reasons  
9 --and good and sufficient political reasons--put in place.

10 And I would hope that we might consider what the  
11 Administration is saying to us on this issue because we end  
12 up, in many instances, with less rather than more access.  
13 And worse still, other unaffected industries become affected  
14 industries, as counterretaliation arises.

15 So, if there is any possibility within the sense of this  
16 committee to find a means to avoid those kinds of ultimate  
17 confrontations, which end up in nobody's good, I would hope  
18 that we would entertain them.

19 Senator Packwood. Mr. Chairman?

20 The Chairman. Senator Packwood?

21 Senator Packwood. Mr. Chairman, I support this, despite  
22 my normal views on unfettered trade, because in this area we  
23 are usually selling--almost always selling--to government-owned  
24 telecommunications systems. This is not the argument about  
25 how farmers won't work for our party if we let you sell rice,

1 or this is not the baseball argument. This is a government  
2 that can move if it wants to move, and by and large, it is  
3 in an area where the ultimate users of the equipment sold do  
4 not know whose equipment it is, anyway. They have no idea  
5 if it came from Siemens's or AT&T or Microswitch or anything  
6 else. They just want to know if their telephone system or  
7 electronic system works--and they are government-owned in  
8 most areas--the government can put in whatever kind of  
9 equipment it wants without irritating its voters.

10 And I think, in this kind of a situation, they cannot  
11 use the argument of cultural identity or our people don't  
12 want to buy it or we have a difficult political problem;  
13 they don't. The only political problem they have is they  
14 want to keep a monopoly for their company for their country.

15 The Chairman. Thank you. We have now had five amendments  
16 that have been discussed on which we have either a consensus  
17 or something very close to a consensus. Unless there is  
18 objection, we will consider the five en block. If anyone wants  
19 a separate vote on any one of them, of course we will do that.

20 Senator Baucus. Mr. Chairman?

21 The Chairman. Yes?

22 Senator Baucus. I just have a couple of questions I want  
23 to ask Senator Danforth on this.

24 The Chairman. All right.

25 Senator Baucus. One is: When and if our Government

1 retaliates, is the Administration under any obligation to  
2 consider its effect on the domestic market? That is, there  
3 is concern on the part of some of the "Baby Bells" for example  
4 t if we do retaliate, it is going to give AT&T, for example,  
5 even more of a monopoly power than it has.

6 Senator Danforth. The answer to the question is yes, and  
7 that is one where I suggested a clarification.

8 Senator Baucus. And the second question concerns  
9 satellites. Because some of this has been privatized, some  
10 of our satellite companies are meeting resistance in getting  
11 into foreign markets and so forth.

12 Senator Danforth. That is also the second question that  
13 we are getting clarification on.

14 Senator Baucus. Thank you very much.

15 The Chairman. If there is no objection to their being  
16 voted on en block, I will entertain a motion that we do so.  
17 May we have a motion?

18 Senator Baucus. I so move.

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

21 (Chorus of ayes)

22 The Chairman. Opposed?

23 (No response)

24 The Chairman. The motion is carried. Mr. Lang, are you  
25 prepared to proceed?

1 Mr. Lang. Yes, sir. The next package we have to suggest,  
2 Mr. Chairman, concerns noncontroversial tariff bills. You  
3 have had passed out to you a list of these bills, which is  
4 labeled "Noncontroversial Tariff Bills," and is a number of  
5 pages long.

6 The Chairman. All right.

7 Mr. Lang. The bills include both those that have been  
8 introduced in the Senate as "S" numbered bills and provisions  
9 of Title 8 of H.R. 3, which is the House Trade Bill that  
10 passed last week, which we have identified as noncontroversial.

11 In order to identify the bills as noncontroversial, the  
12 committee issued a press release a month ago--more than a  
13 month ago; at the beginning of April--asking for public comment  
14 and agency comment on all of the bills that we were aware of  
15 at that time of this nature.

16 Those public comments were received on May 1. The staff  
17 worked with the Administration over that weekend of May 2 and  
18 3. The list of noncontroversial bills was handed out to  
19 members' staff on last Monday. A number of provisions that  
20 were controversial have been rendered noncontroversial by  
21 satisfying the concerns of the Administration or other  
22 interested groups; and this list represents that process,  
23 which, so far as we know, has no opposition anywhere.

24 There are several common characteristics we would like the  
25 committee to consider adopting, if and when it chooses to add

1 the list of noncontroversial bills to the trade bill.

2 First, there is a concern in the Administration that these  
3 bills all have a common termination date for the temporary  
4 duty suspensions. Most of these bills are a reduction in  
5 the U.S. rate of duty to zero because the product in question  
6 is in short supply or isn't available at all in the United  
7 States. The committee has frequently in the past enacted  
8 such bills with different lengths of duty suspensions, and  
9 so you end up with a situation like you had last year where  
10 you have bills expiring more or less monthly throughout the  
11 year; and then you have a crisis near the end of the Congress  
12 where everybody's suspension is expiring, and you are trying  
13 to get the thing through in the last minute.

14 What we suggest is that the date, which was proposed to  
15 the staff by the Administration for the termination of the  
16 suspensions permitted under this bill, be December 31, 1990.

17 The second suggestion we have is that all the expired  
18 temporary duty suspensions be made retroactive to the date of  
19 expiration. Because of the problem you had last fall, a  
20 number of suspensions expired; and the Customs Service was not  
21 allowed to refrain from collecting those duties beyond a period  
22 that is a year from the time when the suspension expired.

23 So, many people who probably would have gotten an  
24 extension of their duty suspensions when they expired were not  
25 able to get them because Congress didn't enact the law. Then

1 the suspension expired; the year had passed; and the service  
2 began collecting duties. What we are proposing here is that,  
3 in all those cases, the duties be retroactively refunded to  
4 those people because you probably never intended for them to  
5 be collected in any event.

6 This was true for cantaloupes and a great variety of  
7 products.

8 The third suggestion we have concerns a bill having to  
9 do with bicycle parts and tires. The bill is noncontroversial,  
10 but it needs two amendments which have been agreed to by the  
11 sponsor of the bill, Senator Glenn. The first is to add  
12 bicycle tires, tubes, and rim strips to the list of items for  
13 duty suspension because they are no longer made in the United  
14 States. This is already part of the House bill provision on  
15 bicycle parts.

16 And the second is an Administration concern that the bills  
17 cross reference to the tariff schedules should be deleted and  
18 instead we substitute cross reference by scheduled item number.  
19 Again, Senator Glenn has no reservations about that.

20 There are three other general suggestions.

21 One of the noncontroversial tariff bills concerns the  
22 Nairobi protocol to the Florence Agreement. Under the Florence  
23 Agreement, the United States permits the duty-free importation  
24 of goods for scientific and educational purposes, and the  
25 Nairobi protocol extended that to goods for handicapped persons.



1           Subtitle (d) of the House bill implements this provision.  
2           There is another provision of the House bill related to the  
3           Florence Convention that alters the definition of scientific  
4           equipment eligible for duty-free treatment.

5           This provision is controversial because a number of  
6           hospitals in the United States feel that it would increase  
7           their duties on scientific equipment; and we suggest that,  
8           since the matter is controversial, you not include it within  
9           this package. That doesn't decide the matter one way or  
10          another; it is just that we can't assure you that the scientific  
11          equipment portion of the Nairobi protocol provision in the  
12          House bill is noncontroversial because these hospitals have  
13          objected. Until we find out what the nature of the objection  
14          is, we think the safest thing for you to do is to treat it  
15          as controversial and leave it off the list.

16          There is a provision in the House bill for which there is  
17          no Senate counterpart that is noncontroversial in terms of  
18          public comment. However, the Administration within the last  
19          day or two has raised the concern that the scope of the duty  
20          free treatment is too broad. The purpose of the provision is  
21          to provide duty-free treatment for a temporary period for  
22          salted and dried plums. However, the provision refers to  
23          salted and dried plums, but not otherwise prepared. And  
24          apparently, the Administration feels this language may be too  
25          broad and would like the narrower language.

1           Again, since we are not sure of the nature of the  
2 controversy, we suggest you take only the noncontroversial  
3 part. And finally, there is a provision introduced by  
4 Senator Rockefeller, S. 1091, which provides temporary duty  
5 free treatment for glass cookware. This is the one case in  
6 which the expiration of the duty suspensions we proposed to  
7 you would be a date other than December 31, 1990.

8           In this case, the cookware is being imported temporarily  
9 until a plant to manufacture it is constructed in the United  
10 States. That plant is to be completed by the end of 1989;  
11 and so, we suggest that the cookware provision expire on  
12 December 31, 1989, instead of December 31, 1990.

13           That completes all of the changes we would suggest to  
14 the list of noncontroversial tariff bills. With those  
15 changes, I have consulted with my counterpart, Mr. Bolten,  
16 and I believe we jointly recommend that the committee adopt  
17 the list with those changes.

18           Senator Baucus. Are there any comments or questions on  
19 this package?

20           (No response)

21           Senator Danforth. Mr. Chairman, I move that these  
22 noncontroversial tariff items be considered and approved.

23           Senator Baucus. All those in favor say "Aye."

24           (Chorus of ayes)

25           Senator Baucus. Opposed, "No."

1 (No response)

2 Senator Baucus. The motion is adopted.

3 Senator Heinz. Mr. Chairman, I have a duty suspension  
4 that I would like to propose on a product known as 1.5  
5 naphthalene disosianate, NDI. NDI is a polymer base that is  
6 used in the formation of high-strength synthetic rubbers,  
7 and it is particularly durable. It has high resistance to  
8 heat and water; and there is, as I understand it, no comparable  
9 product, that is to say, no product that will make similarly  
10 durable, similarly strong, similarly resistant end products  
11 such as automobile bumpers in this country.

12 And it is a very expensive product, about \$11.75 a pound;  
13 and my amendment would suspend the duty on it for the same  
14 three-year period that all other duties are being suspended  
15 for.

16 Senator Baucus. Mr. Lang, do you have a comment on that?

17 Mr. Lang. Mr. Chairman, as Senator Heinz said, this  
18 legislation would suspend through 1989 the MFN rate on this  
19 product. The chemical enters the United States with a tariff  
20 rate of 13.5 percent ad valorem. The reason it is on the  
21 controversial tariff list is that a Michigan-based company,  
22 BASF Corporation, which manufactures--I am sorry--the UniRoyal  
23 Chemical Company, which has a facility in Ohio, opposes the  
24 bill because it makes a chemical for use in bumpers which it  
25 believes is competitive with NDI. The product has a different

1 and, we are informed, a lower price than NDI; and it may be  
2 that the committee would conclude that--for that reason--the  
3 products were so different that it wouldn't take into account  
4 the objection. But I would be remiss if I didn't tell the  
5 committee that there have been objections.

6 Senator Heinz. I think that is the issue the committee  
7 ought to focus on in deciding whether it wants to adopt this  
8 duty suspension or not; and that is whether the product is  
9 indeed directly competitive with the other chemicals which  
10 sell for about one-tenth the price of NDI. I think the issue  
11 is whether you can make the end product, and I would put into  
12 the record at this point, Mr. Chairman, a letter from General  
13 Motors, from which I might read one sentence, which is as  
14 follows. The writer, who is an engineer at GM, says:

15 "My experience is that the material supplied by our  
16 present suppliers--he is referring to NDI--is the only one  
17 that will take the severe loading on this part." The part  
18 involved is a bumper--excuse me, a jounce bumper on front  
19 suspensions for ride cushioning and energy absorption on  
20 large bumps and potholes.

21 And if people are interested in the rest of the letter, I  
22 can read it.

23 (The letter follows:)  
24  
25

1           Senator Heinz. It is my belief that this really is a  
2 different chemical. It produces an end product that is  
3 genuinely better and different--therefore unique; and that  
4 the people who say that such a duty suspension might injure  
5 them are not really in the competitive ball game, and the  
6 only people therefore who are injured are consumers because  
7 they will have to pay ultimately 13.5 percent more than they  
8 would otherwise have to pay because GM is going to use--and  
9 other people are going to use--this chemical feedstock to make  
10 the end product, no matter what.

11           Senator Packwood. Mr. Chairman?

12           The Chairman. Senator Packwood?

13           Senator Packwood. I thought last year UniRoyal opposed  
14 this because they alleged they made a chemical competitive with  
15 this. Am I correct in my memory or not?

16           Mr. Lang. Yes, sir.

17           Senator Packwood. Is this the same issue revisited?

18           Senator Heinz. It is, and I think we are a year later;  
19 and the fact is that GM still uses this higher priced product.

20           Senator Packwood. And UniRoyal still contends that this  
21 is competition with a product that they are making?

22           Mr. Holmer. That is correct, Senator Packwood. It is  
23 a factual discrepancy, as I understand it. The Commerce  
24 Department experts believe that there are several domestic  
25 firms which do produce a product chemically similar to the

1 product for which the duty suspension is sought. And for that  
2 reason, the Commerce Department and the Administration oppose  
3 the amendment.

4 Senator Heinz. May I ask you a question on that?

5 Mr. Holmer. I have already given you just about all of  
6 the information I have.

7 (Laughter)

8 Mr. Holmer. But go ahead.

9 Senator Heinz. Is it simply because of the molecular  
10 similarity, or is there a claim in addition by Commerce that  
11 the uses indeed are virtually identical? In other words, are  
12 they making a chemical judgment or a user-friendly judgment?

13 Mr. Holmer. Senator, I would like to introduce you to  
14 Barbara Steinbock, who is the tariff wizard at the Commerce  
15 Department and can address that question. Barbara?

16 Ms. Steinbock. Senator, my understanding from our  
17 industry experts is that they believe that there are similar  
18 uses, and their analysis leads them to believe that the price  
19 differences are not as great as has been claimed, that they  
20 are in close competition.

21 Senator Heinz. According to the information I have, the  
22 price per pound of NDI is \$11.75. On the competing chemicals,  
23 which are referred to as MDI and TDI--thank heavens--the  
24 prices are \$1.05 and \$1.25 per pound respectively. Are you  
25 saying that the price differences are not nearly that large?

1 Ms. Steinbock. My memory--and that is what I am talking  
2 from at the moment--was when our industry analysts did the  
3 analysis, they did not completely agree with the price  
4 differentials that were given to us. There is a price  
5 differential; they do grant that.

6 Senator Heinz. Is it a substantial price differential?

7 Ms. Steinbock. They didn't believe that it was as  
8 substantial as --

9 Senator Heinz. I understand it is not as substantial, but  
10 the difference here is \$10.00 or \$11.00; and when you are  
11 saying it is not as substantial, would it be \$8.00 or \$9.00?  
12 Instead of it being 1000 percent, it might be 800 percent?

13 Ms. Steinbock. I couldn't say.

14 Senator Heinz. Would Commerce change its position if  
15 Commerce was satisfied that the end uses as a practical matter  
16 were not competitive, that there really are certain things  
17 that could not be well made out of NDI that you just could  
18 not make properly out of the competing products?

19 Ms. Steinbock. The analysis that we looked at was not  
20 totally whether there were some end uses that the other chemical  
21 could not be made into, but whether or not there were similar  
22 uses that they could be; and how you differentiate that on  
23 an import as to what the end use is, the Administration is  
24 very much opposed to putting end use provisions into the  
25 tariff schedule.

1 Senator Heinz. Is opposed to doing what?

2 Ms. Steinbock. Putting end use provisions in. And if  
3 the--I have my initials mixed up, Senator --

4 Senator Heinz. Am I proposing to put in --

5 Ms. Steinbock. What I am saying is that when we analyze  
6 this we not only look at whether or not there are products  
7 that the subject chemical could be made into that are not  
8 like anything else, but whether, in addition, they are end  
9 products that are like something else.

10 Senator Heinz. All right. Thank you very much. I hope  
11 the committee might adopt this amendment because I think there  
12 is a good case.

13 The Chairman. Senator Packwood?

14 Senator Packwood. Can I ask Karen Phillips a question  
15 on this? The information I have is that there haven't been  
16 many companies contacted on this. You have BASF Corporation  
17 in Michigan that wants it. You have got Mobay Corporation of  
18 Pittsburgh that wants it. You have got UniRoyal opposed to  
19 it on the argument that it is not fair, that they are indeed  
20 making a competing chemical. And we have no hearings or  
21 information or anything else on it. The Administration  
22 opposes it.

23 I just have a misgiving about what obviously appears to  
24 be a division within the industry where it gives you the  
25 impression that it is designed to favor a couple businesses



1 over another competing business, and that seems to be the  
2 conclusion the Administration has drawn in past years--not  
3 just then, but now. I have just given you the sum total of  
4 what I know, but I have a creepy feeling that somehow this  
5 is an internicine between the industry with some to be helped  
6 and some to be hurt. I would oppose the amendment.

7 Senator Heinz. Mr. Chairman, just one point I would say  
8 to my friend from Oregon. All we are proposing is a two-year  
9 suspension, and I doubt the world is going to come to an end  
10 in two years. You are probably right; it is an internicine  
11 battle between various companies. And the question, I guess,  
12 one might ask is: If you are going to err, is it better to  
13 err on the side of the consumer or on the side of a producer?

14 In this case, I think the merits come down sufficiently  
15 that we ought to err on the side of the consumer.

16 Senator Rockefeller. I would associate myself with the  
17 remarks of the Senator from Pennsylvania.

18 The Chairman. Senator Packwood has asked for a vote on  
19 this. Are you prepared to offer it?

20 Senator Heinz. Yes.

21 The Chairman. Do you so move?

22 Senator Heinz. I so move.

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

25 (Chorus of ayes)

1 The Chairman. Opposed?

2 (Chorus of noes)

3 The Chairman. The ayes appear to have it. The ayes have  
4 it. The amendment is carried.

5 Senator Heinz. Thank you, Mr. Chairman.

6 Senator Durenberger. Mr. Chairman?

7 The Chairman. Yes, Senator Durenberger?

8 Senator Durenberger. Thank you very much, Mr. Chairman.

9 I have two small matters. The first one on the list in  
10 front of you is S. 956 called the Tariff Classification of  
11 AWA Paper, which is used in the production of reverse osmosis  
12 filters; and the filters are used in the process of making  
13 potable water from sea water or brackish ground water.

14 For certain purposes, a Minnesota based company--and I  
15 think it is the only one in the country--is using a lower  
16 grade domestically produced product, except for purposes of  
17 reverse osmosis filters, where the company must import AWA  
18 paper from Japan because it has not found a qualitatively  
19 equivalent substitute in the United States.

20 The company has preferred a domestic supplier because of  
21 the convenience that would provided. It has tried  
22 unsuccessfully and continues to try to cultivate a domestic  
23 source. It has sent specifications to the nonwoven textile  
24 industry association on two occasions. It once had a company  
25 which was attempting to do the development of a product like

1 this in the United States; it couldn't satisfy the constituent  
2 standards, and so that company has given up the research and  
3 development efforts.

4 The problem is this. AWA was recently reclassified by  
5 Customs as a nonwoven textile with a 12.9 percent ad valorem  
6 plus two cents per pound. It is also subject to textile import  
7 quotas. This reclassification is what has threatened the  
8 availability of supply for the Minnesota company.

9 My amendment is very narrowly drafted. It reclassifies  
10 and then suspends the duty on AWA paper imported for use only  
11 in the production of reverse osmosis filters. Mr. Chairman,  
12 it is our belief that AWA paper was incorrectly classified  
13 as a nonwoven textile based on the length of the constituent  
14 fibers in the filter. AWA is, in fact, comprised of polyester  
15 fibers bounded with a resin, and the standard for determining  
16 nonwoven fibers is based on the length of wood pulp fibers,  
17 not synthetic fibers.

18 So, I would suggest that my amendment doesn't compromise  
19 in any way the ability of the United States to negotiate in  
20 the textile area because it is not a textile problem. I  
21 would also suggest--and the company represents--that there is  
22 a substantial export market for reverse osmosis filters, which  
23 again are used in creating or processing potable drinking water  
24 from sea water or brackish water.

25 So, the amendment is also designed to facilitate domestic

1 exports.

2 Senator Chafee. Mr. Chairman?

3 The Chairman. Yes, Senator Chafee?

4 Senator Chafee. I don't know how many we have got, but  
5 we are getting into very, very complicated industry-specific  
6 matters that none of us know much about and I guess most of  
7 us care less about.

8 Senator Durenberger. This one is real simple.

9 Senator Chafee. Are there a series of these? If so, we  
10 are going to be here all morning--well, way beyond all morning.  
11 Is there any way of kind of channeling these in some  
12 direction?

13 The Chairman. As I said, Senator, we have worked very  
14 hard at getting the major amendments through; and I think we  
15 have made remarkable progress. But then, we finally get to  
16 a number of more or less independent amendments, and I don't  
17 quite know how you channel those. We have been through those  
18 that we felt we could develop a consensus on, and we have got  
19 those out of the way this morning.

20 And we have taken a couple that we didn't have a total  
21 consensus. Now, I think you just have to kind of plow through  
22 them. I don't know another way to do that.

23 Mr. Lang. That is right, Mr. Chairman. We think the list  
24 is not very long.

25 Senator Chafee. Could you give us a rough estimate as to

1 how long you think the list is?

2 Mr. Lang. We think there are only about five of this  
3 nature; and then, there are a number of somewhat larger scale  
4 policy issues that are free standing amendments--perhaps five  
5 or six.

6 Senator Chafee. I know that we do have some big  
7 amendments here to deal with.

8 The Chairman. Would you comment on Senator Durenberger's  
9 amendment?

10 Mr. Lang. Yes. Mr. Chairman, Senator Durenberger's  
11 description of the situation is the same as ours. These  
12 membranes were invented 20 or 30 years ago to allow certain  
13 substances through the membrane at the microscopic level and  
14 not out of their substances; and one of the applications is  
15 water purification. The problem is that the product is in  
16 the textile schedule.

17 The House bill has a similar provision that is a  
18 temporary suspension and does not change the tariff  
19 classification on the product. The textile manufacturers  
20 object primarily because of the precedent it might set for  
21 the reclassification of other products that have a textile  
22 nature to them. The Administration's position, as we understand  
23 it, is that they oppose Senator Durenberger's proposal because  
24 of the permanent change in tariff classification, because of  
25 the reduction--which they feel is inconsistent with the

1 Administration textile program--and would eliminate the import  
2 restraint on the product.

3 Maybe the Administration has an intermediate position;  
4 I am not sure.

5 The Chairman. Does the Administration have comments on  
6 this proposal?

7 Mr. Holmer. Yes, Senator Bentsen. We oppose this  
8 amendment because it does, we believe, provide an exception  
9 to the recently negotiated textile agreement that we have  
10 with the Japanese.

11 Senator Durenberger. Mr. Chairman?

12 The Chairman. Yes, Senator Durenberger?

13 Senator Durenberger. I don't know how temporary temporary  
14 is, as in the House version; but I did indicate the efforts  
15 this company is undergoing to try to find a domestic supplier.  
16 And I am concerned, obviously, about setting precedent in the  
17 textile area; and I don't want to set precedent in the textile  
18 area, and that is why I did it narrowly. But I wonder if we  
19 might accept a three-year suspension rather than a permanent  
20 suspension and trust that that doesn't set the precedent and  
21 maybe gives us some time.

22 Mr. Lang. Senator Durenberger, unfortunately I stand  
23 corrected. The House provision evidently is not the same type  
24 of plastic sheeting, and I believe the Administration's  
25 position is that they oppose even a temporary suspension.

1        Senator Durenberger. Then, let me suggest without  
2 precedent in the House bill, that a three-year suspension  
3 rather than a permanent suspension of the duty on AWA paper  
4 imported for use only in the production of reverse osmosis  
5 filters.

6        The Chairman. Are there further comments?

7        Senator Packwood. I just have a question. David, is  
8 this just one company that does this? Are there a lot of  
9 companies that do this? I am unfamiliar with the whole  
10 process and the product.

11        Senator Durenberger. My understanding is that, right now,  
12 this is the dominant company. There are others getting into  
13 this business because of the potential that it has for creating  
14 more potable water supplies; but right now, it is apparently  
15 the dominant company in the United States.

16        Senator Packwood. I kind of share John Chafee's views  
17 about getting into specific undoings of either commitments  
18 or agreements or doing something for some industry that I  
19 can't quite put my finger on because it is all new to most  
20 of us.

21        Senator Durenberger. The problem is more the one stated  
22 here at the table, that it starts the possibility of setting  
23 a precedent for exceptions in the textile area; and apparently,  
24 the objections are coming from the textile industry, not from  
25 anybody in this particular line of the business, as I

1 understand it.

2 The Chairman. Let the record show that the heads were  
3 nodded affirmatively.

4 (Laughter)

5 Mr. Holmer. We agree with the statement that Senator  
6 Durenberger just made.

7 The Chairman. All right. That is Mr. Holmer and Ms.  
8 Steinbock. Are there any other questions on this one?

9 (No response)

10 The Chairman. Do you move it, Senator?

11 Senator Durenberger. Yes, Mr. Chairman.

12 The Chairman. The motion has been made. Is there  
13 question?

14 (No response)

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

17 Senator Durenberger. Aye.

18 The Chairman. Opposed?

19 (Chorus of noes)

20 The Chairman. I think we had better have a division.

21 All in favor of the Senator's amendment make it known by a show  
22 of hands.

23 (Show of hands)

24 The Chairman. Opposed?

25 (Show of hands)



1 The Chairman. The motion is carried.

2 Senator Durenberger. Mr. Chairman?

3 The Chairman. Yes?

4 Senator Durenberger. The second is a very brief  
5 amendment, and --

6 The Chairman. Senator, how many more?

7 Senator Durenberger. This is it.

8 The Chairman. All right.

9 Senator Durenberger. And I promise not to vote more  
10 than once on the next one.

11 (Laughter)

12 Senator Durenberger. This relates to a matter that has  
13 been before us on the tax bill, although I think it is more  
14 appropriately a trade issue. Last year we tightened the rules  
15 for allowing ethanol produced in the CBI countries or in U.S.  
16 insular possessions to come into the United States duty-free.

17 As a result of the tightening of the law, ethyl alcohol  
18 may be admitted into the U.S. duty-free only if it is an  
19 indigenous product of a U.S. insular possession or CBI  
20 beneficiary. Otherwise, we have the 60 cent per gallon duty.

21 The provision was included in last year's House trade bill.  
22 It is also included in last year's tax bill along with a  
23 transition rule that exempts three companies from the  
24 requirement in 1987 and 1988. One of these companies, Allied,  
25 is located in Minnesota. It has already spent several million

1 dollars in purchasing all of the ethanol distilling equipment  
2 necessary to set up a plant in Jamaica, which had received  
3 preliminary approval. After months of protracted negotiations  
4 with the Jamaican government, that government and my  
5 constituent could not reach an agreement. As a matter of fact,  
6 Jamaica decided to go into this business themselves.

7 The deal fell apart. My constituent has now entered into  
8 negotiations with the government of the Virgin Islands, one of  
9 the insular possessions, not a CBI country, to set up an  
10 ethanol facility there. There is provision in the language  
11 allowing another company to operate in the Virgin Islands. Since  
12 my constituent was planning on operating in a CBI country and  
13 not the Virgin Islands, he can't take advantage of the  
14 temporary exemption included in last year's tax bill.

15 So, my amendment would allow Allied to set up its facility  
16 in an insular possession, the Virgin Islands. There are no  
17 revenue implications to the amendment since the transitional  
18 exemption allowed that each company could only export 20  
19 million gallons of ethanol per year. So, it is in effect  
20 taking last year's provision and one of the three exceptions,  
21 Allied --

22 The Chairman. You are island hopping; is that it?

23 Senator Durenberger. Yes, you have it. We are island  
24 hopping.

25 Senator Packwood. Mr. Chairman?

1 The Chairman. Senator Packwood?

2 Senator Packwood. I had some question last year about  
3 the whole ethanol grandfathering process for all of these  
4 plants, as you are well aware, but I think Senator  
5 Durenberger's case is fair. Forgetting my initial feelings  
6 about the whole issue, he is not asking for any different  
7 exception; and he has got a legitimate case. His company was  
8 grandfathered last year, and this is simply moving it from  
9 one place to another.

10 The Chairman. Mr. Lang, do you have some comments on it?

11 Mr. Lang. Yes, Mr. Chairman. This is a trade matter  
12 even though it was on the tax bill. Senator Dole was very  
13 concerned about this issue, and I don't know what his view  
14 is on this amendment; but Senator Durenberger has explained it  
15 accurately, I think. But let me just run through it to make  
16 sure that we are both talking about the same thing.

17 Senator Durenberger. You always do it more succinctly,  
18 Mr. Lang.

19 Mr. Lang. I haven't seen a piece of paper on this. What  
20 the basic provision was on the tax bill last year was that  
21 the process of merely dehydrating ethanol in CBI countries  
22 would not qualify the product for the zero duty CBI benefit.

23 However, for those companies who had previously made an  
24 investment, relying on the law that gave the CBI benefit to  
25 dehydrated ethanol, they were grandfathered. And the amount

1 of the ethanol that each of those plants could produce was  
2 specifically grandfathered in gallonage terms, so that the  
3 grandfather couldn't be expanded endlessly.

4 And one of the companies that benefitted from that was  
5 Allied ethanol. However, at that time it was anticipated  
6 their plant would be located in a CBI beneficiary country.  
7 Apparently, as it turns out, they are not for some reason  
8 able to locate in one of those countries; but they are able  
9 to locate in an insular possession, the Virgin Islands.

10 The rules of origin for the Virgin Islands are  
11 technically slightly different, but they work essentially in  
12 the same way. The same ruling would apply to those rules of  
13 origin as apply to the rules of origin of the CBI; and,  
14 therefore, our understanding of the amendment and the way we  
15 would draft it, Senator Durenberger, is to simply make the  
16 benefit available for the same class of product and the same  
17 grandfathering language from the insular possessions as  
18 well as from the CBI countries.

19 I believe that accomplishes your purpose.

20 Senator Durenberger. Thank you very much, Mr. Chairman  
21 and Mr. Lang.

22 The Chairman. Does the Administration have a comment?

23 Mr. Holmer. No objection, Mr. Chairman.

24 The Chairman. All right. Is there a motion made to  
25 that effect?

1 Senator Durenberger. I so move.

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

4 (Chorus of ayes)

5 The Chairman. Opposed by a similar sign.

6 (No response)

7 The Chairman. The motion is carried. Senator Danforth?

8 Senator Danforth. Mr. Chairman, I would like to raise  
9 at this time the TV picture tube issue. This is an issue  
10 which was addressed in the House bill. It involves the  
11 importation of television tubes. There is a 15 percent duty  
12 on TV tubes, and there is a five percent on duty on importing  
13 unassembled TV parts. A Japanese television manufacturer,  
14 Matsushita, has been sending its television tubes to Mexico,  
15 putting the tubes in boxes with parts, and then sending the  
16 box with the tube and the parts as a kit into the United  
17 States under a five percent duty, thereby circumventing the  
18 15 percent duty on the tubes.

19 S. 519 would close the loophole by clarifying that the  
20 treatment of sending in unassembled television parts including  
21 the tube would be treated in the same way as though the tube  
22 were sent in by itself. Since 1981, the importation of these  
23 unfinished sets from Mexico has increased from zero to 643,000.

24 The bill that was introduced in the Senate, S. 519,  
25 provided an exception for television sets that were smaller

1 than 12 inches--tubes that were smaller than 12 inches--because  
2 they are not made in the United States. The only known  
3 controversy in the Senate is whether there should also be  
4 an exemption for tubes that are 30 inches and larger.

5 Senator Pryor has taken the position that 30 inch and  
6 larger tubes should also be exempt. The House bill deals  
7 with this issue and does include the exemptions for 30 inch  
8 and larger tubes; and therefore, if we adopted the House  
9 language, we would be satisfying the concerns of Senator Pryor.

10 Therefore, Mr. Chairman, I would suggest that we do  
11 agree to the House language. It is my understanding that the  
12 Administration does support this.

13 Mr. Holmer. That is correct, Senator Danforth.

14 Senator Danforth. Mr. Lang, am I correct in stating  
15 Senator Pryor's position?

16 Mr. Lang. Yes, sir. My understanding from his staff is  
17 that you will exempt tubes over 30 inches but does not include  
18 under 13; is that right? It does not include under 13.

19 Senator Danforth. It is the same as the House bill.

20 Mr. Lang. Oh, all right.

21 Senator Danforth. Which is 12 and under and 30 and over.  
22 Less than 12 is exempted and 30 and over is exempted.

23 Senator Wallop. Is there not some employment connected  
24 with the assembly of kits?

25 Senator Danforth. There is some employment connected with

1 the assembly of kits, but it is believed that there would be  
2 higher employment in the United States if this were agreed to  
3 since there wouldn't be the circumvention through Mexico. The  
4 TVs would be assembled in the United States.

5 Senator Wallop. And 15 percent makes a more competitive  
6 base than the five percent with the employment --

7 Senator Danforth. The tubes are going to be imported  
8 anyway into the United States; and the question is are they  
9 imported and all the value added in the United States, or  
10 are they imported through Mexico where certain parts--the  
11 chassis and the control panel--are assembled in Mexico and  
12 added to the sets.

13 Mr. Lang. Mr. Chairman, we understand from Senator  
14 Pryor's staff that they worked with Senator Danforth's staff  
15 last night and agreed to accept the House provision on this  
16 subject. So, while Senator Pryor isn't here, his staff did  
17 tell us that he had no objection to the amendment as Senator  
18 Danforth has presented it.

19 The Chairman. Are there questions concerning it?

20 (No response)

21 The Chairman. If not, do you move it, Senator?

22 Senator Danforth. I so move.

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

25 (Chorus of ayes)

1 The Chairman. Opposed by a similar sign.

2 (No response)

3 The Chairman. The motion is carried.

4 Senator Moynihan. Mr. Chairman?

5 The Chairman. Senator Moynihan?

6 Senator Moynihan. Mr. Chairman, I would like to offer  
7 again a provision that is in the House bill that has been  
8 independently introduced here as Senate 896 by other Senators  
9 and myself, and I think it has the support of a number of  
10 members of the committee. This is simply a provision on  
11 the time period in which sugar refiners--U.S. sugar refiners--  
12 can receive the export refunds which they routinely get for  
13 sugar brought in, processed, and exported.

14 The imposition of quotas interrupted that sequence and  
15 such that they have acquired what would have been entitlements  
16 they can't use, given the time period, and Mr. Lang is nodding  
17 in seeming awareness. This would extend to 1991 the right  
18 to receive export refunds on duties paid between 1977 and  
19 1985. I think this is a straight-forward matter. It is a  
20 question of equity to the refiners. It is a matter which is  
21 much supported by the Caribbean nations, the Dominican  
22 Republic in particular, and the American cane producers seem  
23 equally supportive. It is an issue of maintaining an American  
24 refining capacity, as I understand.

25 I would ask Mr. Lang to comment and, of course, Ms.



1 Steinbock and Mr. Holmer.

2 Mr. Lang. Senator, as you saw, drawback is allowed by  
3 current law, that is the refund of duties for a product  
4 manufactured in the United States. The question here is  
5 how long after the importation do you continue to allow the  
6 drawback? In this case, in order to keep the refineries  
7 in business, you have to allow a longer period of drawback  
8 because the price has been so low internationally.

9 And our understanding is that the growers of sugar support  
10 the provision, as well as the refiners.

11 Senator Moynihan. The domestic growers.

12 Mr. Lang. The domestic growers, for the reason that it  
13 will keep the refineries in business.

14 Senator Moynihan. Yes.

15 Mr. Lang. Our understanding is that the revenue effect  
16 would be \$35 to \$40 million.

17 The Chairman. Are there other questions concerning this?

18 Mr. Holmer. Mr. Chairman?

19 The Chairman. Yes, Mr. Holmer?

20 Mr. Holmer. The Administration opposes this. The revenue  
21 estimate that I have been provided by the Treasury Department  
22 and OMB is \$200 million of potential revenue loss. There are  
23 very significant administrative problems for the Customs  
24 Service when they attempt to draw back the duty many, many  
25 years after the duty was originally paid.

1           And there is a very significant question raised as to  
2 whether or not this duty drawback is an unacceptable export  
3 subsidy and therefore may violate the subsidies code.

4           The subsidies code says that you can have a drawback  
5 within a reasonable time period, normally not to exceed two  
6 years. And the drawback period contemplated by the Moynihan  
7 amendment is--I have heard 12 years. I am not sure of the  
8 precise time period, but it is substantially in excess of  
9 two years.

10          Senator Moynihan. It allows refunds until 1991.

11          Mr. Holmer. But going back?

12          Senator Moynihan. Back to 1977.

13          Mr. Holmer. So, it is 14 years.

14          Senator Moynihan. But this was in a period when the  
15 normal refunds were simply not available to the refiners.

16          The Chairman. Are there further questions concerning it?

17          (No response)

18          The Chairman. Do you move the amendment?

19          Senator Moynihan. I move the amendment, sir.

20          The Chairman. The amendment is moved. All in favor of  
21 the amendment make it known by saying "Aye."

22          (Chorus of ayes)

23          The Chairman. Opposed?

24          (Chorus of noes)

25          The Chairman. Does the Senator request a division? The

1 noes appear to have it.

2 Senator Moynihan. I would ask for a roll call, if I may.

3 The Chairman. All right. The clerk will call the roll.

4 The Clerk. Mr. Matsunaga?

5 (No response)

6 The Clerk. Mr. Moynihan?

7 Senator Moynihan. Aye.

8 The Clerk. Mr. Baucus?

9 Senator Baucus. Aye.

10 The Clerk. Mr. Boren?

11 (No response)

12 The Clerk. Mr. Bradley?

13 Senator Bradley. No.

14 The Clerk. Mr. Mitchell?

15 (No response)

16 The Clerk. Mr. Pryor?

17 (No response)

18 The Clerk. Mr. Riegle?

19 Senator Riegle. Aye.

20 The Clerk. Mr. Rockefeller?

21 Senator Rockefeller. Aye.

22 The Clerk. Mr. Daschle?

23 (No response)

24 The Clerk. Mr. Packwood?

25 Senator Packwood. No.

1 The Clerk. Mr. Dole?

2 Senator Packwood. No.

3 The Clerk. Mr. Roth?

4 (No response)

5 The Clerk. Mr. Danforth?

6 Senator Danforth. No.

7 The Clerk. Mr. Chafee?

8 Senator Chafee. No.

9 The Clerk. Mr. Heinz?

10 Senator Heinz. No.

11 The Clerk. Mr. Wallop?

12 Senator Wallop. No.

13 The Clerk. Mr. Durenberger?

14 (No response)

15 The Clerk. Mr. Armstrong?

16 Senator Armstrong. No.

17 The Clerk. Mr. Chairman?

18 The Chairman. Aye.

19 The Clerk. Five yeas, eight nays.

20 The Chairman. Do we have further amendments to offer?

21 Senator Baucus. Mr. Chairman?

22 The Chairman. Yes, Senator Baucus?

23 Senator Baucus. Mr. Chairman, I have an amendment to

24 include lamb in the U.S. Meat Import Act. The point of the

25 amendment is to protect the lamb industry in this country from

1 surges that this country has begun to experience in the last  
2 couple of years in large part because lamb production is  
3 given favorable treatment, usually in the form of subsidies  
4 in New Zealand and also in Australia.

5 The fact is that lamb was included in the Meat Import Act  
6 I think in 1979, but it was taken out because lamb imports at  
7 that time were so inconsequential; it was about one percent  
8 of the American market and beef was about 10 percent.

9 The feeling was--as I understand the view of some of  
10 the sponsors at the time of the Act--that if in fact imported  
11 lamb became a very large part of domestic consumption, it  
12 would be included back into the Meat Import Act.

13 The floor we are setting on this amendment is extremely  
14 liberal, that is, I think the four-year average of lamb that  
15 was imported into the United States--that is the last six-year  
16 average--was about 24 million pounds. The peak was 27.8  
17 million pounds. The floor that is provided in this amendment  
18 is higher than that; it is 28.5 million pounds, and it allows  
19 for expansion, too, just as the U.S. Meat Import Act does.

20 In addition to that, as a practical matter, importers  
21 would get 10 percent more, which is the customary practice,  
22 for VRAs under the Meat Import Act. I think it is amendment  
23 frankly whose time has come because lamb was included at one  
24 time under the Meat Import Act.

25 Senator Wallop. Mr. Chairman?

1 The Chairman. Are there comments on it? Senator Wallop?

2 Senator Wallop. Mr. Chairman, I want to first make it  
3 known that I am cosponsor with Senator Baucus on this thing;  
4 but second, I think it is important to reemphasize two  
5 points. One, its purpose is to prevent a surge; had the quota  
6 been in place last year, it would have set the quota level  
7 at 29.1 million pounds, and only 27.8 million pounds were  
8 actually imported. But they are threatened by imports by  
9 surges in the market. Right at this moment in time through  
10 January, there is a 66 percent increase in lamb imports.

11 Who knows really whether the 66 percent would maintain  
12 throughout the year? I don't believe that anybody believes  
13 that it would, but it would make certain in our domestic  
14 market that the futures and all kinds of other things, that  
15 the projected increase of 66 percent wouldn't destroy the  
16 domestic market even though it were never reached for the  
17 entire year. The quota, as Max says, is higher than we have  
18 been importing. It is really just to provide a level of  
19 stability within the domestic sheep producing market, and I  
20 would hope that we would support it.

21 Senator Packwood. Mr. Chairman?

22 The Chairman. Senator Packwood?

23 Senator Wallop. It is also not GATT-illegal under this.

24 Senator Packwood. As a matter of curiosity, can the  
25 Administration tell me whether or not our balance of trade with

1 Australia and New Zealand is plus or minus?

2 Mr. Holmer. We will check those statistics, Senator.

3 I am told Australia is positive. We are checking New  
4 Zealand.

5 Senator Packwood. Mr. Chairman, I am going to oppose the  
6 amendment. It looks to me, over the years, that the imports  
7 have been very sensitive to market forces. They were at 14  
8 percent at one stage; they dropped to five percent in 1982.  
9 They are up to about 10 percent now.

10 But I don't think the case is made, especially--and I  
11 think New Zealand will be positive unless I am mistaken--the  
12 two countries that we have positive balances of trade with,  
13 they have to sell us something and they are going to try to  
14 get their trade deficits down. The whole point of our bill  
15 has been trying somehow to open foreign markets so we can  
16 sell things. Here, we are taking two countries that are  
17 reasonable allies and saying we are going to limit their access  
18 to our market and further exacerbate your deficit balance of  
19 trade; and I think it is probably an unwise policy.

20 Senator Wallop. Mr. Chairman, if I may respond to that?

21 Again, the quota is set higher than any current or  
22 projected levels of import. The basis of our proposition is  
23 to prevent projected increases from destroying a domestic  
24 market. We have had lots of talk in this committee about the  
25 commodities market and futures market, as to whether or not

1 they have an effect on the production end of the livestock  
2 business, and they do. And the futures are highly sensitive  
3 to surges like this 66 percent increase in January; but if  
4 you look at where the level is set, it is higher than their  
5 current imports; it is adjustable upward by its formula, and  
6 it is not meant to be protectionist other than the fact of  
7 the stability based on speculation of the domestic market.

8 Senator Bradley. Mr. Chairman?

9 The Chairman. Senator Bradley?

10 Senator Bradley. When was the current quota on red meat  
11 installed?

12 Mr. Lang. Senator Bradley, the Meat Import Act was  
13 enacted in 1979, I think, or 1980. Previous to that, we  
14 had had a --

15 The Chairman. We had a major change in it in about 1979  
16 when we put the countercyclical in, as I recall.

17 Mr. Lang. That is right, sir. That is what I was  
18 thinking of.

19 Senator Bradley. And what this amendment does is extend  
20 that to lamb--the quota to lamb? Do you have a quota on  
21 lamb now?

22 Mr. Lang. No.

23 The Chairman. And further, Senator Bradley, I think it  
24 was 1964, the basic Act.

25 Senator Bradley. This would extend it to lamb?



1 Mr. Lang. Except as we understand it, it would not be  
2 under the Meat Import Act; it would create a separate little  
3 meat import act for lamb.

4 Senator Bradley. I see. Is it the opinion of Mr. Holmer  
5 that this is GATT-legal?

6 Mr. Holmer. If the quota had any bite, and if it were  
7 to limit imports, it is our view that it would be GATT  
8 illegal and could trigger retaliation against U.S. exports.

9 Senator Bradley. It would be GATT illegal?

10 Mr. Holmer. If it triggered restrictions on imports.

11 Senator Bradley. Mr. Chairman, I think the point that  
12 Senator Packwood made is a good one. I have some concern  
13 about it being GATT illegal. In addition to that, I have  
14 some question as to whether domestic producers are as efficient  
15 as they could be and if other consumers are going to end up  
16 paying the price here.

17 The Chairman. Are there further comments? Senator  
18 Wallop?

19 Senator Wallop. I would contest two statements that  
20 were just made, and I am not a protectionist, as the committee  
21 well knows; but I don't see how-- First, let me say that I  
22 don't see that it sets up a mini meat import act. It expands  
23 the Meat Import Act to include lamb. The Meat Import Act has  
24 been in place for 23 years and, to my knowledge, nobody has  
25 said it is GATT illegal during that 23 years. Nobody has

1 contested it, and I don't see anybody contesting it on this  
2 basis. That seems to be something drawn out of the sky for  
3 this purpose.

4 Mr. Holmer. It is my understanding, Senator Wallop,  
5 that the Meat Import Act has not had quota levels that have  
6 had any bite to them; and, therefore, there hasn't been a  
7 challenge as a result of that.

8 Senator Wallop. Then, let me just suggest to my friend  
9 from New Jersey and Mr. Holmer and the committee that this  
10 thing which sets the lamb import quota at higher than the  
11 beef import quota--and Americans are not known to be  
12 principally lamb eaters--that it is not likely to have that  
13 same kind of bite. What we are trying to do is to avoid the  
14 speculative consequences of this 66 percent surge of imports  
15 in January being projected throughout the year and driving  
16 down the domestic price--a basis that has nothing to do  
17 with efficiency, Senator Bradley. It has only to do with  
18 speculation.

19 Mr. Holmer. If I could, Senator Wallop, there is one  
20 misimpression that I think I may have left with the committee;  
21 and that is that it is not that the meat import quotas didn't  
22 have any bite. It is just essentially that, when they did,  
23 we were able to strong-arm the countries that were adversely  
24 impacted into accepting voluntary restraint agreements on  
25 their exports to the U.S.

1 Senator Danforth. Mr. Chairman?

2 The Chairman. Senator Danforth has been seeking  
3 recognition.

4 Senator Danforth. Mr. Chairman, I know that Senator  
5 Wallop isn't a protectionist, but this is a protectionist  
6 amendment, of course; it is a sectoral-specific quota.

7 Now, my understanding of the problem here is that the  
8 Meat Import Act antedates the General Agreement on Tariffs  
9 and Trade.

10 Mr. Holmer. No.

11 Senator Danforth. It does not? My understanding is that  
12 it has been viewed by Australia and New Zealand as being  
13 grandfathered. Maybe it isn't legally, but it has been  
14 around for a long time.

15 Mr. Holmer. I don't believe so. As I recall the date  
16 was either 1962 or 1964 when the Meat Import Act was first --  
17 Senator Baucus. 1964.

18 Mr. Holmer. But there have not been situations where a  
19 trading partner felt that it was compelled to go to the GATT --

20 Senator Danforth. My understanding is that it is  
21 administered under Section 204 of the Agriculture Act of  
22 1956, and that it has been viewed by Australia and New Zealand  
23 as being grandfathered for that reason, whether or not it is  
24 legally grandfathered, and that a concern is that if lamb were  
25 covered under the same Act, the effect of that would be to open

1 up the question of other kinds of red meat imports and that  
2 the position could be taken by New Zealand and Australia that  
3 the whole Meat Import Act violates GATT.

4 And therefore, they would take us to GATT for the whole  
5 thing, that it would be a real Pandora's box.

6 Mr. Holmer. I am not certain of that, Senator Danforth.  
7 Section 204, if it was enacted in 1956, that was subsequent  
8 to the GATT in 1947. I would prefer not to state to the  
9 committee in public session what I think the outcome would  
10 be if a country were to challenge us under the current Meat  
11 Import Act in the GATT; but if my eyes can say no-no, they  
12 would say it.

13 The Chairman. I think you have said enough, Mr. Holman.

14 Senator Baucus. Mr. Chairman?

15 The Chairman. Yes, Senator Baucus?

16 Senator Baucus. Mr. Chairman, first of all, I would like  
17 to ask Mr. Holmer or anyone: In the 23 years that the Meat  
18 Import Act has been in effect, has it ever been challenged by  
19 any country as being GATT illegal?

20 Mr. Holmer. My understanding is that it has not been  
21 challenged.

22 Senator Baucus. That is correct. And isn't it also true  
23 that during the time, say 1979, when we passed the Act, the  
24 Administration then said it would be challenged, there would  
25 be retaliation? You may not have been around at the time, but

1 it is my understanding that that was the exact charge that  
2 the Administration made at that time.

3 Mr. Holmer. That may be. I am not sure, Senator Baucus.

4 Senator Baucus. The fact is that, in the 23 years that  
5 the Meat Import Act has been in effect, no country has ever  
6 challenged it as being GATT illegal.

7 Now, if I could clarify a misunderstanding that I think  
8 the Senator from Missouri has, GATT was obviously enacted  
9 before the Meat Import Act was enacted. And the section that  
10 the Senator referred to is the provision of the law under  
11 which marketing arrangements are administered. The fact is  
12 that Australia and New Zealand and other countries under the  
13 Meat Import Act have entered into voluntary restraint  
14 agreements which are 10 percent above what the quota would be.

15 In fact, that is one reason they don't challenge the  
16 GATT illegality because they get more by negotiating the  
17 voluntary restraint agreement which is above the quota or  
18 what it otherwise might be. They prefer to get that extra  
19 10 percent.

20 The point we are providing for in this amendment is it  
21 is not restrictive. That is a point I have to keep making  
22 over and over again. It is not restrictive. The floor in  
23 this amendment is above the total volume of lamb that has  
24 ever come into this country, and it has expansionary provisions  
25 to allow for increases in the floor. And I just want to point

1 out that this is to protect against surges.

2 The Senator from New Jersey made the point that maybe  
3 U.S. producers aren't perhaps very efficient. We need to  
4 protect against surges, not only because there are surges;  
5 but second, New Zealand, for example, has a kind of subsidy  
6 --an insurance subsidy provision in its law--for its New  
7 Zealand producers. Sure, we could bring a countervailing  
8 duty action against those producers, but because of the  
9 cyclical nature of the price, that takes time and so forth.

10 So, this is a more efficient way to protect against  
11 those kinds of surges.

12 Senator Bradley. One of the peculiar attributes of this  
13 amendment--if it were passed--and I would be curious to know  
14 Mr. Holmer's position--that it would for the first time bite  
15 and Australia or New Zealand would take the whole Meat Act  
16 to GATT and have the whole thing declared illegal.

17 The Chairman. Mr. Holmer?

18 Mr. Holmer. That is certainly a possibility. If I could  
19 just make a couple of very brief comments. It hits Australia  
20 and New Zealand particularly, who are two of our staunchest  
21 allies in the new round on agricultural issues. It is  
22 sector-specific. If the quotas had any bite to them, they  
23 would violate the GATT. We would be subject to  
24 counterretaliation. When the Europeans placed restrictions on  
25 our exports of soybeans to Europe, even though it was at a

1 quota level and it didn't have any bite, we screamed bloody  
2 murder; and you would have expected that we would have  
3 criticized them, even though there wasn't any bite to those  
4 quotas. And I would also argue that what you have done in  
5 this bill, if the industry feels they are being injured--  
6 seriously injured--as a result of fairly traded imports,  
7 you have a brand new program under Section 201, and they  
8 can also use the dumping and countervailing duty laws.

9 We just don't see any need for this amendment, and the  
10 potential counterretaliation and adverse impact on U.S.  
11 interests that could result.

12 The Chairman. I would like to bring this to a vote if  
13 we can. We are allowed to meet for two hours after the  
14 Senate goes in session, and that means we only have two  
15 hours left if we are not given an exemption from the  
16 limitation on committees meeting; and we have no assurance  
17 of that at this point. So, if we can move it along--are  
18 we prepared to vote on this issue?

19 (No response)

20 The Chairman. If we are then, would the Senator move  
21 his amendment?

22 Senator Baucus. I move the amendment.

23 The Chairman. Do you want a roll call on this? I assume  
24 there is going to be a division here.

25 Senator Baucus. If there is going to be a division here.

1 The Chairman. I think there is going to be. Why don't  
2 we have the roll called?

3 The Clerk. Mr. Matsunaga?

4 (No response)

5 The Clerk. Mr. Moynihan?

6 (No response)

7 The Clerk. Mr. Baucus?

8 Senator Baucus. Aye.

9 The Clerk. Mr. Boren?

10 The Chairman. Aye by proxy.

11 The Clerk. Mr. Bradley?

12 Senator Bradley. No.

13 The Clerk. Mr. Mitchell?

14 Senator Baucus. Aye by proxy.

15 The Clerk. Mr. Pryor?

16 Senator Baucus. Aye by proxy.

17 The Clerk. Mr. Riegle?

18 Senator Riegle. Aye.

19 The Clerk. Mr. Rockefeller?

20 Senator Rockefeller. Aye.

21 The Clerk. Mr. Daschle?

22 Senator Baucus. Aye by proxy.

23 The Clerk. Mr. Packwood?

24 Senator Packwood. No.

25 The Clerk. Mr. Dole?



1 (No response)

2 The Clerk. Mr. Roth?

3 Senator Packwood. No.

4 The Clerk. Mr. Danforth?

5 Senator Danforth. No.

6 The Clerk. Mr. Chafee?

7 Senator Chafee. No.

8 The Clerk. Mr. Heinz?

9 Senator Heinz. No.

10 The Clerk. Mr. Wallop?

11 Senator Wallop. Aye.

12 The Clerk. Mr. Durenberger?

13 Senator Durenberger. Aye.

14 The Clerk. Mr. Armstrong?

15 Senator Armstrong. No.

16 The Clerk. Mr. Chairman?

17 The Chairman. Aye.

18 The Clerk. Ten yeas, seven nays.

19 The Chairman. Thank you. We will move on. Yes, Senator  
20 Chafee, you had your amendment?

21 Senator Chafee. Yes. Mr. Chairman, first if I might, as  
22 we mentioned earlier, I would like to have Mr. Holmer discuss  
23 briefly the matter of the antidumping and countervailing duty  
24 situation as they involve DOD. You were looking into it, and  
25 I just wanted to get the Department of Defense's reaction to  
the situation as you found it out.

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1 Mr. Holmer. Yes, Senator Chafee, we had a chance to  
2 review that with the Defense Department yesterday afternoon.  
3 They have used that authority -- and the use, again, we are  
4 talking about is whether or not the Department of Defense is  
5 to be exempted from dumping or countervailing duties on  
6 imported items. They have used that authority for many years.  
7 It has resulted in conserving appropriated funds for use for  
8 national defense purposes. DOD has entered into a series of  
9 Memorandums of Understanding with nearly every member of NATO.  
10 The agreements provide for a reciprocal waiver of duty on  
11 defense purchases from one another. Those countries do not  
12 apply duties to our exports of defense products. And the  
13 Defense Department and the Administration believe that any  
14 change could lead to serious counteractions by our allies  
15 which could seriously affect our sales to them, thus worsening  
16 our overall trade balance.

17 Because of that, and because of the strong views of the  
18 Defense Department, the Administration does oppose the  
19 provision that was approved by the Committee yesterday.

20 Senator Chafee. Mr. Chairman, it would not be my intention  
21 to pursue that further. Perhaps on the floor or in conference  
22 we can get back to it. We had a vote yesterday; the view of  
23 the Defense Department lost. And I would be prepared now to  
24 go on to my amendment.

25 The Chairman. All right.

1 Senator Heinz. Mr. Chairman?

2 The Chairman. Yes, Senator Heinz.

3 Senator Heinz. Just so that those views don't remain  
4 the only comment on the record at this point, I think it is  
5 clear that the amendment does in fact accommodate the  
6 legitimate concerns of the Defense Department, even if they  
7 don't agree that we have accommodated them. We have  
8 grandfathered all existing memorandums of understanding; we  
9 have said that duties, where they should apply because of  
10 dumping or subsidies, that they will not apply where there is  
11 a system that is being sold government-to-government, that is  
12 not available publicly. And it is clear that the Defense  
13 Department, at least in my judgment, doesn't want to have to  
14 pay dumping or countervailing duties that come out of the  
15 Defense Department budget to the Treasury Department on a  
16 generally-available publicly-traded item that everybody else  
17 would have to pay countervailing duties and dumping duties on.

18 Let the record show that Alan Holmer's head is nodding  
19 up and down; even though his lips are saying, "No, no, no,"  
20 his head is saying, "Maybe you are right."

21 Mr. Holmer. I will get a neck brace, Senator Heinz.

22 Senator Heinz. And I think we ought to understand that  
23 the Defense Department's objection is that they just don't want  
24 to pay any money for things they can get cheaper. I think that  
25 is the sum total of their existence. And if it turns the

1 notion of market discipline on its ear, that they believe is  
2 not their problem; they just want to buy a dumped or  
3 subsidized goods that everybody else has to compete with  
4 whether we like it or not.

5 Senator Chafee. Mr. Chairman?

6 The Chairman. Senator Chafee?

7 Senator Chafee. I only have so much time here.

8 The Chairman. Could we move on with this?

9 Senator Heinz. Yes. I didn't intend to get into a  
10 lengthy debate, and I apologize to my friend from Rhode Island.

11 The Chairman. Senator Chafee?

12 Senator Chafee. Mr. Chairman, for the past 50 years the  
13 U.S. and every other nation that we trade with have permitted  
14 what we call "parallel imports."

15 Now, let us understand what parallel imports are: We  
16 are dealing with foreign-manufactured goods. The foreign  
17 manufacturer sets up in the United States a subsidiary that  
18 markets that good in the United States.

19 So, let us say it is Yves St. Laurent perfume. They give  
20 the exclusive rights to a unit over here, which has not bought  
21 them, to sell that perfume.

22 Now, what has happened -- I don't want to just zero in  
23 on perfume; it happens with cameras, it happens with champagne,  
24 it happens with a whole series of -- spyglasses -- whatever  
25 it might be -- they have discovered that they can sell at a

1 higher price in the United States than they can sell in their  
2 homeland or elsewhere. So, what they do is, they have a link-in  
3 with this wholly owned subsidiary -- there is joint ownership  
4 with the United States -- unit, and they try to have an  
5 exclusive price arrangement with that unit here in the United  
6 States.

7 Then they try to say that Customs should not permit any  
8 goods to come in with that trademark -- the trademark made  
9 abroad -- except if it goes to this exclusive distributor.

10 Now, Customs has, by regulation for the past -- the  
11 custom has been in effect since 1950, but by regulation since  
12 1972 -- has said, "Those goods can come in to another importer  
13 if there is this arrangement with the wholly-owned subsidiary  
14 or joint-ownership subsidiary in the United States, that  
15 somebody else can skirt that and buy the product abroad at the  
16 lower price, which the manufacturer abroad is selling it at,  
17 and bring it in. Thus, you have a whole series of parallel  
18 imports.

19 Now, the manufacturer doesn't like that, because he can  
20 make a lot more money by selling to this exclusive distributor  
21 and keeping the price high in the United States.

22 Senator Packwood. Let me ask: It is the manufacturer  
23 that has also sold at the lower cost? The same manufacturer?

24 Senator Chafee. The same manufacturer has sold at the  
25 lower cost abroad. And that is the way that the parallel

1 importer obtains the product. He goes to the manufacturer's  
2 distributor -- or perhaps even to the manufacturer, doing it  
3 on the sly, but probably not. But he sells to another  
4 distributor, and the U.S. purchaser goes over there and buys  
5 the product, brings it in, there is no question about the  
6 trademark or the brand, that is all kosher, and sells it here.  
7 So, we see the parallel importer or the so-called "gray  
8 market" here selling in the United States.

9 Now, it is a bonanza for the consumer; the consumer is  
10 the person who wins. And if the manufacturer objects to that,  
11 he could bring down his price in the United States so that the  
12 so-called "gray market" wouldn't thrive.

13 But he doesn't choose to do that; he thinks he has a  
14 good deal through these exclusive distributorships over here,  
15 jacks the price way up high, and sells to this U.S. market at  
16 a far higher price than he is willing to sell abroad.

17 Now, what has happened here is, in several cases that  
18 has been found perfectly all right. But in one court case  
19 they have found that, no, the Customs cannot permit the goods  
20 to come in like that. If there is an arrangement in the  
21 United States where the manufacturer has an exclusive  
22 distributor, even though it is jointly-owned, the Customs  
23 will not let the goods come through except to that distributor.  
24 And thus, we have a split in the court cases. Now it is going  
25 up to the Supreme Court, and they are going to make a decision

1     sometime this fall. But if the decision should come out --  
2     why I am bringing this up is to codify what has been in  
3     existence in the law or the regulations for some 50 years,  
4     Custom, and in the regulations since 1972 or thereabouts.

5             Now of course the foreign manufacturer doesn't like that.  
6     They are making some good money here, and one of the claims  
7     they make is, oh, they have spent a lot of money developing  
8     and selling their product, developing the name for their  
9     product. Well, that isn't completely so because the  
10    competitors -- Forty-seventh Street Camera, or whoever it  
11    might be -- runs great big ads in the newspaper advertising  
12    the product, Nikon Camera for example, and thus they  
13    contribute to the marketability of the product.

14            Mr. Chairman, it is really a straight consumer issue.

15            Perhaps many of you remember when we used to have  
16    so-called "fair trade" in the United States. The manufacturer  
17    could set up a system whereby he could dictate the price that  
18    his product could be sold at by the retailer. Pretty soon we  
19    woke up and found that that was really anti-consumer. He was  
20    keeping the price high; other people would scurry around and  
21    buy it. K-Marts would buy the product at a lower price and  
22    sell it, and the consumer was the beneficiary.

23            So if there ever was a consumer bit of legislation, this  
24    is it. Without surprise, this has the support of all the  
25    leading consumer organizations in the United States, including

1 the Consumer Federation, Consumers Union, American Consumer  
2 Trade Council, and so forth and so on -- K'Mart, Walmart,  
3 Zayre, Forty-seventh Street Photo, National Intergroup,  
4 Washington State -- this applies to liquor as well. And many  
5 of the Liquor Control Boards are also for this.

6 We had a hearing on this, and we had testimony from a  
7 whole series of people including the liquor control boards  
8 that found that they could go out and buy their liquor overseas  
9 cheaper. Johnny Walker sells our liquor cheaper overseas than  
10 they will sell it through their distributors here in the  
11 United States.

12 So there is it, and I would be glad to answer any questions  
13 that come up on it.

14 The Chairman. Are there further statements on the points?  
15 Senator Armstrong?

16 Senator Armstrong. Mr. Chairman, I would just like to  
17 ask a question. I just want to be sure that there isn't  
18 anything about this amendment that would prevent a  
19 manufacturer from enforcing a distribution pattern by contract.  
20 The issue here that you have described is whether or not the  
21 Custom Service would prevent the entry of goods; but if it was  
22 the desire of a manufacturer to set up an arrangement where,  
23 for example, in France he would, say by contract, forbid the  
24 subsequent resale under certain circumstances, you wouldn't  
25 interfere with that, you would leave that law where it is?



1 Senator Chafee. We are not changing anything from the  
2 current system. The way the system has worked, as I say, for  
3 some 50 years, these parallel imports have grown to be a major  
4 business now in the United States. Some have said as much as  
5 \$100 billion. I can't speak for that one way or another.

6 Senator Armstrong. I think this is a good amendment,  
7 although I can't resist noting in passing that yesterday we  
8 established as a matter of policy that the Committee does not  
9 wish to have merchandise sold in this country below the price  
10 at which it is sold in a foreign country.

11 This amendment, which I am going to support, establishes  
12 the principle that we don't want it sold above the price it  
13 is sold overseas. So, someone may at some point inquire what  
14 it is that we want, but that will be for another day.

15 Senator Durenberger. Mr. Chairman?

16 The Chairman. Yes, Senator Durenberger.

17 Senator Durenberger. Mr. Chairman, I have wrestled with  
18 this issue as a consumer and have come to the conclusion that  
19 in principle Senator Chafee deserves my support, but with  
20 one important modification that I am going to suggest by way  
21 of an amendment to his amendment:

22 Not all consumers organizations in America support his  
23 bill. I can quote for you partially from a letter from the  
24 National Consumers League, which is America's pioneer  
25 consumer organization -- it has been in business for 88 years.

1 I will just read you one part: "Our major concern is that  
2 many of these gray market products threaten the health and  
3 safety of the American consumer. Gray market products often  
4 differ from the American trademarked products manufactured  
5 for sale in this country."

6 I won't disagree with anything that John said about the  
7 way some companies approach raising prices in America through  
8 this gray market kind of operation; but there is another very  
9 important concern here, and that is that companies like  
10 Pepsi-Cola and a variety of the soap companies and perfume  
11 companies and so forth manufacture the same product with very  
12 expensive trademarking around the world in a different way in  
13 another country because of the needs of consumers in those  
14 countries.

15 So the problem I am suggesting to you, that John hasn't  
16 brought up yet, is the problem of a different formula for the  
17 "same" product in a different country. So that it isn't  
18 quite the same product when it comes into the United States.

19 And, as the Consumer League suggests, it may well be a  
20 product that might endanger the health and wellbeing of people  
21 in this country.

22 So what I am suggesting in the way of an amendment -- in  
23 effect I don't take away from what John is saying, "Let's  
24 permit this gray market to operate because it is good from  
25 the consumer, but we could protect the consumer if we amended

1 his amendment to provide that the Customs Service will be  
2 provided, by the manufacturers, with a list of products that  
3 will be imported into this country -- these are trademarked  
4 products, U.S. Registered Trademarked products -- where the  
5 formula for manufacture differs in a foreign country-of-origin.  
6 Then it becomes the responsibility of the importer to label,  
7 to make sure that that product when it comes to this country  
8 is labeled "French Formula" or, as in the case of Pepsi-Cola  
9 made in Mexico, "Mexico Formula," so that the purchaser knows  
10 that this is not the same formula of Pepsi-Cola. It is  
11 Pepsi-Cola, but not the same formula. It may be the same thing  
12 in terms of a soap or a perfume. but formulated differently.

13 Senator Bradley. Would the Senator yield on that point  
14 for a question?

15 Senator Durenberger. Yes.

16 Senator Bradley. You raise a number of problems that I  
17 have with Senator Chafee's amendment; but my concern is, if  
18 you say it has to be "Mexico Formula," here you have these two  
19 cans of Pepsi-Cola, the same color, virtually the same marking  
20 except that one or two words are different in the description,  
21 right? And then you have a small miniscule thing "Made in  
22 Mexico," or "Mexico Formula."

23 When I go into the Seven-Eleven to buy my Pepsi-Cola, it  
24 is unlikely that I am going to read every word on the label and  
25 find out that it says "Mexico Formula" and say, "Well, that's

1 not what I want; I want 'American Formula'."

2 You know, I think the intent of the amendment is good,  
3 because it points out one of the real problems with gray  
4 marketing, and that is you have soap being sold in the United  
5 States maintaining it is anti-perspirant -- which it isn't,  
6 and the formula that is being produced isn't. You have a  
7 company that has gone out and advertised, you know, with very  
8 expensive television commercials and very attractive people  
9 asserting that if you use this soap you won't perspire as  
10 much.

11 There is a formula that is tested and it does say, "Indeed,  
12 you probably won't." And in comes another company, and they  
13 produce a product that looks almost like it, that is packaged  
14 almost like it, except it doesn't have any antiperspirant in  
15 it.

16 That is the problem you get into with the gray market.

17 Senator Durenberger. That is the counterfeit issue.

18 Senator Chafee. I am prepared to agree to your proposals.

19 Senator Bradley. To his proposal. I haven't made any  
20 proposal.

21 (Laughter)

22 Senator Chafee. Okay. What have you been saying, then?

23 Senator Heinz. Before anybody agrees to anything, I would  
24 like to ask the Administration for their position.

25 Senator Chafee. They have no position.

1 Senator Heinz. That is your hope.

2 Senator Chafee. No, no. I know.

3 Senator Heinz. Alan, what is the Administration's  
4 position on this amendment?

5 Mr. Holmer. Senator Heinz, the Administration has  
6 wrestled with this problem the same way the Committee has,  
7 in terms of trying to balance the rights of U.S. trademark  
8 owners against the rights of consumers who obtain lower-cost  
9 goods.

10 It is our view that this amendment is premature and,  
11 because of the Supreme Court case, may very well prove to be  
12 unnecessary.

13 The one particular concern that we have is that it may  
14 adversely affect our efforts to attempt improved intellectual  
15 property rights, and specifically trademark rules in the new  
16 Round. If some of our trading partners perceive that we are  
17 weakening our trademark laws or enforcement, it is going to  
18 make it more difficult for them to accept our request that they  
19 strengthen their laws.

20 Senator Heinz. So, you are against it for two reasons:  
21 First, that it is involving ourself in a judicial  
22 determination, which is before the Supreme Court; and,  
23 secondly, it will prejudice your intellectual property  
24 negotiations in the Uruguay Round?

25 Mr. Holmer. We think it is premature, pending the results

1 of the Supreme Court case.

2 Senator Heinz. You are opposed to it for the time being?

3 Mr. Holmer. That is correct, Senator.

4 Senator Chafee. Well, the U.S. Government is arguing in  
5 favor of the regulations in the Supreme Court, Alan. Do you  
6 know that?

7 Mr. Holmer. In favor of the Treasury Department regs?

8 Senator Chafee. Yes.

9 Mr. Holmer. That is correct.

10 Senator Chafee. I mean they are arguing in court your  
11 proposition.

12 Senator Chafee. They are arguing my side in the Supreme  
13 Court; so I don't know quite how Alan comes up with the  
14 conclusion that the U.S. Government or the Administration is  
15 opposed to it.

16 Mr. Holmer. That is the result that has come out of the  
17 Cabinet meetings discussing this specific issue.

18 Senator Chafee. Well then, the right hand doesn't know  
19 what the left hand is doing.

20 Senator Heinz. That is a problem.

21 Senator Packwood. Secondly, I am not sure that is  
22 necessarily a valid argument. If we think that the law needs  
23 rectifying, and the only thing the Court is doing is  
24 interpreting the law, there is no need to wait until they make  
25 a conclusion. They may come out right, they may come out

1 wrong. But if you are going to rectify it, you can do it right  
2 now, even while it is in Court.

3 Senator Chafee. Well, I certainly agree with you, and  
4 furthermore --

5 (Laughter)

6 Senator Chafee. There is nothing in here that deals with  
7 trademarks; we are dealing with Customs. We are not changing  
8 the trademark; we are not changing the copyright law; we are  
9 not changing the patent law; we are staying with the Customs.  
10 And whereas I give Mr. Holmer high marks on most of his answers  
11 around here, I grade them in whether I agree with him or not,  
12 I guess.

13 But in any event, on the specific question that  
14 Senator Durenberger raised, his amendment is acceptable with a  
15 couple of minor points which I don't think he would object to.  
16 One is that he has -- if you will look down under the Durenberger  
17 Amendment, we would ask that he would make it so that the  
18 owners of the trademark would tell the Customs Office how the  
19 different product materially differs from the other products,  
20 and how to distinguish that product by looking at it.

21 In other words, we are prepared -- that is, the importers  
22 are prepared -- to label with a great bit label, so that when  
23 Senator Bradley goes down and gets his Pepsi-Cola he will know  
24 exactly whether it is U.S. Pepsi or Mexican Pepsi, or whatever  
25 it is.

1 Senator Bradley. Would you let it be a different color,  
2 as opposed to just saying "Mexican Formula"?

3 Senator Chafee. Sure.

4 Senator Bradley. It would have to be a different color.

5 Senator Chafee. Yes, that is right.

6 Although it is ironic here that the owners of the  
7 trademark "Pepsi" are getting national and international  
8 recognition of their product based on their labeling, its  
9 labeling, and yet they are making a different brand in  
10 different parts of the world.

11 But never mind. We find that a little contradictory. I  
12 don't know how it can be the same product under the same  
13 label, because it isn't.

14 But nonetheless, we are agreeable, with these minor  
15 changes.

16 Senator Durenberger. Well, that is not a minor change.  
17 The manufacturer does not have that responsibility now. The  
18 manufacturer is not going to make any money on this sale; it  
19 is the importer that makes the money. So, the very  
20 association that the Senator is representing here today,  
21 the Importers Association, all I say is that they carry the  
22 burden of putting the label on the product. The manufacturer  
23 doesn't have much control once the sale is made in Europe to an  
24 importer over how that product is going to get into this  
25 company. The one area where there is control over that



1 decision is at the importer level in the United States. So  
2 that is why I insist in my amendment that it be the importer  
3 that has the responsibility for the labeling.

4 Senator Chafee. Oh, that is all right. I have no  
5 objection. I didn't object, except that first of all I would  
6 argue that the manufacturer hasn't made any money. Of course  
7 he made money -- he sold it abroad at a price that he felt  
8 he was making a profit; not as much profit as if he had this  
9 tie-in with the U.S. where there is a higher price.

10 But sure, I think the importer should do the labeling.  
11 But the manufacturer has got to tell Customs how it differs.

12 Senator Durenberger. Yes. That is no problem.

13 The Chairman. Gentlemen, if we may, are there further  
14 comments by staff concerning this amendment of Senator  
15 Durenberger which is before us now?

16 Mr. Chairman, there are two questions we have. First, in  
17 the fifth paragraph of the Durenberger amendment to the Chafee  
18 amendment, we would suggest that the Committee not appropriate  
19 but just authorize appropriations, because you don't have the  
20 appropriations jurisdiction.

21 The Chairman. I think that is a reasonable limitation.

22 Mr. Lang. And second, I understand Senator Chafee's  
23 last comment to be with respect to paragraph 3. But I don't  
24 think I understand what change he proposed to make.

25 The Chairman. Well, my understanding was that

1 Senator Durenberger accepted no changes.

2 Senator Durenberger. No; except for the last one,  
3 Mr. Lang, the first one, point-five, I understood Senator  
4 Chafee to accept my amendment.

5 Mr. Lang. Without any changes at all?

6 Senator Durenberger. Without any changes.

7 Mr. Lang. I see.

8 The Chairman. You made your point about how you felt  
9 strongly about it but were going to accept it, didn't you,  
10 Senator?

11 Senator Chafee. Yes. But I had one other point in the  
12 Durenberger amendment. If you work your way down to about  
13 line three, "produces products abroad which are formulated  
14 differently," I should think you would have to say "materially  
15 differently" there. I mean, if they make it with Belgian  
16 water instead of U.S. water, I think that is a difference, but  
17 I don't think that is what we are talking about -- it would  
18 have to be a material difference that would matter to the  
19 consumer.

20 Senator Durenberger. No, I don't think so. I don't  
21 accept that.

22 Senator Chafee. You don't? Well, it would have to matter  
23 to the consumer.

24 Senator Durenberger. Well, if you want to define that it  
25 matters to the consumer; but I won't accept "material change."

1 The Chairman. All right. Are you now proposing your  
2 amendment? Are you moving your amendment, Senator?

3 Senator Durenberger. Yes, I am, Mr. Chairman.

4 Senator Chafee. I would just ask one other question, if  
5 I might.

6 The Chairman. All right.

7 Senator Chafee. The manufacturer who produces the  
8 product abroad should put something on it so that we know that  
9 it is produced in Belgium instead of in Mexico. Is that  
10 agreeable? So that when the importer looks at the bottle  
11 which he has bought in Belgium, he thinks it is from Belgium,  
12 he has some way of knowing.

13 Senator Durenberger. The importer knows that. The U.S.  
14 Customs Services maintains this register which lists all of the  
15 products where there is a formula difference, and that is where  
16 you go to get the information.

17 Senator Chafee. Well, he has to have some way of telling  
18 how to distinguish them. Let us see if we can't work that out.

19 The Chairman. All right, Senator.

20 Senator Durenberger. I will put my amendment.

21 Senator Bradley. Mr. Chairman, this is the Durenberger  
22 amendment to the Chafee amendment?

23 The Chairman. Right.

24 Senator Bradley. And then we will have a separate  
25 discussion on the Chafee Amendment?

1 The Chairman. Yes.

2 Senator Bradley. All right.

3 The Chairman. Are there further questions?

4 (No response)

5 The Chairman. All in favor of the amendment as stated,  
6 make it known by saying Aye.

7 (Chorus of Ayes)

8 The Chairman. Opposed?

9 (No response)

10 The Chairman. The Ayes have it; the amendment is carried.

11 Yes, Senator Danforth.

12 Senator Danforth. Mr. Chairman, I would just like to follow  
13 up on a point that was made by Senator Armstrong, and think  
14 through it with him, because he raised a question about  
15 contractual relationships.

16 I think this is a very difficult subject. I think it is  
17 kind of a close call. But let me just put this to Senator  
18 Armstrong:

19 Let us suppose that I am the manufacturer of something  
20 that doesn't cost a lot to make but is sold in a very  
21 competitive market in the United States in which a lot of  
22 advertising takes place. Let us suppose it is, say, a bar  
23 of soap, and that there are dozens of different kinds of soaps  
24 that are sold in the United States, and that basically it is  
25 a question of who has the best consumer appeal, and that is

1 related to who does the most advertising on soap operas.

2         So, I contract -- I am the manufacturer, you are the  
3 seller. I contract with you and say, "I will furnish you the  
4 soap, and I will give you the right to sell the soap on the  
5 American market. That is my part of the deal. And your part  
6 of the deal is to do the best you can to sell it, and to do a  
7 good-faith job in advertising the soap. That is the contract."

8         Now then, Senator Chafee goes over to another country  
9 where advertising isn't nearly as expensive as it is here.  
10 Say Senator Chafee goes to, for example, Mexico, where  
11 advertising is much, much cheaper, presumably, than in the  
12 United States, and he buys up a bunch of soap, and he brings  
13 it into the U.S. market and starts selling it. I guess it  
14 doesn't technically interfere with the contractual  
15 arrangement that you and I have, but it certainly pretty  
16 well eliminates the value of your contract, I would think.  
17 You have been put in the business of peddling something at  
18 tremendous cost, because that is your contractual  
19 obligation, and somebody else is able to come into the same  
20 market and just flood the market with something that he can  
21 pick up in another market. Does that give you some problems,  
22 or am I off base?

23         Senator Armstrong. Well, it wouldn't give me any  
24 problems, because I am not in that business. But if I were  
25 the person you described, it would drive me nuts.

1 I would go back to the person who manufactures this soap  
2 and say, "Look, if you are going to keep selling off this  
3 cheap soap to Mexico, you have got to stop it from coming back  
4 in here. That is your job; that is part of what you have got  
5 to provide me, the assurance that I am going to be protected.  
6 And if I am not, then you have got to sell soap to me at the  
7 same price as you sell it to Mexico, or I am going to quit  
8 selling your soap.

9 In other words, I think that is a matter that ought to be  
10 resolved through the contract system.

11 Senator Danforth. How can he possibly do it, though?  
12 In other words, there is somebody down in Mexico who is  
13 selling the soap in Mexico, and Chafee is just an entrepreneur;  
14 he is just a proprietor of a chain of stores.

15 Senator Armstrong. If it gets to be as serious a problem  
16 as it probably would get to be in the case you have laid out,  
17 the answer is that the manufacturer would protect himself  
18 and his U.S. distributor. He would simply label the product  
19 enough differently in Mexico that it wouldn't be an identical  
20 product.

21 The Chairman. Gentlemen, if we can, I would like to  
22 conclude this today to move on the amendment.

23 Senator Chafee. I would just quickly say that that is a  
24 gripe between the manufacturer and this exclusive distributor  
25 he set up here. The question is whether we should use the

1 Customs Service to enforce this agreement that the manufacturer  
2 has himself deviated from. He is the manufacturer. He sold  
3 it in Mexico at a far lower price. That is I can go down  
4 there and buy it -- the entrepreneur, K-Mart -- and bring it  
5 back and sell it here and still make a profit. So that is a  
6 gripe between the manufacturer and his U.S. distributor that  
7 he ought to work out and not use the U.S. Customs Service to  
8 police the program for him.

9 The Chairman. All right.

10 Senator Bradley?

11 Senator Bradley. Mr. Chairman, never mind that this is a  
12 proposal that would hurt only U.S. companies, only U.S.  
13 companies, and never mind that it gives a free ride on the kind  
14 of advertising and investment in trademarks that Senator  
15 Danforth alluded to.

16 Senator Chafee's central contention is that the result is  
17 that the consumer benefits. The answer to that is, not always.

18 Let us take, for example, Cabbage Patch Kids, the dolls  
19 that were the rage a few years ago. The gray marketer in such  
20 a circumstance could bring in Cabbage Patch dolls and not sell  
21 them at below the market but sell them higher than the market,  
22 and indeed, that is what happened. They sold Cabbage Patch  
23 dolls at like \$100 a doll because there was such a demand, and  
24 because you couldn't produce them as quickly in this country.

25 So, the argument that this leads to lower consumer prices

1 has got to be answered: Not always.

2 The Chairman. All right.

3 Do you move your amendment?

4 Senator Chafee. Yes.

5 I would just reply that the manufacturer apparently had  
6 a supply to sell abroad somewhere at a lower price, for some  
7 reason, rather than selling them where the high market was  
8 here. And this deals with foreign manufacturers; this doesn't  
9 deal with U.S. manufacturers. It is a very convoluted way that  
10 a U.S. manufacturer would be involved. Usually it is foreign  
11 manufacturers that sell their goods cheaper abroad and at a  
12 high cost in the United States, and they want to make a big  
13 profit here; and if this doesn't pass, and if the Supreme  
14 Court should decide otherwise, our consumers are blocked off  
15 from getting products at a cheap price.

16 Yes, I would move it.

17 The Chairman. All right.

18 We had better have a roll call on this. Would you call  
19 the roll, please?

20 The Clerk. Mr. Matsunaga?

21 (No response)

22 The Clerk. Mr. Moynihan?

23 Senator Moynihan. No.

24 The Clerk. Mr. Baucus?

25 (No response)



1 The Clerk. Mr. Boren?

2 (No response)

3 The Clerk. Mr. Bradley?

4 Senator Bradley. No.

5 The Chairman. Mr. Boren votes no, by proxy.

6 The Clerk. Mr. Mitchell?

7 (No response)

8 The Clerk. Mr. Pryor?

9 (No response)

10 The Clerk. Mr. Riegle?

11 Senator Riegle. No.

12 The Clerk. Mr. Rockefeller?

13 Senator Rockefeller. No.

14 The Clerk. Mr. Daschle?

15 The Chairman. Mr. Daschle votes No by proxy.

16 The Clerk. Mr. Packwood?

17 Senator Packwood. Aye.

18 The Clerk. Mr. Dole?

19 Senator Packwood. No.

20 The Clerk. Mr. Roth?

21 Senator Packwood. Aye.

22 The Clerk. Mr. Danforth?

23 Senator Danforth. No.

24 The Clerk. Mr. Chafee?

25 Senator Chafee. Aye.

1 The Clerk. Mr. Heinz?

2 Senator Heinz. No.

3 The Clerk. Mr. Wallop?

4 (No response)

5 The Clerk. Mr. Durenberger?

6 Senator Packwood. Aye.

7 The Clerk. Mr. Armstrong?

8 Senator Armstrong. Aye.

9 The Clerk. Mr. Chairman?

10 The Chairman. No.

11 The Clerk. Mr. Matsunaga?

12 Senator Matsunaga. No.

13 The Clerk. Mr. Baucus?

14 Senator Baucus. Aye.

15 The Clerk. Six Yays, 10 Nays.

16 The Chairman. I would like to now do what I hope will  
17 be just a matter of housekeeping here. On the Customs  
18 authorization that was previously passed by this Committee and  
19 the Senate, I would like to offer it on this bill.

20 Now, we may have some problems with the authorization  
21 otherwise with the House, and I offer that authorization at  
22 this time.

23 Are there any objections to it?

24 (No response)

25 The Chairman. Then I so move.

1 All of those in favor, make it known by saying Aye.

2 (Chorus of Ayes)

3 The Chairman. Opposed?

4 (No response)

5 The Chairman. It is done.

6 Senator Armstrong. Mr. Chairman?

7 The Chairman. Who is seeking recognition?

8 Senator Armstrong. I would like to ask a question about  
9 the order of march. I need to excuse myself shortly. What is  
10 your intention? Are you in the process of just taking  
11 amendments as they arise, or do you have a specific order?

12 The Chairman. I had promised Senator Riegler I would  
13 recognize him next in that regard. I have no specific order,  
14 otherwise.

15 Senator Armstrong. Mr. Chairman, I wonder if I could ask  
16 Senator Riegler if he would yield to me to present an amendment  
17 which I think will take no more than 30 and certainly no more  
18 than 60 seconds.

19 Senator Riegler. Of course.

20 Senator Armstrong. Mr. Chairman, this has been  
21 distributed or is available for distribution. I would like to  
22 move an amendment which is identical in language to a provision  
23 that appears in the House bill. It addresses itself to the  
24 question of where we prosecute cases of obscene material coming  
25 into the country.

1           At present, they are required to prosecute it at the port  
2 of entry. This amendment would authorize, though it would  
3 not require, the forwarding of this material for prosecution  
4 in the area to which it is mailed, and the reason simply is  
5 to eliminate the bottleneck, because this all comes into  
6 places like New York. There is a tremendous backlog of cases.  
7 This gives the enforcement authorities the option -- not the  
8 requirement but the option -- which I believe they would like  
9 to have to prosecute it in the jurisdiction to which the  
10 material was mailed.

11           I think it is not controversial; it did not prove to be  
12 in the House. I know of no objection to it, but it would be  
13 helpful in prosecuting these cases.

14           The Chairman. I would ask Staff for any comment that they  
15 might have on this amendment.

16           Mr. Lang. If we could just have a moment, Mr. Chairman.

17           Senator Armstrong. Mr. Chairman, maybe I was misinformed.  
18 I thought this had been run by staff earlier.

19           (Pause)

20           Mr. Lang. Well, apparently this was raised at our  
21 meetings. It was just not discussed extensively.

22           The Customs Service is represented here; maybe they have  
23 a comment on it, Mr. Chairman.

24           The Chairman. Is Customs here?

25           Mr. Holmer. They are. They have no objection to the

1 amendment.

2 The Chairman. Is there any controversy over the  
3 amendment, any question?

4 (No response)

5 The Chairman. If not, it is moved. All in favor say Aye.

6 (Chorus of Ayes)

7 The Chairman. Opposed?

8 (No response)

9 Senator Armstrong. Thank you, Mr. Chairman.

10 The Chairman. It is carried.

11 Senator Armstrong. Senator Riegle, I owe you one. Let  
12 me know when I can repay the courtesy.

13 Senator Riegle. It will be on this very next  
14 amendment, as a matter of fact.

15 (Laughter)

16 The Chairman. All right.

17 Senator Riegle. Just leave your proxy as you go out the  
18 door.

19 (Laughter)

20 The Chairman. All right. Senator Riegle.

21 Senator Riegle. Thank you, Mr. Chairman.

22 The Chairman. Let me say once again, we are getting into  
23 this proposal by Senator Riegle, or his comments, and they are  
24 exceedingly interesting; but I want to remind you again that  
25 we have a 1:00 limitation, and we are making great headway,

1 but we have some other things you have to consider.

2 All right. Senator Riegle?

3 Senator Riegle. Thank you, Mr. Chairman.

4 I think this is an important moment in our deliberations  
5 in that this is the time when we take up the matter of what  
6 is known as the Gephardt Amendment, an amendment that I am  
7 sponsoring here in the Senate.

8 Before I get into the substance of the discussion on this  
9 issue, I want to begin by commending you, Mr. Chairman, for the  
10 job that has been done so far in crafting this bill, and for  
11 the staff help, which I think has really been outstanding.  
12 I have served in the Congress for 21 years and have served on  
13 a number of committees, but I continue to be impressed by the  
14 quality of work done at the professional level on this  
15 committee.

16 Having said that, I think we are at a point where the  
17 meaning of the Trade Bill is very much at stake, in making  
18 sure that its effect will be to actually reduce the trade  
19 deficit, because I think, as some data that I will shortly  
20 present illustrates, the trade deficit is now at a crisis  
21 point.

22 Clayton Yeutter, our Trade Ambassador, has said publicly  
23 that he feels the United States has to be in a trade surplus  
24 situation by 1992. Well, 1992 is not very far away, and if  
25 we are going to get to a trade surplus by 1992, we are going

1 to have to start eating down the deficit at a very rapid  
2 rate, beginning immediately.

3 So, before getting into the substance, then, of the  
4 material, I would like to just pose a question. I see the  
5 Administration witnesses are away from the table for the  
6 moment, but when they return I will want to address a question  
7 to them. The question will be whether there is anything in the  
8 bill as it is presently drafted that will require a reduction  
9 in the trade deficit, that will require a reduction in the  
10 trade deficit and guarantee that in fact the effect of the  
11 legislation will be to bring down the trade deficit.

12 I think their answer will be No, because there isn't  
13 anything in the bill presently that makes sure that that will  
14 happen. That is why the amendment that I am speaking about  
15 now is designed to correct that overall defect.

16 Now, if I may, I have circulated to colleagues three  
17 charts, and I want to just refer quickly if I may -- and I  
18 appreciate the attention of my colleagues to this matter,  
19 because this debate now and as it will later come on the floor  
20 I think will be a center part of the question of how we  
21 resolve what our trade strategy will be for the future.

22 The two charts I have shown here. The one on the right  
23 with the very large red area -- and which each person has a  
24 copy in front of him -- represents the rate of change in our  
25 trade deficit over roughly the last 10 years. As one can see,

1 we went from the early seventies, where we were in a balance-  
2 of-trade situation, more or less, into a deficit position  
3 in the late seventies. But in the early eighties, we have  
4 moved into a very severe trade deficit situation, reaching a  
5 peak last year of nearly \$170 billion.

6 What I think is actually more significant is that we  
7 are seeing a profound erosion in our international balance  
8 sheet. We are seeing the cumulative effect of the trade  
9 deficits beginning to change the fundamental financial  
10 structural strength of the United States as we fit into the  
11 world economic picture.

12 So, the chart to the left is a measurement of that balance  
13 sheet. What it shows is that the United States, until about  
14 three years ago, was a creditor nation with respect to our  
15 relations with the rest of the world, and we had been so in an  
16 uninterrupted fashion all the way back to 1914. That takes  
17 us through The Depression, through World Wars, through all  
18 kinds of upheaval around the world. But our position began  
19 to change so dramatically in the early eighties and coming  
20 forward to the present time that we began a plunge into a  
21 debtors hole. We exhausted our international financial  
22 balance. We became a debtor nation for the first time since  
23 1914. We were moving so rapidly into that debtor nation  
24 position that we passed every other nation on the list -- we  
25 passed Poland and Brazil and Mexico, and the other nations



1 we read about.

2 We are now Number One on the international debtor list.  
3 And significantly, we are adding new international debt at  
4 the rate of a billion dollars every two and a half days. That  
5 is the current rate of performance. So, we are just plunging  
6 further down that line.

7 The New York Federal Reserve Board has estimated that by  
8 1990 the United States will owe the rest of the world roughly  
9 \$1 trillion. But when you talk to people in the financial  
10 markets in Wall Street and other places in this country about  
11 the implications of a trillion-dollar foreign debt, they just  
12 express themselves in terms of great alarm and concern about  
13 that, that this is a condition that we cannot afford to get  
14 ourselves in, so we have to begin to reverse these trend lines.

15 The third chart that I have circulated, and I will just  
16 hold it up here -- I don't have a large one to put on the  
17 easel stand -- this chart depicts our bilateral deficits with  
18 three nations: Japan, Taiwan, and Korea. And I will explain  
19 why those have been chosen in just a moment.

20 What this depicts is the buildup in our trade deficit from  
21 1980 up through last year. You will see that our bilateral  
22 deficits with just these three countries account for roughly  
23 half of our overall international trade deficit.

24 Now, there are other nations on that list, a very great  
25 number of nations that have trade surpluses with us, but as

1 you can see, far and away the dominant nation in that category  
2 is Japan. But Taiwan and Korea also are very significant.  
3 And if you look at this growth over the last seven years, you  
4 will see this expanding surplus pattern with each of those  
5 countries. That, by the way, has happened despite the rapid  
6 fall in the value of the dollar versus the yen, which was  
7 thought to be a kind of adjustment that would have changed  
8 those trend lines. There is no sign of that happening to the  
9 present time.

10 So, it seems to me that the ultimate test of the  
11 effectiveness of our trade bill here has to be whether it will  
12 have the effect of changing these trend lines, and changing  
13 them quite rapidly in the sense of getting ourselves, as  
14 Clayton Yeutter has said, to a balance situation come 1992.

15 I think that is an enormous challenge, and at the moment  
16 I think that the bill we have does not guarantee our getting  
17 there.

18 Mr. Holmer has come back and so I will pose to him the  
19 question that I had raised at the beginning, and that is this:

20 The bill as it is now drafted, does it guarantee that we  
21 will achieve deficit reduction as such in the trade deficit?  
22 I know that we hope that it will; many expect that it will;  
23 but in fact is there anything in the bill that gives us an  
24 iron guarantee that that will be the result that we get?

25 Mr. Holmer. No.

1 Senator Riegle. I appreciate the answer, and I don't  
2 like the answer, because it is an answer that I think tells us  
3 that we can't stop at this point; we have got to take the bill  
4 far enough so that it gives us a procedure that will work, if  
5 all else fails, to get these deficits down.

6 Now, what is known as the Gephardt Amendment, the amendment  
7 that I am offering here in the Senate, is the mechanism that  
8 has been devised by the thoughts of many people -- obviously  
9 originating on the House side, but here in the Senate it is a  
10 matter that Senator Byrd and many others have a strong interest  
11 in.

12 It is a proposal that will, together with everything else  
13 in the bill, ensure that if the rest of the bill doesn't get  
14 the deficits down, that particular provision would.

15 I will just simply describe the way it would work. There  
16 are only a few steps here, but I think they are very reasonable  
17 ones.

18 The reason I do this is, I read so many stories by  
19 economic columnists and others that hear comments by colleagues  
20 that show, I think, a lack of understanding as to how this  
21 amendment would work.

22 It would work in a way to determine any country that is  
23 deemed to have an excess surplus of trade, what you might think  
24 of as a predatory trade surplus with the United States, and  
25 that is defined as being "a level of trade for a nation that

1 is in international surplus in its trading accounts having a  
2 level that is more than 75 percent above the amount that they  
3 buy from the United States.

4 In addition to that, to go on this list, they would have  
5 to have a clear and persistent pattern of unfair trade  
6 practices that keep our goods from being sold in their markets.  
7 And that is an examination that would be done by the  
8 administrative branch of Government and by our Trade  
9 Representative.

10 If they meet both of those tests, it would be then the  
11 requirement of this amendment that discussions begin to figure  
12 out how to take down those trade barriers and how to reduce  
13 these very substantial bilateral surpluses.

14 That framework of tests today apply only against three  
15 countries, and they happen to be Japan, Taiwan, and Korea. But  
16 any other nation that would have the same facts apply to it  
17 obviously would go on that list.

18 After a period of negotiation, the Trade Representative  
19 would be required to do something that Senator Danforth has  
20 talked about before, and that is to cost out the value of the  
21 loss of U.S. export business, say in the case of Japan, caused  
22 by barriers to entry in Japan of U.S. products. If that  
23 figure were found to be, say, \$15 billion a year, then there  
24 would be a requirement that either those unfair trade  
25 practices come down, or the President would be empowered to

1 take a series of steps similar to what we have seen in the  
2 semiconductor situation. It could be tariffs, it could be  
3 quotas, it could be whatever in his judgment constituted the  
4 proper mix of policy responses to wring out the value of the  
5 unfair trade practices now being applied against the United  
6 States, cheating us out of our proper share of commerce in  
7 Japan, and of course cheating American companies and workers at  
8 the same time.

9 Beyond that, in the years to follow, if the trade  
10 deficit -- these huge bilateral trade deficits in the cases of  
11 countries that are on this list -- fail to come down further  
12 on their own, there would be a requirement that additional  
13 actions be taken that would set a goal of reaching a 10-percent  
14 reduction in the trade deficit for each of the next four years.

15 Now, all of this taken together stretches out over roughly  
16 a six-year timeframe. What it says, for those who say this  
17 is too extreme a measure, that it moves to rapidly and is much  
18 too harsh, it takes up to the timeframe that the Trade  
19 Representative talked about in 1992; but in fact it would  
20 mandate, not that we eliminate our trade deficit with Japan  
21 or Taiwan or Korea, but reduce it substantially over that  
22 period of time, although they would still be in a situation,  
23 if this provision were in law, where they would still be able  
24 to maintain a trade surplus with us, and that would not be  
25 seen as a violation.

1           Finally, the President is empowered with two waivers to  
2 set this provision aside altogether: One would be a  
3 determination that the foreign country involved was unable to  
4 repay its foreign debt; and the other would be a determination  
5 by the President that the application of this provision would  
6 be adverse to our own national economic interest.

7           The Congress would have an opportunity to pass judgment  
8 on that. If we disagreed, and the President held to his  
9 position, it would take a two-thirds majority in both the House  
10 and the Senate to override the President's finding.

11           So, I think by any test of reasonableness -- in terms of  
12 time, in terms of the amount, in terms of going at countries  
13 that clearly have well-established, blatant discriminatory  
14 trade practices against the United States -- that this is a  
15 reasonable way to go.

16           Now, if it is in the bill, it only would have effective  
17 application if everything else we have done fails to work.  
18 If the rest of the bill, which many think will bring down our  
19 trade deficit, if that proves to be so, then this provision  
20 would not kick in, because we would find the problem going away  
21 on its own.

22           But this provision would say that if the bill as we have  
23 crafted it does not get the job done, then this provision  
24 would come into effect, and we would then have the ways and the  
25 means and the absolute method by which these terrible adverse

1 trend lines can be changed.

2 I am going to just put one other chart up here. This is  
3 a chart that shows just the bilateral trade deficit with  
4 Japan.

5 Bear in mind that in the most recent year when our  
6 trade deficit was roughly \$60 billion with Japan, we had a  
7 40-percent drop of the dollar against the yen. Everybody has  
8 been waiting for the results of the J-Curve to take and change  
9 these trend lines, and they haven't happened. They haven't  
10 happened because Japan, persistently, in case after case  
11 after case -- we have heard them cited here, whether it is  
12 rice, whether it is work on the airport, whether it is  
13 supercomputers, whatever it happens to be -- we are not  
14 allowed, even when we have better products at lower prices,  
15 to be able to sell in a free way in the Japanese market.

16 What is happening is, we are hemorrhaging scarce capital.  
17 And as this money leaves our hands and becomes assets in the  
18 hands of other nations, the financial strength and future of  
19 this country is put in jeopardy. That is why the discussion  
20 on this provision is absolutely critical.

21 It is not a question of trying to interfere with the laws  
22 of free trade; the laws of free trade are not now being allowed  
23 to work. We have been substantially disadvantaged as a result;  
24 but we are now being financially impaired, and impaired in  
25 terms of our technological and job base in a way that I think

1 we just cannot allow it to go on without having a fail-safe  
2 method to be sure that we are going to be able to take and  
3 turn these trend lines around.

4 I will just conclude with this thought, Mr. Chairman:  
5 As you know, I have enormous professional and personal regard  
6 for you, and I think you have done an extraordinary job of  
7 guiding this process in this committee. I don't know that  
8 there is anybody in the Senate who would have been able to  
9 match the performance that we have seen so far here, in a  
10 chairmanship that is in fact new to yourself, because we had  
11 that shift in control of the Senate just this last time.

12 I want to work with my colleagues. I want to work with  
13 the Chairman. I want to work with colleagues on both sides  
14 of the aisle on this matter of finding a way of crafting a  
15 mechanism that is a fail-safe mechanism, that will assure us  
16 that these trend lines will not continue as they are now. I  
17 think they pose such a danger to this country that, if we have  
18 anything less than an ironclad way of assuring that we have  
19 turned them around, we will have missed meeting our  
20 responsibilities.

21 So I am open to any reasonable modification to this  
22 proposal. I am open to any alternative proposal that can get  
23 the same job done, that we can hang our hat on, that we know  
24 will work.

25 But the barriers to our products in Japan, Taiwan, and



1 Korea are extreme. They are blatant. They are wrong.

2 My friend from Oregon who has been such an eloquent  
3 defender of his point of view with respect to trade and comes  
4 from a state in which many of these goods arrive, come through  
5 the ports in his country, with many jobs involved in it as  
6 he stated here, I just say to Senator Packwood, we can provide  
7 more jobs in your State if we can ship American goods out as  
8 well as bring foreign goods in. We can put just as many people  
9 to work, we can fill up just as many ships going the other  
10 way as those that are coming and unloading goods in this  
11 country. And I would hope that we could find a way to balance  
12 this situation so that dock workers in your State in fact have  
13 more to do, and at the same time see to it that the  
14 industrial base of this country isn't torn apart.

15 We have lost now several hundred thousand jobs in the  
16 manufacturing base. We are losing our technical capacity in  
17 many respects as a result of that, because we can't finance  
18 the innovation and the rapid change that it takes to stay up  
19 with foreign competition.

20 But if this continues to be a debate between a notion of  
21 free trade that excludes our ability to be able to really  
22 penetrate on a fair basis in countries that have the most  
23 blatant practices that can be found and that are doing  
24 multi-billion dollar damage to this country, we are going to  
25 have a fracture here that I think will hurt everybody and will

1 hurt the country.

2 So, my hope would be that we could work together to try  
3 to find something to do that. I am open to any reasonable  
4 answer.

5 I am not going to bring this issue to a vote here today,  
6 because I want to see if we can't work something out along  
7 the way, if not prior to the conclusion of this markup, then  
8 between now and the time this issue comes to the Senate floor.

9 But I will say this: When we get to the Senate floor,  
10 which will be an arena in which all hundred Senators will be  
11 present, where the American people will be present and able  
12 to participate in the debate and be able to watch it and hear  
13 it, that we are going to have to thrash this issue out at  
14 that time. I would much prefer to find an answer, a fail-safe  
15 answer, that would give us the assurance that this trade bill  
16 will work. I think the burden is on those who say No. If  
17 they feel so confident that the bill as now drafted will get  
18 the job done, I don't see why there would be any objection to  
19 this provision, because this provision only kicks in if the  
20 bill as now drafted doesn't get the job done.

21 So I thank the Committee for its attention, and I thank  
22 the Chairman for his courtesy in hearing me out.

23 The Chairman. Senator, I thank you for your comments.  
24 Let me say that I think this discussion touches on what is  
25 probably the most serious problem in the trading system today,

1 and that is the idea that some countries will bend every  
2 economic policy toward building as big a trade surplus as  
3 possible.

4 I think a consensus exists within the United States  
5 Congress that we have to unite behind a trade policy that  
6 attacks that kind of a problem as the highest priority of our  
7 international economic system. I think it is wrecking the  
8 world trading system, and it deeply disturbs me to see it  
9 happen.

10 Now, I also am concern about the fact that at Punta del  
11 Este the Administration refused to put the issue of the large  
12 trading surpluses of Japan on the agenda of the new Round of  
13 the Multilateral Trade Negotiations. As far as I am concerned  
14 and as far as I know, the Administration did not consult with  
15 the Congress on that decision.

16 So I am deeply concerned about it, but I run into some  
17 problems of the realities of what can be done. I want very  
18 much to see us have a trade bill that becomes law, that is  
19 enacted. I am not looking for just a political issue.

20 So as I look at the Gephart Amendment, I look at the kind  
21 of situation where we have had 16 votes in this Committee for  
22 our section 301 provisions, we had 19 votes for our New Round  
23 provisions, we have a large majority for our section 201 and  
24 trade adjustment assistance provisions. I think we can hold  
25 those provisions on the floor of the United States Senate --

1 I hope. And I think we can convince the White House not to  
2 veto a bill with those provisions in it.

3 But if the White House does veto that bill, I think we  
4 will have the votes to override that particular veto, with  
5 these provisions.

6 Those provisions bring about some very profound changes  
7 in trade law. I think they will provide meaningful, realistic  
8 sanctions for an Administration that fails to consult.

9 The other part is the timing. We are less than two  
10 years away from the beginning of a new Administration. That  
11 leaves the current Administration time to do something about  
12 the surplus countries, but it doesn't leave the Congress time  
13 to sanction the White House if it fails or if they refuse to  
14 act.

15 We can and we should require the current Administration  
16 to report on what they are doing about the problem. But if  
17 we mandate a sanction after a period of time for the President  
18 to implement a new policy, the sanction, whatever it is, is  
19 going to fall into the lap of the new President, and I have  
20 some grave reservations about that.

21 The new President is going to have to be tough on trade.  
22 I think the electorate is going to assure that. But the  
23 new President is going to need support, not sanctions, from  
24 the next Congress. Sanctions means failure, and we don't want  
25 a President who is a failure the day he walks into office.

1           So, my concern, once again, is trying to get a piece of  
2 legislation that hopefully a President will sign. And if he  
3 doesn't sign it, that we can pass it over a veto.

4           I think we have a tough and a fair bill here. I think we  
5 have one we can hold in conference. Trade surplus countries  
6 are our highest priority, because they are wrecking the trade  
7 system, and I think we have addressed it here as strongly as  
8 we can and still get something that we finally can get into  
9 law.

10           I share the concerns of my distinguished friend Senator  
11 Riegle, but I am looking at what I judge to be the realities  
12 of what we can put into law.

13           But I appreciate your comments very much, Senator.

14           Senator Danforth. Mr. Chairman?

15           The Chairman. Senator Danforth.

16           Senator Danforth. Mr. Chairman, let me say that I came  
17 to the Senate when Senator Riegle came to the Senate. We have  
18 served together on the Commerce Committee and now on the  
19 Finance Committee, and I have a very high regard for him. He  
20 and I have discussed this issue, and our staffs have discussed  
21 this issue. I think that along the way the so-called  
22 "adversarial trade provisions" of the bill that we now have in  
23 this committee are going to be changed, and they are going to  
24 be made stronger than they are right now.

25           I am not sure exactly how we are going to come out, or

1 exactly at what point in time during the legislative process  
2 the changes are going to be made; but I think that they will  
3 be made.

4 I don't think that the Gephart Amendment is going to  
5 become law. I think it would be filibustered in the Senate,  
6 it would be vetoed by the President, if it ever got to the  
7 President. And I just can't conceive that there would be  
8 the votes to override a Presidential veto on the Gephart  
9 Amendment. So, I don't think the Gephart Amendment is going  
10 to become law.

11 But I do think it is possible for us to put together a  
12 good, strong provision that deals with the problem that we  
13 face with other countries that are running up the score and  
14 that are practicing one-way free trade, which isn't free trade  
15 at all.

16 So, my hope would be, during the process that lies ahead,  
17 that we could work together and could try to figure out some  
18 approach that, when it reaches the President's desk, could be  
19 signed.

20 I think Senator Riegle has made a contribution. I think  
21 as a matter of fact Congressman Gephart has made a contribution,  
22 although I don't agree with the substance of what he is  
23 proposing.

24 I think we have some time ahead of us, and I would not  
25 at this time support changing the terms of the bill. But I

1 want to make it clear that that does not mean that I am  
2 satisfied with what is now in the bill; I just want to give  
3 us some flexibility for working out the problems and,  
4 hopefully, for coming to terms with the Administration.

5 Senator Riegle. Would the Senator yield?

6 Senator Danforth. Yes.

7 Senator Riegle. I thank him for his very generous  
8 comments, and I appreciate the spirit of the statement that  
9 he has made.

10 I have appreciated the effort that we were able to  
11 initiate beginning yesterday, that you referenced, to see if  
12 we might find some meeting of the minds on how to approach  
13 this issue in a way that could earn a consensus, that could go  
14 into a bill, that could be constructive. And as you have  
15 indicated, I want to continue that search, continue that  
16 discussion.

17 I think there will be adjustments made. I am very  
18 conscious of wanting to find a formula as well that the  
19 Chairman would feel would make sense. I don't say that in  
20 this context at this moment; but I would hope, as we go along,  
21 that perhaps if we could find a way here, find something that  
22 the Chairman as well would feel was a constructive addition  
23 to the bill --

24 The Chairman. Senator, I am quite willing to explore  
25 that, and obviously we will certainly have that as a major

1 consideration and comfort.

2 I must say that you have done an extraordinarily eloquent  
3 job in presenting your point of view, and I share a great deal  
4 of your concern, as I stated in my comments. I am  
5 appreciative of the contribution you make to this committee.

6 Senator Riegle. You are gracious to say that.

7 I want to also say that I feel the same toward the  
8 Senator from Missouri. He was very kind in his remarks, and  
9 I appreciate very much his leadership here, and in other  
10 settings as well.

11 The Chairman. Senator Baucus?

12 Senator Baucus. Thank you, Mr. Chairman.

13 I also want to join Senator Danforth in complimenting  
14 the Senator from Michigan.

15 I think that, as we address the question of the trade  
16 deficit, whether it is bilateral or global, all of us are  
17 coming a long way -- that is, we are learning more about the  
18 nature of the problem and we are learning more about the  
19 causes of the problem. It is part of the process.

20 I think that Congressman Gephardt has advanced our  
21 understanding and our willingness to more effectively address  
22 the very severe problem of the trade deficit.

23 I also think that the Senator from Missouri has a  
24 refinement -- I think it is an improvement. It is a better  
25 idea on how to address it.



1 I further think that as we work out a solution, we are  
2 all agreed that we are going to find a solution that is  
3 somewhere, if you will, between the Gephart provision as it  
4 passed the House and the provisions that are currently in  
5 this bill.

6 As we look for that solution, I hope that we keep  
7 trying to find a still more imaginative, still more creative  
8 solution that is both effective and responsible, and by that  
9 I mean a solution that does have some kind of results test  
10 that does force us to look at results so that we do begin to  
11 reduce this deficit, but also one that encourages cooperation  
12 with the countries involved.

13 It is my concern that the Gephart Amendment, and some  
14 others, are too much pointing the finger of blame at the other  
15 country, when in fact we know that our trade deficit is caused  
16 not only by other countries' unfair foreign trade practices  
17 but also caused by some of the actions or inactions that we  
18 are responsible for here in our own country. One example is  
19 our fiscal deficit.

20 So, I would hope that, as we look for a solution, we  
21 also explore a more responsible dimension. A more responsible  
22 dimension might be for the United States, under Article 23 of  
23 the GATT, to try to find in the beginning -- for, say, nine  
24 months to a year -- a multilateral solution that will  
25 strengthen the GATT and one which will focus on the problems

1 not only caused by other countries but by our country as well.  
2 If that does not work, then perhaps we can fold in some of the  
3 results-test provisions that you are talking about or  
4 Senator Danforth's.

5 So I think we will find a solution, and I think that you  
6 are helping advance this by raising the Gephardt Amendment.  
7 But in doing so, I think if we look for some other more  
8 responsible dimensions of this, we will probably find that  
9 we are going to be better able to reach a solution, because  
10 other countries -- namely Japan in this case -- will be more  
11 willing in coming along.

12 Senator Packwood. Mr. Chairman?

13 The Chairman. Senator Packwood.

14 Senator Packwood. Mr. Chairman, I want to support this  
15 bill if I can. I hope I can. There are some good things in  
16 it, although it is becoming incrementally worse --  
17 incrementally. There are just little things here and there,  
18 when accumulatively added together make it more than I may be  
19 able to support, unless I can rationalize it by saying those bad  
20 things aren't in the House bill, and we have a chance when we  
21 go to conference to drop them.

22 Clearly, if we adopted the Gephardt Amendment, that would  
23 be the absolute atom bomb on this bill, and I would totally  
24 oppose it.

25 So, Mr. Chairman, just to make sure we are not

1 incrementally going too far, I would like to offer a  
2 sense-of-the-committee resolution that we are opposed to the  
3 Gephart Amendment.

4 (Laughter)

5 (Continued on the following page)

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1 (Continued from preceding page.)

2 The Chairman. The amendment is not before us.

3 Senator Packwood. That is right. It is on the bill  
4 on the floor. These are, essentially, the committee  
5 resolutions that we are opposed to the amendment.

6 The Chairman. Are there further comments on this?

7 Senator Matsunaga. Mr. Chairman?

8 The Chairman. Senator Matsunaga.

9 Senator Matsunaga. I think that Senator Riegle really  
10 deserves commendation in his working with charts and  
11 explaining the --

12 (Laughter)

13 Senator Matsunaga. -- Gephardt amendment. It has been  
14 made much more understandable by Senator Riegle than it has  
15 been in the House, I believe. But, the thing that bothers  
16 me the most about the Gephardt amendment is that, as the  
17 Senator has pointed out, we are today the greatest debtor  
18 nation in the world.

19 In order to pay off that debt, we are going to have to  
20 accumulate surplus in our trade balance. And when that  
21 happens, supposing our trading partners enact mirror  
22 legislation, then where will we be?

23 This is the real problem, and I feel that at this point,  
24 and I am glad the Senator is not offering his amendment in  
25 committee, because perhaps it can be further discussed on the

1 floor. But, on that basis, I must oppose the amendment --  
2 if he offers it. And I do hope he will not offer it in  
3 committee.

4 Senator Riegle. If the Senator will just yield just  
5 for a moment, I would say I appreciate his kind comment; and  
6 I would just say I am prepared to see the United States live  
7 by these kinds of standards. There is nothing in this proposal  
8 that I think ought to apply to others and not apply equally  
9 to us.

10 But we don't have the problem of unfair trade practices  
11 keeping other nations out. That is why everybody heads here  
12 with all their surplus production, because we have been the  
13 true open market.

14 It is interesting, some of the nations with which we  
15 have a positive balance of trade -- and there are very few  
16 of them -- Soviet Union, Libya, Albania, Bulgaria, Cuba,  
17 Vietnam. I mean, these are the countries today where we  
18 have trade surpluses, and it is a very short list.

19 Paraguay, Greenland, Pakistan, the Falkland Islands --  
20 but if you go into any of the nations of consequence around  
21 the country -- a few exceptions, but they are clearly  
22 exceptions -- it is the other way around.

23 So, I am quite prepared to take the proposition that  
24 the equivalent of our amendment should apply equally to us  
25 in the future.

1           Senator Matsunaga. The response to that is anew,  
2 because we have things to sell to these countries and they  
3 have nothing that we would buy. Take the case of  
4 Afghanistan -- what will Afghanistan sell us?

5           Senator Riegle. See, it is more the problem of the  
6 things that we have that we could be selling in Japan --  
7 there are a lot of examples. But, as you know, the door  
8 is shut, even though the quality is better in many cases,  
9 the prices are lower. But, sorry, there is a no sale sign  
10 on the door.

11           The Chairman. Senator Rockefeller.

12           Senator Rockefeller. Mr. Chairman, I regret that  
13 Senator Packwood, if he indeed tends to do this, is putting  
14 this motion before us. It seems to me that there has been  
15 a sense from around this panel that there are some of us  
16 who would like to both work to see that this process finally  
17 results in something which is so much stronger than what we  
18 now have; but on the other hand, as the Chairman himself  
19 indicated, we want to see the bill signed.

20           And, if it is not, we want to see the veto overridden.  
21 Now, this is very much a matter of process, and it strikes  
22 me that this committee has been operating very smoothly and  
23 very strongly with respect to a process of consensus.

24           What Senator Packwood is doing is intervening directly  
25 into that process at this point to, in a sense, force a vote

1 on something which is, perhaps, negotiable at some point  
2 within this process. Now, if we come to that point, then  
3 we have to look at more than--in fact, we have to this  
4 point.

5 For example, the discussion here has only been about  
6 trade balances. Senator Riegle, with respect to his  
7 presentation, talked about trade balances. And they are  
8 extremely important. Part of what points the direction of  
9 trade balances for the future is the nature of the economies  
10 which respond or don't respond to trade initiatives from us  
11 or from other countries.

12 The matter of what is it that will cause Brazil, for  
13 example; or what is it that will cause Japan, for example,  
14 over the longer term, or the mid-long term, to restructure  
15 in a way substantial enough to allow other parts of this  
16 bill to work -- I think is of moment.

17 Senator Packwood, in offering this amendment or motion,  
18 seems to me to preclude a process which can fairly work.  
19 Now, I understand how he feels about the matter and he is  
20 following through on his instincts. But, I cannot support  
21 the amendment, because I don't think it is fair to the  
22 consensus that the Chairman has worked to build with respect  
23 to this entire bill.

24 I want to see something that the Senate can support,  
25 that the House can support, and that the President can

1 support, and which also addresses problems which need to be  
2 addressed very substantially.

3 The Chairman. Senator Rockefeller, Senator Packwood  
4 will seek the vote. Senator Danforth.

5 Senator Danforth. Mr. Chairman, I have the opposite  
6 view of Senator Packwood's vote. I am obviously in favor  
7 of the process. I just said I was in favor of the process.

8 But, I think it is a step forward to recognize where we  
9 are. When Congressman Rostenkowski took the position that  
10 the House view was going to be insisted on by the House  
11 conferees, that the Gephardt amendment was going to be  
12 insisted on by the House conferees, a lot of people have  
13 asked me, well, is the Gephardt amendment going to be passed?

14 And I think that it furthers the process of coming up  
15 with some reasonable compromise, some reasonable middle  
16 ground position. If we make it totally clear that from the  
17 standpoint of those who are going to represent the Senate  
18 in the conference, the Gephardt amendment doesn't have a  
19 chance.

20 I really think that facing up to the truth, facing up  
21 to the reality, the political reality, is a very important  
22 step forward.

23 Senator Heinz. Mr. Chairman?

24 The Chairman. Senator Heinz.

25 Senator Heinz. Mr. Chairman, I am going to oppose



1 Senator Packwood's motion.

2 The Chairman. He hasn't made it yet.

3 Senator Heinz. Well, my understanding is that he will.

4 But, if he doesn't, I won't.

5 (Laughter)

6 Senator Heinz. But, he said he was going to and he is  
7 usually a man of his word.

8 Senator Packwood. That might be a worthwhile trade-off.

9 (Laughter)

10 Senator Heinz. And I will tell you why. We have been  
11 through a colloquy between Senator Danforth, Senator Riegle,  
12 and others, and to which I would gladly have joined, except  
13 for the amount of time available to the committee, to express  
14 my agreement that we do need to strengthen -- when all is  
15 said and done -- the adversarial trade provisions of our  
16 bill.

17 If there were to be the kind of vote that Senator  
18 Packwood proposes to have, what the substance we would be  
19 voting on is a sense of the Finance Committee resolution  
20 against an amendment that generically has in it a number of  
21 things that you must deal with in some fashion if you are  
22 going to deal with the question of adversarial trade.

23 There are three. First, some kind of results orientation.  
24 If you do not look at the red ink, and if you are not  
25 determined to do something about the red ink of the trade

1 deficit and measure accordingly, it is probably going to be --  
2 and here, I believe, Senator Baucus was quite explicit --  
3 you are really not going to be able to have a policy that is  
4 terribly meaningful.

5 A second element is directly addressing the persistent,  
6 continuing, mercantilist policies of, not necessarily one or  
7 two countries, but most of the rest of the world. So, that  
8 is a second common element.

9 And third, there is the real question of whether or  
10 not you are going to act at all to take on the consistent  
11 significant surplus countries, as I say, either singly or  
12 as a group, as opposed to their practices. And I would not  
13 want, at this point, to cast a vote that could be misconstrued  
14 as saying I don't want to take on those problems, those  
15 challenges. I do want to take them on. I want Senator  
16 Danforth and Senator Riegle and the rest of us to succeed in  
17 strengthening our bill.

18 So, if the amendment is offered, I won't support it.

19 The Chairman. Senator Packwood, are there any comments?

20 Senator Packwood. Mr. Chairman, I have had several  
21 members say they want to vote, and send me notes and say I'm  
22 with you, but please don't do this.

23 (Laughter)

24 Senator Packwood. I didn't make the motion, I made the  
25 suggestion only half facetiously in this sense. We all know

1 on this committee, in this committee, the Gephardt amendment  
2 is not going to be adopted. It is not going to be adopted  
3 on the floor. If we have a vote, I think it will be defeated  
4 rather handily.

5 What bothers me is that this bill is only incrementally  
6 going to affect trade, and many people are selling amendments,  
7 which I think are bad amendments, saying that it is going to  
8 dramatically improve trade -- and it isn't.

9 And I understand all of the forces that are pushing for  
10 limitations on trade, justifiably in their mind trying to  
11 protect their jobs, damn the torpedoes, full speed ahead,  
12 don't worry about the consumer prices, protect the job.

13 That is an understandable viewing.

14 And I understand the other side, often represented by  
15 the retail industry, that flies under the banner of free  
16 trade, who really simply says we want the cheapest shoes we  
17 can get. And, if by chance, somehow free trade didn't  
18 produce that, then the rubric of free trade would be gone.

19 Everybody is looking out for their own interest, and  
20 there is nothing wrong with that. James Madison understood  
21 that perfectly. It is up to this committee and ultimately  
22 up to the Congress to try to harmonize those interests.  
23 All I am saying, Mr. Chairman, is that the interests of all  
24 of those groups will not be furthered if we move in the  
25 wrong direction. And just incrementally this bill is starting

1 to move in the wrong direction. It isn't there yet, and it  
2 is savable, and the Chairman has done an admirable job. I  
3 don't envy him in this situation. I know what he is going  
4 through.

5 But, I will be prepared, obviously, to fight the Gephardt  
6 amendment or anything else that moves in that direction.  
7 Needless to say, that, in and of itself -- I think I can say  
8 this, Mr. Woods -- no matter what else was in the bill, would  
9 cause it to be vetoed. It may get vetoed anyway if we put  
10 other bad things in, but there is no question about that.

11 So, I will withdraw, Mr. Chairman, simply because I  
12 know there is no fear of this committee or of the floor of  
13 the Senate putting that amendment in or anything like it.

14 The Chairman. Thank you very much, Senator Packwood.

15 (Laughter)

16 The Chairman. Let me state that I get back to the  
17 realities of what we face and all of this work we have done.  
18 And I want it to finally end up in a piece of law that is  
19 going to help turn this concern of ours around and this  
20 incredible trade deficit that we have. And we have great  
21 support in this committee for 301 and 201 and what we have  
22 done there. And I think that is a tough and a fair trade  
23 bill that we have done. I look at the Gephardt situation,  
24 where it was voted on in the House and carried by four votes.  
25 And, it is obvious that it would result in a veto.

1 I think we would have an extremely difficult time  
2 overcoming that veto, if that is a provision in the piece  
3 of legislation. And yet, this incredible trade surplus by  
4 some nations bending their economic policies to whatever  
5 extent they can to have that kind of a trade surplus and  
6 something that cannot be sustained without destroying the  
7 trading system of the world, gives me deep concern in trying  
8 to find a way to address that. I am committed to and will  
9 work to try to do that. Thank you very much.

10 Now, with that and that having been withdrawn, let me  
11 present one. If you would distribute this, please. This is  
12 one that I would like to present.

13 This is an amendment to go in the National Security  
14 section. I have proposed it for that purpose, and it deals  
15 with the peril point on the importation of oil. What we have  
16 seen in this country is a situation where in 1985, we were  
17 importing 27 percent of the oil we used in this country.

18 And, depending on the fluctuations and the month-to-month  
19 importation of oil, is running from 37 to 42 percent now.  
20 Back at the time of the crisis, when we had the oil embargo  
21 slapped on us, you had a situation there where oil imports  
22 were approximately 33 percent -- substantially below what  
23 they are today.

24 We have increased vulnerability year by year. It doesn't  
25 do any good to have those tanks and those ships and those

1 airplanes if you don't have the fuel to run them. So, what  
2 I am proposing in an amendment under the National Security  
3 Provision is no expansion of the President's powers. The  
4 President's powers under Section 232 of the Trade Expansion  
5 Act provide for him to exercise certain powers if you have  
6 a problem and an overdependence on oil.

7 The Department of Energy has just cited that; the  
8 Secretary of the Interior has cited that and says that he  
9 thinks we will be back to long lines at the gas pumps in not  
10 too many years.

11 What you are seeing is a situation where oil production  
12 is dropping in this country, that conservation has fallen  
13 by the wayside, and that you are seeing Mexico has topped  
14 out on their oil reserves, Canada has topped out on theirs,  
15 the North Sea will be topping out this year. And you are  
16 seeing a further and greater concentration of dependence on  
17 the Middle East for oil.

18 So, what this states is that the President would have  
19 a projection each year as to what the dependence on foreign  
20 oil would be for the next three years. And, if in any one  
21 of those three years it is projected that you would have a  
22 dependence that would pass 50 percent -- that that certainly  
23 has to be a peril point and a crisis point -- then that the  
24 President must present to the Congress his proposal as to how  
25 to turn that around. And that obviously could be conservation

1 practices, it could be incentives to the industry, it could  
2 be quite a variety of things.

3 That is in the current law what this does is puts a  
4 trigger there and says that you have to get off the dime,  
5 you have to present it to the Congress and it then would be  
6 subject to action by the Congress and could be overridden  
7 as the present law requires under Section 232 by the action  
8 of both Houses of the Congress.

9 And, so I am proposing this amendment. We have quite  
10 a number of members of this committee who are joint sponsors  
11 of the bill as it was recently introduced. But, the fact  
12 sheet that has now been distributed to each of you declares  
13 that the U.S. Energy Security requires a national energy  
14 policy in which the foreign oil dependence will not exceed  
15 that 50 percent of consumption.

16 And it goes through the specific things that I have  
17 stated to you. And I offer that amendment for the  
18 consideration of the committee.

19 Senator Packwood. Could I ask a question, Mr. Chairman?

20 The Chairman. Yes, you may.

21 Senator Packwood. I don't understand the present law.

22 Maybe staff can explain it.

23 The Chairman. All right.

24 Senator Packwood. Under Section 232 of the Trade  
25 Expansion Act of 1962 -- and I am reading here from Senator

1 Bensten's handout, if I read it correctly -- the President  
2 can impose imports.

3 The Chairman. He could.

4 Senator Packwood. And they go into effect automatically?

5 The Chairman. No. He proposes them and then it is sent  
6 to the Congress, and the Congress -- it would be presented  
7 to the Congress and the Congress will have a set period of  
8 time within which to override it. That was done previously --  
9 President Carter did that. He sent it to the Congress. He  
10 recommended the imposition of those import fees, and the  
11 Congress overrode that.

12 Senator Packwood. First, what I am trying to find out  
13 is what the 1962 Act says, and do I read it correctly, that  
14 the President can -- and I am quoting here -- "He can impose  
15 such imports that will not treaten to impair the national  
16 security, subject to Congressional disapproval, in the case  
17 of petroleum imports."

18 The Chairman. That is correct.

19 Senator Packwood. Now, do I read that correctly? Apart  
20 from petroleum, under the present law he can impose import  
21 restrictions, and unless Congress overrules them and literally  
22 votes them out, they are automatically in. Is that correct?  
23 At the moment, under the present law, how do the petroleum  
24 imports differ from the other imports?

25 Mr. Lang. It is just a special provision.



1 Senator Packwood. What?

2 Mr. Lang. There is just a special provision.

3 The Chairman. For the petroleum imports.

4 Senator Packwood. Yes, but here is what I don't  
5 understand. Let's say he puts an import limitation on  
6 textiles. That goes into effect automatically. He puts a  
7 limitation on petroleum; that goes into effect unless Congress  
8 disapproves it.

9 Mr. Lang. Right.

10 Senator Packwood. Don't the textiles go into effect  
11 unless Congress disapproves it?

12 Mr. Lang. No. Congress has no statutory procedure  
13 for disapproving anything except in the --

14 Senator Packwood. A joint resolution is enough on the  
15 petroleum exports. The President can't veto or disapprove it.

16 Mr. Lang. Right.

17 Senator Packwood. All right. Now let me go down to  
18 what Senator Bentsen is suggesting to make sure I understand.  
19 We go through the Sections 1, 2, 3, 4, 5, and we find that  
20 90 percent in the projections and that we are going to fall  
21 below the 50 percent. Now, is the President given the  
22 authority to do everything that is stated in 6, and unless  
23 Congress turns it down, it goes into effect.

24 The Chairman. I am advised, Senator, that this is in  
25 no way inconsistent with the administrative procedures under

1 Section 232.

2 Senator Packwood. For the moment, I am just trying to  
3 find out what it is that 6 gives the President the power to  
4 do. Really, it says he has all powers currently within the  
5 law. But, the first section up above related just to imports,  
6 didn't state anything else. And I'm trying to find if 6 is  
7 an expansion of that, or whether he at the moment has the  
8 power to impose. And I am looking here, tax and other  
9 incentives for strip oil production offshore and whatnot.

10 Does the President have the power to do that now, to  
11 impose tax incentives?

12 Mr. Lang. No.

13 The Chairman. I don't know that he does.

14 Mr. Lang. No.

15 Senator Packwood. In other words, under the present  
16 law, is his power limited to import quotas or import  
17 restrictions of some kind? I think so, but I don't find  
18 anybody who knows the answer.

19 Mr. Lang. I think that is correct, Senator. Let me  
20 just check the law.

21 Senator Packwood. While you are looking that up, if  
22 that is correct, then 6 is a substantial expansion of  
23 Presidential powers, is it not?

24 The Chairman. I am advised it is not. That it is  
25 definitely not an expansion of Presidential powers. In fact,

1 I asked to be sure that we structured it so it was not.

2 And I am advised that it does not.

3 Senator Packwood. Then now -- and I will come back to  
4 my question again -- now the President does have the power  
5 to impose tax and other incentives for strip oil well  
6 production. He could put back in the 27 percent depletion  
7 allowance under the present law by fiat, and unless we then  
8 repeal it, by law it goes into effect?

9 Mr. Bolten. Senator Packwood, the answer to your  
10 initial question as to the President's current powers under  
11 Section 232 are that it is limited to import relief.

12 Senator Packwood. All right.

13 Senator Matsunaga. No taxes.

14 Mr. Bolten. No mention of taxes under Section 232.

15 Senator Packwood. But see if Mr. Lang agrees.

16 The Chairman. It reads specifically -- let me read it.  
17 "And the President shall take such action and for such time  
18 as he deems necessary to adjust the imports of such articles  
19 and its derivatives." Now, that is the point that Mr. Bolten  
20 was making.

21 Mr. Bolten. Yes sir, exactly.

22 The Chairman. And I am reading from it specifically.

23 Senator Packwood. Now, then under number 6, let's  
24 take it. It states that, "The energy plan may include the  
25 utilization of all powers currently within the law." I assume

1 that means the import relief powers.

2 The Chairman. That is right.

3 Senator Packwood. And comma -- energy conservation  
4 actions. Does that mean currently within the law, or does  
5 that mean energy conservation actions in addition to what --  
6 apparently there are none in the law now -- in addition to  
7 what is there?

8 The Chairman. Well, that would obviously have an impact  
9 on imports -- conservation methods would.

10 Senator Packwood. So the President could order  
11 conservation actions which will go into effect unless Congress  
12 turns them down.

13 The Chairman. Unless Congress turns them down.

14 Senator Packwood. All right. He could order an  
15 expansion of the strategic petroleum reserve beyond what  
16 Congress has directed and appropriated to pay for, and it  
17 goes into effect unless we turn it down. And he can order  
18 production incentives for domestic oil and gas, whatever those  
19 production incentives might be, including tax and other  
20 incentives, for strip oil production, offshore frontier and  
21 other produced --

22 The Chairman. Senator, that is all in the present law.

23 Senator Packwood. Well, is that all the present law?

24 The Chairman. Well, it affects imports.

25 Senator Matsunaga. Not the taxes.

1 The Chairman. Senator Wallop.

2 Senator Wallop. Mr. Chairman, I did not hear the last  
3 observation, whether it is in present law. But, I would  
4 point out that there is within the reach of both Houses the  
5 ability to stop whatever conclusions the President arrives to.  
6 But it strikes me that as a matter of national security  
7 interest and national economic interest, at the time when  
8 imports reach the stage of 50 percent, we become vulnerable  
9 to the same kinds of total, not just oil and gas market  
10 disruption, but total market disruption that took place in  
11 1973 and 1979.

12 Now, maybe that is the will of the Congress to let us  
13 be and remain vulnerable to that, but at least we ought to  
14 have the possibility of examining some means of extracting  
15 ourselves from that kind of a circumstance. And this is  
16 really a trigger mechanism to try to force some energy policy  
17 planning. And it does not necessarily have to be done by  
18 any one of the serial things mentioned, a combination of them,  
19 or something that is not mentioned in there.

20 But, it seems to be necessary to understand the  
21 vulnerability of this nation, not just our military services,  
22 but our whole economic structure, when energy imports reach  
23 more than 50 percent of domestic production.

24 Senator Bradley. Mr. Chairman?

25 The Chairman. Yes, Senator Bradley.

1           Senator Bradley. Mr. Chairman, I would like to try to  
2 address the national security question, because I really  
3 think that there is a misunderstanding here. Because, the  
4 premise of the amendment is that national security is  
5 threatened by the level of imports.

6           In my view, that is incorrect. In 1973 and 1979, when  
7 we had an oil supply disruption, the problem that we  
8 experienced was a dramatic increase in price. And we had to  
9 pay that increase in price. And we paid the biggest total  
10 increase, because we are the biggest consumer of oil in the  
11 world.

12           It doesn't make any difference if we were importing  
13 20 percent or 40 percent or 60 percent. The price would go  
14 up on all barrels of oil that we consumed. That is the  
15 danger. The only way out of that danger is to say no, when  
16 the world price goes up, we are not going to allow it to go  
17 up in the United States -- we are going to put price controls  
18 on it.

19           And, indeed, that is what happened. I personally  
20 wouldn't like to see price controls. The danger, though, is  
21 the economic cost, not the level of imports. So, my argument  
22 is that the amendment is aimed at the wrong thing from a  
23 national security perspective.

24           The second problem I have with it is that I saw in  
25 today's newspaper a news story that said "Reagan seeks oil

1 industry tax relief". And it went on to describe the  
2 increase, the depletion allowance, etc. I don't really  
3 think that we want to give the President the authority to  
4 do that without us being able to debate whether, indeed,  
5 we want it to happen.

6 But, as I read the proposal, it seeds that authority  
7 to the President. But, my primary objection here is the  
8 thing I think it targets the wrong issue. It is not level  
9 of imports -- it is the price increase that does the damage.  
10 And if you are really concerned about will there be adequate  
11 supply for the military, then you have a strategic petroleum  
12 reserve. And you should be increasing that at a higher rate  
13 than you are now.

14 The Chairman. Senator, I strongly agree with increasing  
15 that reserve. I have supported you time and time again on  
16 that. I believe that has to be done. I also strongly  
17 disagree with you on the idea that the level of the imports  
18 is not a major factor in this. There is not question when  
19 they curtail the amount of imports, that they are going to  
20 drive up the price, unless you go to price controls here.  
21 And then you go back to the long lines at the gas pump and  
22 the great disruptions, and all the bureaucracy of trying to  
23 administer it.

24 So, I frankly think that we are extremely vulnerable,  
25 and if we get past that 50 percent, that ought to set off all

1 the alarm bells in this country. And we are headed right  
2 back to where we were of having the OPEC countries finally  
3 get together and slapping an embargo on us. And then, I  
4 think, we are in serious trouble. And we ought to have the  
5 mechanics in force by then.

6 Senator Chafee. Mr. Chairman?

7 The Chairman. Yes, Senator Chafee.

8 Senator Chafee. Mr. Chairman, I would like to address  
9 a question to the staff. It is not entirely hypothetical.  
10 Under 232, it is currently possible for the President to  
11 impose an oil import fee on oil coming into the United  
12 States?

13 Mr. Lang. Yes.

14 Senator Chafee. An oil import fee.

15 Mr. Lang. Yes.

16 Senator Chafee. And so, what does this bill do that --

17 The Chairman. What it does, Senator, it puts a trigger  
18 there. It says that when it is in the projections of  
19 dependence on foreign oil, that it has shown that it is  
20 passing 50 percent, then that the President has to get off  
21 the dime and propose the policies that will help turn that  
22 around, and send it to us, and then Congress approves or  
23 disapproves.

24 Senator Chafee. Now, I must say, I am amazed that the  
25 President can do that under 232. He can just do it



1 unilaterally? I presume he makes some findings and then --

2 The Chairman. Senator Chafee, he did that. President  
3 Carter did that. And the Congress overturned it and rejected  
4 it.

5 Senator Chafee. He proposed an oil import fee?

6 The Chairman. Yes. \$10 a barrel. That was about  
7 19 --

8 Senator Bradley. 1979.

9 The Chairman. 1979. Yes, that is right.

10 Senator Chafee. Well, the part on this that does give  
11 me trouble is, of course, number 5, where the Congress  
12 disapproves, rather than having to approve.

13 The Chairman. Once again, Senator, we track the  
14 present law.

15 Senator Chafee. And also, I am surprised that the  
16 number 6 would meet a constitutional test. I am of the  
17 opinion of the Constitution says that taxes must originate  
18 in the House, and yet here they originate in the White House.  
19 Is there any problem there, Mr. Lang?

20 Mr. Lang. Well, Congress has frequently delegated to  
21 the President the authority to raise a tax. For example,  
22 the authority to proclaim rates of duty was the delegation  
23 of authority made first in the 1930s. The President was  
24 given enough guidance on what the limits on his tax increase  
25 power were, and under the 1930 Act he could increase, or

1 reduce or modify rates of duty.

2 So, it would appear that at least over 30 or 40 years  
3 it has been constitutional.

4 Senator Bradley. But rates of duty are not rates of  
5 income taxes. I don't think he has the authority under the  
6 Section 232 to cut the tax rates, the income tax rates, for  
7 certain corporations.

8 Mr. Lang. It is revenue. The same constitutional  
9 principle would appear to apply, whether you are delegating  
10 the authority or --

11 Senator Packwood. But does he have the power under the  
12 present law, I think is what Senator Bradley is asking now.  
13 Under 232, could the President decree a 20 percent corporate  
14 income tax rate for petroleum companies?

15 The Chairman. Let me state that as I understand it,  
16 this question, that question was debated before. And, it  
17 was stated that it might have to ultimately be resolved in  
18 the courts -- that specific questions. But, the Congress,  
19 with that in mind, went ahead and wrote what it has written.  
20 And this has been in the law and has been utilized, as I  
21 cited in the case of President Carter.

22 Senator Packwood. With all deference, Mr. Chairman,  
23 I don't have my question answered yet. Mr. Bolten says he  
24 can impose import restrictions. I am curious if, under the  
25 present law, he can impose corporate tax cuts, depletion

1 allowances, gasoline taxes. And when I was reading some of  
2 these, you made a statement it will reduce imports. The  
3 Synfuels program will reduce imports. If you can start that  
4 up and get it going, it will reduce imports.

5 I want to know, under the present law, can he do all  
6 those things?

7 Mr. Lang. Senator Packwood, Section 232 uses unusual  
8 language. Usually when you give the President the authority  
9 to change a rate of duty, you just write it that way. The  
10 way Section 232 reads is "The President shall take such  
11 action and for such time as he deems necessary to adjust  
12 the imports of such article and its derivatives, so that  
13 imports will not threaten to impair the national security."  
14 And that is very broad language.

15 Senator Packwood. Under that reading now, I'll let  
16 somebody else ask, under that reading, what you are saying  
17 is he can, therefore, do anything that affects that  
18 conclusion.

19 Mr. Lang. Well, I don't know that the full extent of  
20 this language has been explored. But, it is very broad  
21 language compared to what you usually write when you give  
22 the President the authority to change rates of duty.

23 The Chairman. The problem is, you have got yourself a  
24 crisis on your hands when you get to this kind of a situation  
25 where there is dependence on foreign oil.

1 Senator Wallop. Mr. Chairman, if I may.

2 The Chairman. Senator Wallop.

3 Senator Wallop. I would like to answer Bill Bradley's  
4 statement. The fact is that the price was what created the  
5 economic disruption. And I have no quarrel with that, and  
6 I doubt the Senator from Texas does either.

7 The problem is, what gets you to the point where price  
8 can be manipulated so easily? And that is related to the  
9 level of imports and dependency, which cannot be reacted to  
10 quickly.

11 Senator Bradley. No, I would disagree. It is related  
12 to a disruption in supply.

13 Senator Wallop. Well, the disruption is only available  
14 to you when you command such a dimension in the market that  
15 the response of the domestic market is unavailable.

16 Senator Bradley. Let's assume we imported zero, but  
17 Europe and Japan imported a lot of oil. And there was an  
18 Iran/Iraq war that expanded and disrupted supply, and world  
19 production was cut by 7 million barrels, and the price goes  
20 up \$30 a barrel. Every barrel of oil we produce in this  
21 country has a \$30 per barrel increase, whether we imported  
22 any oil or not. The only way you could avoid that is price  
23 control.

24 Senator Wallop. No, I don't accept that. I do not  
25 believe that we have to pin our entire price dependency on

1 the rest of the world. I do agree that from time to time  
2 it can become that way. And, in that instance, the  
3 President already has the power that we are tracking here.  
4 What we are talking about here is to try to reduce, in some  
5 way, our level of dependency -- our own market dependency --  
6 on foreign sources. Now, 50 percent, some would argue, is  
7 higher than it ought to be. Perhaps the Senator from New  
8 Jersey would like to see it at another percentage.

9 But somehow or another, in the law of supply and demand,  
10 there becomes an availability -- one of the things the  
11 President could do is stop export authorities, rather than  
12 impose price restraints under Section 232.

13 What we are trying to look for here, the Senator from  
14 Texas and I, is a trigger mechanism that gives us some  
15 intellectual approach, if you will, and you might not say  
16 it is very intellectual, but if you have another suggestion,  
17 let's do it. But something that triggers thinking about  
18 the economic security, or lack of it, on energy prices and  
19 dependence in this country.

20 The Chairman. Senator, if I might, the Chairman has  
21 deferred his amendment, requested the other Senators bringing  
22 up their amendments, I have done that. My time is about to  
23 expire. I think members know how they are going to vote  
24 on this thing. And I would like to bring it up for vote,  
25 if I may.

1 If there is no objection, then will you call the roll,  
2 because I am sure it is going to be a divided one.

3 The Clerk. Mr. Matsunaga?

4 The Chairman. Yea by proxy.

5 The Clerk. Mr. Moynihan?

6 (No response)

7 The Clerk. Mr. Baucus?

8 Senator Baucus. Yea.

9 The Clerk. Mr. Boren.

10 The Chairman. Yea by proxy.

11 The Clerk. Mr. Bradley?

12 Senator Bradley. Nay.

13 The Clerk. Mr. Mitchell?

14 (No response)

15 The Clerk. Mr. Pryor?

16 The Chairman. Yea by proxy.

17 The Clerk. Mr. Riegle.

18 The Chairman. Yea by proxy.

19 The Clerk. Mr. Rockefeller?

20 Senator Rockefeller. Yea.

21 The Clerk. Mr. Daschle?

22 The Chairman. Yea by proxy.

23 The Clerk. Mr. Packwood?

24 Senator Packwood. Nay.

25 The Clerk. Mr. Dole?

1 The Chairman. Yea by proxy.

2 The Clerk. Mr. Roth?

3 Senator Roth. Nay.

4 The Clerk. Mr. Danforth?

5 Senator Danforth. Yea.

6 The Clerk. Mr. Chafee?

7 Senator Chafee. Nay.

8 The Clerk. Mr. Heinz?

9 Senator Heinz. Nay.

10 The Clerk. Mr. Wallop?

11 Senator Wallop. Yea.

12 The Clerk. Mr. Durenberger?

13 Senator Packwood. Nay by proxy.

14 The Clerk. Mr. Armstrong?

15 (No response)

16 The Clerk. Mr. Chairman?

17 The Chairman. I withdraw the vote of Riegle. The

18 Chairman votes Yea, and I understand Senator Moynihan wants  
19 to be recorded as Nay.

20 Senator Wallop. Mr. Chairman, if I may, Senator

21 Armstrong earlier expressed to me his desire to be recorded  
22 in the favor on this thing, but I do not have his proxy and  
23 would like the privilege of the committee to seek it.

24 The Chairman. I'm sorry. I was interrupted.

25 Senator Wallop. Senator Armstrong earlier expressed to

1 me an interest in support of this amendment, but I would not  
2 want to cast his proxy without specific permission from him.  
3 But, I would like the opportunity to seek it.

4 The Chairman. I have the same problem with Senator  
5 Riegle. There is some confusion on that one, so I withdraw  
6 that one. Obviously, we have that open until 5:30 anyway.  
7 So, it you would announce the present vote.

8 The Clerk. This vote is 10 Yeas, 7 Nays.

9 The Chairman. All right. Now, is there another one.  
10 I tell you, we have 10 more minutes before the Senate will  
11 be back out of recess.

12 Senator Baucus. Mr. Chairman, I think I can take care  
13 of this pretty quickly. Two or three days ago, I have  
14 forgotten exactly which, we voted 10-10 on an amendment  
15 offered on option quotas. That was fairly well debated  
16 then. I would like to move to reconsider that vote.

17 The Chairman. The motion is made to reconsider. I  
18 think, obviously, you are going to have to have a roll call  
19 on that one.

20 Senator Baucus. Unless we do it by voice vote.

21 (Laughter)

22 The Chairman. Senator, I don't see much chance of that  
23 when you had a 10-10. Are you moving to reconsider?

24 Senator Baucus. I am moving to reconsider.

25 The Chairman. All right. Please call the roll.



1 Senator Heinz. Mr. Chairman, does he qualify to make  
2 a motion to reconsider?

3 Senator Baucus. As I understand the committee rules,  
4 the answer to that question is yes.

5 The Chairman. Mr. Wilkins, will you state the committee  
6 rules on that?

7 The Clerk. The committee rules have no specific  
8 written rules for motions to reconsider. The procedures  
9 that have been followed in the past and that the Chairman  
10 announced at the beginning of the markup, are that any  
11 Senator can move, at any time, to reconsider a vote previously  
12 taken.

13 The Chairman. All right, fine. All right. The motion  
14 is made to reconsider. Please call the roll.

15 The Clerk. Mr. Matsunaga?

16 Senator Baucus. Yea by proxy.

17 The Clerk. Mr. Moynihan?

18 The Chairman. Yea by proxy.

19 The Clerk. Mr. Baucus.

20 Senator Baucus. Yea.

21 The Clerk. Mr. Boren?

22 Senator Baucus. Yea by proxy.

23 The Clerk. Mr. Bradley?

24 Senator Bradley. Yea.

25 The Clerk. Mr. Mitchell?

1 Senator Baucus. Yea by proxy.

2 The Clerk. Mr. Pryor?

3 Senator Baucus. Yea by proxy.

4 The Clerk. Mr. Riegle?

5 Senator Baucus. Yea by proxy.

6 The Clerk. Mr. Rockefeller?

7 Senator Rockefeller. Yea.

8 The Clerk. Mr. Daschle?

9 Senator Baucus. Yea by proxy.

10 The Chairman. I understand Senator Matsunaga, I'm not  
11 sure that was called, but I am told that he has been asked  
12 to vote Yea by proxy.

13 (Laughter)

14 The Clerk. Mr. Packwood?

15 Senator Packwood. Nay.

16 The Clerk. Mr. Dole?

17 Senator Packwood. Nay by proxy.

18 The Clerk. Mr. Roth?

19 Senator Roth. Nay.

20 The Clerk. Mr. Danforth?

21 Senator Danforth. Nay.

22 The Clerk. Mr. Chafee?

23 Senator Chafee. Nay.

24 The Clerk. Mr. Heinz?

25 Senator Packwood. Yea by proxy.

1 The Clerk. Mr. Wallop?

2 Senator Packwood. Nay by proxy.

3 The Clerk. Mr. Durenberger?

4 Senator Packwood. Nay by proxy.

5 The Clerk. Mr. Armstrong?

6 Senator Packwood. Nay by proxy.

7 The Clerk. Mr. Chairman?

8 The Chairman. Yea.

9 The Clerk. 12 Yeas, 8 Nays.

10 The Chairman. Now, the motion then would be in order,  
11 as I understand it. Is that correct? Would that be the  
12 next procedure?

13 The Clerk. That is correct. The committee has agreed  
14 to reconsider.

15 The Chairman. We moved to reconsider, so the motion  
16 is in order. Does anyone desire a roll call on that? I  
17 assume it is apparent from the previous one. All in favor  
18 of the motion, please state and make it known by saying "aye".

19 (A chorus of "ayes")

20 The Chairman. Opposed?

21 (A chorus of "noes")

22 The Chairman. Motion carried. Now, Mr. Lang.

23 Mr. Lang. Yes sir.

24 The Chairman. Senator Boren, who is engaged in the  
25 other hearing, has asked that his amendment on fence panels

1 be brought up on tariffs, I assume. Is that correct?

2 Mr. Lang. Yes sir.

3 The Chairman. Now, would you explain what that is.

4 Mr. Lang. The purpose of Senator Boren's amendment  
5 would be to add wire mesh fence panels to the President's  
6 Field Volunteer Restraint Program on Steel. Under this  
7 provision, the Administration would add these products which  
8 are used for making fencing in the bilateral arrangements  
9 they already have.

10 In the event an arrangement country refuses to expand  
11 the coverage of the existing arrangement to include these  
12 items, then under Senator Boren's bill the United States,  
13 in the administration of the arrangements, would not have  
14 authority to agree to a request from an arrangement country  
15 for technical adjustments or exception or modification to  
16 the arrangement terms, and, if appropriate, could require  
17 entry by entry certification of compliance.

18 The problem is that the steel used to make the fence  
19 panels is, instead of being imported into the United States  
20 under the restraint program, is used to make the fence panels  
21 abroad, which come in at very low prices. And so, the purpose  
22 is to expand the scope of the voluntary restraining program  
23 to these fence panels.

24 The Chairman. Is there objection to this amendment?

25 (No response)

1           The Chairman. If not, I so move the amendment. All in  
2 favor?

3           (A chorus of "ayes")

4           The Chairman. Opposed?

5           (No response)

6           The Chairman. All right.

7           Senator Packwood. Mr. Chairman, I have an agreement  
8 that both you and I are co-sponsoring. I think there is no  
9 objection. The agreement says that in any case in which  
10 there is an inconsistency between any provision of this act  
11 and any bilateral free trade area agreement that was entered  
12 into in force and effect that restricted the United States  
13 before January 1, 1987, the provision shall not apply with  
14 respect to the foreign country that is party to this agreement.

15           Mr. Chairman, that relates to the Israeli free trade  
16 agreement we just passed. It passed overwhelmingly. And,  
17 it would be very wrong and unfair to announce our undoing  
18 by statute what we have agreed to in that agreement, and that  
19 is the point of this amendment.

20           The Chairman. I strongly agree with it. I, obviously,  
21 co-sponsor of it, and I support it. And I don't know of any  
22 question on it. Is there any question concerning it?

23           (No response)

24           The Chairman. If not, would you move it.

25           Senator Roth. Mr. Chairman, may I be added as a

1 co-sponsor?

2 The Chairman. Yes.

3 Senator Packwood. Senators Moynihan and Bradley wanted  
4 to be added as co-sponsors as well.

5 The Chairman. Without objection, that will be done.

6 Do you move the amendment, Senator?

7 Senator Packwood. I move the amendment.

8 The Chairman. All in favor of the amendment, make it  
9 known by saying "aye".

10 (A chorus of "ayes")

11 The Chairman. Opposed?

12 (No response)

13 The Chairman. Motion carried. Now, let me state  
14 that we will go into recess. We do not yet know that we will  
15 be able to meet while the Senate is in session. Hopefully  
16 that will still be worked out. We have made great progress,  
17 again, this morning. And we are right at the point of  
18 wrapping this thing up.

19 So, we will stand in recess to the call of the chair,  
20 and I will do my best to give you a half-hour's notice before  
21 that. Yes?

22 Senator Roth. Mr. Chairman, can we at least be  
23 informative on the amendments?

24 The Chairman. Yes, we could do that. But, let me state  
25 that I would not anticipate that we would be called back

1 before 2:30. Not to be called back before 2:30.

2 Senator Roth. I would have two amendments ready.

3 The Chairman. All right.

4 (Whereupon, at 1:08 p.m., the hearing was recessed.)

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## AFTERNOON SESSION

(3:40 p.m.)

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2  
3 The Chairman. Please cease conversation and be seated.  
4 Hopefully, we are going down the home stretch here, and we  
5 want to expedite it to the extent we can. Mr. Lang?

6 Mr. Lang. Mr. Chairman, we have nothing to propose at  
7 this point.

8 The Chairman. You have no proposals? All right. Do  
9 you have amendments to offer? Senator Roth?

10 Senator Roth. Mr. Chairman, I have two amendments I  
11 would like to offer. The first one deals with strengthening  
12 the hand of the U.S. Trade Representative. Mr. Chairman, I  
13 am sure you know that I feel very strongly that the countries  
14 that have been most successful in trade are those countries  
15 which have had, of course, a strong trade policy, have had  
16 good people, and most importantly have had good organization.

17 And what I want to propose today is an organizational  
18 change, a change that I think will help ensure that the  
19 substantive changes we are proposing in the legislation will  
20 be fully implemented. Now, I have been very much concerned  
21 down through the years--whether it was a Republican or  
22 Democratic Administration--that trade has not received the  
23 kind of priority that it deserves in this world of today.

24 One of the reasons I think that is true is that there is  
25 no accountability, no single are to look for the responsibility



1 of setting policy and implementing it within the Executive  
2 Branch. One has a tremendous turf battle with every new  
3 Administration as to who is going to control trade policy,  
4 and usually all, or several, wind up with a little bit of  
5 the action. So, it seems to me we are at a very, very logical  
6 time to do something about organization.

7 I am not talking about a trade department; that is not  
8 within our area of responsibility, but what I am talking about  
9 is within the authority of the Finance Committee.

10 So, what I am suggesting is that the U.S. Trade  
11 Representative be given the authority to decide and implement  
12 all actions--and I emphasize to decide and implement all  
13 actions--subject to the specific direction, if any, of the  
14 President in the following trade matters. And we have  
15 five different ones.

16 The USTR would have the authority to determine adjustments  
17 to import competition, Section 201. The U.S. rights under  
18 trade agreements in response to foreign unfair practices,  
19 Section 301. Market disruption caused by imports from  
20 Communist countries, Section 406. Administering the GSP  
21 Program, Title 5. And finally, protection of domestic  
22 industries from infringement of patent and copyrights by  
23 imports, Section 337.

24 Now, what we are trying to do is give one person, the  
25 USTR, responsibility and accountability in this area and also

1 to make him a man, or a woman as the case may be, of great  
2 clout. I think the USTR is one of the few cabinet positions  
3 where he has very little actual authority, with one exception,  
4 which is retaliation against foreign trade-related investments  
5 performance requirements.

6 Now, essentially, the USTR's policy functions are given  
7 expression by his chairing an interagency trade policy  
8 committee which advises the President on trade decisions;  
9 but frankly, this committee does not even meet currently.

10 Let me point out that this is not true in other areas.  
11 The Secretary of the Treasury has very broad authority. He  
12 commands a \$12 to \$15 billion exchange stabilization fund,  
13 with only nominal Presidential approval. He can conduct  
14 foreign economic negotiations without being required to consult  
15 with other cabinet officers.

16 At the same time, while we are focusing on the USTR  
17 and making him a strong figure in any new Administration, it  
18 is important to understand that we are not stripping the  
19 Presidency of ultimate control over the execution of these laws.

20 We specifically say that the USTR is subject to the  
21 specific direction, if any, of the President; and that was  
22 included to retain ultimate control in the President, and he  
23 can choose any time he wants to give such direction as is  
24 necessary. But it does not require case-by-case involvement  
25 or directions as a precondition for the USTR to use his

1 authority. Now, I expect that the USTR will continue, or  
2 should, use the interagency process to obtain information  
3 from other agencies. In effect, what my amendment would do  
4 is require that, if a cabinet officer has a major policy  
5 disagreement with the USTR, he would have the burden of  
6 persuading the President to direct the USTR to take a different  
7 course of action.

8 We would not find ourselves, as we have so often under  
9 the current situation, where a particular decision may be  
10 influenced most by the Secretary of State who, rumor has it,  
11 was key in certain situations with the Japanese, maybe  
12 influenced by the Chief of Staff of The White House or some  
13 other White House functionaries. We are putting the  
14 responsibility and accountability in one person who can be  
15 called before this committee and interrogated and questioned  
16 as to policy.

17 We know where the authority is being given. So, I would  
18 urge and hope that the committee would adopt this one step  
19 of reorganization. I think other things need to be done. I  
20 might say that I had a call today from Bob Stroud, whom I  
21 think we all agree was one of our most effective USTRs. He  
22 has advised me that this is not the perfect solution, but he  
23 supports this amendment. He thinks it is a major step forward  
24 in providing the kind of power and authority and responsibility  
25 --clout, whatever you call it--any new USTR should have.

1 As I said, Mr. Chairman, in closing, I think the time is  
2 ripe for this because we are going to have a new Administration  
3 in 18 months. I don't pretend to know who or what party, but  
4 I think it is important we avoid a major turf war or struggle  
5 in who is going to do what, and make it clear that there is  
6 one individual in the Executive Branch who has responsibility  
7 and accountability for implementing the trade policy we are  
8 trying to enunciate in this Act.

9 The Chairman. I would like to hear from Mr. Woods. Are  
10 you prepared to comment on this?

11 Mr. Woods. Yes, I am, Senator. Thank you very much.  
12 I cannot tell you and words cannot express how strongly the  
13 Administration opposes this amendment. I would like to give  
14 you some of the practical problems we frankly see with this,  
15 starting back with the history of the creation of the Office  
16 of the U.S. Trade Representative.

17 It is my understanding that when the Office of the U.S.  
18 Trade Representative was created, the purpose of this committee  
19 was to make sure that the President's principal advisors were  
20 standing at his right arm when the President made decisions  
21 regarding trade matters. This would, in some respects, make  
22 the U.S. Trade Representative into--if you will excuse the  
23 expression--just another cabinet officer. He would be on an  
24 equal footing with all other cabinet officers, in a sense,  
25 coming to the President, asking for his permission to take

1 actions under the trade laws. Second, I would like to point  
2 out that in some of the actions the committee has previously  
3 taken, some of the bases upon which action cannot be taken  
4 --particularly under Section 201 and under Section 301 of  
5 the Trade Law--now there is a requirement that national security  
6 must be taken into consideration.

7 And I submit that the U.S. Trade Representative is not  
8 the appropriate official to be making decisions with regard  
9 to whether national security waivers should be used in order  
10 not to take action under Section 201 or Section 301.

11 In addition to that, action taken under Section 301 of  
12 the Trade Law potentially can start trade wars; and we are  
13 very sensitive to that when we are taking retaliatory actions  
14 under Section 301. In a sense, you are talking about economic  
15 warfare. We don't allow the Secretary of Defense to declare  
16 war, and we don't believe the U.S. Trade Representative should  
17 either.

18 I believe it has been the intention of the committee in  
19 many of the discussions that you have undertaken here in  
20 recent days to get the President more involved, not less  
21 involved, in the trade issues. That has certainly been my  
22 sense of what the committee has been talking about; but if  
23 you take away from the President the requirement that he make  
24 decisions, then it seems to me that you are actually telling  
25 him in a sense to get less involved. He is the highest elected

1 official in the country, and many of the decisions which  
2 should be taken under the provisions of the Trade Law that  
3 you are suggesting be transferred to the U.S. Trade  
4 Representative are decisions of critical national importance,  
5 including trade with Communist countries.

6 I can tell you quite directly that Ambassador Yeutter  
7 opposes this transfer of authority very strongly and has  
8 asked me to convey to you his views in that regard. Thank you.

9 The Chairman. I must say that is kind of a unique  
10 experience with me here, finding a department that resists  
11 getting more turf. That is very unusual. I understand the  
12 concerns and, with Senator Roth, I share many of those concerns.  
13 I have felt for a long time that the USTR sits below the  
14 salt, and I really would like for him to have more influence;  
15 but for those people directly involved in the process to give  
16 such a strong statement frankly gives me a great deal of  
17 concern about trying to bring about the transfer of authority.

18 But I am sure there are others who have feelings on  
19 this one. Senator Danforth?

20 Senator Danforth. Mr. Chairman, I would hope that we  
21 would not agree to this amendment, especially in light of  
22 Ambassador Woods' statement that he could not express the  
23 Administration's opposition more strongly. There have been  
24 proposals over the years to reorganize the operation of our  
25 trade laws--create a Department of Trade to do this and that.

1 I must say that I have never been one who thought that  
2 very much was going to be accomplished by organizational  
3 changes; but I think that, unless we are very clear in our  
4 own minds that this is precisely the way to go, and unless  
5 we are very clear that this is going to have a real effect  
6 on trade policy, it is an unnecessary additional burden to  
7 place on this bill.

8 It has been clear to a lot of us that the number one  
9 problem we are going to have with this bill is getting  
10 something that the Administration is going to agree to. And  
11 when the Deputy Trade Representative tells us that the  
12 Administration's position could not be more strong, that to  
13 me is to say that this is veto bait. And it just seems to  
14 me to be such a small issue and such a questionable issue  
15 to risk Presidential opposition on it; it seems to me that  
16 something like this should not be approved.

17 Senator Packwood. Mr. Chairman?

18 The Chairman. Senator Packwood?

19 Senator Packwood. Mr. Chairman, as much as I hate to  
20 oppose my good friend, Bill Roth, I am going to oppose this  
21 amendment for a couple of reasons. One is that I think it  
22 raises the question: If we want to make the special trade  
23 representative independent, make him independent; set up an  
24 independent commission, like the ITC. Have appointees, and  
25 say the President is not involved. It would be somebody

1 else's function to determine the economic impact and national  
2 security and whether jobs are at stake. If we don't want the  
3 President involved.

4 If we do want him involved, then don't hobble him. I  
5 actually doubt that this particular amendment hobbles him  
6 very much because there are the exculpative words, subject  
7 to the specific direction of any of the President's; and if  
8 this passes, my hunch is that the President says to Mr. Woods,  
9 who is the Ambassador: All right now, Mr. Ambassador Woods,  
10 you are not to do anything unless I specifically tell you.  
11 You got that? And normally, somebody who is an appointee  
12 of the President will say: Yes, sir, I have got that. And  
13 all of this would therefore be a nullity.

14 I think we ought to let any President organize his office  
15 within broad ways the way he wants, or she wants, to organize  
16 the office, including cabinet officials. And if we want  
17 independent action--Federal Communications Commissions, ITCs,  
18 CABs--create them. Make them independent, and take the power  
19 away from the President. I don't think that is what Senator  
20 Roth intends to do; therefore, I think we ought to leave the  
21 statute the way it is.

22 The Chairman. Senator Baucus?

23 Senator Baucus. Thank you, Mr. Chairman. Ambassador  
24 Woods, I wonder if you could help me understand as a practical  
25 matter how often and to what degree the USTR makes a decision



1 or has made a decision in the last several years, contrary  
2 to the wishes of the President?

3 Mr. Woods. Maybe I misunderstand your question to some  
4 degree, but I think we are talking here about decisions which  
5 the President makes upon recommendation from the U.S. Trade  
6 Representative, as opposed to the U.S. Trade Representative's  
7 decision that he would make contrary to the wishes of the  
8 President. I could think of no U.S. Trade Representative  
9 who has been fired, so I suspect none.

10 Senator Baucus. That goes to my point because I understand  
11 that, as a practical matter, what the Senator from Delaware is  
12 trying to do is to move or elevate trade policy to make it  
13 more important, to hold a higher status, compared with other  
14 public policy determinations made by the Chief Executive.

15 And that is a goal that I think we want to strive for.  
16 As a practical matter, though, I am wondering the degree to  
17 which transferring some of this so-called authority to the  
18 USTR in fact makes much difference because, as I hear you,  
19 the USTR by and large--and maybe in all cases--essentially  
20 does what the White House and the President want him to do  
21 in those cases where the President either directly or through  
22 the White House tells the USTR what it wants the USTR to do.

23 Am I correct in my assumption that the USTR basically  
24 makes his own decisions; but in those cases where there is a  
25 difference of opinion, or the White House has a different

1 opinion, or the President has a different opinion, that the  
2 USTR follows the wishes of the White House?

3 Mr. Woods. Yes, Senator; I think in many respects it is  
4 a little more complicated than that. The U.S. Trade  
5 Representative is, as you say, a cabinet officer. He is,  
6 however, a cabinet officer who is part of the Executive Office  
7 of the President. It is a circumstance within our system.  
8 He is a cabinet officer who sits on the right hand of the  
9 President and is his chief trade policy advisor and spokesman,  
10 and is part of The White House in that sense.

11 So, in many respects, there is no difference between The  
12 White House office--the Executive Office of the President--and  
13 the Office of the U.S. Trade Representative. It is all there  
14 as a unit, as a unity.

15 Senator Baucus. Can the President remove the USTR at will?

16 Mr. Woods. The USTR serves at the pleasure of the  
17 President, as do I, sir.

18 Senator Baucus. I am just asking for information. The  
19 USTR can be removed at will?

20 Mr. Woods. Yes, sir.

21 Senator Baucus. By the President. It is not a fixed  
22 term. Are there any conditions in the law, or the statute,  
23 which might impede the dismissal of the USTR by the President?  
24 Any administrative procedure requirements?

25 Mr. Woods. No. He is confirmed by the Senate and must be

1 confirmed by the Senate before he can serve, but the President  
2 can dismiss him; he serves at the pleasure of the President  
3 in that respect.

4 Senator Baucus. Mr. Chairman, I understand the concerns  
5 that other Senators have raised on this amendment; but frankly,  
6 as a practical matter, I don't think it makes a lot of  
7 difference one way or the other. And I think there is a lot  
8 of symbolic value in the Senator's amendment; and I,  
9 therefore, will support it.

10 The Chairman. Senator Rockefeller and then Senator Roth.

11 Senator Rockefeller. Mr. Chairman, when I first heard  
12 about this, it appealed to me because I think all of us want  
13 to see the function of the Trade Representative not only  
14 better funded but at a higher profile. Nevertheless, I think  
15 that the trade situation has come to the point and will stay  
16 at the point for many years to come wherein trade is going  
17 to be at the highest possible profile, by the choice of no  
18 one and the facts of everything, and that the President at  
19 this particular time should in fact be forced more into it.

20 And this diminution with language that is very strange  
21 to me--that is, decide and implement all actions, and then,  
22 all of a sudden, at the direction, if any, of the President--  
23 seems somewhat put in there maybe to round up votes or to  
24 soften it. I think that trade is of the highest national  
25 priority and, therefore, has to have the symbolic and actual

1 total authority of the President. I am uncomfortable with it.

2 The House, I understand, has this provision in it. I  
3 would be uncomfortable at this point in reinforcing that and  
4 hindering the President's freedom of action as we go into  
5 conference.

6 The Chairman. Thank you. Other comments?

7 Senator Roth. Mr. Chairman?

8 The Chairman. Senator Roth?

9 Senator Roth. Let me try to answer some of the statements  
10 that have been made by other members. First of all, I  
11 understand that there are some who think organization is  
12 not important. With that I agree very strongly. I can say  
13 that I know that in business some of the reasons certain  
14 companies have been successful has been their superiority in  
15 organization. Just let me point out that a lot of people  
16 think the problem with the Senate is the way the Senate  
17 is organized. The committees' jurisdictions are overlapping  
18 and there are such turf wars that nothing can be done.

19 So, you may not necessarily agree with a particular  
20 approach, but I think it is a serious matter when we don't  
21 begin to concern ourselves with the kind of organization that  
22 we think will strengthen the hand of those responsible for  
23 trade policy.

24 Now, I understand why the Deputy Trade Representative  
25 --for whom I have the greatest admiration and respect--is here.

1           Let me just point out, in this current Administration,  
2 it took six years to resolve who was going to be the big man  
3 on the campus as far as trade is concerned. And we all know  
4 who it is. What I am concerned about is not the next 18  
5 months, but the beginning of the next Administration.

6           I think it is indeed a sorry matter if we have to go  
7 through a period of several months fighting to see who is  
8 going to be key in the area of trade. Make no mistake--it  
9 has happened in the past, and it will continue to happen in  
10 the future. The various cabinet members will fight to have  
11 a say on these matters, and that includes the Secretary of  
12 Defense and the Secretary of State; but somewhere in Government  
13 beyond the President, we need one individual--not only with  
14 the expertise and background, but the clout--with the clout,  
15 that the minute he accepts that position, people from other  
16 countries are going to listen to him.

17           It is well known that our competition abroad plays one  
18 agency against another. If they can't get what they like in  
19 one department, they go to another. Now, what we have tried  
20 to carefully craft is a division to focus basic responsibility  
21 in the USTR, just like monetary matters are under the  
22 responsibility of the Secretary of the Treasury and military  
23 matters under the Secretary of Defense, and so forth.

24           At the same time, we make it clear that obviously he has  
25 to act subject to the direction of the President; but when he

1 goes into a trade neogtiation, people know that he is the  
2 individual with clout. As I said, probably the man who is  
3 considered our most successful trade representative thinks  
4 this is a major step forward.

5 Now, Mr. Chairman, I think this is too important an idea  
6 to let collapse on a single vote. So, I will not push for  
7 a vote at this time, but I am going to reserve the right to  
8 proceed with the concept.

9 The Chairman. Thank you very much, Senator. Are there  
10 other amendments to be offered?

11 Senator Heinz. Mr. Chairman?

12 The Chairman. Senator Heinz?

13 Senator Heinz. The Customs Service, which at present  
14 has two or three amendments that they would like to have  
15 offered, I would like to offer them on their behalf; and I  
16 would like them, if they could, to come forward and explain  
17 them, in order to save time. I think they are prepared to  
18 do that.

19 The Chairman. I have no objection to that.

20 Mr. Basha. My name is Stephen Basha. I am the Assistant  
21 Chief Counsel for Enforcement for the Customs Service. This  
22 package of proposed legislation entitled the Trade Enforcement  
23 Act, contains amendments that we think would significantly  
24 cure deficiencies in the present enforcement provisions in  
25 the Customs laws. And I would be glad to go through section

1 by section. I believe there are only three.

2 The Chairman. What are we talking about?

3 (Laughter)

4 Senator Heinz. Could you describe briefly each of the--

5 The Chairman. Now, wait a minute. I want to understand  
6 what we are talking about. Are we talking about a very  
7 extensive piece of legislation here? Have we examined this  
8 before?

9 Senator Heinz. The answer is, I think, that in at least  
10 two of the three instances we have examined them. We in the  
11 committee have had hearings on the legislation; we have  
12 examined them before, but I would ask you to explain very  
13 briefly in two or three sentences each of the three elements.

14 Mr. Basha. All right. There were several of these  
15 that were studied before. One is the statute of limitations  
16 change.

17 The Chairman. This was studied in this Congress by this  
18 committee?

19 Mr. Basha. In the last Congress by the Finance Committee,  
20 as I recollect, in a bill that was introduced by Mr. Heinz.

21 Senator Chafee. Do you have a piece of paper or something  
22 we can look at on this?

23 Senator Heinz. Mr. Chairman, I would ask Mr. Basha if  
24 he could describe the amendments. If not, we just don't have  
25 the opportunity to do it any other way, and we will just have

1 to pass over them.

2 Mr. Basha. Yes, I can describe them quickly.

3 Senator Heinz. Please.

4 Mr. Basha. All right.

5 Senator Heinz. Describe the statute of limitations  
6 amendment, what it says.

7 Mr. Basha. All right. 19 U.S.C. 1621 currently provides  
8 that an action to enforce any suit or violation of the Customs  
9 laws must be commenced within five years of the date of the  
10 violation; and the commencement period is a filing of a suit  
11 generally in a court of law. The amendment would provide that  
12 the commencement would run from the filing of a penalty notice,  
13 which is the administrative process in Customs that really  
14 initiates the action.

15 The second amendment would reduce the time period in  
16 which general order merchandise must be stored before it can  
17 be sold; and there is another amendment that would allow it  
18 to be either retained for official use or treated in the same  
19 manner as forfeited merchandise. And that is an amendment to  
20 a very old statute which is outmoded.

21 There is another provision that would amend the --

22 The Chairman. Wait a minute; let me interrupt here. Mr.  
23 Lang, have you studied these?

24 Mr. Lang. Yes. We were given them a few days ago or a  
25 week ago by Senator Heinz's staff. Some of the provisions have



1 been discussed in the committee in previous years. I am not  
2 familiar with the hearing on them, but they were controversial.

3 This grand jury amendment raised some questions for  
4 Senator Mitchell, and there may be other subjects in here.  
5 I am sorry I haven't given them the time they deserve.

6 The Chairman. Senator, I really am concerned. I have,  
7 for example, a substantial part of the border between the  
8 United States and Mexico in the State I represent. I have  
9 a great interest in Customs, yet a lot of brokers and small  
10 businessmen around there who are very much involved in these  
11 issues. What I really would prefer, if we could, Senator,  
12 is to have a hearing on these. I would be delighted to give  
13 you a hearing on these and do it expeditiously and try to  
14 consider them at that time, rather than take them up now.

15 Senator Heinz. Mr. Chairman, in view of the discussions  
16 presented at this point, I agree with you.

17 The Chairman. All right. Thank you very much.

18 Mr. Basha. Thank you.

19 The Chairman. Thank you, Mr. Basha. Are there other  
20 amendments to be presented? Yes, Senator Roth?

21 Senator Roth. Mr. Chairman, I would like to propose as  
22 an amendment an administrative procedure for the suspension  
23 of noncontroversial duties. As you well know, there are on  
24 occasion situations where a domestic manufacturer discovers  
25 that there is no domestic supply for a component or a substance

1 they use in manufacturing a product in the United States.

2 In such cases, of course, they have no alternative but  
3 to import the necessary raw material and to pay the U.S.  
4 duty on that importation. Now, obviously, the duty raises  
5 the cost and lessens the competitiveness of the U.S. industry.

6 So, from time to time, Congress will routinely pass  
7 legislation temporarily suspending U.S. duties on such  
8 products. I guess we have had that experience this morning  
9 on a number of those. Now, usually Congress only enacts those  
10 where they are noncontroversial, that is there is neither any  
11 Administration nor any significant domestic industry or group  
12 opposing the suspension.

13 What we are proposing here is to provide a procedure that  
14 this could be done without necessarily going to Congress,  
15 although that could continue to be done as well. And the  
16 reason that we think that it is important is that many times  
17 such action is delayed indefinitely, and it does hurt the  
18 competitiveness of this country. And I think that is what we  
19 are trying to promote.

20 Specifically, what we are providing is a basic procedure  
21 that would be established that any person or persons who wants  
22 a suspension would file a petition with the ITC containing  
23 sufficient information to enable the ITC to decide whether  
24 investigation is warranted. If they decide to go ahead, the  
25 will notify the U.S. Trade Representative and publish notice

1 of the investigation. The Government can also self-initiate.  
2 The ITC will investigate whether the article that is the  
3 subject of the investigation is produced in the United States  
4 or likely to be produced. It will give the opportunity for  
5 comment; and if it determines after completing this research  
6 to make a determination that it is noncontroversial and  
7 advises the President of its views.

8 Then, the President in turn will decide what action to  
9 take; and he can, of course, among others suspend the duty  
10 for three years. So, what this is, in effect, is a substitute  
11 for having to go to Congress as a means of expediting the  
12 process. This is critically important in many industries,  
13 including the chemical industry. The chemical industry has  
14 historically been one that has particularly given us a  
15 favorable balance in their own trade. Increasingly, they are  
16 finding it hard to compete; and I would hope that we could  
17 agree on this kind of routine procedure to enable these duty  
18 suspensions to be accomplished by administrative action, but  
19 only in noncontroversial cases.

20 The Chairman. Would the Administration comment on that?

21 Mr. Woods. Thank you. We basically are sympathetic to  
22 the concept that Senator Roth has outlined. It is a very  
23 technical area that we would want to make sure that, as the  
24 legislative language was drafted, we had the ability to address  
25 the specific technical issues that we would be concerned about.

1 If we can do that, we would be certainly sympathetic to  
2 the concept.

3 Senator Danforth. Mr. Chairman?

4 The Chairman. Yes, Senator Danforth?

5 Senator Danforth. Mr. Chairman, I just hate to be  
6 always--at least in the last half-hour--opposing Senator  
7 Roth's ideas. I do oppose this. I do it for practical  
8 reasons. Having been involved in some trade bills in the  
9 last few years, I just hate to see the Finance Committee  
10 give away any more bargaining depth that it has to. And I  
11 think that that is what is involved here, really.

12 I think that it is very much the same as in a tax bill.  
13 You know, we could say there are certain noncontroversial  
14 items that people want to get accomplished in tax bills; so,  
15 let's let the Treasury Department do them. I think that that  
16 would be a mistake, and I think that when we legislate in  
17 the area of taxation or in the area of trade, it is important  
18 for us to have as much discretion as we can marshal for the  
19 committees of Congress in dealing with these matters.

20 The Chairman. Senator, did you want to speak to that?

21 Senator Chafee. Mr. Chairman?

22 The Chairman. Yes, Senator Chafee?

23 Senator Chafee. As I understood it--and Ambassador Woods  
24 didn't have the microphone terribly close, so I am not sure I  
25 heard what he said--but as I understood it, they weren't quite

1 sure of the language but, absent that, they thought they could  
2 work it out. Is that correct?

3 Mr. Woods. As I said, we are sympathetic to the concept;  
4 and if the language would deal with some of the technical  
5 problems that we might have with it, we would be glad to  
6 try to work it out.

7 Senator Chafee. But as I understand it, you would have  
8 to have the notice in some form so that everybody is alerted  
9 to it. Is that correct, Senator Roth?

10 Senator Roth. That is correct.

11 Senator Chafee. It is just dealing with these routine  
12 things that we don't get to very often here. I don't know  
13 when was the last time we dealt with this long list of --

14 Senator Roth. I think we had none last year.

15 Senator Chafee. And I think that Senator Roth's proposal  
16 makes some sense, assuming that the technical details can be  
17 worked out. But I think it is putting the petitioners in  
18 quite a problem to come up here and have to go through this  
19 elaborate business of being included in the legislation,  
20 instead of having a routine method of satisfying these  
21 noncontroversial problems.

22 Senator Moynihan. Mr. Chairman?

23 The Chairman. Yes, Senator Moynihan?

24 Senator Moynihan. Could I remark that we ought to have  
25 as simple and direct a process for this to deal with these

1 cases as we can. I wonder if there is not, in fact, a  
2 Constitutional question. Trade is a Congressional  
3 responsibility under Article 1, and I don't think we can  
4 delegate it. I think we should work out a fast track for  
5 dealing with those cases that Senator Roth very properly  
6 described, but I don't know that we can delegate it.

7 The Chairman. Are there other comments concerning that?

8 Senator Roth. Mr. Chairman, could I just make a quick  
9 statement?

10 The Chairman. Yes.

11 Senator Roth. I would hope that we could proceed. On  
12 a lot of things, Constitutional questions can be raised; and  
13 it is always, I think, risky business to try to decide ahead  
14 of time what the nine old men and women might decide.

15 In this case, I think there is a need. We are only  
16 dealing with the noncontroversial ones. If you want to put  
17 in it something that either the House Ways and Means or  
18 the Senate Finance Committee considers this a controversial  
19 matter, we are not trying to bypass them, when there is  
20 some controversy. We are supposedly concerned about doing  
21 something about the imbalance, and the fact is that Congress  
22 just is not in the position to act as fast as is necessary  
23 for competitive purposes.

24 So, I would urge that we go ahead. I am perfectly happy  
25 to have the language worked out with Mr. Lang and the

1 Administration and see if we can't at least take this one  
2 small step to help competitiveness.

3 The Chairman. Are there further comments?

4 (No response)

5 The Chairman. Do you move the amendment?

6 Senator Roth. I move the adoption of my amendment.

7 The Chairman. All right. Is there a request for a  
8 roll call?

9 (No response)

10 The Chairman. All those in favor make it known by saying  
11 "Aye."

12 (Chorus of ayes)

13 The Chairman. Opposed?

14 (Chorus of noes)

15 The Chairman. The ayes appear to have it. The ayes have  
16 it.

17 Senator Roth. Thank you, Mr. Chairman.

18 Senator Danforth. Mr. Chairman?

19 The Chairman. Yes?

20 Senator Danforth. Just a point of clarification. I  
21 understand this to be in addition to the Congressional route,  
22 not in lieu of the Congressional route.

23 Mr. Lang. Yes.

24 The Chairman. All right. Are there other amendments?  
25 Don't tell me that day has arrived.

1 (Laughter)

2 Senator Bradley. Mr. Chairman?

3 The Chairman. All right.

4 (Laughter)

5 The Chairman. Senator Bradley?

6 Senator Bradley. I intended to offer an amendment on  
7 Third World debt and its relation to trade, but I understand  
8 that you have a request from the chairman of the Banking  
9 Committee that he views that as the territory of the Banking  
10 Committee and requests that we not act in that area. So, I  
11 will refrain from offering it, but what I would like to do is  
12 to ask the committee to keep an open mind based upon what  
13 does come out of the Banking Committee because I might want  
14 to do something on the floor, because there is a direct  
15 connection between the Third World debt issue and the trade  
16 deficit. There is a very direct connection between job  
17 loss in this country and the way we have handled that issue.

18 So, I hope that my not doing it now will not prejudice  
19 members from listening to the case if it be necessary on  
20 the floor.

21 The Chairman. Senator, I understand that and I know of  
22 your great interest in it; and I have talked to the chairman  
23 of the committee over there, and he has a high respect for  
24 your thoughts on that and he is interested in them.

25 So, I am sure that you will be very much a part of that



1 debate, and we will be interested in it.

2 Now, are there other amendments? Yes?

3 Senator Heinz. Mr. Chairman, I don't have an amendment,  
4 but I have a comment I would like to make at the appropriate  
5 time.

6 Senator Packwood. Mr. Chairman?

7 The Chairman. Yes, Senator Packwood?

8 Senator Packwood. Mr. Chairman, I am going to vote  
9 for this bill, with some misgivings; and the misgivings are  
10 substantive. And if I had to vote for this as the final  
11 conference report, I would vote against it. But the chairman  
12 has done an extraordinary job in getting a reasonable  
13 consensus on 80 to 90 percent of some very difficult problems  
14 that I frankly questioned whether a consensus could be reached  
15 on. My problem, I guess, if this would be the final bill  
16 would be this.

17 Would I be willing to give the President a pretty good  
18 extension of his bargaining authority and trade off any right  
19 for him to decide, based upon the public good, whether imports  
20 were sufficiently injuring jobs that he would be willing to  
21 make a decision to not impair the injured industry in exchange  
22 for taking care of the public good.

23 I am bothered about the lamb import quotas aimed at two  
24 of our best allies. We have a trade adjustment bill in here  
25 with no cap on it, and I support trade adjustment assistance;

1 but I would like to have some idea of what it costs, and I  
2 don't think we know. And we have extended some special  
3 benefits to oil and gas workers that no other workers in  
4 the country get.

5 Having said all that, I will support it. I will offer  
6 some amendments on the floor. This bill is still salvageable.  
7 I mean, it can be a very good bill on the floor; and by the  
8 time we finish conference, it can be an excellent bill. It  
9 can be. I don't know if it will be. I don't know where the  
10 Administration will be when we finally finish, but I really  
11 take my hat off to Chairman Bentsen who, I think, has done  
12 an extraordinary job in a relatively brief period of time.

13 And I will support reporting the bill.

14 The Chairman. Thank you very much, Senator. Senator  
15 Heinz?

16 Senator Heinz. Mr. Chairman, I am going to vote for the  
17 bill; and while I hope to see the bill further strengthened  
18 on the floor, I think this is a very significant step forward.

19 This legislation targets much stronger, surer action  
20 against the explicit unfair trade practices of others; and it  
21 is, therefore, a major advancement in that regard, and it  
22 contains a number of items that a number of us have been  
23 working very hard on over the years: a critical circumstances  
24 provision that will allow much more rapid relief, the nonmarket  
25 economies legislation which I think I first introduced in 1979.

1           We have tightened countervailing duty and antidumping  
2 statutes. There is an important amendment to the President's  
3 steel policy. If there is one area in which the bill falls  
4 short, it is in my judgment in not more broadly attacking the  
5 large bilateral trade deficits that some countries enjoy  
6 because of their mercantilist policies.

7           At the same time, I would anticipate the Administration  
8 will argue that the legislation is too tough, too tough because  
9 it does require action against unfair trade practices in  
10 particularly egregious cases, and thereby gives the President  
11 less flexibility than he has heretofore had.

12           The fact that I think most members of the committee are  
13 going to vote for the bill does lend a lot of credibility  
14 to Bob Packwood's point, which is that the chairman of the  
15 committee has done an extraordinary job in fashioning  
16 legislation which is acceptable to a very broad set of points  
17 of view in this committee.

18           Mr. Chairman, let me just say you have done an extraordinary  
19 extraordinary job, and I commend you and I congratulate you.

20           The Chairman. Senator, you are very generous, and I  
21 appreciate that. Are there any further comments?

22           Senator Daschle. Mr. Chairman?

23           The Chairman. Senator Daschle?

24           Senator Daschle. Thank you. I would want to be sure that  
25 someone on this side of the aisle as well complimented the

1 chair. I am the newest kid on the block, and I have nothing  
2 to which to compare the deliberations, but I must say that I  
3 think this has been handled in a very admirable fashion.

4 I would share that in particular that the staff, in  
5 their professionalism and the fairness with which they have  
6 prepared this work, is commendable. And I know we all have  
7 a true sense of gratitude to them.

8 The Chairman. Thank you very much. Yes, Senator  
9 Moynihan?

10 Senator Moynihan. Could I join in this well deserved --

11 (Laughter)

12 Senator Moynihan. There are very few moments when you  
13 hear things like this after the hours and days and weekends  
14 of work, that you have done a superb job of leadership. I  
15 think, sir, this is your first major bill of your chairmanship,  
16 and I think it is a tribute to you. And I think it will be  
17 remembered as an act of statemanship with respect to an  
18 issue where the capacity for ruin was very high. And you  
19 have saved us from that and taken us further to something  
20 which is something to be proud of. And I must say I am proud  
21 to be serving on this committee.

22 Senator Baucus. Mr. Chairman?

23 The Chairman. I am told that those kinds of statements  
24 are just great, as long as you don't inhale them.

25 (Laughter)

1 The Chairman. And I am most appreciative. Senator  
2 Baucus?

3 Senator Baucus. Mr. Chairman, I don't know the exact  
4 date--I have forgotten--but I think that the date on which  
5 we passed the tax bill was the same date, but it was 3:00  
6 in the morning.

7 Senator Packwood. This chairman has done a much better  
8 job.

9 (Laughter)

10 Senator Baucus. I think it is significant frankly that  
11 two major bills have been passed on the same dates, and we  
12 are all very proud of your efforts and all our joint efforts  
13 because I think it is a very good bill.

14 The Chairman. Thank you, Senator.

15 Senator Bradley. Mr. Chairman?

16 The Chairman. Yes?

17 Senator Bradley. Let me just echo the fine compliments,  
18 well deserved, that you have received. I think you have done  
19 an outstanding job, and now I would like to move to reconsider  
20 the oil amendment--no--

21 (Laughter)

22 The Chairman. Strike that.

23 (Laughter)

24 The Chairman. Before this gets out of hand, I will call  
25 on Senator Danforth.

1           Senator Danforth. I have said to you in the past that  
2 the passage of this bill--enactment of this legislation--is  
3 going to be an enormously difficult task. It is going to  
4 be harder than passing the tax bill, by a long shot.

5           I felt that, as soon as the tax bill was introduced,  
6 it was going to be passed one way or another. The trade  
7 bill is much more "iffy." It is a real high-wire act that  
8 you are engaged in because, on one hand, you have people who  
9 feel very strongly that we should move more in the direction  
10 of protectionism; and on the other hand, you have those who  
11 believe that almost anything is too loosely fashioned.

12           The difficulty of pleasing both sides and getting  
13 something that the President will sign is an enormously  
14 difficult undertaking. I think that when people watch a  
15 high-wire act, they hold their breath. They don't burst  
16 into excitement, and some of the comments you have heard in  
17 the last five or ten minutes have been good, but could have  
18 been this or that.

19           Senator Packwood was reserved in his comments from one  
20 philosophical perspective; Senator Heinz from quite another  
21 philosophical perspective was also reserved. And I think  
22 that is going to be the case until this bill gets through  
23 conference. I think that it is going to be a high-wire act  
24 right to the end and that people are going to be holding  
25 their breath right to the end. I believe we have a chance

1 to pass the bill. I believe we have a chance to get one that  
2 the President will sign and not just a weak bill, not just  
3 a dumping bill. But I think that there is a good chance that  
4 we can pass trade legislation that is strong and yet  
5 responsible and one that does move in the direction of  
6 free trade without protectionism.

7 I want to compliment you, Mr. Chairman, as everyone else  
8 has on an absolutely extraordinary job. It has been masterful  
9 to date, and I hope that you reach the platform at the end  
10 of the high-wire act.

11 The Chairman. Thank you, Senator.

12 Senator Chafee. Mr. Chairman?

13 The Chairman. Senator Chafee?

14 Senator Chafee. First, I haven't prevailed on everything  
15 in here. As a matter of fact, there are a few things I can  
16 remember that went on, but I did bet Jeff Lang a dinner that  
17 we would--the trouble was that it wasn't a bet. I said that  
18 I would give him a dinner if there weren't more than 40  
19 witnesses. He didn't bet back, and it turns out there were  
20 92 witnesses. So, I don't owe him a dinner.

21 (Laughter)

22 Senator Chafee. But I will congratulate you on what you  
23 have done here, steering a course between two very divergent  
24 interests. I would just like to say that there is much in  
25 this bill that we are going to report out that I will vote

1 for that I hope can be straightened out. I am talking about  
2 the workers' rights and the provision that gives the right  
3 of action against some countries: such as China and the  
4 Soviet Union with some outs, but the President has to find a  
5 very narrow out; the 201 limited Presidential discretion  
6 that Senator Packwood mentioned; the auction of the quotas;  
7 the possibility of an oil import fee that was discussed earlier  
8 today, and the failure of the gray market; but so be it.

9 I just hope we can improve the bill when we go through  
10 conference and on the floor, but nonetheless, I will vote for  
11 it with the hopes that some measures can be taken to improve  
12 it as I see it. I want to thank you for your fine leadership.

13 The Chairman. Thank you, gentlemen. Let me say that,  
14 when we started out, we wanted to put a positive bill out  
15 on trade and that the objective was to try to break down  
16 barriers to trade. And I think we have done that in this  
17 bill. I think it is a good bill.

18 Each of us would have designed it somewhat differently,  
19 but the democratic process has worked here; and I set out to  
20 make it a bipartisan effort, and we have had that. And that  
21 is one of the unique things about this committee, I think, is  
22 how we work together to try to bring about what we think is  
23 fair and effective legislation.

24 And this staff of ours is remarkable. The hours that they  
25 have put in, the expertise that they have dedicated to this --



1 (Applause)

2 The Chairman. With that, and my thanks to each and  
3 every one of you for participation, there just hasn't been  
4 any rancor; there has been cooperation. We have had differing  
5 points of view, but we have resolved them.

6 So, now, let's get on with it.

7 Senator Packwood. If I might add, I think that Mr. Woods  
8 and Mr. Holmer have been extraordinarily helpful.

9 The Chairman. Yes, they have done a good job.

10 Senator Packwood. Yes, well done.

11 (Applause)

12 Senator Matsunaga. Mr. Chairman?

13 The Chairman. Senator Matsunaga?

14 Senator Matsunaga. At the beginning, Mr. Chairman, I  
15 was concerned, as so many of my business friends were who  
16 are so fearful of a protectionist measure coming out of this  
17 committee, especially with the chairman being from oil country  
18 in Texas. But I think from the comments I have heard today,  
19 they are very much satisfied; and I wish to join my colleagues  
20 in congratulating you for the way you have handled the  
21 hearings as well as the markup session.

22 I think it is a remarkable effort on your part and, of  
23 course, I am not saying that because of my name and face; the  
24 Japanese will be happy, too, but I think in talking to some of  
25 those that I have been approached by, not only the Ambassador

1 of Japan, the Ambassador of China, the Ambassador of Taiwan  
2 --you name it--they have been in to see me. And their  
3 expression was fear of protectionism, and I think that that  
4 fear will definitely be assuaged by the bill that we are  
5 reporting out.

6 The Chairman. Thank you, Senator.

7 Senator Wallop. Mr. Chairman?

8 The Chairman. Yes.

9 Senator Wallop. I won't be long because I would echo  
10 everything that everybody has said. And I certainly feel  
11 that what you said about fairness is absolutely correct.

12 The Chairman. Thank you, Senator.

13 Senator Wallop. And I will continue to work to try to  
14 find legislation which I find satisfactory. I will not vote  
15 for this. One of the problems that I have with it is I find  
16 us having decided that the greatest sin a President can  
17 possibly express, having become President, is the wish to  
18 be President. I think we have overly limited the ability and  
19 powers of our leader. I think in some areas we have provided  
20 our country with hammers instead of tools.

21 I think in some instances the consequences of what we  
22 have done will be diminished trade rather than expanded trade.

23 I think that the bill is a substantially better piece  
24 of legislation that it was when we began. I think everybody  
25 has been fair, and I will continue to work on it. I would not

1 in any way seek to delay it or in any way stop the progress  
2 of it, either here or on the floor.

3 The Chairman. Thank you very much, Senator. Now, I  
4 would like to ask the committee to report out S. 490 as  
5 amended. May I have a motion to that effect?

6 Senator Roth. I so move.

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

9 (Chorus of ayes)

10 The Chairman. Opposed by a similar sign.

11 (No response)

12 The Chairman. Now, let's have a roll call on this, so it  
13 will be on the record.

14 Senator Roth. Mr. Chairman?

15 The Chairman. Yes.

16 Senator Roth. The statement that Senator Packwood made  
17 I think is probably understood by all of us. Many of us  
18 are voting for it because we want the legislation to move  
19 forward. I don't want the situation to happen where I get  
20 marked down for not saying something nice about the chairman  
21 because we all share appreciation for your strong leadership.

22 (Laughter)

23 Senator Roth. But I do want to make the record clear  
24 that there are things that concern me that I will be seeking  
25 to amend, either on the floor or in conference; but at the

1 same time, I think it is a worthy effort, and I shall vote for  
2 the legislation on the coming roll call.

3 The Chairman. Thank you. Would you proceed, please?

4 The Clerk. Mr. Matsunaga?

5 Senator Matsunaga. Aye.

6 The Clerk. Mr. Moynihan?

7 Senator Moynihan. Aye.

8 The Clerk. Mr. Baucus?

9 Senator Baucus. Aye.

10 The Clerk. Mr. Boren?

11 The Chairman. Aye by proxy.

12 The Clerk. Mr. Bradley?

13 Senator Bradley. Aye.

14 The Clerk. Mr. Mitchell?

15 (No response)

16 The Clerk. Mr. Pryor?

17 Senator Pryor. Aye.

18 The Clerk. Mr. Riegle?

19 Senator Riegle. Aye.

20 The Clerk. Mr. Rockefeller?

21 Senator Rockefeller. Aye.

22 The Clerk. Mr. Daschle?

23 Senator Daschle. Aye.

24 The Clerk. Mr. Packwood?

25 Senator Packwood. Aye.

1 The Clerk. Mr. Dole?

2 (No response)

3 The Clerk. Mr. Roth?

4 Senator Roth. Aye.

5 The Clerk. Mr. Danforth?

6 Senator Danforth. Aye.

7 The Clerk. Mr. Chafee?

8 Senator Chafee. Aye.

9 The Clerk. Mr. Heinz?

10 Senator Heinz. Aye.

11 The Clerk. Mr. Wallop?

12 Senator Wallop. No.

13 The Clerk. Mr. Durenberger?

14 Senator Packwood. Aye.

15 The Clerk. Mr. Armstrong?

16 Senator Armstrong. Aye.

17 The Clerk. Mr. Chairman?

18 The Chairman. Aye.

19 Ladies and gentlemen, that is it. We have done it.

20 Thank you very much.

21 (Whereupon, at 4:40 p.m., the meeting was concluded.)

22

23

24

25

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

1  
2 This is to certify that the foregoing proceedings of an  
3 Executive Session of the Committee on Finance, held on  
4 May 7, 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  
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15 My Commission expires April 14, 1989.  
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## CURRENCY MANIPULATION AMENDMENT

More than half of all U.S. trade is with countries whose currencies have not substantially appreciated against the dollar since 1985. The values of some of these currencies are clearly the result of deliberate government policies intended to maintain a favorable trade advantage. This government manipulation of exchange rates has cost us export opportunities. It is an unfair trading practice - it is like government-sponsored dumping, except it affects all products.

This amendment changes the Committee bill in two important ways. First, it focuses attention on government manipulation rather than on pegging. Pegging a currency to a fixed rate is not necessarily unfair, so long as the peg is adjusted periodically to reflect underlying economic fundamentals. Government manipulation of exchange rates is internationally recognized as unfair. The definition of manipulation in the amendment is similar to that used in the Articles of Agreement of the International Monetary Fund.

Second, this amendment requires a second round of negotiations within 6 months if the exchange rate issue cannot be resolved bilaterally. The goal of this second round would be to obtain trade concessions to compensate the U.S. for the manipulation. This second round is necessary to give Treasury additional leverage to obtain agreement on exchange rate reform. The Treasury is already negotiating with Taiwan and South Korea on exchange rates. The results are mixed - the new Taiwan dollar has appreciated against the dollar, but not enough; the Korean won has not moved appreciably.

CURRENCY MANIPULATION AMENDMENT  
DETAILED SUMMARY

I. Amend subsection (a) so that it reads as follows:

IN GENERAL. - The President shall take action to initiate bilateral currency negotiations on an expedited basis with each foreign country that manipulates its exchange rate, and maintains barriers to investment, discourages internal investment, or engages in a pattern of other acts, policies, or practices for the purposes of --

- i) preventing effective balance of payments adjustments, or
- ii) gaining an unfair competitive advantage in trade.

These negotiations shall begin upon the President's finding that the currency of the foreign country is substantially undervalued against the U.S. dollar. In making this finding, the President shall consider, inter alia, the relative rates of inflation between the U.S. and the foreign country. The purpose of these negotiations shall be to ensure that such foreign country regularly and promptly adjusts the rate of exchange between the currency of such foreign country and the United States dollar to accurately reflect the underlying economic fundamentals.

II. Redesignate subsection (b) as subsection (c), and change all references to subsection (a) in the redesignated subsection (c) to read subsections (a) and (b).

III. Add a new subsection (b) providing for a second round of negotiations.

(b) Trade Concessions - This round of negotiations will begin within 6 months if the currency negotiations are not successful. If the President determines that the country has a material global current account surplus (taking into account the strength of the economy), he shall take action to initiate negotiations to exact trade concessions in the amount of the trade disadvantage suffered by the U.S. as a result of the currency manipulation.

IV. Add a new subsection (d) providing for an annual report by the Secretary of the Treasury and the USTR.

(d) - The Secretary of the Treasury and the USTR shall report to the Congress annually on the currency exchange rate policies and trade policies of countries with global current account surpluses.

The report shall describe the exchange rate policy of each country, identifying those countries that manipulate their exchange rates, and maintain barriers to investment, discourage internal investment, or engage in a pattern of other acts, policies, or practices for the purposes of i) preventing effective balance of payments adjustments, or ii) gaining an unfair competitive advantage in trade.

The Department of Commerce is required to collect and publish information on global and bilateral current account balances.



SPECIFICATIONS

FOR BAUCUS/BRADLEY CURRENCY MANIPULATION AMENDMENT

Findings

1. The benefit of trade concessions can be adversely affected by misalignments in currency.
2. Misalignments in currency caused by government policies intended to maintain and unfair trade advantage tend to nullify and impair trade concessions.

In general.--Whenever, in the course of trade negotiations pursuant to this Act, the President determines that a foreign government in the negotiation both manipulates its exchange rate and maintains barriers to investment; discourages internal investment; or engages in a pattern of other acts, policies, or practices for the purposes of (i) preventing effective balance of payments adjustments or (ii) gaining an unfair competitive advantage in trade, then the President shall take action to initiate bilateral currency negotiations on an expedited basis with such foreign country.

Conditions on negotiations.--Negotiations ought not begin unless the President finds that the currency of the foreign country is substantially undervalued against the U.S. dollar and that the foreign country has a material global current account surplus.

SUMMARY OF BAUCUS LAMB IMPORT ACT

OVERVIEW

The purpose of this amendment is to give U.S. lamb producers the same protection from surges of imports that is provided to the U.S. beef industry. This amendment sets a quota each year, based upon market trends in the U.S., that controls the amount of lamb that can be imported. The quota is so liberal that it will only be engaged if there is a dramatic surge of lamb imports; it even allows for reasonable import expansion as the U.S. market grows. We have similar import controls on most other meats. None of the other meat import quotas have ever been challenged under GATT.

SUMMARY

The Meat Import Act controls imports of beef, veal, mutton, and goat. The quotas set by the Meat Import Act are structured to give the nations that export meat to the U.S. an incentive to negotiate Voluntary Restraint Agreements (VRAs) on meat instead of forcing the U.S. to actually trigger a quota. These voluntary restraints are not covered by GATT. This system of avoiding GATT challenges has been so successful that, in twenty three years of operation, meat import restraints have not even been challenged under GATT.

This amendment establishes a separate import control for lamb that directly parallels the import control on beef in the Meat Import Act. The amendment, however, is not attached to the Meat Import Act. None of the changes made by this amendment in any way effect the beef quota. The National Cattleman's Association has prepared a letter indicating that they in no way oppose this amendment. The amendment provides for increased imports during a shortage to ensure that consumers will not be forced to pay high prices for lamb when domestic production is down.

This amendment only prevents sudden surges of imported lamb, it does not impede the normal flow of imports. The amendment contains a provision ensuring that at least 28.5 million pounds of lamb will always be allowed to enter the U.S. The average level of imports over the last six years has been 24 million pounds. The peak level for that period--reached in 1986--was 27.8 million pounds. Clearly, this quota will not roll-back imports below the levels experienced in recent years.

Lamb producers are only seeking the same level of protection that other meat producers already have. The Senate originally included lamb in the Meat Import Act amendments of 1979. But lamb was dropped in conference because, at the time, imports of lamb controlled only 1.5% of the domestic market while beef imports controlled 10% of the domestic market. Now, lamb imports control more than 10% of the domestic market and beef imports control less than 8%.

If we do not prevent sudden surges of lamb imports, U.S. lamb producers could be wiped out. If the import pattern set in January holds, these heavily subsidized lamb imports may surge to 45 million pounds in 1987 and 70 million pounds in 1988.

Senator Chafee's Amendment is identical to S.1097, which provides the following changes to the Tariff Act of 1930:

5/7

Section 526 of the Tariff Act of 1930 (19

U.S.C. 1526) is amended by adding at the end thereof the

following:

“(f)(1) Nothing in this Act or the Act of July 5, 1946

(60 Stat. 427; chapter 540) shall restrict the importation or

sale of foreign-made articles bearing a trademark or trade

name identical with one owned and registered by a citizen

of the United States or a corporation or association created

or organized within the United States if—

“(A) both the foreign and the United States

trademark or trade name are owned by the same

person or business entity;

“(B) the foreign and domestic trademark or

trade name owners are parent and subsidiary compa-

nies or are otherwise subject to common ownership

or control; or

“(C) the articles of foreign manufacture bear a

recorded trademark or trade name applied under au-

thorization of the United States owner.

“(2) For purposes of this subsection—

“(A) The term ‘common ownership’ means in-

dividual or aggregate ownership of more than 50

percent of the business entity.

“(B) The term ‘common control’ means effec-

DURENBERGER AMENDMENT ON GRAY MARKET

1. IF THE UNITED STATES TRADEMARK OR TRADE NAME OWNER, OR A RELATED COMPANY, OR A COMPANY UNDER AUTHORIZATION OF SUCH OWNER MANUFACTURES OR PRODUCES ARTICLES ABROAD WHICH ARE FORMULATED DIFFERENTLY, CONSTRUCTED DIFFERENTLY, OR OTHERWISE VARY FROM THE PRODUCT SOLD IN THE THE UNITED STATES, AND BEAR A TRADEMARK OR TRADE NAME IDENTICAL TO THE TRADEMARK OR TRADE NAME BORNE BY SUCH ARTICLES IMPORTED BY OR WITH THE CONSENT OF THE UNITED STATES TRADEMARK OR TRADE NAME OWNER, THE UNITED STATES TRADEMARK OR TRADENAME OWNER SHALL NOTIFY THE U.S. CUSTOMS SERVICE THAT SUCH ARTICLES VARY FROM THE PRODUCT SOLD IN THE UNITED STATES AND SHALL IDENTIFY THOSE COUNTRIES WHERE THE PRODUCTS PRODUCED DIFFER FROM THOSE SOLD IN THE UNITED STATES.

2. U.S. CUSTOMS SHALL CREATE A REGISTER AVAILABLE TO THE PUBLIC IDENTIFYING WHICH TRADEMARKED PRODUCTS ARE FORMULATED DIFFERENTLY, CONSTRUCTED DIFFERENTLY, OR OTHERWISE VARY FROM THE PRODUCT SOLD IN THE UNITED STATES.

3. IT SHALL BE THE RESPONSIBILITY OF THE IMPORTER OF SUCH PRODUCTS TO PLACE A LABEL ON SUCH PRODUCTS IDENTIFYING THAT THEY ARE OF THE FOREIGN COUNTRY FORMULATION--FOR EXAMPLE "FRENCH FORMULA"

4. THE TREASURY DEPARTMENT SHALL PROMULGATE SUCH REGULATIONS AS ARE NECESSARY TO IMPLEMENT THIS PROVISION.

5. CONGRESS SHALL APPROPRIATE SUCH ADDITIONAL FUNDS AS ARE NECESSARY FOR U.S. CUSTOMS TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS AMENDMENT.

5/7

### Enforcement of the Restrictions Against Imported Pornography

The amendment is identical to Sec. 876 of H.R. 3 (page 889) which passed the Ways and Means Committee and the House without opposition.

The purpose of the language is to improve the government's ability to prosecute cases involving the importation of pornographic material. Currently, obscenity importation offenses are prosecuted in the district in which the material is seized.

The amendment would allow, but not require, Customs agents to forward the seized material to the U.S. Attorney in the district to which the material was addressed in order to allow for prosecution where the material was destined to go and to reduce the workload at the major ports of entry.

The amendment would also lengthen the time in which forfeiture proceedings must be commenced from 14 to 30 days. This gives the government a more realistic time frame in which to proceed.

## FACT SHEET

## ENERGY SECURITY ACT OF 1987

Section 232 of the Trade Expansion Act of 1962 authorizes the President to take such action, and for such time, as he deems necessary to adjust imports of any article or its derivatives "so that such imports will not threaten to impair the national security," subject to congressional disapproval in the case of petroleum imports.

The Energy Security Act of 1985 is a straightforward bill. It proposes no drastic remedy to the problem of overdependence on imported oil. It grants the President no authority that he does not already possess under Section 232 of the Trade Expansion Act of 1962. It only requires that the President exercise his authority when oil imports are projected to reach critical levels.

Specifically, the Energy Security Act of 1987

1. Declares that U.S. energy security requires a national energy policy in which foreign oil dependence will not exceed 50% of consumption (U.S. foreign oil dependence was 33% in 1973 just prior to the embargo, 27% in 1985, and has risen to about 40% today).
2. Requires the President to submit to Congress with his budget annual projections of U.S. oil production, demand and imports of crude oil and refined product for the three subsequent years.
3. Gives Congress ten session days to review the oil demand, supply and import data, and to modify the presidential projections if appropriate by joint resolution.
4. Provides that for any year in which oil imports are projected to exceed domestic production of oil and natural gas liquids, the President must submit to Congress, within ninety session days of the certification of the projection, an energy plan designed to prevent foreign oil dependence from exceeding 50%.
5. Gives Congress ninety session days to disapprove or modify the energy plan by joint resolution, or else it becomes effective.
6. States that the energy plan may include utilization of all powers currently within the law, energy conservation actions, expansion of the Strategic Petroleum Reserve to maintain a ninety-day cushion against projected oil import blockages, and production incentives for domestic oil and gas, including tax and other incentives for stripper well production, offshore, frontier, and other oil produced with tertiary recovery techniques.

A copy of the Energy Security Act of 1987, as modified May 7, 1987, is attached.

100TH CONGRESS  
1ST SESSION

# S. 694

To provide a comprehensive national oil security policy.

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## IN THE SENATE OF THE UNITED STATES

MARCH 10, 1987

Mr. BENTSEN (for himself, Mr. WALLOP, Mr. BOBEN, Mr. PRYOR, Mr. DOMENICI, Mr. BREAU, Mr. MELCHER, Mr. SIMPSON, Mr. BUMPERS, Mr. BUDICK, Mr. STENNIS, Mr. BAUCUS, Mr. BINGAMAN, Mr. MURKOWSKI, Mr. DOLE, Mr. NICKLES, Mr. WIETH, Mr. MCCAIN, Mr. GAHN, Mr. SIMON, Mr. DIXON, Mr. CONRAD, Mrs. KASSEBAUM, Mr. COCHRAN, and Mr. MATSUNAGA) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide a comprehensive national oil security policy.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Energy Security Act of  
5 1987".

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) **FINDINGS.**—The Congress finds that—

1 (1) the United States is the leader of the free  
2 world and has world wide responsibilities to promote  
3 economic and political security;

4 (2) the exercise of traditional responsibilities here  
5 and abroad in foreign policy requires that the United  
6 States be free of the risk of energy blackmail in times  
7 of shortages;

8 (3) the level of the United States oil security is  
9 directly related to the level of domestic production of  
10 oil, natural gas liquids, and natural gas;

11 (4) a national energy policy should be developed  
12 which ensure that adequate supplies of oil shall be  
13 available at all times free of the threat of embargo or  
14 other foreign hostile acts; and

15 (5) the ability of the United States to exercise it's  
16 free will and to carry out it's responsibilities as leader  
17 of the free world could be jeopardized by an excessive  
18 dependence on foreign oil imports.

19 (b) PURPOSE.—The purpose of this Act is to establish a  
20 national energy security policy designed to limit United  
21 States dependence on foreign oil supplies.

22 **SEC. 3. DUTIES OF THE PRESIDENT.**

23 (a) ESTABLISHMENT OF CEILING.—The President  
24 shall establish a National Oil Import Ceiling (referred to in  
25 this Act as the "ceiling level") which shall represent a ceiling



1 level beyond which foreign crude and oil product imports as a  
2 share of United States oil consumption shall not rise.

3 (b) LEVEL OF CEILING.—The ceiling level established  
4 under subsection (a) shall not exceed 50 percent of United  
5 States crude and oil product consumption for any annual  
6 period.

7 (c) REPORT.—(1) The President shall prepare and  
8 submit an annual report to Congress containing a national oil  
9 security projection (in this Act referred to as the “projec-  
10 tion”), which shall contain a forecast of domestic oil and  
11 NGL demand and production, and imports of crude and oil  
12 product for the subsequent three years. The projection shall  
13 contain appropriate adjustments for expected price and pro-  
14 duction changes.

15 (2) The projection prepared pursuant to paragraph (1)  
16 shall be presented to Congress with the Budget. The Presi-  
17 dent shall certify whether foreign crude and oil product im-  
18 ports will exceed the ceiling level for any year during the  
19 next three years.

20 **SEC. 4. CONGRESSIONAL REVIEW.**

21 The Congress shall have 10 continuous session days  
22 after submission of each projection to review the projection  
23 and make a determination whether the ceiling level will be  
24 violated within three years. Unless disapproved or modified

1 by joint resolution, the Presidential certification shall be bind-  
2 ing 10 session days after submitted to Congress.

3 SEC. 5. ENERGY PRODUCTION AND OIL SECURITY ACTIONS.

4 (a) ENERGY PRODUCTION AND OIL SECURITY  
5 POLICY.—(1) Upon certification that the ceiling level will be  
6 exceeded, the President is required within 90 days to submit  
7 an Energy Production and Oil Security Policy (in this Act  
8 referred to as the “policy”) to Congress. The policy shall  
9 prevent crude and product imports exceeding the National  
10 Oil Import Ceiling. Unless disapproved or modified by joint  
11 resolution, the policy shall be effective 90 session days after  
12 submitted to Congress.

13 (2) The Energy Production and Oil Security Policy may  
14 include—

15 (A) utilization of all powers  
16 currently within the law;

17 (B) energy conservation actions;

18 (C) expansion of the Strategic Petroleum Re-  
19 serves to maintain a 90-day cushion against projected  
20 oil import blockages; and

21 (D) production incentives for domestic oil and gas  
22 including tax and other incentives for stripper well pro-  
23 duction, offshore, frontier, and other oil produced with  
24 tertiary recovery techniques.

○

BOREN AMENDMENT  
PROPOSED AMENDMENT TO TITLE OF THE 1984  
TARIFF AND TRADE ACT, ENFORCEMENT AUTHORITY  
FOR THE NATIONAL POLICY OF THE STEEL INDUSTRY

Section 805 of Title VIII is amended by renumbering subparagraph (3) as (4) and inserting the following new subparagraph (3):

Bilateral arrangements between the United States and steel exporting nations imposing quantitative limitations or other restrictions on steel exports to, or imports into, the U.S. must include restraints on welded steel wire fence panels, wire fabric, and welded steel wire mesh for concrete reinforcement. Should any arrangement country (or European Community) refuse to expand the coverage of existing arrangements to include these items, the United States in the administration of such arrangements shall have no authority to agree to a request from such arrangement country (or the European Community) for any technical adjustments, exception or modification to or from the arrangement terms, and, if appropriate, shall require entry-by-entry certification of compliance.

PACKWOOD/BENTSEN PROPOSAL EXEMPTING EXISTING  
BILATERAL FREE TRADE AGREEMENTS FROM THE PROVISIONS IN S. 490

Adds the following provision to be included in the appropriate place:

In any case in which there is an inconsistency between any provision of this Act and any bilateral free trade area agreement that entered into force and effect with respect to the United States before January 1, 1987, the provision shall not apply with respect to the foreign country that is party to that agreement.