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EXECUTIVE COMMITTEE MEETING

TUESDAY, JULY 19, 1994

U.S. Senate,

Committee on Finance,

Washington, DC.

The meeting was convened, pursuant to notice, at 10:00 a.m., in Room SD-215, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan, Chairman of the Committee, presiding.

Also present: Senators Baucus, Bradley, Rockefeller, Daschle, Breaux, Conrad, Packwood, Roth, Danforth, Chafee, Grassley, Hatch and Wallop.

Also present: Lawrence O'Donnell, Jr., Staff Director; Lindy Paull, Chief of Staff, Minority.

Also present: Ambassador Rufus Yerxa, Deputy USTR Representative; Ira Shapiro, General Counsel, USTR; Jennifer A. Hillman, Chief Textile Negotiator USTR; Susan Esserman, Assistant Secretary for Import Administration, U.S. Department of Commerce; and Marcia Miller, Chief International Trade Counsel.

Also present: Deborah Lamb, Trade Counsel; Eric Biel, Trade Counsel; and Brad Figel, Chief Trade Counsel, Minority.

The Chairman. A very good morning to our guests and our indefatigable staff members -- Ms. Miller, Mr. Biel, Mr. Figel. Today is a moment of some consequence in the affairs of the Committee on Finance. A year ago we provided the President the authority to conclude the negotiations of the Uruguay Round, as it is called, of the general agreement on tariffs and trade. And indeed that negotiation after seven years begun by President Reagan, continued by President Bush and now concluded under President Clinton was finished. Negotiations were more or less finished last December and the agreement was initialed at a past international convention in Maraquesh in Morocco.

The measure now comes to us under the fast track proceeding in which basically we initiate legislation in coordination with the House, which is the Committee on Ways and Means, which is sent to the administration, which in turn sends it back to us and we take it up under a restricted time schedule.

This is a pattern which in one way or another has been in place since the reciprocal trade agreements program was begun under Cordell Hull in 1934 in response to the ruinous aftermath of the Smoot-Hawley Tariff of 1930.

These agreements were executive agreements as against

treaties; and, again, this is an executive agreement which we will be dealing with.

I would simply make the point that in the Brenton Woods agreements which were reached in 1944 in the anticipation of the end of the Second World War and putting in place a new international economic system that would avoid the disastrous trade wars and depressions and count the better thy neighbor arrangements that have been so common in the 1930s, it was anticipated and proposed that we would create an international bank for reconstruction and development known as the World Bank with its headquarters here in Washington, the International Monetary Fund, which also has its headquarters here in Washington. Is that not right, Ambassador Yerxa?

Ambassador Yerxa. Correct.

The Chairman. And an International Trade Organization which was to be located in Havana. The first two institutions were in due course established and in one way or another have become indispensable to the world economic system. The International Trade Organization did not. It was not established. It was in effect defeated in the Senate Committee on Finance. And we have worked with the temporary arrangements of the general agreements on tariffs and trade. That was concluded, I believe, in

1946, was it not?

Ambassador Yerxa. Yes.

The Chairman. Well, now we have an opportunity at long last to finish up the work of Brenton Woods if nothing else. This proposal establishes a world trade organization with very limited but important duties as an institutional setting in which the world trading nations will reach agreements and settle the normal disputes that come about in any business transactions, which after all this is what trade is.

We sometimes exaggerate the number of disputes and the number of decisions made. We have spent a good deal of time on matters which you might suppose we are involved in disputes with half the nations in the world on examination and it turns out to be two or three or seven or ten and no more than the normal commercial -- well, I do not want to characterize them as of inconsequence. But the normal pattern of any business activity is, from time to time there are disputes and they are settled in the courts.

We have dispute settlement arrangements in the world trade as well and we hope to institutionalize them in this Uruguay Round.

I have a statement which I would like to place in the record at this point, making two points.

(The prepared statement of The Chairman appears in the appendix.)

The Chairman. The first is to note that the committee has had an exemplary bipartisan practice and pattern in this regard. Just a year ago when the President was going to the G-7 meeting in Tokyo he needed an extension of the fast track authority and it was given in this committee by a vote of 18 to 2, and with unanimity on the Republican side, if I may say.

The second point to note is that what we are dealing here with in a legitimate sense of the word is that the fiscal arrangements that are necessary involve a tax cut. We are going to reduce tariffs which will reduce the costs of imported goods to Americans and their consumers by taking off a portion of a tax previously imposed.

It is beginning to be lost to our memories. But up until 1913 the principal source of revenue of the United States Government were tariffs and the principal activity of the United States Congress you could sometimes suppose was enacting tariff, from the Tariff of Abominations. When was the Tariff of Abominations, 1838?

Pretty bad. When we got into recessions we tended to increase tariffs in such a way as to make the recessions worse. It took a century to figure that out, but we have not necessarily figured it out yet. But as late as 1910

half the revenue of the Federal Government came from tariffs. Then the graduated income tax came along and the Sixteenth Amendment of 1913.

But this is a tax cut, not a very large amount, but not inconsequential. The good Lord knows it is difficult to find the specifics.

I have a letter today from Secretary of the Treasury Bentsen which we will make available to the press and to the public generally, which records that last week Director Panetta -- is Leon Panetta still Director? He's counsel to the President, is he not?

Ambassador Yerxa. Chief of Staff.

The Chairman. Chief of Staff, yes. Somebody should tell the Secretary of the Treasury that. ''Last week Director Panetta, Ambassador Kantor and I briefed the members of the Finance and Ways and Means Committee on the administration's proposed funding package.'' It is not final. We have to find some $12 billion in revenues to make up for this tax reduction. And Secretary Bentsen says that he encloses a list of some $8 billion in spending cuts and some $4.3 billion in revenues.

He indicates that this need not be a final list, that there will be some negotiating with it still. So we will put this in the record and as I say make it available as we begin our walk through.

(The letter appears in the appendix.)

The Chairman. I would like to say that we are doing this simultaneously with the Committee on Ways and Means in the sense that they are working at this subject even as we are. They are meeting this afternoon, for example, so that such we would not be able to do. Ambassador Yerxa and Counselor Shapiro will want to be over there. But we will be going back and forth.

We hope to be able to do this in fairly short order. We will take all the time that it requires, but as I said when we began, this is the culmination of 60 years of bipartisan, American, foreign trade policy. It is a huge agreement. It has great economic growth prospects for our nation and for the world trading system generally. I for one very much welcome it.

Today I will ask the staff to summarize the agreement for us and the more significant aspects of its implementation; and then suggest that the administration staff, the committee staff, and the legislative assistants meet with an eye toward developing a recommendation on noncontroversial amendments to the proposal.

That is enough from this Senator. Would Senator Packwood wish to make an opening statement?

Senator Packwood. Mr. Chairman, I would. I think it was Will Rogers that said he had never met a man he did

not like. Up until this moment, I had never met a trade bill that I did not like. I have not fully decided what to do with this one yet. I was supposed to put it in terms of personality. This is a bill that I would only want to have a passing acquaintance with. I would not want it to marry my daughter.

I am normally enthralled with tariff cuts and enamored with quota reductions and raptures by subsidy eliminations. I think all of those are good for this country. They are certainly good for my State. I thought NAFTA was a 90/10 bill for both Mexico and the United States and for Canada.

This bill is marginally maybe -- a 55/45 bill, and maybe 60/40 in my judgment. I think the administration is making a terrible mistake in not taking into account genuine concerns that a good many Republicans have. All Republicans do not have all the same concerns. But the passions are felt strongly enough in each of the concerns that in the aggregate they could defeat this bill. And they could defeat it and there will be a number of Democrats, I think, who will vote against it also.

Now, in the past the administration has had a bad habit, I think, of attempting to get things through on a straight partisan basis if they think they have the votes. That is an all or nothing game. With the stimulus package

a year ago it turned out to be a nothing game. The Republicans filibustered it and failed. With the budget, it was a close shave, but it went through the House by two votes and then a tie vote in the Senate with Vice President Gore breaking the tie, the administration won it.

Motor voter, the same thing. Strike-Baker bill, the administration lost. They just decided to push it straight through and they lost it. In this bill the Republicans have genuine concerns about subsidies. Senator Danforth has been raising them for a year. A letter signed by all Republicans that went to the administration. So far we have seen no movement. In fact, we are quite discouraged. It was the administration that led the fight for the subsidies.

But for us bringing them up late in the negotiations this would not have been an issue. We have grave concerns about labor and environment and tying those to any kind of a fast track procedure, most of us do not think they have any business in the subject of trade.

On the taxes in this bill and the spending cuts in this bill they are illusory. It is worse than the pea end of the shell and shifting the shell around. There is no pea end to the shell in some of these spending cuts. And on the tax side there are some speed ups. Are those

genuine? Sure. In some cases, for example, with small wineries you move up their payment a week and it falls in September rather than October, therefore it falls into this fiscal year, falls out of next fiscal year. But it is a speed up and you can count it this year. And all parties are guilty of doing that. The Republicans have done it as well as Democrats in the past.

So in theory it gets you the money to meet your revenue requirements for this fiscal year. But no one should think it is a real tax. It is just a shift.

On the spending side, as I say, illusory spending restraints. But then the worst of all from a budget standpoint is probably this pay go. Under the Budget Act we have two kinds of caps. One of the appropriated caps and we have a total amount of money that can be spent and under the appropriated bills we have to stay within those caps. And then we have entitlement caps and we sort of add up all the entitlements over the year. And if at the end of the year it appears that we are going to spend more on entitlements than we think we should, there is a requirement for an across-the-board sequester, except Social Security, of course, as usual, is exempt.

But you add up as you are going through the year. Well, at the moment there happens to be a slight pay go surplus. So the administration wants to count that as

revenue. The Budget Committee has never scored that before as revenue. It is just an ongoing accounting procedure as to where we are at this moment.

To say that is a revenue increase when at the end of this year we may be slightly behind on our entitlement projections is outrageous. But the administration has chosen not to take any of these concerns into account.

Now, collectively they could cause me to vote against this bill. Would any one of them by itself cause me to vote against it? I do not think so, although I can assure the administration that there are any number of Republicans who with any one of these will vote against the bill and all the Democrats are not going to vote for it.

Mr. Chairman, as we go through the step-by-step mock mark-up in meetings with the House, I simply have to say that if some of these concerns are not addressed, then I do not think this is going to pass this year. And if they are not addressed, I do not think it is going to pass next year.

So I would hope the administration, for example, over a five-year budget requirement where we are going to be spending some place between $7 and $7.5 trillion in five years could find real spending cuts out of that $7.5 trillion to come up with the better part of $12 billion

that is needed to meet the five-year revenue totals.

Now, I will say if it is not all spending cuts, I am one of the Republicans that could live with $3 or $4 billion in real revenues if we had $8 or $9 billion in real spending cuts. But I refuse to believe that they cannot be found from $7.5 trillion in spending over five years. I thank the Chair.

The Chairman. Well, I thank my friend, Senator Packwood. I would simply wish to say that the issue of the budgetary exercises we have to go through are still open and everything is open. Not one thing is agreed to.

It is a self-imposed absurdity that we have to find revenues to make up for a loss in tariffs which will come about because of an increase in trade, which will produce an increase in revenue. I do not think I will get much argument on that point.

This is hugely an important agreement to American agriculture, to the services industry. For the first time we have the beginning of a code on intellectual property. I would say on the issue, we will walk through this step-by-step on issues. I am a little surprised at your concern about the very mild references to international labor standards.

The International Labor Organization began 75 years ago here in Washington. The United States has belonged to

the ILO since 1934. American business and American labor have always seemed to be very much in their interest to see that there are something like labor standards in the world in terms of the competitive position of the United States.

I think we will all feel much better about this as we get to know the details a little better. There is certainly no arbitrary position on our side as to this is what it is going to be like and we are going to vote it. We are going to try to get the same spirit of cooperation we had when we began this measure under President Reagan and continued it under Presidents Bush and Clinton.

With that placatory response, Senator Baucus.

Senator Baucus. Thank you very much, Mr. Chairman. Mr. Chairman, I have essentially your views on this provision with the Uruguay Round proposal. But I also must say I have some of the concerns of the Senator from Oregon.

When we opened the Uruguay Round, as you will recall, in the fall of 1986 we hoped to bring in trade and services and foreign products under the GATT and we have.

The Chairman. And we have, yes.

Senator Baucus. We hope to cut agricultural export subsidies. We have. And also require GATT members to protect intellectual property rights. This is what this

agreement does. And continue cutting tariffs and opening markets on a fair reciprocal basis and approve dispute settlement while protecting national sovereignty.

We set ambitious goals and while we did not meet them I think we met a good number of them. In 10 years the Round will raise world economic production by $270 billion a year. It will cut Europe's agricultural export subsidies, reduce tariffs and protect copyrights, patents and trademarks. And the administration believes that it can add between $100 and $200 billion a year to our nation's economy and create hundreds of thousands of new jobs.

The basic agreement I think is good. And the Chairman's mark, which includes much of the proposals that Senator Danforth and I made last month resolves many of the remaining questions about it.

The Chairman's mark, as you know, Mr. Chairman, preserves our right to use Section 301 and the laws on dumping and countervailing duties. It strengthens our ability to fight theft of intellectual property abroad. It ensures that dispute settlement will be effective, transparent and open to private parties who have a legitimate interest.

And finally, it protects national and State sovereignty. The new WTO will have no more power to

change American laws and regulations than the old GATT. The power to change U.S. laws continues to rest exclusively with the Congress.

Some questions, however, remain. I intend to offer several amendments as follows. First, permanent extension of Super 301 to establish an annual, predictable process for naming our top trade priorities. The Uruguay Round does not cover such critical issues as exclusive Japanese business practices and we need strong trade laws to ensure that we can deal with these problems.

Second, an amendment to strengthen the restrictive business practices language in Section 301 and require a report similar to the national trade estimate for restrictive business practice violations.

Third, an amendment to broaden USTR's retaliatory options under Section and Special 301 to include denial of trade preferences, such as those given under GSP and the CBI.

Fourth, an amendment to clarify the statement of administrative action's language on indirect subsidies which is critical to the leather and lumber industries.

And fifth, an amendment to strengthen the provision in the GSP renewal to ensure that GSP beneficiaries do not discriminate against American exports by providing special deals to other developed countries.

Finally, three other issues which are not part of the basic GATT agreement of critical importance. While I believe that the agreement is good, these issues will play a major part in my decision on whether to support the final bill.

The first one is authorization for further trade negotiations under fast track. I am not convinced that we need to include a new fast track provision in this bill at all. But if we choose to do so, strong environmental negotiating authority is very important. Environmental issues are critical to the development of beneficial trade.

Anybody who has visited the Maquila-Dora zones on our border with Mexico will understand that if we do not consider them early on, increased trade can degrade, rather than raise living standards. Future trade agreements must consider such questions, just as the NAFTA side agreements did.

The administration's language on the issue is basically sound and I trust it will remain in the fast track proposal.

Second is the administration's economies and transition program granting Russia and some other reforming economies exemptions from the anti-dumping law. I believe this program should not be in the GATT bill at

all.

The anti-dumping laws have already shown themselves useful in dealing with Russia. For example, we could not have reached last winter's aluminum production cutback agreement which serves the interest of Russia as well as the American industry if American aluminum companies had not had the option of a dumping case as a last resort.

By exempting Russia from anti-dumping laws, the economies and transition proposal could well undo the agreement.

In a broader perspective, the proposal is a big departure from our present anti-dumping policy. It is not necessarily bad. The departure may be unavoidable and even beneficial. But neither the administration nor anyone here knows that for sure. We have had no time to hold hearings or any other formal discussion of the idea and I believe it would be premature and dangerous to pass the economies and transition proposal without full consideration.

Third is the issue of paying for the GATT. I continue to believe it is silly to pay for an agreement that means a net gain in revenue. I have met no one in industry who disagrees. I also find it somewhat intellectually dishonest to insist that we must pay for the GATT but then to actually do it in proposals like

moving payment deadlines and fee dates which we all know are basically flim-flam.

That is really an esthetics issue. And with a trade agreement that means this much to the country, esthetics are not all that important. Thus, with one reservation I am willing to support this package. The reservation is that we must not use the export enhancement program to fund the GATT. EAP will take a hit and agriculture has already taken more than its share of cuts for the GATT as well as other programs.

Money from savings on EAP should go to GATT legal domestic farm programs, just as other countries, particularly European union are doing.

So on the whole, I think the agreement is good. With those points addressed, it will be good for America. It will be good for the world and also for my State of Montana. Those of us who have stayed with the Uruguay Round negotiations for the past eight years have had a long journey, but we can finish these last few steps if we dig down and resolve some of these remaining issues.

Thank you, Mr. Chairman.

The Chairman. Thank you, Senator Baucus.

May I just note that the Chairman's proposal that you have before you does not include an extension of fast track authority. We have enough, I think, to do to

resolve right now and to get on to that subject, that we can get to next year, particularly since the G-7 did not indicate any great responsiveness to the President's proposal to have some matters ready for next year at Halifax. So to that extent, we will not have one difficulty that concerns you. And, of course, we do have 301 and other things in here.

Senator Danforth?

Senator Danforth. Mr. Chairman, thank you very much. Mr. Chairman, my feelings are somewhat the same as those expressed by Senator Packwood. I am not a purest on international trade. I have had my moments of pragmatism. But there has never been a trade agreement that I have not supported since I have been in the Senate. The Tokyo Round in 1988 and the trade legislation then, and various free trade agreements.

I think that a lot of us have a very strong predisposition to support trade agreements because the way we think of them almost in an automatic fashion is, well, trade agreements are good because trade agreements mean free trade and expanding free trade, and free trade is good and protection isn't as bad. Therefore, we are for trade agreements. Therefore, we are for this trade agreement.

So we come into it with this mind set to support

trade agreements and it is almost as though well those who oppose trade agreements are protectionists and neandrothols and bad people.

But the problem is, well, what happens when a trade agreement perhaps moves away from free trade in certain ways or moves toward the distortion of trade? And what happens if the enabling legislation does the same?

For example, on the issue of subsidies, which Senator Packwood mentioned, there is a problem with subsidies because subsidies do not open up free markets. Subsidies close out markets. That is the lesson of airbus. Airbus should not even be in existence. It has never made money. Never once has airbus made money. And yet, airbus has, what is it, a third of the commercial aircraft manufacturing business.

I woke up this morning and turned on the morning news as I was getting dressed and there was a commercial for airbus. They never made money. Now we have a subsidies agreement, so-called green lighting of research and development subsidies that was pressed by the administration and I believe that the administration has seen airbus as the model. I believe that the problem with this agreement that has been negotiated is that airbus is the model and that one country after another can pick off whatever favorite industry it likes.

Maybe it is computers. Maybe it is telecommunications. Maybe it is pharmaceuticals. Who knows? Country by country. And our country can do the same. The so-called flat panel display initiative I think is an example of that. I am concerned about it and I have expressed this concern repeatedly. Increased subsidies are not the same as free trade. Increased subsidies are the opposite of free trade.

We have attempted to work with the administration in doing the best we can with chewing gum and scotch tape and paper clips to piece together something that at least mitigates this bad agreement with respect to subsidies because I want to support an agreement and will continue to work to the administration. But we have along way to go in working. We have not reached it yet.

In environment and workers rights, the administration proposes fast track authority. It is not in the Chairman's mark. I am glad it is not in the Chairman's mark. Apparently there are, however, to be negotiations in the Chairman's mark. Do we really want to tie international trade to other matters, even other matters that we consider to be worthwhile matters?

The environment -- I mean, who is against a clean environment? But is trade always to be the handle? See, many of us for years in this committee have taken the

position that trade should not be the bargaining chip for other things, whether it is foreign policy, human rights in China, whatever it is. Why should trade always be the bargaining chip? Why should we always say, if you do not do things our way, we are going to cut back on trade? We are going to close down trade.

And if we are going to embark on a program in which workers rights or environmental standards are the condition for free trade, then trade is something that is to be turned on or off to accomplish other things, even though those other things are very, very worthwhile.

Senator Baucus has mentioned the issue of dumping in the former eastern block countries and whether or not dumping is something that should be countenance, because, hey, here are some countries that have problems and we want to help them solve those problems. So how do we solve those problems? Well, how about a little dumping?

I mean, maybe that is a good idea. Let us just have a little bit of dumping. Dumping can be okay if it accomplishes some foreign policy objective of the United States or some extraneous objective.

So, Mr. Chairman, I think that there is a theme involved in this issue, this whole debate and I think that the theme was sounded by Senator Packwood. But I would state the theme as being whether or not trade is something

that's just a tool to accomplish other things, whether or not trade is something that you turn on or off, whether it is something that you can give one day, take the next, whether subsidies are generally bad from the standpoint of trade.

But, hey, let us all subsidize if it is a high tech industry, whether or not the environment or worker rights are things that can be furthered by turning on and off trade, whether dumping is something that can be countenance, if the country is the right country and if the circumstances are correct.

I think that it is a basic theme. So I think that what we are approaching as we proceed with this mark-up is more than just very technical points and there are some very technical points, mind-boggling in their complexity. Eyes glaze over type stuff.

But I really think that the fundamental theme that we are facing is not so much the eyes glaze over complexity. I think that the fundamental theme is, how do we really feel about free trade and how do we really feel about open markets and is that the purpose of a trade agreement or do we enter into trade agreements to go in the other direction?

The Chairman. Thank you, Senator Danforth. Not to prolong this, but may I just say that trade has always

involved more issues than trade as such. It is just in the nature of the international community.

We do have a provision here about looking forward to some negotiations having to do with linking labor standards with trade standards. But just whatever, you know, we will talk about it. It is an interesting fact that the new World Trade Organization will be located in, as the GATT is now located in, the former headquarters in Geneva of the International Labor Organization.

A century ago it began to be discussed, the proposition began to be discussed, that any given -- for a country to enact labor legislation such as child labor laws, would put it at a trade disadvantage with other competing nations.

I do not know how true this was, but it certainly was believed. Believed by economists and certainly believed by the public. And the notion of international labor conventions arose, in which countries would agree to do these things simultaneously and consequently which there would be no trade disadvantage that followed.

This had been an activity which the United States has been involved in one way or another for a century. And not three years ago, for a long while we were not very active in adopting international labor conventions although we saw them have huge consequence. I mean,

Poland is a free country today in very large measure because the Polish Government was bound by the International Labor Convention that recognized the legitimacy of the trade union federations and they did not question them on solidarity.

We agreed two years ago to a convention on forced labor, which we believe in. It has something to do with other than trade, but it is important to us. It is important to you. You voted for it and I am pleased that you did.

So these issues on subsidies, that is what Ambassador Yerxa is there for, and we are going to sit here until we are satisfied with what we have or find we cannot be satisfied.

Senator Conrad?

Senator Conrad. Thank you, Mr. Chairman. First of all, I want to commend you for finding time in the very busy schedule of this committee to hold this hearing; and also to commend you and your staff for the extraordinary job that has been done to put this agreement before us today.

This was a herculean undertaking to put this together. I think for the most part the staff has done an extremely good job under your leadership.

Let me just say that the Uruguay Round Agreement from

my perspective expands the GATT to cover agriculture and textiles and provides a worldwide tax cut of about $750 billion over 10 years because it is reducing tariffs on average by about one-third.

I do not think the magnitude of that should be lost here today as we discuss these provisions. These tariff cuts will boost U.S. exports and reduce prices for our consumers. But the Uruguay Round did more than just expand the GATT. It created new disciplines and services in intellectual property. And because the United States is a world leader in these areas, we can expect to reap major benefits from the agreement.

Mr. Chairman, that is the good news. Let me turn now to some specific concerns that I have which are very serious ones. As the Chairman and the other members of the committee know, representatives of the administration, my State is one of the most agricultural States in the nation. And the future economic health of my State depends on a strong agricultural base.

The administration inherited a deeply flawed agreement with respect to agriculture. I want to commend this administration for the extraordinary job they did in fixing those shortcomings. We now have an agreement that is perhaps a modest plus and I would emphasize the modest plus for agriculture.

But I do have deep concerns about a number of elements of this package. First, Mr. Chairman, I want to emphasize that what you have offered today does not include the authority proposed by the administration to allow the U.S. to take action against unfairly traded Canadian grain. This is an issue of the greatest seriousness to my constituency.

As my colleagues know, ever since the passage of the U.S.-Canadian Free Trade Agreement, we have been subjected to a flood of unfairly traded Canadian grain. That is not just my opinion, that is now the fixed position of the International Trade Commission, all of whose members indicated there is interference with the U.S. farm program, most of the members who have now called for limitations on what the Canadians are doing.

Unfortunately, under a Section 22 those sanctions against Canada will end as soon as the GATT is implemented. Now, Mr. Chairman, we have adopted with the agreement of the administration a two-track strategy -- Section 22 in the short run, and Article 28 action in the long run. That is absolutely imperative in order to get a negotiated settlement with our Canadian neighbors to the north. That negotiation will take place next Wednesday and hopefully be concluded very quickly. Mr. Chairman, without an Article 28 provision in this legislation, I

cannot support it.

I also want to emphasize the funding mechanism. As I look at the administration's funding proposal, I notice the single biggest offset comes in agriculture. About $700 million of that comes from reduced deficiency payments that flow naturally from the agreement. I can understand that. I can understand that part of it.

But an additional $1 billion is saved from cuts in our export programs. Mr. Chairman, ever since I have been in the Senate, we have been practicing unilateral disarmament, vis-a-vis the Europeans and agricultural trade.

As Yogi Beara would say, it is deja vu all over again. The Europeans will plow the savings from their required cuts in disciplined export subsidies into the so-called green box or allowable export programs, but we are now proposing to do nothing to match them. That is after every budget deal since I have been in the Senate has put agriculture number one in terms of the proportion of cuts required from that sector.

Mr. Chairman, agriculture cannot take much more. In my view the proposal for funding with respect to agriculture would simply be a mistake. I am also concerned that the U.S. oil seeds industry will be one of the few losers from this agreement.

Because it was efficient enough without large subsidies to compete with highly subsidized European and South American produces during much of the base period, the oil seeds industry now faces an 80 percent reduction in export subsidy and our negotiators were unsuccessful in achieving significant market access breakthroughs that would have offset those cuts. As a result, if nothing were done the sunflower industry in my State would be devastated.

But finally, I am concerned about the affect of the agreement on State laws -- State laws, Mr. Chairman. While the implementing legislation specifies that no World Trade Organization decision can change federal law without congressional action, there is no similar provision regarding State law.

Under the Chairman's proposal the Executive has the power to impose changes in State health, environmental, safety or tax laws that it finds to violate the GATT. I intend to offer amendments to ensure that Congress has a role in these decisions and more generally to limit any possible negative effect of the GATT on States and to strengthen cooperation between the States in USTR.

Mr. Chairman, again, I want to congratulate you on the really extraordinary effort you and your staff have put forward to bring us here today.

The Chairman. Well, i want to thank you, Senator Conrad; and comment that much more congratulation like that and we are going to be in some real difficulty.

(Laughter.)

The Chairman. Let us see if Senator Breaux cannot do any better.

Senator Breaux. There is a challenge. Kill me with kindness. Well, thank you, Mr. Chairman, for making the time available. It is very important that we have this type of a session, I think, on such an important agreement.

Let me start off by congratulating really our Trade Representative Mickey Kantor and Ambassador Yerxa for the good work their team has done in negotiating this agreement. It has not been easy. Sometimes insurmountable odds they had to overcome in order to bring us an agreement.

I also want to say that in connection with this agreement that we have just completed some additional talks in Paris with the OECD and Don Phillips and the negotiating team there, I think, really was able to bring about an agreement on the question of shipbuilding subsidies which has not brought a disagreement, but a separate negotiated agreement which has brought about some real positive results.

This is an agreement that talks were started in the last administration, that are now presumably completed in this administration, with an agreement that I think is really right on target with what we need to do to get the U.S. shipbuilding industry back on its feet and productive again.

So they are to be congratulated in a lot of areas. This agreement is not perfect. But then again, nothing that we ever do is ever going to be perfect. But I think it does present us with a framework of an agreement that can be good for America. Not perfect but one that certainly is much better than the current conditions that we are facing in international community with regard to trade.

I have a couple of areas that I think we can do a little bit better, help shape it a little bit better. I am concerned about the rules of origin, to make sure that we have rules of origin that really take into consideration where products are produced not where they just sort of originally are picked up and begin the process of changing them into the final product. But I think we need to do a little bit better with that and I think there are some ways in which we can do that and make it a better agreement.

Also, as has been expressed by some of our

colleagues, there are some problems with the section dealing with economies and transition. While we should help other countries transit to a complete democracy and to a free enterprise system, we should not do it to the detriment of our own industries. I think that we need some work in that particular area.

But I would say on the larger question, if we believe that every time we reduce a dollar in tariffs that we also lose a dollar in revenues, then we ought to all go out and start building fences around this country because that is not what history has shown us with regard to good trade agreements. The opposite is true.

As much as $3 is generated in new revenues every time we reduce tariffs by $1. So if we are going to get hung up on what CBO is telling us, and maybe we have to because of the rules of the Senate which I think is absolutely ludicrous that we cannot consider the changes in dynamics because of things we do in the Congress, then we are always going to be facing these kinds of situations.

I think we can do better than just build fences around this country. We need to look at the real benefits of international trade agreements that actually have a very positive bottom line result for our country and look at NAFTA has done.

I mean, we just saw something in the Journal of

Commerce the other day that since NAFTA we have increased the automobile exports to Mexico by 1,000 percent -- 1,000 percent. Those are examples of what benefits we get economically to our workers, and our people in the Treasury of the United States because of more revenues, more taxes being paid. I think that that is something we can look to to see what this agreement will also do when we finally implement it.

Thank you.

The Chairman. Thank you very much, Senator Breaux. I want to congratulate you for a remarkably improved performance.

(Laughter.)

The Chairman. Now, let us see, let us see if Senator Wallop can join in this spirit. He is an old free trader.

Senator Wallop. Yes, Mr. Chairman.

Senator Conrad. Mr. Chairman, might I just inquire, was that an improved performance from his last one?

(Laughter.)

Senator Wallop. No, the last one.

(Laughter.)

The Chairman. Senator Wallop?

Senator Wallop. Thank you, Mr. Chairman. I appreciate being recognized as a free trader because my anxieties about this proposal, these proposals, are that

as fast as we are tearing down barriers it seems as though we are seeking to create non-tariff barriers and I speak in terms of, as others have, the labor and environmental provisions in here.

You quite rightly brought up something that the world generally agreed to with slavery and child labor. But one wonders if that is of the same -- I mean, if right to work and striker replacement are of the same magnitude. And yet they cold be used as means by which non-tariff barriers could be raised and I am concerned about that.

As Senator Danforth and others, I am concerned about the subsidies issue. I do not see how a nation that is already struggling with its budget deficit can ever find the means by which we can subsidize a Boeing, for example, to compete with an airbus. It seems our only other choice is to absorb the subsidy and not match it. That seems to be a genuinely awkward situation for us.

I agree with Senator Breaux and Senator Baucus and others on the problem that we face with regards to the financing of what is a rigidly programmed computer that thinks all inhabitants of the world are like sheep and no matter what you do they will behave the same way in the morning as they did the evening before, no matter which fold you put them in.

It is obvious that we have not, as you explained with

what NAFTA has done. I do not know how we ever get to dynamic revenue projections but they certainly ought to be a part of how we think and function. In fact, I have another world of interest and that is the whole world of capital gains.

Virtually everybody would realize that there is activity that will take place that the computers do not recognize and that we are assumed to behave quite similarly.

But worse still, I think that the financial proposals that I see are going to feed public cynicism about what we do when you have smoke and mirrors that are even recognizable to the non-efficient observer of Congress as just that. It strikes me that we put ourselves in the position of going through motions, the motions of which we know do nothing. So I do not know what the answer to that dilemma is for you, but surely we ought to look and see if there is one.

Thank you.

The Chairman. Thank you, Senator Wallop. I could not more agree with your last comments. I mean, it is just a situation we find ourselves in and not of our own making. But we are open on that. There is nothing settled, nothing resolved, nothing agreed to yet.

Senator Daschle?

Senator Daschle. Thank you, Mr. Chairman. Like many who preceded me, I want to commend you as well for holding this meeting and appreciate the leadership that you are showing on this issue, given all of the concerns that many of our Senators have expressed this morning.

I would also congratulate the past administration and this one for the work they have done in getting us to this point. I am struck really by the dramatic changes that have occurred in the world since the original initiation of the Uruguay Round.

When you think about it, the Berlin Wall has come down. The Iron Curtain is no longer there. Three billion people are now entering the free market for the first time. And in that environment we have come to the table with an agreement I am told reaches 22,000 pages. That 120 --

The Chairman. That is correct, yes.

Senator Daschle. That 120 countries have tentatively agreed to. That is a phenomenal accomplishment given the occurrences over the last seven or eight years. Given the complexity of this agreement, given the success in reaching the agreement that we have in terms of its scope, in terms of its reduction in impediments, in terms of the new infrastructure that it calls for, I mean there is a remarkable set of accomplishments here, especially given

as I say the context within which this agreement has been achieved.

I suppose that it has been achieved in large measure because those 120 countries realize the cost of failure. They realize that if we were not to achieve this agreement that the implications for each of these countries would be extraordinary. They also understand, I think, with this growing transition that our interdependency is all the more important, all the more realized by all countries. That that interdependence is going to grow. That the realization we need each other and must trade with each other will continue to grow.

So like all of those who have preceded me, I have concerns about this agreement as well. The oil seeds issue in particular is one that I hope we can address in a number of ways. But when all is said and done, I hope we will all consider the cost of failure. I hope we will all consider the realization that if we do not achieve success here, and these seven or eight years of work by two administrations is for naught, then I really question the future economically of our relationships, the future of this country economically, and the opportunities for future trade agreements that this failure will deny.

So I hope that we all understand the ramifications and certainly this meeting is an important beginning.

The Chairman. Thank you very much, Senator Daschle. It cannot be more emphatically stated that with the end of the Cold War and the era of totalitarianism that began with the era of trade wars, we could easily revert to that and to our vast regret.

Senator Bradley?

Senator Bradley. Thank you very much, Mr. Chairman. As I listen to the comments of various committee members, I am reminded of the story of the old Senator in the late 19th Century who took a younger Senator under his wing and said to the young Senator, ''Son, there is only thing you have to know around here to get ahead.'' He said, ''Well, what?'' He said, ''Tariffs.''

The reality is that in the 19th Century tariffs were goodies that were handed out to industries who could not compete and everybody paid a higher price. That was ironically the position of the Republican party at that time, that they were the high tariff party; and it really took Woodrow Wilson to come in and say, look, the little guy is paying the price of those tariffs. Let us bring them down and let people compete.

That was continued with Coyle Hall and those who learned from the Smoot-Hawley days that it is better to have open trade than closed trade. It is better to have lower tariffs than higher tariffs. It is better to have

fewer non-tariff barriers than more non-tariff barriers.

We have gone through this every year that I have been here for 16 years -- the Tokyo Round as Senator Danforth talked about. I can remember sitting as the first year in the Senate Finance Committee and hearing Senator Danforth and the late Senator Heinz go over in excruciating detail all elements of the Tokyo Round and thinking to myself, you mean I have to know all that if I am going to be on this committee.

And the reality is that we have not made a lot of progress. And as the Uruguay Round was getting under way, the head of the GATT at that time put together a small group of which I was fortunate enough to be a member to try to think through, well, what do we want this Round to achieve. We produced a document that gathers dust on the shelf of a lot of bureaucrats offices in the trade field.

But by in large, this agreement has achieved much of what we had hoped it would achieve. And everyone has to represent their own constituency as well as the broad national interest. Everyone who has spoken today asserts obviously that the broad national interest is served by more trade rather than less trade, more open trade rather than closed trade.

But, there is this little thing and that little thing, and this little thing and that little thing. As

long as the barnacles that will grow in this agreement do not prevent the free flow of water, I think that we will be all right. What I will try to do is take a look and make sure that we do not impede the rather significant accomplishments of this negotiated agreement by the things that we add in the process.

The Chairman. I thank you very much, Senator Bradley. You would know I completely agree with what you have done. I think that advisory group did important work -- I am sure Ambassador Yerxa would agree -- in giving a sense of what Congress wanted in terms of what the negotiators went out and sought.

Senator Grassley?

Senator Grassley. I suppose in Senator Bradley's words, I want to talk about this little thing and that little thing. But I do not think that coming from a State like mine that exports so much, both manufacture and agriculture, that we would lose sight of the overall goal that we all seek. But there is a process for our refereeing of these little things and those little things and I think we are in that process of working those things out. I believe that they will be worked out.

Some of these things, Mr. Chairman, will be familiar to you because I have discussed these at other meetings you have had that have not been so out in the open. I

think some of these things have been expressed.

Let me say for myself and Senator Hatch that we have been at Judge Breyer's hearing where he was just confirmed out of our committee unanimously.

The Chairman. Oh, really.

Senator Grassley. So we do make some progress in some areas around the Hill here.

First of all, farm State Senators would have brought up about the agriculture deficiency payments going down as one way of paying for this and for the export enhancement program.

The extent to which these appropriations go down because world market price goes up is perfectly legitimate to figure savings there. But I think we want to remember what reports we are getting out of the European community, what they are going to do with their savings. They are not going to disarm agriculture by spending anything less on agriculture.

They will be spending less on subsidies, which they must do under the GATT. But they are going to be promoting their agriculture products. And if we take some of these savings and we lose them, we are going to be unilaterally disarming one of the most favorable aspects of our international trade which comes from agriculture. It happens to be one of those areas where we could,

because we are very efficient, compete very effectively.

So I want to urge my colleagues to think in the long term, that if we are going to help solve our trade imbalance for the greater good, Senator Bradley, we are going to have to be in the market competing with our competition and it does not seem to me that we can do that if we are going to forget our market promotion while the European community not only continues their market promotion but they enlarge it dramatically.

The second point that I would make would be, where the savings come from the PBGC, it is very important that these savings not be lost in the big black hole of the Federal Treasury, but that they be used for that purpose that they were intended to be. That is to make sure that our pension funds are sound.

In that regard, I think it is also important to know that this is a very complicated area of law and that that should not be in a fast track, but that should be a separate outside so that we can give it adequate consideration it should have by amendment if need be.

Then I wanted to remind my colleagues that we are in the process for environmental reasons of phasing out ozone depleting chemicals. But when it comes to refrigerants, we are in the process of phasing out one -- freon, which I think next year will be prohibited and new products cannot

have it. But in the new products there is a tax here that would tax that replacement for freon.

On the other hand, we do not have any replacement for the replacement. And it seems to me that we should not be adding to the consumers' costs for revenue raising purposes if we do not have something to replace a product that we think needs to be coming out, but instead wait for the industry to develop that, which they are in the process, of course, doing.

Another point that I want to raise because it affects not only Iowa but New York and Arkansas, and that is the changes in the inventory accounting just recently from a major segment of American industry, the aluminum industry, got word about what a devastating impact that is going to make.

As I said, Mr. Chairman, that will affect industry in your State as well as Arkansas. I suppose there are some other states as well.

My next point would be the impact, and I think Senator Conrad brought this up earlier when I was at the Judiciary Committee. But just for emphasis, we are very concerned about the World Trade Organization and the impact that that would in the way of preempting existing State law.

Now it is my understanding that the administration is

working very closely with State Attorneys General to work something out in this area. But if this is not worked out, it seems to me that we will need to amend the process or amend in the process.

I want to put out here on the table just a couple of amendments that I will have, which I hope are not controversial, but at least so everybody can expect that I would have them. An amendment to the Chairman's mark on the cost of recovery and that would be on page 8. And a second amendment to the Chairman's mark on the statement of administrative action on standing of petitioners on page 48.

Then lastly, and this is the last point I want to make, Mr. Chairman, it is in regard to the dumping laws and the exemption for economies for those countries that come under the classification of economies in transition, exempting them from U.S. anti-dumping laws for a five-year period.

I think first of all we should remember that it is unrelated to the Uruguay Round and is a controversial shift in U.S. trade policy and I do not think we should burden some of our industries with this.

The second thing is that U.S. industries would find it difficult to obtain relief from dumping by these countries.

And the third and last point would be that the proposal would make the resolution of these countries unfair trade entirely a political matter. Something it seems to me we want to leave out of the Uruguay Round process.

The Chairman. Thank you, Senator Grassley.

Can I just note that one of the true achievements, I think of this agreement, has to do with the subsidies for agriculture. There is no nation of which I am aware that does not in some measure or other seek to subsidize certain kinds of agricultural products. It is generally none in which representation in government is based on territory as ours is.

Senator Bradley, when I first came to this committee I spent much of my time listening to delegations of Japan explain to us that the rice subsidy was necessary to keep Japan from going communist. So they kept the rice subsidy and sure enough they went socialist.

(Laughter.)

The Chairman. So, you see,these things are very complicated. But the prospect that we will see if we do not get this agreement which domestic subsidies would have to be cut by 20 percent in six years and export subsidies must be reduced 36 percent over six years. If we do not, it is the farm States on this committee that will suffer.

You could make the point that if you live in, say, New York City and the French want to give away their wheat, well, why not take it. And, indeed, that is the way it will happen. The great advantage we have in the world right now is in agriculture and in intellectual property. This addresses both.

Now you give it up at great risk, a great risk.

Senator Grassley. Mr. Chairman, I was referring to this little thing and that little thing.

The Chairman. Sure.

Senator Grassley. We do acknowledge a great advancement in freeing up trade and a benefit to agriculture, without a doubt. The things that I am talking about are beyond that principle, you know, it is a policy of agriculture and a budget policy of our government are we going to unilaterally disarm our agriculture.

The Chairman. Fair enough.

Senator Breaux handed me some clippings just now. In the months since the North American Free Trade Agreement was agreed to Mexico is on the verge of becoming the second largest -- in four-and-a-half months, the North American Free Trade Agreement went into effect, Mexico is close to overtaking Japan as the United States' second largest export market.

Automobile sales have increased by 1,000 percent. Walmart has increased the percentage of U.S.made products in its Mexican stores to 80 percent from 40 percent. You ignore these things at some peril.

Senator Grassley. Mexico is Iowa's third largest trading partner.

The Chairman. Well, then you be nice to this agreement, Senator.

(Laughter.)

The Chairman. For the record, the Tariff of Abominations was 1828, not 1838.

Senator Rockefeller?

Senator Rockefeller. Mr. Chairman, I think you and the folks who work for you have done an absolutely superb job on this and I want to particularly congratulate Marcia Miller.

The Chairman. Yes.

Senator Rockefeller. She really has been awesome. And I think as a result of our walk through today, it will be possible for her to work out a number of amendments before we come to the final and that will be very, very helpful.

This is a good agreement. We got to remember as Senator Bradley said there was a time when we were doing tariffs and then we have sort of gone to non-tariff

barriers and now we are sort of looking more carefully at what subsidies and other things mean, redefinitional type of approach.

But the point is that this was started under a Republican President. This was finished under a Democratic President. We are all vested in it. There are areas -- intellectual property actually, which I think although it is not in the Chairman's mark -- I think has been worked out. The Chairman indicated that is very, very important.

Dumping and subsidies are things to look at. But this is an enormous step forward. We have moved into services and into intellectual property and other areas that we have never moved into before in this round. I would think that our credibility here in the Congress is very much at stake and I would hope that we would vote this in a bipartisan way even as we have negotiated this in a bipartisan way.

The Chairman. Thank you, Senator Rockefeller, most emphatically. May I make the point that Senators who have amendments, if they would just let us have them and I am sure many of them can be worked out without any gratification of any kind.

Senator Hatch, congratulating you on having reported out, this is an era of good feeling with respect to

Supreme Court Justices seems to be upon us.

Senator Hatch. Well, we are unused to that on the Judiciary Committee. So it has been a wonderful day for all of us.

Mr. Chairman, the Uruguay Round commenced in 1986 and eight years later we have before us the results of a long and tedious series of negotiations of more than 100 nations. So I am very impressed. It seems to be somewhat of a miracle that a general agreement was reached among so many parties with so many different interests.

But what it boils down to is that the process we are undertaking today is the final step of this long eight-year journey into what I believe leads to greater economic opportunity for the United States. I agree with the distinguished Chairman as I do in so many things in this area.

Therefore, I am as eager as anybody to implement this agreement as soon as possible so that our economy can enjoy the benefits of the Uruguay Round.

I want to commend you, Mr. Chairman, for what I consider to be an excellent mark. The proposal you have crafted for the most part I believe that your proposal seeks to make improvements in what the administration has already done up to this point.

I would also like to commend the administration for

the attention it has paid to some trade concerns that I have raised. For example, I know that the administration officials have been meeting earnestly, as recently as last Friday, with State and local government officials in an attempt to explain in more detail the relationship between the WTO and local governments and to respond to the concerns regarding the WTO and its potential impact on State and local government sovereignty.

They have indicated a willingness to work out the constructive language in the statement of administrative action that will address these concerns. And I will certainly monitor developments on this issue carefully.

Nevertheless, Mr. Chairman, as you well know, we still have a long way to go in reaching consensus on the important issues that will determine the fate of this legislation.

Therefore, without taking too much of the committee's time, I would like to briefly restate my personal reservations about this bill -- reservations that I hope can be worked out during the course of this mark-up process.

First, I understand that the committee will have the chance to explore further with the administration the financing proposals sometime in the future.

The Chairman. Absolutely.

Senator Hatch. Good.

The Chairman. This matter was touched upon while you were in Judiciary.

Senator Hatch. I am sure it has. And I will echo the concerns that I and others expressed to Secretary Bentsen, Ambassador Kantor and Leon Panetta last week by just stating again how disappointed I am with the sketchy proposal we have received from the administration thus far.

To date, we do not have enough specific information on the financing proposals to make an adequate study of them. I cannot in good conscience vote for a financing package that I do not understand or have not seen. I sincerely hope that the administration will supply us with the details on the complete financing package with enough time to make an adequate assessment of them.

The bottom line, Mr. Chairman, is that we are being asked this week to mark up a complex document that I strongly believe will benefit our country, but I cannot help but be uneasy about the financing of the agreement. I know others have expressed this as well.

I would hate to choose between a trade agreement that I strongly believe in and a financing package shoved down my throat without the opportunity to evaluate it thoroughly.

Second, I am extremely concerned with the administration's proposal to treat economies in transition, as others have raised this issue, differently than advanced economies in anti-dumping and countervailing duty cases.

The irony of this proposal is that in the name of providing assistance to non-market economies such as Russia and the Ukraine, which we all agree is important, I believe that we will be encouraging the retention of creation of excess capacity and subsidized production in transitional economies. This is precisely the type of incentive developing countries not need.

Furthermore, it was recently reported in an industry trade publication that the European union has imposed import quotas on various steel products from several States of the former Soviet Union. I find it deeply disturbing that while the Europeans are trying to curb potentially damaging imports from these countries we are threatening our domestic industries by reducing our ability to fight unfairly priced imports from these same transitional economies.

I strongly believe that this policy, if implemented, will send the wrong message to the countries with which we are trying to foster a recognition of the importance of fair trade and the development of competitive industries

that can effectively compete in an undistorted world market.

Finally, as we attempt to craft a workable anti-dumping code that is GATT consistent and yet does not unduly weaken our domestic industry's ability to fight unfairly priced or subsidized exports, I want to make sure that the Department of Commerce and the International Trade Commission are employing reasonable methodologies when determining dumping margins, subsidy levels and subsequent injury.

I plan on introducing and supporting amendments in the area of anti-dumping and countervailing duties that will work to provide reasonable and fair consideration of our domestic industry's interests and concerns.

I personally want to just express how much I value the way you lead this committee, Mr. Chairman. Having served on some very contentious committees in the past, and still do, this is a very interesting committee. The way you run it is very well done.

Could I ask one question? Sometimes they have indicated on this committee that unless you are here during mark-up you will not accept proxies. Will we be accepting proxies as we vote on this?

The Chairman. Oh, surely. Of course we will.

Senator Hatch. All right. I just wanted to make

sure because sometimes we have had conflicts with the Judiciary Committee.

The Chairman. You cannot be in both places.

Senator Hatch. Right. Thank you, Mr. Chairman. I am sorry I took this long.

The Chairman. Not at all. I acknowledge that we have not had the kind of discussion of the economies in transition provisions that would be helpful. And yet it is the great fact of the world economically right now that the centrally planned economies are trying to come into world trade in a way they have never done before. It has to be a difficult transition.

If I can just tell one tale of the United Nations. We had a succession of conferences on world trade, north/south particularly. There was one took place in Sophia, if I recall, in which a Soviet delegate received a resounding ovation from the collected delegates when he announced the Soviet Union was abolishing all tariffs on imports from developing countries.

Nobody bothered to point out that the Soviet Union did not have any tariffs.

(Laughter.)

The Chairman. They bought what they wanted and where they wanted it. But this is a new era.

And now, finally, Senator Chafee, we welcome you,

sir.

Senator Chafee. Thank you, Mr. Chairman. Has the letter from the former USTRs been introduced? I received a copy of a letter from Carla Hills, Clayton Yeutter, Bill Brook.

The Chairman. I do not think it has.

Senator Chafee. It is a very interesting letter. Obviously, all the prior USTRs are in support of the Uruguay Round. The points they make are very good. Mr. Chairman, all I want to say is, I hope we can get on with this. I am supportive of what you are trying to do.

It does seem ironic that we are tied up in this financing problem because I think all of us recognize that.

The Chairman. It is so peripheral. It is so unnecessary.

Senator Chafee. Well, I am not quite sure.

The Chairman. Well, I mean it is not what this is all about.

Senator Chafee. Yes, and particularly when you think that if you do it -- what is the term, in a dynamic fashion, that the monies will be there, but we are not allowed to count them. That is unfortunate but I want to be supportive and helpful, Mr. Chairman.

The Chairman. Thank you very much, Senator Chafee.

I am sure you will let us have a copy of that letter. Perhaps we will put it in the record.

Senator Chafee. I thought it came to everybody.

The Chairman. It probably has, but you just open your mail more quickly than others.

(Laughter.)

(The letter appears in the appendix.)

The Chairman. Well, all right, here we are. We will have Marcia Miller lead us through. I think if Ambassador Yerxa and Counsel Shapiro, if you have any comments, feel free to do them. Why do we not start at the beginning?

Ms. Miller. Very well, Mr. Chairman. The committee will work from the rather large document it has in front of it -- The Chairman's Proposal on Legislation Implementing the Uruguay Round of Multilateral Trade Negotiations. It is a side-by-side description of the provisions of the agreement, the current law provisions where applicable, and the third column is a description of the Chairman's proposal.

Essentially, the Chairman's proposal is the product of sort of a two-step process that the committee staff has been through with first the administration putting forward its proposals on the ways and the necessary laws that needed to be amended to implement the Uruguay Round as a matter of U.S. law.

We discussed those with the Ways and Means Committee staff and essentially with our Minority colleagues in Ways and Means, Finance, administration. Put forward a set of these descriptions to the trade LAs of the committee members over the last month and discussed those proposals with them.

Out of those discussions some changes were made to the general proposals and the Chairman's mark then is essentially the product of those meetings and discussions.

I would also mention that the legislative language setting forth sort of our starting point here was distributed to the trade LAs of the committee yesterday as well as the statement of administrative action which the committee must also approve. So that is essentially the work that has gotten us to this point.

The Uruguay Round results include some 18 different agreements. About seven of them include or require implementing legislation and those are the ones that we have listed first, and those are the ones that I would propose to describe this morning.

If any of you have questions on other agreements, those can be raised and we can have a discussion on those as well.

If I could turn to the first page of the descriptive language describing the agreement establishing the World

Trade Organization --

The Chairman. Could I interject for just one moment to say to Senator Hatch that we are very conscious of the Attorneys General concern in this matter and we would be very appreciative if you could monitor the negotiations going on between them and the administration.

I spoke last evening to Richard Blumenthal, the Attorney General of Connecticut, who was very optimistic about that. They are concerned properly, but I think their concerns can be met.

Mr. Shapiro, would you tell us about that? Those negotiations are going on, discussions.

Mr. Shapiro. They are, Mr. Chairman. We spent several hours together on Friday and have subsequently met since then. I think we are making good progress. I do not want to speak for the Attorneys General.

The Chairman. Sure.

Mr. Shapiro. But I did want to distribute today a letter that Ambassador Kantor has sent responding to the individual points that the Attorneys General have raised. We have copies of that available because I think subsequently it will be helpful to you.

The Chairman. And will you see that Senator Hatch is particularly kept apprised. Fine.

Ms. Miller, go ahead.

Ms. Miller. On the first page, I am just generally going to call the committee's attention to the most significant changes to U.S. law that are included in the Chairman's proposal. I will also call attention to areas where I know members have raised particular concerns this morning or prior to today.

Senator Rockefeller. Mr. Chairman?

The Chairman. Senator Rockefeller?

Senator Rockefeller. Is Marcia going to leave WTO now or is she going to go further?

Ms. Miller. No, I am going further on WTO.

Senator Rockefeller. All right.

Ms. Miller. On the first page there is a point directing the USTR to seek changes in the rules of the WTO to open meetings of the general counsel and the GATT Council, the current GATT Council. This is the beginning of many provisions in the bill that respond to the concerns about the lack of transparency either in the operation of the WTO itself under its rules or in the operation of the dispute settlement panels.

To the degree that the Chairman's proposal can address those consistent with the agreement, it does so. In some areas such as this point the Chairman's proposal directs USTR to seek changes in the WTO procedures to make them more transparent.

The next point I would raise, which is going to the decisions about decision making in the WTO would be on page three. The first point is that the bill would authorize appropriations as necessary for the U.S. contribution to the WTO.

I would note that in the history with the GATT our contribution has been about $9 million a year recently. I think the expectation is that it will be around the same amount, maybe a slight bit more if any members have questions about that point.

The next point I would raise because of questions about the operation of the WTO, Article IX speaks to the decision making in the WTO and voting requirements as does Article X on amendments. This is on page 3 and 4.

I thought because of the questions that have been raised here about how the WTO acts in voting procedures we might want to have Ambassador Yerxa address this point for a moment.

The Chairman. Yes, will you do that, Ambassador?

Ambassador Yerxa. I certainly will.

The Chairman. As the committee knows, the GATT has worked on a consensus basis and it makes for awful 4:00 in the morning meetings. But on the other hand it has worked. Still there are fallback arrangements in the present situation. Ambassador?

Ambassador Yerxa. Yes. I wonder if I could just briefly address the openness question as well that Marcia referred to.

The Chairman. Yes, please.

Ambassador Yerxa. Because the administration certainly supports the notion of making regular GATT meetings and other GATT procedures more open. I must say I served four years as our representative there and I never really understood why meetings had to be closed. Quite frankly, most of the discussions that take place in these meetings were fully reported afterwards and could easily have been conducted in public. There were not any kinds of secrets being discussed.

The Chairman. You mean people talk to journalists?

Ambassador Yerxa. But I think it would have a positive effect on the credibility of the institution to be more open. I am not sure that people are going to find it as interesting as they think it might be. Having sat through a lot of those meetings, I can tell you there is not enough caffeine in the world to keep them interesting. But I think the administration strongly supports that concept.

With respect to voting procedures, I think there is no area of the new WTO agreement that is less understood and more misrepresented than this whole question of

decision making.

As you stated, Mr. Chairman, the GATT agreement itself has provided for decision making by voting since its inception. But there has not been a vote on a policy issue since 1959 and that is because the GATT operates essentially on the principle of consensus. Consensus means that any contracting party can block an action and exercise an effective veto if it is willing to do so.

The Chairman. Could I interrupt to say, with respect, sir, you know, that is a very important point. The last time the GATT took a vote on a policy issue was 1959. The world community has learned how to reach agreements, even if it takes all night, as you say.

Ambassador Yerxa. And often it does.

Senator Chafee. Could I ask one question, Mr. Ambassador? Is every member of the -- in the case of the GATT, was every member a member of the decision making group? In other words, the 118 countries, whatever you had.

Ambassador Yerxa. That is correct. But effectively there are far fewer than that. Because as you know, a number of countries who are nominally members do not have a large stake in world trade and do not regularly appear at GATT sessions.

The European Union, formerly the European Community,

is represented only by one spokesperson. So that reduces substantially the number. I think in practice in the GATT decision making process there are about 30 countries or 30 representatives that conduct the regular business of the institution.

But to go on, this new WTO agreement codifies the principle of consensus. It was only a custom in the GATT. There is no GATT article that talks about consensus. But in the WTO agreement Article IX specifically codifies this custom and it makes consensus the governing principle for decision making.

Now, there are certain areas where voting could and does occur if necessary. But even in this, U.S. negotiators ensured that WTO voting rules should they ever be invoked would safeguard U.S. interests, even more than at present under the GATT rules.

We raised majorities required for important decisions and increased our ability to mobilize blocking minorities if necessary. For example, in the case of amendments, no change in substantive rights or obligations through an amendment will bind the United States unless we have agreed to that amendment.

In other words, amendments can be adopted by a voting procedure but they do not apply to countries that do not accept them. So as a practical matter, in order to have

amendments apply to all countries you have to consensus.

Key provisions such as the most favored nation obligation, decision making rules and the amendment rule itself can only be changed by a unanimous vote, not by a two-thirds vote. In order to ensure that the WTO cannot change the deal, we negotiated by initiating interpretations of the agreement, the U.S. had the rules changed to require a larger majority than the GATT presently requires for interpretations. Three-quarters of all members must vote on an interpretation and interpretations cannot be used to undermine the WTO's rules or amendments.

So I think in almost every respect there are also strengthening of the voting procedures with respect to waivers that will significantly strengthen our rights. My basic point here is that the argument that has been made by opponents is that this is a one nation, one vote system. In practice, in custom and in how these rules are structured and in the fact that we can essentially refuse to accept a change that we do not like, that is not the case. This is a consensus institution and one which the U.S. has always lead in developing the necessary consensus.

The Chairman. Thank you, Ambassador.

Ms. Miller. Mr. Chairman, I would go on to page 7

which begins the provisions that include the approval of the agreement and the statement of administrative action and then on to the provisions that describe the relationship of the agreements to U.S. law.

Essentially here the proposal follows very closely the model of previous trade agreements, most specifically the NAFTA which was approved by this committee last fall. One point I would mention here is that the bill would authorize the President to enter into the WTO at such time as a sufficient number of countries also are accepting the obligations of the agreement.

On page 8 --

The Chairman. Could I just ask Ambassador Yerxa, at the meeting in Naples of the G-7, the European Union indicated that it would ratify this year and the Japanese did as well. Is that the case?

Ambassador Yerxa. Yes. Our expectation now is that all major participants are prepared to implement the agreement and to complete the ratification procedures this year.

The Chairman. This calendar year?

Ambassador Yerxa. That is correct.

The Chairman. Thank you, sir.

Senator Chafee. Mr. Chairman?

The Chairman. Senator Chafee?

Senator Chafee. Has the Ambassador done away with the arguments of this WTO infringing upon our sovereignty? I mean, that is an argument that means to be raised and I am not saying it is a valid argument. But could you give us the briefest destruction of that argument?

Ambassador Yerxa. Well, I think in just another page we are going to get to the provisions in the implementing bill that set out the relationship of this agreement to U.S. law. I think that might be -- I mean, it is coming right up.

Senator Chafee. All right. Thank you.

Ms. Miller. With that, on page 8 the proposal is, again following the NAFTA and the model of former trade agreements approved by the committee, the bill would specifically say that the Uruguay Round and its application essentially only have the effect that this bill or other futures acts of Congress gives the Uruguay Round as a matter of U.S. law.

The agreement itself is not self-executing essentially. It is only a matter of U.S. law insofar as congressional action makes it a matter of U.S. law.

The Chairman. Now, it reads there, ''No provision of the Uruguay Round, nor its application, which is inconsistent with any U.S. law shall have effect.''

Ms. Miller. Exactly.

The Chairman. And that will be in our statute.

Ms. Miller. Yes.

Ambassador Yerxa. Could I comment on that? This continues -- you know, the Chairman said something at the outset that I want to agree with very much. This is a culmination of many, many years of the evolution of a system. This continues the fundamental principle that was underlying the GATT system. That is, it is a contractual arrangement among governments, not a super national law.

You know, the GATT itself referred to its members as contracting parties. And the whole concept both in the disputes process and in negotiations is that there is a balance of rights and obligations among countries. If one party does something to violate its rights and obligations, that upsets the balance and permits another party to do something equivalent in order to correct it.

But it does not permit either a GATT panel or the GATT itself or the new WTO to make rulings which are binding and effective upon the United States.

Now, any international dispute system which ultimately relies on a balancing of rights and obligations means that it is possible for another country to refuse to do something that this agreement says it has to do. We do not have assurances under this agreement that other countries will always abide by their obligations. We do

have assurances as we have always contemplated under 301 and U.S. law that we would have a right to take some reciprocal action if they do not. That is the essential nature of this arrangement, not one which in any way changes our rights and sovereignty to decide our own laws.

The Chairman. It is, in fact, an exercise in sovereignty.

Ambassador Yerxa. That is correct.

Senator Rockefeller. Mr. Chairman?

The Chairman. Senator Rockefeller?

Senator Rockefeller. I think I really agree with that and I think, you know, somehow the idea that every time -- you know, State sovereignty is something that can really catch fire on this committee or in the Senate if we do not put it in perspective. I think what the Ambassador said is right.

Second, every time GATT ruled that there was something wrong or, you know, there was some State specific situation and we were trying to correct it, we would really have a Pandora's Box opening up on us. I think this is the kind of thing that sounds a lot more dangerous than, in fact, it is.

Ambassador Yerxa. I might just mention in passing that the National Governors' Association meeting today in Boston I guess has approved a resolution. These are the

Chief Executives of the States. So presumably they are concerned about these matters. And, of course, in our consultations with the Attorneys Generals and others, we have been very sensitive to these concerns.

The resolution says, ''The Governors affirm their support for the approval of legislation this year implementing the Uruguay Round of multilateral trade negotiations within the framework of the GATT. The Uruguay Round agreements will expand world trade, open foreign markets to U.S. goods and services, increase U.S. economic growth and create new and better American jobs.''

I will ask that the full resolution be included in the record.

The Chairman. I will put that in the record. I want to state for the record that I knew if Bob Dole was up there in Boston they would do this.

(Laughter.)

(The information appears in the appendix.)

Senator Baucus. Mr. Chairman?

The Chairman. Sir?

Senator Baucus. Mr. Chairman, I basically agree with the import of all discussion that has preceded this point. But I do think it is only proper to address a concern that some people and some of the States have.

Looking at page 8, Relationship to Federal Law, the

Chairman has already read that first sentence. It differs from the first sentence under the paragraph ''Relationship to State Law,'' in that the marks says, ''No State law, nor its application, will be declared invalid on the ground that it is inconsistent from the Uruguay Round, except nations brought by the United States for such purpose.''

The main argument we hear from many of the States is, gee, if Uncle Sam has to -- if the Japanese decision means that Congress must act to change U.S. law and if the implementing language says that Congress must act to change U.S. law, why should not Congress have to act to change State laws that are in effect invalid because of a GATT decision.

What is sauce for the goose is sauce for the gander they say in some sense. I am hearing this. Many of us have heard this and many of us will continue to hear it. What is your response to that on the surface legitimate concern?

The Chairman. Mr. Shapiro?

Mr. Shapiro. Well, I think Senator Baucus' point is a good one that on the surface it is a legitimate concern. And as Senator Rockefeller and others have said, some of these States sovereignty issues can potentially catch fire.

We have to start a little bit back with a couple of basics. The first is, I want to emphasize the relationship of this agreement, this trade agreement, to State law is exactly the same as the relationship of previous trade agreements that Congress has approved to State law -- the Tokyo Round, the CFTA, and the NAFTA.

When an agreement applies and there are obligations that affect State law, when the Congress implements the agreement, the agreement becomes the law of the land and its relationship to federal and State law is, frankly, different. The relationship to State law is a different one and this agreement takes precedence potentially over State laws.

But what it does not do, and it is important to emphasize, while Congress is changing certain federal laws in the course of this implementation, we are not changing any State laws as part of this implementation process. So those laws stay on the books.

The second thing is, there are substantive concerns here that swirl in as well. We have addressed with the Governors and the State Attorneys General their concerns that somehow States' abilities to enact health, safety and environmental laws would be compromised.

Under this agreement, we have protected their ability to enact State statutes that are stricter, not only in

international norms, but stricter than federal norms as well, as long as they have a scientific basis in these areas.

The third thing that needs to be said because the Tax Commissioners have raised important concerns, many of the tax issues, the State tax issues, that have been raised have been the subject of reservations that we have taken under the GATTs, but we have listed whole categories of State laws that are reserved. That is, they cannot be attacked under this agreement.

And in our time that we have spent with the Governors, with the AGs, including I met for four hours with a group including North Dakota's Attorney General, and with the State Tax Commissioners, I think we have been moving in the direction of our both understanding their concerns about federal/State consultation and also their understanding our concerns as to how these laws would apply.

The two things -- and I do not mean to go on, but it has been a controversial subject, the two additional points are, there has been one case, one action brought in the GATT against State laws I believe in the last 30 years. that is the so-called Beer 2 case. There has never been a case where the Attorney General of the United States has brought any action against a State to bring

them into compliance with an agreement of this sort.

The Chairman. Let us just hear that once more, Mr. Shapiro. The original GATT was 1947.

Mr. Shapiro. Yes.

The Chairman. And since 1947 has the United States Government ever instructed a State that because of a GATT agreement a State law had to be changed or was struck down?

Mr. Shapiro. Have never brought a suit. There have been times if a State law, as in this Beer 2 situation was involved, Federal Government and the State Governments have worked together and talked about the possibilities of how to comply. But there has never been a suit.

The Chairman. Never in a near half century?

Mr. Shapiro. Right. And I think some of what is swirling here, Mr. Chairman, and Senators Baucus, and Conrad and others, is a concern that panel decisions can no longer be blocked.

Senator Baucus. Exactly.

Mr. Shapiro. The agreement applies to some areas of State law that had not been applied to before, such as the services and taxation of services. What we have been trying to do in working through with the State Attorneys General and Tax Commissioners is to reassure them both about the process and the substance on these issues.

Ambassador Yerxa. But if I could just add one point, because I think we have to be cognizant of the fact that there are probably a number of countries in the world who would like to see a result of this entire process that suggests that sub-federal entities are not obligated to abide by the basic principles of the GATT.

If we were to put in provisions into our system which essentially lead one to the conclusion that these obligations do not apply, both to the federal and State entities, that becomes certainly a very simple road map for every country around the world to opt out of the agreement, simply by adapting provincial, local, municipal policies which violate the agreement and which we would have little right to contest.

Senator Baucus. Mr. Chairman?

The Chairman. Sure. Senator Baucus?

Senator Baucus. I am saying, Ambassador, nobody is suggesting that. That was not -- if I might continue, that was not suggested by my question either.

Ambassador Yerxa. No, no. I know that.

Senator Baucus. Well, I am trying to focus in on a different issue, a different issue. I am not focusing on whether GATT dispute settlements or panel decisions which apply to the United States, the Federal Government, should not also apply to the States or that somehow States should

somehow not be as bound as our Federal Government. I am not addressing that issue at all. It is an entirely separate issue.

I am addressing the point that some people in some States make, namely that if implementing language requires Congress to overturn any federal law that might be inconsistent with a GATT panel decision, why should not Congress also be required to overturn any State law that might be inconsistent with a GATT panel decision. That is the question.

And as you said, Mr. Shapiro, that issue is more of an issue now because the United States cannot block a panel decision as it could in the past. In the past, I would guess that there is a reason why no Attorney Generals brought such an action. That is because basically the United States could block any action that would apply to the United States or the States or whatnot.

In the future that is not going to be the case. In the future, I suspect as the world becomes more complex, that there could well be panel decisions against States and if GATT decisions against Uncle Sam require congressional action, why should not GATT decisions against States also require congressional action? That is the question.

Mr. Shapiro. Well, and I tried to address that

question at the outset, Senator. Basically, federal and State law do not stand on precisely the same footing with respect to our international obligations. I mean, under our constitutional system, the way the trade agreement works is, when adopted it does take precedence over inconsistent laws at the State level. That is because the United States and the Congress have the authority over foreign and interstate commerce.

I think the State Attorneys General in our discussions and the Governors have been comfortable with that. What they have wanted to know is, what is the substantive affect on State law? And if a State law is challenged, they want to be full participants at all stages of the proceeding in defending such State laws, participating along with us in the defense of the State law.

Finally, they wanted reassurance about the question of when a Federal Government would possibly bring suit in terms against a State law. We have gone through the history here of how it has never been done. I think we are working towards some assurances for them that would deal with this problem. But the State law and federal law questions are not exactly identical.

Senator Baucus. Those are a lot of words, Mr. Shapiro, and I am basically sympathetic with the actions

you have taken to try to address States' concerns. But I must tell you I have not yet heard the public policy reason why there should be a difference.

Senator Conrad. Mr. Chairman?

The Chairman. Could I just ask what difference?

Senator Baucus. Well, the difference, Mr. Chairman, is that we are providing in the mark, as I said, the United States Congress must overturn affirmative, deal directly with any decision by a GATT panel which renders United States law inconsistent with the GATT.

We do not make a similar requirement with respect to inconsistent State laws. That is, where the GATT panel finds a State law is inconsistent. And just as we in the Federal Government want the reassurance that we have the right to go back and address federal laws by enacting legislation, I mean the States say, well, why should not the States get that same reassurance. That is the question.

The Chairman. I would have thought, Mr. Shapiro, with reference to the constitutional opposition that Congress is responsible for foreign trade.

Senator Baucus. And that is consistent with the point, Mr. Chairman. We are not asking the States to go back themselves to change State law, we are saying that Congress and the supremacy clause of the United States

should go back and address the State law matter.

I am not arguing for the point, but I am saying that is the point that States make and I think there is a lot of logic to it.

Senator Conrad. Mr. Chairman?

The Chairman. Senator Conrad?

Senator Conrad. If I might raise the point in a very specific way, New York City, California, tax corporations on a unitary basis -- at least New York City used to, I do not know if they still do -- there are countries that mightily object to that method.

Montana also taxed on a unitary basis. North Dakota taxed on a unitary basis. And if you could have a panel finding against that specific State law, it would be overturned.

Now, the States and the localities, including your own State, your own constituency, California, the constituency Senator Baucus and I represent are deeply concerned that they could have an overturning of their law and no review.

And frankly, we have been in situations. I was on a Commission in the Reagan Administration on State taxation of multinational corporations. We have seen very clearly and very specifically what happens when people who do not give a fig about what the State policy is. We are down

here in Washington. We are dealing with foreign countries on other basis that have other considerations. Are quick to trade away State law in order to accomplish what they see are greater purposes and there is no defense.

The States come to us and the localities come to us and they say, look, you have the right on a federal level to have congressional review. Why not the same protection for us?

The Chairman. Ambassador, do you want to answer that?

Ambassador Yerxa. Well, I was going to simply say not maybe much more, maybe in a slightly different way, what Mr. Shapiro has said, that when the United States enters into international agreements and international obligations as a matter of our constitutional system, those are obligations the United States is undertaking for all of its entities -- its federal and subfederal.

Now, the question of when the Federal Government would actually exercise some power over a State is obviously another question. The traditional relationship that has been maintained here through prior trade agreements is that these obligations do apply and that the Attorney General does have a right, which obviously has seldom in the trade field been exercised. But there is a right there in case some State adopts a provision or a

procedure which is so outrageous as to cause definitive harm to U.S. interests.

Now I think if we are suggesting that there would be some other approach to this, we have to recognize that that might be the same relationship between federal and subfederal entities that other countries would want to establish.

For example, in Canada where the Federal Government does not have the authority to overturn provincial practices we might be suggesting to the Canadians that there would be no effective obligations on the part of Providences. So I think you have to think what superficially seems like a very simply solution to a concern and analyze it very carefully.

It is not as if the Federal Government has acted imprudently in preempting States under trade policy in the past. We have not done so in the one case that Mr. Shapiro referred to where there was a GATT panel finding, nor are we proposing that we do so.

So I do think that the committee has to look at this very, very carefully before deciding what seems like the superficially appealing solution of essentially locking State practices except where Congress decides to change them and be very, very careful about that.

Senator Conrad. Mr. Chairman, if I am not mistaken

though, Mr. Ambassador, let us take the Tuna-Dolphin case, correct me if I am wrong, but it is my recollection that in that case the GATT decided against the United States saying that the United States law is inconsistent with the GATT. But did the United States change the law? No.

Ambassador Yerxa. No, we did not.

Senator Baucus. We kept the law. We felt that that was good public policy. And did other countries retaliate? No. So I am just saying that the United States did decide, did not want to change the law consistent with a GATT finding that U.S. law is inconsistent. The same may apply with respect to States, that the United States collectively at the federal level or the State level may decide that a GATT decision should not necessarily mean that that State law now is invalid.

It did not in the Marine Mammal Protection Act. So why is that not also the approach --

Ambassador Yerxa. Well, Senator Baucus, in the Beer 2 decision we have not decided that State laws which were found to be inconsistent with the agreement should be preempted. Although there was a ruling against State laws, many of which still remain on the books.

Senator Baucus. Mr. Chairman, it seems to me the question is who decides. Is the Executive to be the one that decides with respect to States or is to be the

Congress to be the one that decides? That really is the issue. It is not a question if there is going to be a decision.

We are not saying there should not be a decision. We are saying it ought to be a matter that is decided not by bureaucrats but by people who are elected. It is good enough for those disputes that arise with respect to federal law. Why is that not good enough with respect to disputes that arise with respect to State law?

The Chairman. Let me just say here, I think we cannot resolve this right now and I would like to get on with this walk through. We have a clear area of concern. I think we ought to allow the administration officials to see what kind of agreement they can reach with the Attorneys General and what is their understanding. Let us be clear.

In a half century of this arrangement, no State has ever been told you cannot do anything. And the idea that a President would make such decisions, and no Senator will ever rise to the defense of his or her State, it seems to me improbable.

The International Trade Organization in this committee was defeated in 1947-48 by the notion that some kind of world government was going to take over and run this country from Havana. It did not happen. This is an

old tradition in American life and not the worst to be concerned about these things. But let us see if we cannot resolve them.

I think Senator Chafee asked the right question. I think you did, too, sir. I think you all did. But let us see how you work it out with the Attorneys General. But for heavens sake, I mean, it is not 1947. We have had a half century in the GATT.

Mr. Shapiro. I will say, Mr. Chairman, that we will continue to do that. I do think Senator Conrad has raised a bedrock constitutional question. And the question is, once if the Congress so chooses to approve the trade agreement by implementing legislation, then if there is a challenge to State law and there is an effort to bring a State into compliance is it an Executive function or a legislative function.

I think as a constitutional matter, and I think we should provide something in writing on this, Article II would require that the President is obligated at that point. He is the one with responsibility for carrying out the enforcement at that point.

Senator Conrad. Mr. Chairman, I do not mean to prolong this. But why should that not also apply to the federal statutes?

Mr. Shapiro. Well, because basically, Senator, here

we have a situation where federal law stands on different footing and the President and Congress has to act.

The Chairman. Congress makes the law.

Senator Baucus. But, Mr. Chairman, and again I do not want to prolong this, but we are talking about an instance where the GATT panel finds the U.S. laws inconsistent. We are providing in this legislation that the President cannot willy-nilly on his own, I mean as an Executive matter, render that law invalid. W are rather providing in this mark that Congress must affirmatively act.

I ask the question again, if that is the case with respect to federal law, why should that not also be the case under Article I -- well, then a supremacy clause -- to address State laws that are inconsistent.

Mr. Shapiro. Well, Senator, because they do not stand on precisely the same footing. And, obviously, I think, you know, you have raised the question several times. I have not satisfied you, so I am going to have to give you something in writing.

The Chairman. Right. But let me lay down one proposition. If it becomes possible to avoid GATT agreements by a subdivision of any particular country, saying we do not like it, then there will be no international agreement.

Senator Baucus. Absolutely. Nobody is suggesting that, Mr. Chairman. Nobody is. Nobody is suggesting that.

Senator Conrad. In fairness, that really I do not think is a fair statement of the issue. I really do not.

The Chairman. Well, maybe it was not fair, but it is true.

(Laughter.)

Senator Baucus. That is not the issue that we are addressing.

The Chairman. No, it is a separate issue. But let me just tell you that the way the governments of the world are organized, you just would not have any agreements if a jurisdiction which was not the contracting party had a right to act opposing or negating statutes.

All right. We are going to get something in writing and we thank you very much for your patience with us.

Mr. Shapiro. It is an important issue.

The Chairman. Sure.

Ms. Miller. Mr. Chairman, the last point I would mention that does relate somewhat to this discussion is on page 9, again following previous trade agreements, the model of previous trade agreements. There would be no possibility of private rights of action based on the agreement.

In other words, as the Chairman's proposal says, ''No person other than the United States, the Federal Government, would have any cause of action or defense under the Uruguay Round Agreements to challenge either U.S. law or State law.''

The Chairman. What you are saying is that no French firm can take a statute -- could come into an American court and say.

Ms. Miller. That is correct.

The Chairman. Yes, we are talking about persons, the private rights of actions in the path of persons --

Ms. Miller. Of any private party.

The Chairman. Yes.

Ms. Miller. I would then go on to page 11, which speaks to the implementation of the tariff concessions, the U.S. commitments to lower its tariffs as part of the Uruguay Round agreements. Those are contained in Schedule 20 to the Marakesh protocol.

The proposal here would grant the President the authority to proclaim the tariff reductions that are essentially contained in the U.S. schedules, the U.S. Schedule 20. It also would include some proposals to allow for technical adjustments to what are referred to the Column 2, those are the non-most favored nation rate duties. This requirement comes because of some of the

tariffication provisions of agricultural import quotas and such.

Then I think the next provision I would point out to the committee would be on page 13. One of the issues that the committee has raised concerns about in the past has been to prevent any, what has become to be known as free riders on an agreement. That is countries getting the benefits of the agreements but without making any real commitments on their own.

The provision here would say that if a country does not join on to the World Trade Organization that the President would have the authority to not grant them the lower tariffs that are otherwise extended to all WTO members.

The Chairman. Just curious. We have some major countries not members of the WTO -- the Peoples Republic of China is not. What are the other major ones?

Ambassador Yerxa. A number of the Gulf States are not. The Republics of the former Soviet Union are not.

The Chairman. Are not.

Ambassador Yerxa. Most of them are in various stages of consideration of accession. We also have a couple of, you know, countries like Vietnam and Cambodia and Laos and others.

The Chairman. It might be helpful if we have a list

of the countries not members and those which are applying.

Ms. Miller. The next provision I would point out to the committee is at the bottom of page 13 it directs the President to seek establishment of a GATT working party on the relationship of internationally recognized worker rights to the GATT and the WTO.

Essentially, the proposal would set forth the objectives for that linkage, also set forth that the purpose should be to examine the trade effects.

The Chairman. These are ones which the Congress has enacted as part of the GSP status.

Ms. Miller. Exactly.

The Chairman. These are what we have said before are internationally recognized.

Ms. Miller. Exactly.

With that I would go on to page 15 which is the beginning of the description of the dispute settlement rules that apply in the World Trade Organization. In particular on page 15 in the middle column you have a description of the Section 301 of the 1974 Trade Act, which is the U.S. authority that essentially leads into the dispute settlement mechanisms of international trade agreements like the GATT.

On page 15 you have some clarifications to Section 301 authority. There have been concerns raised about the

impact of the World Trade Organization and its dispute settlement mechanism on 301. The point here is to clarify that under existing authority the President does have a broader range of options in deciding what actions to take if he has found an unfair trade practice under Section 301, that that authority is broader than just import measures.

It is essentially in the statute refers to any other authority within the power of the Presidency. This would just clarify that point to make absolutely clear in the statute that that is the situation. It also clarifies some of the language regarding intellectual property protection and what are considered to be unfair trade practices when it comes to intellectual property.

Senator Baucus. In fact, Mr. Chairman, I think these are some suggestions that Senator Danforth and others have made.

Ms. Miller. Exactly.

Senator Baucus. Thank you.

Ms. Miller. I would then go on to page 18 where we begin to see some of the provisions, more of the provisions I alluded to earlier regarding the transparency of dispute settlement. The Chairman's proposal includes here, and on pages 20 and 21, requirements that when the United States is being challenged in the GATT and a panel

has been established to hear a dispute about some particular U.S. practice that USTR would publish a notice in the Federal Register describing the nature of the dispute. It would consult with the Congress, consult with interested parties.

The idea here is to create a continuum of transparency proposals, from the point that the panel is convened all the way through to the point that the United States has to decide what action to take to assure that Congress is involved, private parties are involved, and there is a fair degree of understanding about what the nature of the issues are that are being raised.

The Chairman. Ms. Miller, can I ask a question here which I think is appropriate? You can get the impression from our discussion of trade that the trading system in the world is hugely disputatious and that people are constantly litigating and appealing and so forth.

How often is is an action under the GATT taken against the United States?

Ms. Miller. Well, my understanding is that there have been 76 cases involving --

The Chairman. Seventy-six cases in fifty years?

Ms. Miller. Actually, it is 76 cases in which the United States has been the Complainant; 66 in which we have been the Respondent. So the latter is the answer to

the question you have asked.

The Chairman. So in a half century we have made 76 statements about somebody else's practice?

Ms. Miller. Yes.

The Chairman. And there have been 66 complaints made to us. That would not keep many K Street law firms busy, would it?

Senator Baucus. Mr. Chairman, if I might add, dumping cases do.

(Laughter.)

Senator Baucus. They are extremely complicated and they are very, very lengthy. They do keep K Street attorneys going.

The Chairman. But if you considered the amount of litigation that involves the normal commercial activities of American firms, that fill up the State Supreme Courts and the city courts and so forth, this is once a year we say something to somebody and somebody else says something to us.

Ambassador Yerxa. I think it also would be worth pointing out that as a percentage of overall U.S. imports and exports affected by these disputes -- I do not have any exact percentage, but I know having worked on the disputes for many years that it affects a relatively small portion of overall U.S. trade.

They are important disputes and I do not want to minimize the importance we attach because we win about 80 percent of the cases in which we are Complainants and we win about 52 percent of the cases where we are a Respondent. So our track record is not so bad. But they do not -- many, many large areas of international trade are never brought up in these disputes.

The Chairman. Right. I think if we could get some weighting it would help the perspective on this. I think what we are seeing is a world trading system which is advantageous and people abide by the rules because as a matter of fact it is in your interest to abide by the rules.

Senator Baucus. Mr. Chairman, I think in all fairness it is also fair to say that there is a reason why we are a Complainant more often than are we a Respondent, and that is because other countries still have more barriers to trade overall than do we.

The Chairman. Oh, sure.

Senator Baucus. And it is important that we, for want of a better expression, you know, stand up for our rights and exercise the judicial system.

The Chairman. And we do and we will.

Senator Baucus. I also think that there is not an equal distribution in the last half century in these

cases. I think there are more cases in later years than there were in earlier years.

The Chairman. Probably because there are more rules.

Senator Baucus. And because trade is more important.

The Chairman. All right.

Ms. Miller?

Ms. Miller. Yes. There are more of these proposals on transparency on pages 20 and 21. But I think I have described for you the general concept behind them, so I will not go through all of them. The idea is to get panel reports publicly known, U.S. positions on them publicly known, foreign positions on them publicly known. So there are a number of provisions to that affect.

On page 21 at the bottom of the page we have really the only one amendment that is required to Section 301 as a result of the dispute settlement understanding, and that is something to bring the deadlines into conformity with the agreement.

Under the agreement, dispute settlement panels, the maximum time table is about 16 months. The U.S. time table for Section 301 determinations is around 18 months. So essentially for the most part they conform. And if the U.S. seeks to pursue a case in the WTO while it has a Section 301 action going forward, the international panel should rule well before Section 301 reaches any deadline.

So at the point that that decision is made, the administration knows what the international panel has done.

The one instance in which that is not the case it relates to the subsidies agreement. And violations of the subsidies agreement under Section 301 in the past have been under a 12-month time table. The proposal here would be to expand that and make it fit with other trade agreement violations in 18 months. Also for those that are related to the intellectual property protection and covered by the TRIPS agreement, you would have an 18-month deadline.

The Chairman. Good.

Ms. Miller. The next point I would raise is on page 22. It relates a bit to the earlier discussion about how panel decisions are implemented as a matter of U.S. law. The proposal in the Chairman's mark, we have spoken a fair amount about what happens when a U.S. law is found inconsistent with the agreement or with an agreement under the World Trade Organization.

An issue has arisen as to a situation where it is not U.S. law that is inconsistent with the agreement, but it is U.S. practice or U.S. regulation. In other words, the Congress does not need to act to change a law to come into conformity. It would normally be within the power of the

administration to change a practice or regulation to come into conformity.

But there is concern that Congress should be involved in those decisions as well. The Chairman's proposal here would require that the administration seek advice from the private sector and submit a report to the Congress that would have to lay over for a period of 60 days before they could actually act to change the practice or regulation.

This is modeled on requirements we have had for consultation in lay over and other trade agreements with respect to different matters -- tariff issues occasionally or Customs issues.

While the value of the consultation on lay over requirements I think in our experience with past trade agreements has been that it has made the administration quite careful on how it goes about changing something that is not normally subject to congressional review or change. And, therefore, it has been a fairly noncontroversial way of making these changes and still involving Congress in what those decisions are.

The Chairman. Ambassador?

Ambassador Yerxa. Well, here I want to raise something of a concern, although I think obviously we will continue to work with you on this concept. But here we are dealing with situations where the administration's

practice or regulation is the question, not the law under which we are operating.

Now, it is quite clear that if some panel decision relates to a law or a statute, then we have to come to the Congress and seek implementation the Congress may or may not choose to implement it. But there are numerous cases of where it is a question of regulatory practice, it is a question of procedures, that sort of thing, that are fully consistent with the law whether we keep them the way they are or slightly modify them.

I am concerned about essentially something which says that there are serious limitations on the administration's ability to modify areas of practice in conformity with the statute. We certainly understand the concern about consultations and about some procedure for determining whether or not you want to think about changing U.S. law. But I am concerned about the limited flexibility this gives the administration.

In practice it could create difficulties. So I want to continue to talk with the committee about how we would accommodate our concerns.

The Chairman. Fine. That is perfectly reasonable. But you do note it says the President shall consult with the committees.

Marcia?

Ms. Miller. On page 23, following along the same issue of how panel decisions are implemented, a mechanism is set forth that authorizes the International Trade Commission to revisit decisions that it has already made on anti-dumping and countervailing duty cases as well as safeguards, decisions under Section 201 of the 1974 Trade Act.

The problem arises that once an order, for example an anti-dumping order, is issued, even if some aspect of it were found to be inconsistent with our obligations under the anti-dumping agreement, the ITC (International Trade Commission) has no authority to go back and revisit that.

This does not specifically mandate in any way what they do. The proposal essentially has USTR seek the advice from the International Trade Commission as to whether it is even possible to come into conformity without a change in U.S. law. They basically say yes or no without saying what their change would be.

There is a requirement for consultation with Congress. And USTR may after these consultations ask the ITC to revisit its earlier determination to take steps to comply with whatever the decision has been under the panel.

On page 25, again, Mr. Chairman, and in part to make sure the committee is aware of how many disputes are

ongoing in the World Trade Organization, there is a requirement that the USTR submit a report semi-annually to the Ways and Means and Finance Committees setting forth the activity on dispute settlement in the WTO so the committee stays aware of what is going on.

The Chairman. So we know what the calendar is.

Ms. Miller. Exactly. And also under the agreement there is a ministerial decision described in the left-hand column that provides for a full review of the dispute settlement rules in four years. There is a requirement here, of course, that the Congress should be consulted on that extension.

The Chairman. Sure.

Ms. Miller. If there are no questions on dispute settlement, I think the next part of the proposal that we would --

Senator Rockefeller. Mr. Chairman?

The Chairman. Senator Rockefeller?

Senator Rockefeller. I think that is a remarkable statement in and of itself, because it was not that long ago that there were all kinds of questions about dispute settlement and it just shows that things can be worked out.

Ms. Miller. There is an outstanding panel decision against the United States from 1988 regarding Section 337

of the Tariff Act of 1930 which relates or is used primarily regarding intellectual property protection.

The administration has proposed to come into conformity with the panel decision at this time as part of the Uruguay Round implementing legislation.

The Chairman. Do you want to give us just a little more detail on this? I am not sure what some semi-conductor mask work means. What was the decision?

Ms. Miller. Well, Mr. Chairman, I was about to ask Ms. Lamb to discuss this particular part of the proposal.

The Chairman. Would you do that for us? Just tell us.

Ms. Lamb. Thank you, Mr. Chairman.

The Chairman. This is one where we lost.

Ms. Lamb. We did lose and this is the procedure by which we are seeking to bring United States law into compliance with the GATT finding.

The Chairman. Just give us a little preview of who and whom here.

Ms. Lamb. Sure. It was the European Community who brought the action against the United States. Those were the two principal litigants, although other countries also expressed an interest. I believe Mexico was one.

The Chairman. What did they say we were doing wrong?

Ms. Lamb. The heart or the essence of the panel

finding was that certain aspects of Section 337 violated the national treatment principle found in GATT Article III. Specifically, the essence of their finding was that while imported goods that were alleged to be infringing U.S. patents, trademarks, copyrights, semi-conductor mask works could be subject to suit at both the International Trade Commission (the ITC) --

The Chairman. This was the fact that there are two places in which you can go for redress.

Ms. Lamb. Precisely.

The Chairman. Not a very alarming practice I would say.

Ms. Lamb. That is right. So that while imported products could be subject to be suit at both the ITC and Federal District Court, domestically produced goods that were alleged to be infringing intellectual property rights could be subject to suit only in Federal District Court.

The national treatment obligations of GATT in Article III are brought forward into GATT 1994.

The Chairman. Explain national treatment to us, Ms. Lamb.

Ms. Lamb. This is the heart of the GATT or one of the key principles on which the GATT is founded. The principle is that imported products should be treated no less favorably than domestically produced goods.

The Chairman's proposal, your proposal, implements essentially or adopts essentially the administration's recommendations for bringing Section 337 into compliance with the GATT finding with some minor refinements. The proposal addresses each of the four points, the four major points, in the GATT ruling. I will start on the bottom of page 26.

The first is that the panel found that while there are strict time limits in the ITC, there are no such time limits in Federal District Court actions.

The Chairman. Do we not know.

Ms. Lamb. And so the proposal would eliminate the time limits in Section 337 actions, but it would provide that the ITC would nonetheless concludes its investigation at the earliest practical time and that a target date would be set at the initiation of the investigation as to the completion date.

The second element found at the bottom of page 26 is aimed at addressing the dual forum problem that you mentioned, Mr. Chairman. What it would provide is that if a Complainant has initiated or sought injunctive relief against the same party on the same claim in Federal District Court, it would not be permitted to pursue that same claim against that same party in the ITC.

The Chairman. And there will not in fact be a dual

decision process.

Ms. Lamb. That would be the principal.

On page 27, the third issue that was raised by the panel was that a Defendant in Federal District Court is allowed to raise counterclaims, whereas the Respondent of the ITC is not allowed to do so. The proposal would permit the Respondent at the ITC to raise a counterclaim, but the counterclaim would then be removed to Federal District Court.

And then finally at the bottom of page 27, the fourth area addressed by the panel was the fact that the ITC, but not Federal District Court, can issue what are called general exclusion orders which means that imports can be subject to exclusion whether or not the parties producing them were actually before the ITC in the proceeding.

The panel found that in certain instances such general exclusion orders were necessary or could be necessary and the proposed implementing measure would simply provide that there are restrictions as to when the ITC actually used these general exclusion orders.

The Chairman. Good.

Ms. Lamb. On page 28 and 29 you will find, just for the committee's reference, several amendments that fall within the jurisdiction of the Judiciary Committee that are also necessary to implement these points.

The Chairman. Oh, good. You make sure that Senator Hatch and Senator Biden know about them.

Senator Rockefeller. Mr. Chairman?

The Chairman. Senator Rockefeller?

Senator Rockefeller. If it is okay if I could just address a question to either Ira or Rufus. There has been a huge subject as the Chairman indicated and it has been subject to discussion for sometime, the question of border enforcement and intellectual property which essentially you all did with TRIPS.

Sometime ago, Mr. Chairman, I introduced a bill, Senate bill 148, which I think was a very good bill and frankly had the support or has the support of the entire intellectual property community and of the lawyers, the Bar Association, which said that it would be applicable and workable.

I just wanted to address Mr. Shapiro. This is a very complex issue. The Chairman's mark does not reflect 148 in a variety of ways. But I assume that this is sort of a work in progress. If I could get any comments from you on that.

Mr. Shapiro. Senator, I have -- well, going back. This is a complicated issue and your bill, 148, which had broad support formed the basis of what we were trying to do. Over time we added a number of features to it in

consultation with the private sector, as well as Hill folks, and have continued to talk about it.

Over time also in certain features I have learned that it was foolish of me to think that we could come up with anything that was an improvement on 148. I have mentioned to both the majority and minority that we are continuing to work on this, and particularly on the central question of the injunctive ban. So we are continuing to discuss this with the Senator and with others.

The Chairman. Senator Rockefeller, these provisions do in some measure respond to your bill.

Senator Rockefeller. Yes, sir, they do. But there are some more ideas that I think that Mr. Shapiro and perhaps Marcia Miller have been discussing. That is why I referred to this.

The Chairman. And this is going to continue.

Ms. Miller. Yes.

Senator Rockefeller. This is kind of a work in progress.

The Chairman. Good.

Senator Rockefeller. I thank you, sir.

Ms. Miller. With that I would go on to the description of the safeguards agreement which is on page 30. I will not spend a lot of time here because for the

most part the agreement tracks U.S. law very closely. These are the provisions that allow for emergency action to assist industries which are being injured because of imports. It has been a principle of the GATT under Article XVIV that such actions could be taken under specific circumstances and that concept is embodied in Section 201 through 204 of the 1974 Trade Act, administered by the International Trade Commission, which makes recommendations to the President and then the final decisions are made by the President in terms of what action to take.

The Chairman. Once again, you always learn something when you put a number on a concept. How many of these have we had in the last 10 years? Ms. Lamb, you have the databank there.

Ms. Lamb. I have figures for the last five years. Since 1989 there have been two Section 301 actions. In one case no injury was found; in another case the President decided not to grant import relief.

The Chairman. Thank you.

Ms. Miller. As I said, the agreement is mostly quite consistent with U.S. law. I will just point out a couple of changes that are the most significant. One, on page 30 I'll just point out that textile products are not subject to safeguard action pending the transition period under

the separate textiles agreement, whereby products that have been under import quotas subject to the multi-fiber arrangement essentially they are being integrated back into the GATT or the World Trade Organization and during the period of their transition they are not eligible for action under Section 201. They are eligible for separate action.

The Chairman. I wonder if the Ambassador would tell us a little more about the textile provisions, which are always sensitive. In entered this field in 1962 with the negotiation of a long term cotton and textile agreement in Geneva which was a condition of getting the Trade Expansion Act of 1962 in the Kennedy Round.

Now at this point about what portion of textile imports are under quota?

Ambassador Yerxa. I am going to ask Ambassador Hillman, our textile negotiator.

The Chairman. Please, Ambassador, we welcome you. Step right up there.

Ambassador Hillman. Mr. Chairman, I am sorry that I do not know that I have an answer exactly to the question that you have asked. But we generally right now have textile agreements with a total of 40 countries. Some of them are very broad agreements that would cover virtually all of the textile trade from that country, others would

be much smaller agreements covering only a small percentage.

We now have import penetration levels in the order of approximately 60 percent of the articles of clothing that are today sold in our market would be imports. Approximately 40 percent of the fabric that is sold in our market today are imports. In the order of approximately 70 percent of that trade is covered by categories within our textile quota system, so they could be eligible for quotas. But we do not have quotas on every country or every product.

The Chairman. And as we bring the textiles back into the GATT, what do you expect, these quotas will now disappear?

Ambassador Hillman. Yes. They will be phased out over a 10-year period. The phase-out process works through two specific aspects. One of it will increase, accelerate the rate at which existing quotas will grow. They will grow faster than they have in the past so that each country that has a quota will get increasing access to our market under a faster time pace than they do today.

The second aspect of it is that we will remove all quotas for all WTO members from a specific portion of all of our trade in three separate stages, such that at the end of the 10-year period all products will have all

quotas removed for WTO members.

The Chairman. I see. Thank you. One last question. We do export textiles, do we not?

Ambassador Hillman. Yes, Mr. Chairman. We import approximately $40 billion worth of textiles and clothing today and we export approximately $10 billion.

The Chairman. What would the world do without Levis?

Ambassador Hillman. Actually, exports have been growing quite fast from a fairly small base. So our export base has been fairly low over the years, but we are beginning to see our exports in the textile and clothing area rise very rapidly.

The Chairman. And there will be no quotas against them in foreign markets at the end of this 10-year period?

Ambassador Hillman. That is correct.

The Chairman. Thank you very much, Ambassador.

Ambassador Yerxa. If I could, are you going to do more on the 201?

Ms. Miller. Yes.

Ambassador Yerxa. Well, I will wait then. I had a comment about the safeguards agreement, but I will wait until after the descriptions.

The Chairman. Fine.

Ms. Miller. The first provision I would point out to the committee is on page 32. It relates to circumstances

in which an industry alleges that there are critical circumstances that the import relief is necessary more quickly than would normally be the case.

The proposal here essentially replaces the existing critical circumstances procedure with a faster procedure so that the ITC would make a decision in 60 days and the President could act within 30 days after that.

At the bottom of page 33 I would point out one change in law necessary regarding the duration of any import relief. Under current law the maximum is eight years and there is no split of that eight years. The President could decide to grant three, six, eight, any amount in that time frame.

Under the agreement, initially a safeguard action can only be taken for four years. It can be renewed up to an additional four years. So the total time frame is the same as under U.S. law. Eight years is the maximum possible. But whereas in the past there was more flexibility within that eight years, now it will just be a matter of a maximum of four plus four.

The Chairman. Four plus four. Once again, how many of these emergency orders are in effect, Ms. Lamb?

Ms. Lamb. Probably none at the moment since we have had no cases.

The Chairman. Probably none, yes.

Ambassador Yerxa. But that goes to a point I wanted to make.

The Chairman. Yes, Ambassador.

Ambassador Yerxa. This has at various times been an important feature of U.S. law. It deals with --

The Chairman. It is there.

Ambassador Yerxa. Yes. And it deals with fairly traded goods. But where there is such an increase in fairly traded goods as to cause a situation of serious injury. Where an industry needs time to make positive adjustment to that increase, this law gives the President the authority to impose temporary relief.

In the past, I think the difficulty of actually using this law has been that while we have a right to do it under GATT, we also have an obligation to pay compensation to another country for the relief. I think this has led in various cases to the resistance on the part of administrations to take a measure, and perhaps has in some instances forced those industries to seek remedies under other laws, unfair trade laws and the like, because of the uncertainty of any presidential action here.

One of the major features of this agreement is that there is no requirement of compensation now in the first three years.

The Chairman. I see. And so this means that the

administration does not have to decide to help X by hurting Y.

Ambassador Yerxa. That is correct.

The Chairman. Thank you, Ambassador.

Ms. Miller. That was in fact the last provision I was going to mention in the agreement. So with that we can move on to the description of the anti-dumping agreement, which begins on page 37. This and the subsidies provision of the implementing proposal are by far the bulk of the drafts.

The Chairman. Excuse me. Mr. Shapiro has been replaced by --

Ambassador Yerxa. Assistant Secretary Esserman of the Commerce Department.

The Chairman. Good afternoon, Ms. Esserman.

Ms. Esserman. Good afternoon, Mr. Chairman.

The Chairman. It is a pleasure to have you here.

Ms. Miller. The anti-dumping agreement does require numerous changes in U.S. law and in many instances what is required here or the administration's proposal, the Chairman's proposal as it is based on that, essentially brings into the law many things that have been a matter of regulation in the past. That is one of the reasons why it is such an extensive part of the bill.

Essentially you have here two elements to determine

dumping. One is that the Commerce Department finds the degree to which dumping is occurring and that is by comparing what is referred to as the normal value -- the price in the foreign market -- to the export price, which is the price that the goods are being sold at here.

The agreement sets out in great detail how the determination of dumping is made, the methodology essentially that applies, and then also how the determination of injury should be made. Again, in addition to the calculations and the factors to be considered in both parts of this decision, you have a number of evidentiary and procedural elements that are included.

Again, as I have been doing in general, I am just going to highlight the provisions that I think are of most importance and interest to the committee. Beginning on the bottom of page 37 and going over onto page 38, one issue here is determining what the cost of production is in cases where it is the cost of production that will serve as the basis of comparison.

In particular, there has been an issue as to how to handle what are referred to as start-up costs. The agreement essentially at the bottom of page 38, beginning of page 39, points out that the cost of production should be adjusted to account for costs effected by start-up

operations.

The Chairman's proposal includes a provision that provides that the Commerce Department should make an adjustment for start-up operations when a company is using new production facilities or producing a new product requiring substantial additional investment.

At the bottom of page 39, another major change in U.S. law required by the agreement, has to do with how one calculates general selling, administrative selling, and other costs and profits in making this determination of what the normal value should be.

Under U.S. law in the past in constructing that value, there was an assumption that you would use 10 percent for these general expenses and 8 percent for profit. It was just a standard amount U.S. law set forward as what would be used in these calculations.

The agreement requires that both the general expenses and profit be based on actual production and sales data and not these --

The Chairman. What did United States law say is the normal profit, 8 percent?

Ms. Miller. Eight percent.

The Chairman. What would economists say about that?

Ms. Miller. Well, we will not be doing it any longer. Essentially, the Chairman's proposal will adopt

straight from the agreement the use of actual production for a set of other possible criteria if actual information is not available.

The Chairman. Again, just in trying to put a number on this. How many anti-dumping procedures are we running into these days?

Ms. Miller. There are currently 292 outstanding anti-dumping orders here in the United States against imports from other countries.

The Chairman. With a maximum of eight years?

Ms. Esserman. No, Mr. Chairman, those cases would continue on and in the past did not have a finite duration. Under the agreement, there will be a sunset review every five years.

The Chairman. Every five years?

Ms. Esserman. Yes.

The Chairman. What is the volume of trade involved?

Ms. Miller. The volume of trade is about half a percent in 1993.

The Chairman. About one-half of one percent.

Ms. Miller. One-half of one percent of U.S. trade is under such an order.

The Chairman. But the fact that the law is there has a salutary effect, I have to assume. Is dumping a practice that tends to grow? I mean, I associate it with

earlier mirrors of State trading.

Ambassador Yerxa. I think there are a larger number of dumping actions today than at any time before. But, of course, there is a much larger volume of trade now today. So it has grown proportionately with the volume of trade.

The Chairman. How do you distinguish between, just as a matter of practice, people trying to get into a market by a loss leader as a department store might describe it as against dumping?

Ms. Esserman. Mr. Chairman, the law looks at whether or not there are prices that are deemed to be unfair. That is that generally a product is sold in the United States at a price less than in the home market. But in addition before a dumping duty may be imposed, the International Trade Commission must make an injury finding. So there must be a finding that the product is injurying the United States industry.

The Chairman. I would not want to be on that Commission. Thank you, Madame Secretary.

Ms. Miller. On page 42 the --

Senator Rockefeller. Mr. Chairman?

The Chairman. Yes, sir.

Senator Rockefeller. I am sorry. I am always a little bit behind.

The Chairman. Not at all. Senator Rockefeller?

Senator Rockefeller. But on the matter of fair comparison because that has been -- the Department of Commerce has come up with a way of looking at this. Is it not fair to say that if that fair comparison law or proposal that it in fact would not be necessary, that it would add nothing to today's current situation?

Ms. Esserman. We had come up with a fair comparison proposal which we thought was consistent with the GATT.

Senator Rockefeller. That was consistent. I have a concern that -- Mr. Chairman, the reason I am bringing this up is that a member who is not currently here may try to reinsert that fair comparison version back into the text. If that were to be the case, I just want to put Marcia Miller, and obviously most importantly the Chairman, on notice that if that were to occur I would strongly oppose that.

The Chairman. You are satisfied with the arrangement we have in this sheet?

Senator Rockefeller. Yes.

Senator Baucus. Mr. Chairman, I would agree.

The Chairman. Well, shall we take a vote?

(Laughter.)

The Chairman. We will adjourn at 1:00, just to give you some hope there, Marcia.

Ms. Miller. Well, with that admonition perhaps I

will go on to page 48.

The Chairman. That is the spirit.

Ms. Miller. Which speaks to the issue of whether there is industry support for a petition. In the past the Commerce Department has essentially made this decision based on whether or not there was any express opposition rather than going out and affirmatively determining the position of each individual U.S. producer.

The agreement requires that 50 percent of those having a view on a petition support the petition; and that at a minimum 25 percent of the production of all of the domestic industry support the petition and, indeed, that is exactly the requirement which is now brought into U.S. law under your proposal.

The Chairman. Good. That assures that something that is regarded seriously in the sector against this.

Senator Rockefeller. Mr. Chairman?

The Chairman. Sir.

Senator Rockefeller. Another just quick comment. We skipped over the so-called material injury provision. I just wanted to put the Chairman on notice that that is a matter of some substantial interest.

The Chairman. Now, are there changes you would like to see here?

Senator Rockefeller. There could be.

The Chairman. All right.

Senator Rockefeller. Not to discuss now. But that is a matter of great importance to the steel industry and it is just for later consideration.

The Chairman. All right.

Ms. Miller. I would then go on to page 59. Just to reference the provision relating to what is referred to as the sunset provision. That is as Ms. Esserman already referred to the fact that after five years now each order will have to be reviewed and the ITC will make a determination as to whether or not the injury would be likely to continue or recur if an anti-dumping order was lifted.

Again, in the past these orders once on the books have essentially stayed so unless there was some period of time of absolutely no dumping or if the ITC made some kind of determination under a changed circumstances situation. It is one of the most significant provisions, I think, of the agreement.

The Chairman. Why do we not hear from Ambassador Yerxa on this? The GATT parties have determined that there ought to be a self-limiting provision with respect to anti-dumping orders that they do not just get put in place and are left there until somebody notices them and that five years should be enough.

Ambassador Yerxa. Well, I am going to ask Sue to comment. But the requirement in the agreement is there be a review after five years as to whether or not injury would be likely to continue or recur if the order were lifted. We have provided a procedure for doing that, but one which we are certain is fair to petitioners that it does not result in them having to disprove a negative essentially.

The Chairman. Let us see, to prove that they are not going to be injured? Secretary Esserman?

Ms. Esserman. The standard is that it must be demonstrated that injury or dumping is likely to continue or recur. What we have tried to do consistently in the GATT is to establish a standard that provides for the continuation of orders where such conditions continue to exist.

The Chairman. Then you are satisfied with this. You think this is an important provision?

Ambassador Yerxa. Well, it is one we have accepted in the agreement. The United States was I think the only major country with dumping laws that did not have a review procedure.

The Chairman. How often do we find ourselves with anti-dumping actions against us and against our traders in foreign countries? I am trying to get some metric on

these things.

Ms. Esserman. I do not have the precise numbers, Mr. Chairman. But increasingly in the last couple of years our companies have been subject to anti-dumping cases in foreign countries.

The Chairman. So this five-year review provision is something we can look upon as an interest we have.

Ambassador Yerxa. And many other provisions of the agreement. It is important to emphasize that anti-dumping measures are proliferating around the world. In the past, were it not for the WTO only about 27 countries adhered to the old GATT anti-dumping code, the 1979 anti-dumping code.

Under this new agreement, all 123 members will have to adhere to the rules of the code in applying their own dumping laws.

The Chairman. And demonstrate injurious dumping and so forth.

Ambassador Yerxa. And follow all the other procedural requirements and can be challenged by us under the dispute settlement rules if they do not abide. As Sue said, we are seeing more and more dumping actions against U.S. exporters worldwide.

Senator Rockefeller. Mr. Chairman?

The Chairman. Senator Rockefeller?

Senator Rockefeller. Could I just raise one point as Ambassador Yerxa has mentioned? He said none of those orders will be terminated before five years and all will be reviewed within six-and-a-half years; am I correct?

Ms. Esserman. That is correct. No order will be terminated before five years.

Senator Rockefeller. Yes. And that is incredibly important to keep in. It is something that I feel strongly about and mentioned in a letter to Ambassador Kantor, also to the Chairman.

Now, just a question I wanted to ask. So-called --

The Chairman. Could you give us a page here, because if it is important to you we need to make sure it gets in? Where are you? On what page?

Ms. Miller. You are on the sunset provisions on page 59 perhaps?

The Chairman. On page 59, the five years, provides that every five years after acceptance of a suspension agreement Commerce and ITC conduct a sunset review.

Senator Rockefeller. Can I just ask Ms. Esserman, is the provision that says ''normally older orders are reviewed first'' meant to provide flexibility to account for recent orders that are lumped in with older orders?

Ms. Esserman. Senator, I think the plan is that we would group together orders, that we would review orders

based on the oldest order date. I think there does need to be flexibility for the situation that you have mentioned.

Senator Rockefeller. Can I just raise a situation then with funny words? Say you have orders on widgets from 1982, 1988 and 1992 and you also have an order on gizmos from 1986. Should you not review the order on the gizmos first because the newest order on widgets is so much more recent than the order on gizmos?

Mr. Chairman, I apologize for this discourse here, but it is important.

Ms. Esserman. Well, I think you have really hit on the right word here. We did put ''normally'' in to deal with some of those very complex situations. That normally if you had a group of older orders, we would begin with those first. But you have to look at a complex array of circumstances to determine how to handle that situation.

Senator Rockefeller. All right. So flexibility is the key?

Ms. Esserman. Yes. To try and deal with a situation where you have such a gap in terms of the age of the orders.

Senator Rockefeller. Thank you.

The Chairman. Well, I think that might be a good note on which to terminate this morning. But just again,

a little curious pattern. Apart from our neighbors north and south, there are almost no anti-dumping proposals that have been made against the United States, saved by Australia. Why do we distress the Australians?

Ambassador Yerxa. I am not sure where those figures come from. The data we have are somewhat different.

The Chairman. They come from the Office of the --

Ambassador Yerxa. The U.S. has about 69 initiations against it.

The Chairman. Yes.

Ambassador Yerxa. Oh, I see, you are saying the only three countries which have initiated orders against us are Mexico, Canada and Australia.

The Chairman. Yes, of any number. I mean, for some reason we seem to distress the EC hardly at all. Two in total. Well, somebody get in touch with Canberra and find out what is going on there.

Well, listen, what is going on here is a very useful and very positive walk through. I hope everybody will understand that -- Secretary Esserman and Ambassador Yerxa does -- we work continuously with the Trade Representatives on both sides here. In their absence, our respective parties are in their weekly caucus. We wanted to get through to 1:00.

I cannot say when we will meet again because we have

to accommodate ourselves to the Committee on Ways and Means which is meeting tomorrow morning. So we will adjourn subject to the call of the Chair, with thanks for fine work and steady progress.

(Whereupon, at 1:04 p.m., the meeting was recessed subject to the call of the Chair.)

C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Committee Meeting held before the United States Senate Committee on Finance on July 19, 1994, were transcribed as herein appears and that this is the original transcript thereof.

William J. Moffitt

WILLIAM J. MOFFITT
Official Court Reporter

My Commission Expires April 14, 1999

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

EXECUTIVE SESSION

Tuesday, July 19, 1994 -- 10:00 a.m.

Room SD-215 Dirksen Senate Office Building

A G E N D A

To consider recommendations for legislation to implement the Uruguay Round of Multilateral Trade Negotiations.

Post-it™ brand fax transmittal memo 7671 | # of pages ▶
To Kathy King | From Connie T.
Co. | Co.
Dept. | Phone #

/ 11, 1993

To: [redacted]

From: Connie Takata

Subject: Senate amendment to H.R. 11 regarding nurses and physician assistants

---

The current estimate of the Senate amendment to H.R. 11 regarding physician assistants, nurse practitioners and clinical nurse specialists is as follows:

(fiscal year outlays, in $millions)

1994	1995	1996	1997	1998	5-year total
14	22	25	27	29	117

This estimate has not been reviewed by the Director of the Congressional Budget Office and is subject to change.

w/ 6-18-93

DANFORTH AMENDMENT
AVIATION FUELS EXCEPTION FROM THE TRANSPORTATION TAX

This amendment would exclude fuels used in aviation from the 4.3 cents/gallon transportation fuels tax proposed in the Chairman's mark IF the National Commission to Ensure a Strong Competitive Airline Industry, created by Public Law 103-13, finds applying such a tax on U.S. airlines would have a significantly adverse effect on the financial health of the U.S. airline industry.

Roth Amendment to Sunset the Tax Increases

- This amendment would sunset these tax increases at the end of the five year budget period, so that we can re-evaluate whether or not we should continue down this path to ever higher tax increases -- or should we reverse course and cut spending instead.

- We did the same thing in 1990. For example, the phase-out of personal exemptions (PEP) and the limitation on itemized deduction (Pease) provisions were both set to sunset in 1995. Also, the 5¢ per gallon gasoline tax is scheduled to sunset in 1995. Now, this bill would extend all of these tax increases. Congress will have the same opportunity in later years, but we should not make these taxes permanent.

GRASSLEY NURSE/PA

OVERVIEW OF AMENDMENT AND OFFSETS

Amendment

1) PROVIDES MEDICARE REIMBURSEMENT AT 85 PERCENT OF THE PHYSICIAN RBRVS FOR NURSE PRACTITIONERS, CLINICAL NURSE SPECIALISTS, AND PHYSICIAN ASSISTANTS.

2) REIMBURSEMENT DIRECTLY TO THE NURSES IS AUTHORIZED. REIMBURSEMENT FOR THE PHYSICIAN ASSISTANTS IS TO THE EMPLOYER.

3) REIMBURSEMENT WOULD BE PROVIDED FOR ALL SERVICES IN OUTPATIENT SETTINGS WHICH ARE WITHIN THE SCOPE OF PRACTICE OF THESE PRACTITIONERS AND WHICH THESE PRACTITIONERS ARE PERMITTED BY STATE LAW TO PROVIDE.

4) MAKES A CHANGE FROM WHAT WAS INCLUDED IN HR 11 TO SPECIFY THAT AN EMPLOYMENT RELATIONSHIP FOR PHYSICIAN ASSISTANTS MAY INCLUDE AN INDEPENDENT CONTRACTOR ARRANGEMENT AND THAT AN EMPLOYER STATUS MAY BE DETERMINED IN ACCORDANCE WITH STATE LAW. THIS IS DESIGNED TO DEAL WITH AN IOWA-SPECIFIC PROBLEM AND IS A NO-COST ADDITION.

Offset

REDUCE MEDICARE REIMBURSEMENT FOR THE TECHNICAL COMPONENT OF MAGNETIC RESONANCE IMAGING SERVICES BY 10 PERCENT (AFFECTS CAT SCANS AND MAGNETIC RESONANCE IMAGING (MRI).

THE GAO HAS FOUND THAT THERE IS CONSIDERABLE VARIATION IN THE COST TO MEDICARE OF THE TECHNICAL COMPONENT OF THESE SERVICES ACROSS THE COUNTRY. FURTHER, AS PROVISION OF THESE SERVICES HAS BECOME MORE EFFICIENT, THE PROVIDERS OF THOSE SERVICES HAVE REALIZED LARGER SAVINGS (PROFITS). MEDICARE SHOULD SHARE IN THOSE SAVINGS. TO SOME EXTEND IT HAS. BUT ADDITIONAL SAVINGS CAN, AND SHOULD, BE REALIZED. IN THE FACILITIES EXAMINED BY GAO USING 1990 DATA, MOST WERE MAKING PROFIT MARGINS OF FROM 10 TO 42 PERCENT. (ONE FACILITY WAS MAKING 0.)

THE GAO RECOMMENDED THAT HCFA MAKE PERIODIC ADJUSTMENTS IN THE TECHNICAL COMPONENT OF MRI SCANS, AND THAT HCFA SET THE TECHNICAL COMPONENT PAYMENTS AT RATES THAT REFLECT THE COSTS INCURRED BY HIGH VOLUME, EFFICIENT PROVIDERS.

Savings:	~~$188~~ 132 million 1994-1998
Cost of Grassley Proposal:	~~$115~~ 117 million 1994-1998

The Impact of Tax Rate Changes
in Administration's Budget Plan on "Small" Businesses

Some have argued that the Administration's proposal to increase marginal tax rates for the top 1.2 percent of U.S. taxpayers would have an adverse impact on "small" businesses, including businesses organized as S corporations, partnerships or sole proprietorships. It is also argued that the rate increases, which apply only to married couples with taxable income (income after all expenses) above $140,000, would result in job losses because of the alleged impact of the change on small businesses. These allegations are false. Here are the facts:

- First, the Administration's proposed top marginal rates are modest by historical standards. A 36 percent marginal rate would apply to taxable income over $140,000 for joint returns ($115,000 for single filers), and a 10 percent surtax would apply to taxable income over $250,000. The U.S. economy has enjoyed healthy growth when marginal tax rates were far higher than these levels. For example, in the 1960s, average annual (real) GDP growth was 4.1 percent, although the top marginal income tax rate averaged 78.7 percent for the decade. (By comparison, average annual GDP growth in the 1980s was 2.5 percent when the top marginal rate averaged 48.1 percent.) In addition, it is interesting to note that, as part of its 1985 Tax Reform proposals, the Reagan Administration proposed a top marginal rate of 35 percent at $70,000 for joint returns ($42,000 for single individuals). These rates would have applied to income from S corporations, partnerships, etc., as well as income from other sources.

- The argument that higher marginal rates on S corporations, partnerships, and sole proprietorships will reduce employment (or investment) by these businesses doesn't make sense. The higher marginal rates in the Administration's plan apply only to income after expenses, i.e., after deductions for wages and depreciation, for example. Thus, any amounts paid out to the employees of these businesses are deductible and thus are not subject to the higher rates.

- It is extremely misleading to imply that any income earned by an S corporation, partnership, or sole proprietorship is earned by a "small" business. For example, in 1990, nearly 50 S corporations had gross receipts over $500 million. Shareholders in these S corporations earned an average of $2.5 million from these businesses. By definition, only S corporation shareholders, partners, and sole proprietors with net income (profits) over $140,000 would face higher marginal rates, and then only, of course, for the income above the threshold.

- In any event, only a small percentage of taxpayers with active business income greater than their wages -- the true business owners (as opposed to investors in tax shelters, for example) -- would face higher rates on any of their income. Of the nearly 7 million taxpayers with business income in excess of their wages, only 4.2 percent, or about 300,000, would be subject to the higher marginal rates. While this is higher than the percentage for all taxpayers, this is because taxpayers with income from S corporations, etc., are likely to have high incomes. For example, in 1990, over 80 percent of all S corporation income was

earned by taxpayers whose AGI exceeded $100,000, and 43 percent of S corporation income was earned by taxpayers with AGI over $1 million.

- Finally, it would be inaccurate to assume even that the 4 percent figure cited above represents the kinds of examples cited as "small business" owners, such as the hardware store owner or corner grocer. Many S corporations, shareholders, partners, partnerships, and sole proprietors, particularly in the high income ranges, are not small business owners of these types, but instead investment bankers, doctors, lawyers, and lobbyists. Is it really "fair" to exempt these "small business owners" from paying their fair share of the burden of deficit reduction? Providing an exemption from the rate increases for S corporations, partnerships, and sole proprietorships, would do just that.

PROPOSAL: Reduce the Technical Component Payment for CT and MRI Scans by 10%.

PRELIMINARY CBO STAFF ESTIMATE:	*(By fiscal year, in millions of dollars)*					5 Yr
	1994	1995	1996	1997	1998	Total
Medicare Outlays	−15	−25	−28	−31	−34	−132

DATE: May 20, 1993

ANALYST: Lori Housman

CAVEATS: February Baseline

This is a preliminary CBO staff estimate that has not been reviewed by the director of CBO and is subject to change.

DRAFT

Post-it™ brand fax transmittal memo 7671	# of pages ▸
To Julie James	From Lori Housman
Co. SFC Minority	Co. CBO
Dept. 45315	Phone # 62825
Fax # 45920	Fax # 62963

CHAFEE

~~GRASSLEY~~ PHYSICAL THERAPIST AMENDMENT

For physical therapists in private practice, there is an annual $750 cap on Medicare payments. This cap does not apply to physical therapists who practice in hospitals or other settings. Senator Grassley's amendment would lift this cap. at a cost of $49 million.

*** We have received a number of calls from physical therapists in Arkansas who would like you to support this amendment.**

* Because this amendment is costs money, it may violate the Byrd rule.

* There is a provision in the House bill that would increase lift the cap to $900. If you vote against Grassley's amendment, your position could be to be supportive of the House provision in conference.

CHAFEE AMENDMENT RELATING TO THE LIMITATION ON THE DEDUCTIBILITY OF EXECUTIVE COMPENSATION

AMENDMENT

Senator Chafee's amendment imposes a $1 million cap on the deduction of compensation for all taxpayers of compensation for all individuals who perform services for the corporation. Personal service corporations would be treated as individuals.

COST

The Joint Committee on Taxation estimates that this proposal will raise _____.

Roth Amendment to Sunset the Tax Increases

- This amendment would sunset these tax increases at the end of the five year budget period, so that we can re-evaluate whether or not we should continue down this path to ever higher tax increases -- or should we reverse course and cut spending instead.

- We did the same thing in 1990. For example, the phase-out of personal exemptions (PEP) and the limitation on itemized deduction (Pease) provisions were both set to sunset in 1995. Also, the 5¢ per gallon gasoline tax is scheduled to sunset in 1995. Now, this bill would extend all of these tax increases. Congress will have the same opportunity in later years, but we should not make these taxes permanent.

HATCH AMENDMENT TO STRIKE BUSINESS MEALS PROVISION

The Hatch amendment would strike the provision in the bill that reduces the deductible portion of business meals and entertainment expenses from 80 percent to 50 percent. It also strikes the substantiation threshold reduction.

Rationale: The provision to reduce the deductible portion of the meals and entertainment expenses from 80 percent to 50 percent is counterproductive to deficit reduction, economic growth, and President Clinton's goal to create jobs. Estimates prepared by Malcolm Knapp, Inc. for the National Restaurant Association indicate that $3.8 billion less would have been spent on business meals in 1993 had this provision been in effect -- a 10 percent reduction. This loss in sales is estimated to translate into over 165,000 lost jobs nationwide (see attached sheet). Moreover, women and minority employees would be the hardest hit by these job losses.

Much of the $15.5 billion in additional revenue scored for this change is unlikely to ever be realized. Not only will the number of business meals sold be reduced by an estimated 10 percent, a huge loss to the Treasury will result from the decreased payroll and income taxes and increased unemployment benefits outlays caused by the lost jobs.

State-by-State Impact of Limiting Business Meal Deductibility from 80% to 50%, 1993

State	Total annual spending on business meals in this state is...	If the deduction is cut to 50%, business-meal sales will drop by an estimated...	And this drop-off in sales means an estimated...
U.S.	$38,038,715,000	$3,764,163,000	165,198 jobs lost
Alabama	$407,804,000	$40,363,000	1,771 jobs lost
Alaska	$128,603,000	$12,726,000	558 jobs lost
Arizona	$645,775,000	$63,892,000	2,804 jobs lost
Arkansas	$215,932,000	$21,371,000	937 jobs lost
California	$5,229,231,000	$517,508,000	22,711 jobs lost
Colorado	$603,866,000	$59,752,000	2,622 jobs lost
Connecticut	$512,126,000	$50,684,000	2,225 jobs lost
Delaware	$104,289,000	$10,321,000	453 jobs lost
D.C.	$305,297,000	$30,196,000	1,326 jobs lost
Florida	$2,582,744,000	$255,544,000	11,215 jobs lost
Georgia	$1,006,916,000	$99,641,000	4,373 jobs lost
Hawaii	$624,574,000	$61,775,000	2,711 jobs lost
Idaho	$113,261,000	$11,208,000	491 jobs lost
Illinois	$1,616,834,000	$160,003,000	7,022 jobs lost
Indiana	$645,102,000	$63,847,000	2,802 jobs lost
Iowa	$299,363,000	$29,628,000	1,301 jobs lost
Kansas	$291,628,000	$28,863,000	1,266 jobs lost
Kentucky	$431,136,000	$42,670,000	1,872 jobs lost
Louisiana	$521,732,000	$51,630,000	2,266 jobs lost
Maine	$197,548,000	$19,549,000	858 jobs lost
Maryland	$671,253,000	$66,433,000	2,916 jobs lost
Massachusetts	$1,236,479,000	$122,360,000	5,370 jobs lost
Michigan	$1,116,589,000	$110,512,000	4,850 jobs lost
Minnesota	$629,350,000	$62,279,000	2,733 jobs lost
Mississippi	$206,613,000	$20,448,000	897 jobs lost
Missouri	$744,576,000	$73,681,000	3,234 jobs lost
Montana	$107,618,000	$10,649,000	467 jobs lost
Nebraska	$184,900,000	$18,299,000	803 jobs lost
Nevada	$1,056,688,000	$104,453,000	4,584 jobs lost
New Hampshire	$220,410,000	$21,810,000	959 jobs lost
New Jersey	$1,323,597,000	$130,952,000	5,747 jobs lost
New Mexico	$212,161,000	$20,995,000	921 jobs lost
New York	$2,623,115,000	$259,583,000	11,392 jobs lost
North Carolina	$893,049,000	$88,388,000	3,879 jobs lost
North Dakota	$78,170,000	$7,735,000	340 jobs lost
Ohio	$1,311,536,000	$129,807,000	5,696 jobs lost
Oklahoma	$361,642,000	$35,789,000	1,573 jobs lost
Oregon	$444,258,000	$43,969,000	1,930 jobs lost
Pennsylvania	$1,551,378,000	$153,517,000	6,737 jobs lost
Rhode Island	$147,589,000	$14,608,000	642 jobs lost
South Carolina	$487,117,000	$48,206,000	2,115 jobs lost
South Dakota	$75,950,000	$7,516,000	329 jobs lost
Tennessee	$613,373,000	$60,701,000	2,664 jobs lost
Texas	$2,271,001,000	$224,749,000	9,864 jobs lost
Utah	$211,178,000	$20,898,000	917 jobs lost
Vermont	$121,630,000	$12,033,000	528 jobs lost
Virginia	$981,780,000	$97,152,000	4,264 jobs lost
Washington	$774,528,000	$76,657,000	3,365 jobs lost
West Virginia	$176,087,000	$17,425,000	765 jobs lost
Wisconsin	$639,713,000	$63,313,000	2,779 jobs lost
Wyoming	$81,625,000	$8,075,000	354 jobs lost

Sources: "Assessing the Impact of Limiting Business Meal Deductibility to 50 Percent," National Restaurant Association, Malcolm Knapp, Inc., March 1993; National Restaurant Association, *National Restaurant Association 1993 Foodservice Industry Forecast*; and Bureau of the Census, *Census of Service Industries, Subject Series, Hotels, Motels and Other Lodging Places*, 1987

GRASSLEY NURSE PA AMENDMENT

TEXT OF BILL ADOPTED IN HR 11

No. 136—Part II

Vol. 138 WASHINGTON, TUESDAY, SEPTEMBER 29, 1992 No. 136

Congressional Record

United States
of America

PROCEEDINGS AND DEBATES OF THE *102d* CONGRESS, SECOND SESSION

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SENATE JOINT RESOLUTION 315

At the request of Mr. SEYMOUR, the names of the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Utah [Mr. GARN] were added as cosponsors of Senate Joint Resolution 315, a joint resolution to designate September 16, 1992, as "National Occupational Therapy Day."

SENATE JOINT RESOLUTION 327

At the request of Mr. BRYAN, the names of the Senator from California [Mr. SEYMOUR], the Senator from Nebraska [Mr. EXON], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of Senate Joint Resolution 327, a joint resolution to designate October 8, 1992, as "National Firefighters Day."

SENATE JOINT RESOLUTION 328

At the request of Mr. COCHRAN, the names of the Senator from California [Mr. SEYMOUR] and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of Senate Joint Resolution 328, a joint resolution to acknowledge the sacrifices that military families have made on behalf of the Nation and to designate November 23, 1992, as "National Military Families Recognition Day."

AMENDMENT NO. 3217

At the request of Mr. PACKWOOD the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of Amendment No. 3217 proposed to H.R. 11, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of tax enterprise zones, and for other purposes.

SENATE RESOLUTION 353—RELATIVE TO THE PRESIDENTIAL DEBATES

Mr. PRYOR (for himself and Mr. GRAHAM) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 353

Whereas American taxpayers currently fund presidential campaigns through a one dollar check-off on their Federal income tax form;

Whereas the Democratic and Republican presidential nominees will each receive roughly $75,000,000 in taxpayers' dollars to fund their campaigns through the 1992 general election;

Whereas the American electorate deserves to be presented with the opportunity to watch and listen to the candidates exchange views face-to-face on the issues of the day;

Whereas presidential debates have been a part of every Presidential campaign for the last 16 years;

Whereas the American public has come to expect formal debates as an integral part of the presidential election process;

Whereas Democrats and Republicans alike agree in the importance of debates and showed their interest by having the Democratic and Republican National Committees collaborate in 1987 to establish the Commission on Presidential Debates, a bipartisan group; and

Whereas in 1988, 160,000,000 Americans expressed their interest in seeing candidates debate by watching the two Presidential and one Vice Presidential debates that the Commission sponsored: Now, therefore, be it *Resolved*, That it is the sense of the Senate that—

(1) the American people fund the campaigns of the major party candidates, and they have a right to expect formal Presidential and Vice Presidential debates; and

(2) the Democratic and Republican Presidential candidates and Vice Presidential candidates should debate before the election of November 3, 1992.

Mr. PRYOR. Mr. President, American taxpayers currently fund the Presidential campaigns through a $1 check-off on their Federal income tax form. This year the Democratic and Republican Presidential nominees will each receive roughly $75 million in taxpayers' money to fund their campaigns through the 1992 general election.

What I am introducing at this time is a very simple sense-of-the-Senate resolution. It is a very simple resolution saying that it is the American public funds that fund the Presidential campaigns and the American people deserve to see formal Presidential and Vice Presidential debates before the election on November 3, 1992.

Today, as we know, was supposed to have been a day for a second Presidential debate in Louisville, KY. Like its predecessor in Michigan, the Louisville debate was canceled, to my understanding, because President Bush declined to attend.

Mr. President, this simple resolution simply states that the United States Senate is going on record supporting the Presidential debates to go forward so that the American people can see the position each candidate is taking.

Not since the campaign of 1972 have the American people been deprived of Presidential debates. They have come to expect debates and they deserve them.

If American taxpayers are going to foot much of the bill for Presidential campaigns, the least a candidate can do in return is give 2 hours of his time to tell the American people where he stands in a face-to-face debate.

Accordingly, today I am offering a sense-of-the-Senate resolution which would simply put the Senate on record in favor of Presidential debates.

This resolution reads as follows: Resolved that it is the sense-of-the-Senate that: First, the American people fund the campaigns of the major party candidates, and they have a right to expect formal Presidential and Vice Presidential debates; and second, the Democratic and Republican Presidential candidates and Vice Presidential candidates should debate before the election of November 3, 1992.

It is as simple as that—the Senate wants debates.

Today, I stand on the floor of the greatest deliberative body in the world, the site of innumerable debates on the important issues of the day. This resolution is a simple way for the Senate to stand in unison in favor of a simple and noncontroversial concept: the candidates for President and Vice-President have a responsibility to the American public to debate.

It is my understanding that today at 5 p.m. another deadline is set to expire for both candidates to accept a debate from the bipartisan commission on Presidential debates. If one of the candidates declines to debate, later this week I will offer a sense-of-the-Senate resolution stating that any candidate refusing to accept the commission's offer to debate should return the Federal campaign funds that they have received, or will receive. The American public pays for these elections with their tax dollars, and they expect debates in return. That later resolution will make another simple statement: if you do not want public debates, give back the public tax dollars you have taken.

I hope I do not have to submit that resolution. I hope both candidates will accept the bipartisan commission's offer for a public debate, but if that bipartisan offer is spurned, I will be back later this week to offer my second resolution.

AMENDMENTS SUBMITTED

START TREATY

WALLOP EXECUTIVE AMENDMENT NO. 3317

Mr. WALLOP proposed an amendment to the resolution of ratification to the Treaty between the United States and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms, as follows:

Add at the appropriate place the following:

The Senate's advice and consent to the ratification of the START Treaty is subject to the following condition, which shall be binding upon the President:

"The START Treaty, including the May 23, 1992 Protocol, the two Annexes, six Protocols, Memorandum of Understanding, and Corrigenda, shall not enter into force until the President certifies that all MIRVed ICBMs, and all launchers for MIRVed ICBMs, shall be eliminated in accordance with the agreement in the Joint Understanding on deep cuts of June 17, 1992, signed by the President of the United States of America and the President of the Russian Federation."

TAX EQUITY ACT

BENTSEN AMENDMENT NO. 3318

Mr. BENTSEN proposed an amendment to the bill H.R. 11, to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of tax enterprise zones, and for other purposes; as follows:

On page 1811, after line 9, insert the following new titles:

g nature in transmitting to supplı-
ament rights of individuals eligible
its under part B of title XVIII, or
nce of warehousing or stock inven-
tions)".

FECTIVE DATE.—The amendment
paragraph (1) shall apply with re-
services furnished on or after Janu-
3.

ITATION ON BENEFICIARY LIABILITY.—
GENERAL.—Section 1879 (42 U.S.C.
amended by adding at the end the
new subsection:

a supplier of medical equipment and
as defined in section 1861(oo))—
nishes an item or service to a bene-
ır which no payment may be made
of section 1834(i);
nishes an item or service to a bene-
ır which payment is denied in ad-
ler section 1834(a)(15);
excluded from participation under
or
nishes an item or service to a bene-
ır which payment is denied under
62(a)(1);

ıses incurred for items and services
to an individual by such a supplier
assigned basis shall be the respon-
f such supplier. The individual shall
lnancial responsibility for such ex-
ıd the supplier shall refund on a
ısis to the individual (and shall be
:he individual for) any amounts col-
ım the individual for such items or
unless the supplier informs the in-
n advance that payment under this
ıot be made for the item or services
ıdividual agrees to pay for the item
.".

FECTIVE DATE.—The amendment
paragraph (1) shall apply to items
ıs furnished on or after July 1, 1993.
ATMENT OF NEBULIZERS AND ASPIRA-
MISCELLANEOUS ITEMS OF DURABLE
EQUIPMENT.—
GENERAL.—Section 1834(a)(3)(A) (42
5m(a)(3)(A)) is amended by striking
ors, aspirators, IPPB machines, and
;" and inserting "ventilators and
:hines".
MENT FOR SUPPLIES RELATING TO
IS AND ASPIRATORS.—Section
A) (42 U.S.C. 1395m(a)(7)(A)) is
by striking "and" at the end of
, by striking the period at the end
(vi) and inserting "; and", and by
after clause (vi) the following new

ı the case of supplies to be used in
on with a nebulizer or aspirator for
yment is made under this para-
yment shall be in accordance with
(2) of this subsection.".
FECTIVE DATE.—The amendments
:his subsection shall apply to items
on or after January 1, 1993.
MENT FOR OSTOMY SUPPLIES, TRA-
Y SUPPLIES, UROLOGICALS, SUR-
ESSINGS, AND OTHER MEDICAL SUP-

GENERAL.—Section 1834(h)(1) (42
5m(h)(1)) is amended by adding at
ıe following new subparagraph:
CEPTION FOR CERTAIN ITEMS.—Pay-
ostomy supplies, tracheostomy sup-
ological, surgical dressings, and
lical supplies shall be made in ac-
with subparagraphs (B) and (C) of
34(a)(2) (except that in the case of
:ressings, the national limited pay-
ount shall be computed based on
ment amounts using average rea-
:harges for the six-month period
ıne 30, 1992, increased by the cov-
update for 1993).".
CTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply with respect to items furnished on or after January 1, 1993.

(B) SURGICAL DRESSINGS AND OTHER MEDICAL SUPPLIES.—The amendment made by paragraph (1) with respect to surgical dressings and other medical supplies shall apply to items supplied on or after July 1, 1993.

(j) FREEZE IN REASONABLE CHARGES FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT DURING 1993.—In determining the amount of payment under part B of title XVIII of the Social Security Act during 1993, the charges determined to be reasonable with respect to parenteral and enteral nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such nutrients, supplies, and equipment during 1992.

(k) STUDIES.—

(1) SUPPLIES AND SERVICES IN NURSING FACILITIES.—The Comptroller General of the United States shall conduct a study and report to the Congress no later than January 1, 1994, on the types, volume, and utilization of services and supplies furnished under contract or under arrangement with suppliers to individuals eligible for benefits under title XVIII of the Social Security Act residing in skilled nursing facilities and nursing facilities.

(2) DESCRIPTIONS RELATING TO CERTAIN CODES.—The Comptroller General of the United States shall conduct a study beginning no earlier than July 1, 1993, and report to the Congress no later than January 1, 1994, on—

(A) whether changes made by the Department of Health and Human Services to the descriptions relating to the codes for medical equipment and supplies (as defined in section 1861(oo) of the Social Security Act other than paragraphs (4), (6), and (7))—

(i) accurately reflect the items being furnished under such codes, and

(ii) are sufficiently explicit to distinguish between items of varying quality and price, and

(B) recommendations for additional changes that would improve the descriptions relating to the codes for such items.

SEC. 122. AMENDMENT TO DEFINITION OF CERTIFIED NURSE-MIDWIFE.

(a) IN GENERAL.—Section 1861(gg)(2) (42 U.S.C. 1395x(gg)(2)) is amended by striking ", and performs services in the area of management of the care of mothers and babies throughout the maternity cycle".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1994.

SEC. 123. PAYMENT UNDER THE FEE SCHEDULE FOR SERVICES FURNISHED BY A CERTIFIED REGISTERED NURSE ANESTHETIST WHO IS MEDICALLY DIRECTED.

(a) IN GENERAL.—Section 1833(l)(4)(B) (1395l(l)(4)(B)) is amended to read as follows:

"(B) Except as provided in subparagraph (D), the conversion factor used to determine the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1992, and before January 1, 1997, by a certified registered nurse anesthetist who is medically directed shall be $10.75.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1993.

SEC. 124. ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.

Section 9342 of OBRA-1986 is amended—

(1) in subsection (c)(1), by striking "4 years" and inserting "5 years",

(2) in subsection (d)(1), by striking "fourth year" and inserting "fifth year", and

(3) in subsection (f), by striking "$55,000,000" and "$3,000,000" and inserting "$58,000,000" and "$5,000,000", respectively.

SEC. 125. DESIGNATION OF CERTAIN HOSPITALS AS EYE OR EYE AND EAR HOSPITALS.

(a) IN GENERAL.—Section 1833(i)(3) (42 U.S.C. 13951(i)(3)) is amended—

(1) by striking the last sentence of subparagraph (B); and

(2) by adding at the end the following new subparagraph:

"(C)(i) In the case of a hospital that—

"(I) makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary),

"(II) receives more than 30 percent of its total revenues from outpatient services, and

"(III) on October 1, 1987—

"(aa) was an eye specialty hospital or an eye and ear specialty hospital, or

"(bb) was operated as an eye or eye and ear unit of a general acute care hospital which, on the date of the application described in subclause (I), operates less than 20 percent of the beds that the hospital operated on October 1, 1987, and has sold or otherwise disposed of a substantial portion of the hospital's other acute care operations,

the cost proportion and ASC proportion in effect under subclauses (I) and (II) of subparagraph (B)(ii) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1995.

"(ii) For purposes of this subparagraph the term 'eye or eye and ear unit' means a physically separate or distinct unit containing separate surgical suites devoted solely to eye or eye and ear services.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after January 1, 1993.

SEC. 126. EXTENSION OF CAP ON PAYMENTS FOR INTRAOCULAR LENSES.

(a) IN GENERAL.—Section 4151(c)(3) of OBRA-1990 is amended by striking "December 31, 1992" and inserting "December 31, 1994".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1990.

SEC. 127. EXPANDED COVERAGE FOR PHYSICIAN ASSISTANTS, NURSE PRACTITIONERS, AND CLINICAL NURSE SPECIALISTS.

(a) PHYSICIAN ASSISTANTS.—Section 1861(s)(2)(K)(i) (42 U.S.C. 1395x(s)(2)(K)(i)) is amended by striking "(I) in a hospital" and all that follows through "shortage area".

(b) NURSE PRACTITIONERS AND CLINICAL NURSE SPECIALISTS.—Section 1861(s)(2)(K)(iii) (42 U.S.C. 1395x(s)(2)(K)(iii)) is amended—

(1) by inserting "(I)" before "in a rural area", and

(2) by inserting ", (II) in any other area, in the case of services furnished by nurse practitioners other than services furnished to an inpatient of a hospital, or (III) in any other area, in the case of services furnished by clinical nurse specialists other than services furnished to an inpatient of a hospital, skilled nursing facility or nursing facility (as defined in section 1919(a)), and" after "section 1886(d)(2)(D))".

(c) CONFORMING AMENDMENTS.—

(1) Section 1832(a)(2)(B)(iv) (42 U.S.C. 1395k(a)(2)(B)(iv)) is amended by striking "provided in a rural area (as defined in section 1886(d)(2)(D))" and inserting "described in section 1861(s)(2)(K)(iii)".

(2) Section 1833(a)(1)(O) (42 U.S.C. 1395l(a)(1)(O)) is amended by striking "provided in a rural area".

(3) Section 1833(r)(1) (42 U.S.C. 1395l(r)(1)) is amended by striking "provided in a rural area".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1994.

SEC. 128. ORAL CANCER DRUGS.

(a) UNIFORM MEDICARE COVERAGE OF ANTICANCER DRUGS.—Section 1861(t) (42 U.S.C. 1395x(t)) is amended—

(1) by inserting "(1)" after "(t)";

(2) by striking "(m)(5) of this section" and inserting "(m)(5) and paragraph (2)"; and

(3) by adding at the end thereof the following new paragraph:

"(2)(A) For purposes of paragraph (1) the term 'drugs' includes any drugs or biologics used in an anticancer chemotherapeutic regimen for a medically accepted indication as described in subparagraph (B).

"(B) The term 'medically accepted indication' means any use of a drug included under paragraph (1) which is approved by the Food and Drug Administration, which appears in one or more of the following: *Annals of Internal Medicine, Blood, Journal of Clinical Oncology, Journal of National Cancer Institute, Lancet,* and *New England Journal of Medicine*; or which is included (or approved for inclusion) in one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations and the United States Pharmacopoeia-Drug Information.".

(b) COVERAGE OF CERTAIN SELF-ADMINISTERED ANTICANCER DRUGS.—Section 1861(s)(2) (42 U.S.C. 1395(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (O);

(2) by adding "and" at the end of subparagraph (P); and

(3) by adding at the end the following new subparagraph:

"(Q) oral drugs prescribed for use in an anticancer chemotherapeutic regimen, for a medically indicated use (as described in subsection (t)(2)), if such drugs contain the same active ingredient that would be covered pursuant to subparagraph (A) or (B);".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items furnished on or after January 1, 1993.

Subtitle C—Provisions Relating to Parts A and B

SEC. 131. MEDICARE SELECT.

(a) AMENDMENTS TO PROVISIONS RELATING TO MEDICARE SELECT POLICIES.—

(1) PERMITTING MEDICARE SELECT POLICIES IN ALL STATES.—Subsection (c) of section 4358 of OBRA-1990 is hereby repealed.".

(2) REQUIREMENTS OF MEDICARE SELECT POLICIES.—Section 1882(t)(1) (42 U.S.C. 1395ss(t)(1)) is amended to read as follows:

"(1)(A) If a medicare supplemental policy meets the 1991 NAIC Model Regulation or 1991 Federal Regulation and otherwise complies with the requirements of this section except that—

"(i) the benefits under such policy are restricted to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), and

"(ii) in the case of a policy described in subparagraph (C)(i)—

"(I) the benefits under such policy are not one of the groups or packages of benefits described in subsection (p)(2)(A),

"(II) except for nominal copayments imposed for services covered under part B of this title, such benefits include at least the core group of basic benefits described in subsection (p)(2)(B), and

"(III) an enrollee's liability under such policy for physician's services covered under part B of this title is limited to the nominal copayments described in subclause (II),

the policy shall nevertheless be treated as meeting those standards if the policy meets the requirements of subparagraph (B).

"(B) A policy meets the requirements of this subparagraph if—

"(i) full benefits are provided for items and services furnished through a network of entities which have entered into contracts or agreements with the issuer of the policy,

"(ii) full benefits are provided for items and services furnished by other entities if the services are medically necessary and immediately required because of an unforeseen illness, injury, or condition and it is not reasonable given the circumstances to obtain the services through the network,

"(iii) the network offers sufficient access,

"(iv) the issuer of the policy has arrangements for an ongoing quality assurance program for items and services furnished through the network,

"(v)(I) the issuer of the policy provides to each enrollee at the time of enrollment an explanation of—

"(aa) the restrictions on payment under the policy for services furnished other than by or through the network,

"(bb) out of area coverage under the policy,

"(cc) the policy's coverage of emergency services and urgently needed care, and

"(dd) the availability of a policy through the entity that meets the 1991 Model NAIC Regulation or 1991 Federal Regulation without regard to this subsection and the premium charged for such policy, and

"(II) each enrollee prior to enrollment acknowledges receipt of the explanation provided under subclause (I), and

"(vi) the issuer of the policy makes available to individuals, in addition to the policy described in this subsection, any policy (otherwise offered by the issuer to individuals in the State) that meets the 1991 Model NAIC Regulation or 1991 Federal Regulation and other requirements of this section without regard to this subsection.

"(C)(i) A policy described in this subparagraph—

"(I) is offered by an eligible organization (as defined in section 1876(b)),

"(II) is not a policy or plan providing benefits pursuant to a contract under section 1876 or an approved demonstration project described in section 603(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, and

"(III) provides benefits which, when combined with benefits which are available under this title, are substantially similar to benefits under policies offered to individuals who are not entitled to benefits under this title.

"(ii) In making a determination under subclause (III) of clause (i) as to whether certain benefits are substantially similar, there shall not be taken into account, except in the case of preventive services, benefits provided under policies offered to individuals who are not entitled to benefits under this title which are in addition to the benefits covered by this title and which are benefits an entity must provide in order to meet the definition of an eligible organization under section 1876(b)(1)."

(b) RENEWABILITY OF MEDICARE SELECT POLICIES.—Section 1882(q)(1) (42 U.S.C. 1395ss(q)(1)) is amended:

(1) by striking "(1) Each" and inserting "(1)(A) Except as provided in subparagraph (B), each";

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively; and

(3) by adding at the end the following new subparagraph:

"(B)(i) In the case of a policy that meets the requirements of subsection (t), an issuer may cancel or nonrenew such policy with respect to an individual who leaves the service area of such policy, except that, if such individual moves to a geographic area where such issuer, or where an affiliate of such issuer, is issuing medicare supplemental policies, such individual must be permitted to enroll in any medicare supplemental policy offered by such issuer or affiliate that provides benefits comparable to or less than the benefits provided in the policy being canceled or nonrenewed. An individual whose coverage is canceled or nonrenewed under this subparagraph shall, as part of the notice of termination or nonrenewal, be notified of the right to enroll in other medicare supplemental policies offered by the issuer or its affiliates.

"(ii) For purposes of this subparagraph, the term 'affiliate' shall have the meaning given such term by the 1991 NAIC Model Regulation.".

(c) CIVIL PENALTY.—Section 1882(t)(2) (42 U.S.C. 1395ss(t)(2)) is amended—

(1) by striking "(2)" and inserting "(2)(A)";

(2) by redesignating subparagraphs (A), (B), (C), and (D) as clauses (i), (ii), (iii), and (iv), respectively;

(3) in clause (iv), as redesignated—

(A) by striking "paragraph (1)(E)(i)" and inserting "paragraph (1)(B)(v)(I); and

(B) by striking "paragraph (1)(E)(ii)" and inserting "paragraph (1)(B)(v)(II)";

(4) by striking "the previous sentence" and inserting "this subparagraph"; and

(5) by inserting at the end the following new subparagraph:

"(B) If the Secretary determines that an issuer of a policy approved under paragraph (1) has made a misrepresentation to the Secretary or has provided the Secretary with false information regarding such policy, the issuer is subject to a civil money penalty in an amount not to exceed $100,000 for each such determination. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(d) EFFECTIVE DATES.—

(1) NAIC STANDARDS.—If, within 6 months after the date of the enactment of this Act, the National Association of Insurance Commissioners (hereafter in this subsection referred to as the "NAIC") makes changes in the 1991 NAIC Model Regulation (as defined in section 1882(p)(1)(A) of the Social Security Act) to incorporate the additional requirements imposed by the amendments made by this section, section 1882(g)(2)(A) of such Act shall be applied in each State, effective for policies issued to policyholders on and after the date specified in paragraph (3), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the 1991 NAIC Model Regulation (as so defined) as changed under this paragraph (such changed Regulation referred to in this subsection as the "1993 NAIC Model Regulation").

(2) SECRETARY STANDARDS.—If the NAIC does not make changes in the 1991 NAIC Model Regulation (as so defined) within the 6-month period specified in paragraph (1), the Secretary of Health and Human Services (hereafter in this subsection as the "Secretary") shall promulgate a regulation and section 1882(g)(2)(A) of the Social Security Act shall be applied in each State, effective for policies issued to policyholders on and after the date specified in paragraph (3), as if the reference to the Model Regulation adopted in June 6, 1979, were a reference to the 1991 NAIC Model Regulation (as so defined) as changed by the Secretary under this para-

(b) BONUS PAYMENT FOR SERVICES PROVIDED IN HEALTH PROFESSIONAL SHORTAGE AREAS.—Section 1833(m) of such Act (42 U.S.C. 1395l(m)) is amended—

(1) by inserting "(1)" after "(m)"; and

(2) by adding at the end the following new paragraph:

"(2) In the case of services of a physician assistant furnished—

"(A) to an individual described in paragraph (1),

"(B) in a health professional shortage area as described in such paragraph,

in addition to the amount otherwise paid under this part, there shall also be paid to such physician assistant (or to an employer in the cases described in clause (C) of section 1842(b)(6)) (on a monthly or quarterly basis) from the Federal Supplementary Medical Trust Fund an amount equal to 10 percent of the payment amount for the service under this part.".

(c) REMOVAL OF RESTRICTION ON EMPLOYMENT RELATIONSHIP.—Section 1842(b)(6) of such Act (42 U.S.C. 1395u(b)(6)) is amended by adding at the end the following new sentence: "For purposes of clause (C), an employment relationship may include any independent contractor arrangement, and an employer status shall be

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determined in accordance with the law of the State in which the services described in such clause are performed.".

(d) REMOVAL OF RESTRICTION ON SETTINGS.—Section 1861(s)(2)(K)(i) of such Act (42 U.S.C. 1395x(s)(2)(K)(i)) is amended by striking "(I) in a hospital" and all that follows through "shortage area".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after July 1, 1993.