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1 EXECUTIVE COMMITTEE MEETING

2 THURSDAY, JULY 21, 1994

3 U.S. Senate,

4 Committee on Finance,

5 Washington, DC.

6 The meeting was convened, pursuant to recess, at  
7 10:45 a.m., in Room SD-215, Dirksen Senate Office  
8 Building, Hon. Daniel Patrick Moynihan, Chairman of the  
9 Committee, presiding.

10 Also present: Senators Baucus, Bradley, Rockefeller,  
11 Conrad, Packwood, Roth, Danforth, Chafee and Hatch.

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

14 Also present: Susan Esserman, Assistant Secretary  
15 for Import Administration, U.S. Department of Commerce;  
16 Paul Joffe, Deputy Assistant Secretary for Import  
17 Administration, U.S. Department of Commerce.

18 Also present: Rufus Yerxa, Deputy U.S. Trade  
19 Representative; Ira Shapiro, General Counsel, USTR; Lyn  
20 M. Schlitt, General Counsel, USTR; and Daniel E. Brinza,  
21 Senior Advisor and Special Counsel for Natural Resources,  
22 USTR.

23 Also present: Marcia Miller, Chief, International  
24 Trade Counsel; Deborah Lamb, Trade Counsel; Eric Biel,  
25 Trade Counsel; and Brad Figel, Chief Trade Counsel,

1 Minority.

2 [The press release announcing the meeting follows:]

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1           The Chairman. A very good morning to our guests and  
2 our distinguished and indefatigable staff. May I  
3 apologize for my tardiness this morning. Those who were  
4 here on Tuesday will recall that Senator Hatch came in to  
5 announce that the committee had just unanimously reported  
6 out the nomination of Judge Breyer to be Associate  
7 Justice of the Supreme Court. That came a week at least  
8 ahead of expectations and it meant that the committee was  
9 free to move ahead with a very large backlog of judicial  
10 nominations which need to be resolved this year and can  
11 be.

12           So the three judges for the Second Circuit and the  
13 Southern District of New York were on hand. One of them  
14 was Judge Cabranis who brought forth some nine other  
15 Senators who wished to speak to recommend him to the  
16 committee as well. So I am unavoidably late and I  
17 apologize particularly to Senator Baucus and Senator  
18 Packwood who gave up on us and went back to his office  
19 for a few moments.

20           I think if it is appropriate we might just continue  
21 with our mark-up. We met last evening, so all here will  
22 know, in a Committee of Conference with the House  
23 Committee on Ways and Means on the legislation recreating  
24 an independent Social Security Administration.

25           After that work was done, Acting Chairman Gibbons

1 told us that they had finished and Ambassador Yerxa was  
2 pretty well exhausted and we were to be generous to him  
3 this morning. But that they were ready to go to  
4 conference any time we were and made the suggestion that  
5 we might reserve for conference the question of how we  
6 pay for this legislation.

7 Senator Packwood demurred that we had to work it out  
8 here and we left it that we would let us get through this  
9 part of our work, and when we have reached the same point  
10 that they have -- the House has not dealt with the  
11 question of the offsetting revenues and it has not dealt  
12 with the question of fast track. Is that not right,  
13 Ambassador?

14 Ambassador Yerxa. That is correct.

15 The Chairman. But they do not propose to do that in  
16 committee. They would like to do it in conference. I  
17 can teach it either way. But in any event I said that  
18 since there was not agreement on that, we would get to  
19 the point they are and then we would resume conversations  
20 with them. Senator Baucus was there.

21 So, why do we not just proceed and pick up where we  
22 left off? Ms. Miller?

23 Ms. Miller. Yes, Mr. Chairman. We left off on page  
24 66. That is the point at which I would suggest we begin  
25 today. The provision that I would bring to the

1 committee's attention here is the provision on anti-  
2 circumvention of anti-dumping duties. This also would  
3 apply to the anti-circumvention of countervailing duties  
4 under the subsidies agreement.

5 Let me just explain the main changes proposed here.  
6 This was a provision that was added to the anti-dumping  
7 law.

8 The Chairman. What page are we on?

9 Ms. Miller. It is page 66.

10 The Chairman. Page 66.

11 Ms. Miller. This amends a provision that was added  
12 to the anti-dumping law in 1988 by virtue of the 1988  
13 Trade Act. The concern has been that companies have  
14 found ways after an anti-dumping order is in place to  
15 circumvent those duties by shipping via third countries,  
16 some kind of assembly operation in a third country, or by  
17 importing parts into the United States and assembling  
18 them here and again avoiding the anti-dumping duty.

19 One of the objectives that the committee set out, in  
20 fact, for the Uruguay Round in its objectives in the 1988  
21 Act was to improve on the anti-circumvention provisions  
22 under the Uruguay Round. The negotiators were not able  
23 to reach any agreement on improving on the anti-  
24 circumvention problem.

25 There was a ministerial decision and statement to

1 the effect that they were not able to reach agreement on  
2 this point, but that the issue would be referred to the  
3 Committee on Anti-dumping practices for further work.

4         What the proposal in the Chairman's mark does here  
5 is essentially try to change the framework for the  
6 analysis of whether circumvention is occurring. In  
7 particular the problem under the current law has been  
8 that one of the conditions for applying an anti-dumping  
9 duty to a product that is believed to be circumventing  
10 the duties has been that the difference between the value  
11 of the merchandise sold in the United States, the final  
12 product which has been subject to the order, and the  
13 imported parts or components that have been brought into  
14 the United States has been small. That is the term in  
15 the law, that the difference in the value is small.

16         That has been the particular problem. I think the  
17 Commerce Department can attest to this more in terms of  
18 their effort to administer the law. What the Chairman's  
19 proposal would do here is essentially shift the focus  
20 from the difference in the value to looking at the nature  
21 of the assembly operation, whether the assembly operation  
22 is significant or rather whether it is insignificant.

23         If the assembly operation is minor, that that should  
24 be a situation in which you would have the possibility of  
25 applying duties to the product that is believed to be

1 circumventing the anti-dumping order.

2 That is the main change that this proposal includes.  
3 If there are no questions about it, I will go on to  
4 explain the next proposal.

5 Senator Rockefeller. Mr. Chairman?

6 The Chairman. Senator Rockefeller?

7 Senator Rockefeller. Could I be improbable and go  
8 back to two things on dumping that we did not discuss on  
9 prior things on page 43 and page 44?

10 The Chairman. Of course.

11 Senator Rockefeller. One of them is cumulation,  
12 which is on page 43. I would just say to Marcia Miller  
13 and Sue Esserman, we did not discuss this on Tuesday.

14 Ms. Miller. Correct.

15 Senator Rockefeller. It is this question if, you  
16 know, you get injury or dumping, let us say, of pipe, and  
17 we have a lot of cases of that between January 1 and  
18 April, and you have let us say five cases then, but then  
19 on April maybe you have four more cases. It is not in  
20 the text, I think, to keep in that these could be kept  
21 together and that we could somehow set a date at random,  
22 like nine months, that cumulation would be considered  
23 cases which happened within that period of let us say  
24 nine months or something of that sort; and that would  
25 allow for help for import searches and other things.

1           This does make a big difference to pipe, for  
2 example. I have a lot of examples which I can make  
3 available if you want them. But would this be an idea  
4 that the Chairman would be willing to consider, some sort  
5 of State -- a number of months so that the cumulation  
6 could be clearer?

7           Ms. Miller. Senator Rockefeller, the Chairman's  
8 proposal modifies only slightly the administration  
9 suggestion on this. It was modified to account for some  
10 concerns that there might be the ability of the Commerce  
11 Department to affect whether cumulation would occur.

12           Senator Rockefeller. But if the administration  
13 could maintain the current law, for example.

14           Ms. Miller. My understanding is that the  
15 administration's concern has been focused on the  
16 agreement's requirement that imports be simultaneously  
17 subject to investigation. That is in Article III. But  
18 why do I not ask --

19           The Chairman. Could I interrupt here to welcome  
20 Secretary Joffe to our committee and say that I would  
21 hope he would feel free to comment, representing the  
22 Commerce Department, as well as the others.

23           Senator Rockefeller. And he has worked for some  
24 good people.

25           The Chairman. I have heard that and it shows, the



1 progress he is making. He has got to anti-dumping.

2 Ms. Esserman. Thank you.

3 Ambassador Yerxa. I am not aware of any bad people  
4 he has worked for.

5 Ms. Miller. But perhaps on this point of cumulation  
6 Assistant Secretary Esserman could speak to why they felt  
7 there was a need to construct it the way they did.

8 Senator Rockefeller. All right.

9 Ms. Esserman. Senator Rockefeller, we were  
10 concerned about the requirement in the GATT which  
11 requires as Ms. Miller said that imports be  
12 simultaneously subject to investigation. So we thought  
13 we had better protect our cumulation practice by  
14 introducing the requirement that cumulation take place  
15 where cases are filed together.

16 And, in fact, we think that will not have a material  
17 impact on petitioners because, in fact, our records show  
18 that 95 percent of the cases in which there has been  
19 cumulation has been where cases have been filed together.

20 So we do not think it will disadvantage petitioners.  
21 We also have some flexibility under our proposal and it  
22 is a three-month flexibility. We are concerned about a  
23 nine-month flexibility in that we think it really would  
24 push us to the limit where we could have a GATT challenge  
25 in that a GATT panel could find that the cases are not

1 simultaneously investigated.

2           Senator Rockefeller. All right. Well, then he  
3 already met an understanding that it sounds reasonable.  
4 What happens then if you -- that it takes the body a long  
5 time to make up its decision about what it is going to  
6 do? That would mean if there was a second series of  
7 import searches that it would extend enormously the  
8 amount of time.

9           You tell me what you think would be a reasonable  
10 amount of time and whether that should be specified or  
11 not.

12           Ms. Esserman. Well, in fact, the administering  
13 agencies cannot take an additional time. There are  
14 specified deadlines and there are opportunities for  
15 extension. In fact, one of the things that we were  
16 trying to do by specifying the cases that are filed  
17 simultaneously could be cumulated is to protect  
18 cumulation in those circumstances.

19           We were very concerned that we would have been  
20 vulnerable and we were vulnerable under our prior law  
21 where cases were filed simultaneously but due to  
22 extensions they got onto different schedules. What we  
23 wanted to do is make it clear that we believe that in  
24 that situation that cumulation would be appropriate.

25           So we think that our proposal very much protects the

1 petitioning industries and we have tried to provide some  
2 flexibility and we are suggesting the three-month period  
3 to deal with just the kind of concern that you raised.

4 Senator Rockefeller. All right. Let me consider  
5 that.

6 Mr. Chairman, I unfortunately have one more.

7 The Chairman. That is all right. That is what we  
8 are here for.

9 Senator Rockefeller. I apologize. But this is  
10 actually kind of a nub issue.

11 The Chairman. That is what we are here for.

12 Senator Rockefeller. It is on page 44. It is  
13 material injury. This is a, you know, question of are  
14 imports harming domestic injury. It is a little bit  
15 complicated. Congressional intent has always been clear  
16 that dumped imports need only to be a cause of injury.  
17 But the ITC has ruled that they have to be -- they have  
18 not always acted that way.

19 They sometimes say that they have to be "the"  
20 cause of injury which is a much higher standard. The  
21 SAA, which is what the Statement of Administration  
22 whatever, makes it very clear, they make it very clear  
23 that it need only be a cause of injury. But the ITC does  
24 not look to SAA because ITC is an independent agency  
25 which presents us with a problem.

1           But on the other hand, SAA does have a legislative  
2 history, i.e. us. Therefore, is there not a way that we  
3 can get within the GATT agreement that imports much only  
4 be found to be a cause of injury, not the cause of  
5 injury, and that the SAA statement makes that clear. Now  
6 the House, I think, has done this.

7           Ms. Esserman. What we have proposed to say and to  
8 make clear is that neither the 1979 Code nor the new  
9 agreement require that imports be the cause of injury.  
10 In fact, we think that our existing practice has stood  
11 well and has not been challenged successfully in the GATT  
12 and we think that --

13           The Chairman. Ms. Esserman, when you say has never  
14 been challenged successful, has it been challenged?

15           Ms. Esserman. It has been challenged in the salmon  
16 case. But our practice was upheld in that case.

17           The Chairman. Good.

18           Senator Rockefeller. All right. Again, my concern  
19 is that the ITC is not bound to comply with the SAA.  
20 They are not bound to comply with that. It is an  
21 independent agency. Therefore, somehow having the SAA  
22 language included in our language, in the Senate  
23 language, as I believe the House has included it in its  
24 language, would be highly clarifying. Is there an  
25 objection to that?

1 Ms. Esserman. We would not have an objection to  
2 include our SAA language or the House language.

3 Senator Rockefeller. Or the Senate language?

4 Ms. Esserman. Or the Senate language.

5 Ambassador Yerxa. In committee report.

6 Ms. Esserman. Yes.

7 Senator Rockefeller. Committee report, all right.

8 Ambassador Yerxa. But I do want to make a couple of  
9 points. One is that in our view, and I want it to be  
10 very clear, the SAA is a statement adopted by the  
11 Congress because in the approval of the agreement in the  
12 language approving the agreement, what the Congress is  
13 approving is the implementing legislation and the  
14 statement of administrative action.

15 In our view, that language, that is the SAA  
16 language, binds Executive Branch agencies. It is a  
17 statement of how the administration will administer the  
18 law.

19 Senator Rockefeller. But it does not bind the ITC.

20 Ambassador Yerxa. In our view it does.

21 Senator Rockefeller. It does?

22 Ambassador Yerxa. Absolutely. It is adopted by the  
23 Congress.

24 Senator Rockefeller. All right. I do not want to  
25 make a mountain out of a mole hill. I am just trying to

1 make sure that the --

2 Ambassador Yerxa. We would not have a problem with  
3 also reflecting this in committee report. But I just  
4 would not want there to be an impression that the SAA  
5 language is not something that the ITC should look to.

6 The further point I would like to make is that there  
7 is one requirement in the Code which we are also  
8 addressing in SAA language. That is, well, on the one  
9 hand the injury standard that has been upheld in U.S. law  
10 and was in the 1979 Code was not changed in this  
11 negotiation, was not changed in this agreement.

12 So existing U.S. practice is valid and can continue.  
13 Existing U.S. practice at the Commission has been not to  
14 require that imports be the cause, but simply that  
15 imports are causing injury and that is reflected in our  
16 SAA language.

17 There is one additional Code requirement that at the  
18 same time the administering authority or the ITC should  
19 not attribute injury from other factors to the dumped  
20 imports. We have some language which does require them  
21 to look at the other factors, so as to be sure they are  
22 not attributing that to the dumped imports.

23 That is not to suggest --

24 The Chairman. Ambassador, I have to help us be  
25 clear here. We are dealing in this committee with

1 statute and report language about the statute. When you  
2 say we have some language, you mean in the Executive  
3 Branch you have some language or do you mean you have  
4 language in the agreement?

5 Ambassador Yerxa. In the proposed Statement of  
6 Administration Action that you would adopt as part of the  
7 implementing package, that you would approve, that the  
8 Congress would approve.

9 The Chairman. Which we will approve, but will be  
10 that -- I see Mr. Shapiro here. What is the legal status  
11 of the SAA, the Statement of Administrative Action? Is  
12 this a regulation which you are --

13 Mr. Shapiro. As Ambassador Yerxa said, Mr.  
14 Chairman, traditionally we and the Congress, I believe,  
15 have regarded the SAA as not only a definitive statement  
16 of this administration's or the current administration's  
17 intentions with respect to the agreement and the  
18 implementing legislation, but one that is to be followed  
19 by future administrations.

20 It has a considerable amount of force, because as he  
21 indicated, it is adopted and approved by the Congress as  
22 part of this exercise.

23 Senator Rockefeller. Mr. Chairman, all I would be  
24 saying is, to make it clear that it would be said in the  
25 legislative history that the SAA statement reflected the

1 intent of Congress. I do not think it changes anything.  
2 It just links the SAA.

3 Ambassador Yerxa. And I do not think we have a  
4 problem with that at all.

5 The Chairman. You do not have a problem?

6 Ambassador Yerxa. No.

7 The Chairman. Can I ask, does anybody? Well, let  
8 us put the committee on notice that Senator Rockefeller  
9 would like to do this. If anyone has objections to it,  
10 we will hear you. All right?

11 Senator Rockefeller. I thank the Chairman.

12 The Chairman. I thank you. If Ms. Miller would  
13 just write this up as a proposal we have, it seems  
14 perfectly all right to me. But let us have everybody  
15 take a look at it. Fine. Is that all right, Senator  
16 Packwood?

17 Senator Packwood. That is all right. But I want to  
18 make a statement in relation to something you said  
19 earlier. I was here and then I went back to my office  
20 until you came. I understand you opined that perhaps we  
21 should do the taxes in conference. I have --

22 The Chairman. No. No. No. No. I said that after  
23 the conclusion of our conference committee work yesterday  
24 on the independent agency Acting Chairman Gibbons stated  
25 that they had completed their work of walking through the



1 agreement and it was they had in mind that the issue they  
2 had not dealt with, that of the extension of fast track  
3 authority and taxes should be resolved -- that they would  
4 not take them up in committee, but it was suggested we  
5 might want to do this in conference.

6 I said that you indicated that this was not  
7 agreeable to you.

8 Senator Packwood. Good.

9 The Chairman. And, therefore, was not agreeable to  
10 the Senate. But we had left it that we would try to get  
11 to the point in this committee where the Ways and  
12 Committee is, having gone through this mark-up and then  
13 we might revisit the subject. But no agreement of any  
14 kind. A proposal was made.

15 Senator Packwood. There is a line in the play, A  
16 Man for All Seasons, where they are being charged with  
17 treason. The prosecutor says, I presume that you do  
18 acquiesce and the King is divorced. As I recall, Moore  
19 says, the prosecutor may presume what he wants. I have  
20 said nothing. And the law presumes acquiescence.

21 I did not want the law to presume acquiescence here  
22 if I did not say anything about this subject.

23 The Chairman. I had not previously thought of any  
24 remark I made as to law.

25 (Laughter.)

1           The Chairman. But if we can get to that point, such  
2 is agreeable, you had not conceded the possibility, let  
3 us presume for that sake that there is not precedent to  
4 be -- fine. Ms. Miller?

5           Ms. Miller. Mr. Chairman, if I could make one  
6 comment back on the Statement of Administrative Action  
7 and the questions that Senator Rockefeller raised. It  
8 would be just to say that originally when the fast track  
9 mechanism was developed in 1974 because of concerns that  
10 in the past the administration had essentially used  
11 administrative and regulatory actions to regulate trade  
12 agreements without the Congress being fully aware of  
13 them, Congress at that point in constructing the fast  
14 track asked that the Statement of Administrative Action  
15 be submitted to the Congress for approval with the trade  
16 agreement.

17           So just for the purpose of understanding what it  
18 serves in this process.

19           The Chairman. All right. It has a somewhat  
20 ambiguous character, but it serves its purpose.

21           Ms. Miller. Yes.

22           The Chairman. Fine. Senator Danforth?

23           Senator Danforth. Mr. Chairman, is this an  
24 appropriate time in the walk through to raise the issue  
25 of diversionary dumping?

1 Ms. Miller. Yes, Senator, I think it would be.

2 The Chairman. Sure.

3 The Chairman. Not without a page number it is not  
4 though.

5 (Laughter.)

6 Senator Danforth. I do not think there is a page  
7 number on it.

8 The Chairman. Uh-oh.

9 Ms. Miller. Well, to the extent this issue often  
10 arises in connection with the anti-circumvention  
11 provisions we would be on page 66.

12 The Chairman. We are here, we are at 66, yes. Why  
13 do you not start? We will declare it to be on 66 and  
14 will not be immediately visible.

15 Senator Danforth. Let me see if I understand what  
16 the problem is. There is a dumping case. There is a  
17 dumping order. Then the issue is whether that dumping  
18 order to circumvented by the dumping country sending --  
19 shipping the good to another country where there is some  
20 processing that takes place.

21 The dumping order is against the good as it  
22 previously existed, not against the good as it has been  
23 altered. Therefore, the dumping order is circumvented.  
24 Is that the issue?

25 Ms. Miller. That is my understanding of the issue

1 in diversionary dumping.

2 Senator Danforth. That is what worries me.

3 Ms. Miller. It is not the issue that has reached to  
4 the anti-circumvention proposal.

5 Senator Danforth. Right.

6 Ms. Miller. But it is the issue in diversion.

7 Senator Danforth. All right. Now, it is my  
8 understanding that the question of diversionary dumping  
9 is not addressed in what is before us; is that right?

10 Ms. Miller. In the sense that you have described  
11 it, I think that is correct. The existing proposal  
12 addresses the situation where you have an order on a  
13 final product and then parts or components of that order  
14 of that product go to a third country or into the U.S.,  
15 are assembled and come to the United States or finished  
16 here. It is not addressed in this proposal.

17 Senator Danforth. And it would be a loop-hole,  
18 would it not as it now stands?

19 Ms. Miller. It is something that our anti-dumping  
20 law does not address. That is correct.

21 Senator Danforth. Right. And would it be agreeable  
22 to attempt to address it in this enabling legislation?

23 Ms. Miller. This is a question I may let the  
24 administration address because they have had concerns  
25 about proposals regarding trying to address this problem

1 in the past.

2 Senator Rockefeller. Mr. Chairman, I associate  
3 myself strongly with Senator Danforth's comments, because  
4 it is not addressed. The administration I do not think  
5 thinks this is GATT legal and I think it is a very  
6 important problem. I agree with Senator Danforth.

7 Ms. Esserman. Senator Danforth, to some extent that  
8 is addressed under current law. That is where the  
9 product that comes in from the third country is the same  
10 like product that is under investigation. But if it is  
11 not, we believe it is not GATT consistent and, therefore,  
12 we have not proposed to address it.

13 We do share your concern about circumvention and  
14 that is why we strongly support the inclusion in the  
15 Chairman's mark of a strengthened circumvention  
16 provision.

17 Senator Danforth. Well, let me give you a fact  
18 situation and ask you whether this mark or the  
19 administration's proposal deals with it. Say that there  
20 is a dumping order against hot-rolled steel that is  
21 produced in country A. Country A ships that steel to  
22 country B where it is processed into cold-rolled steel.  
23 Then it is in turn shipped to the United States.

24 Ms. Esserman. Under our current law --

25 Senator Danforth. Would the affect of the -- in

1 other words, the wrong of the dumping has been carried  
2 out, implemented through the shipment from country A to  
3 country B. The consequences of the dumping are still the  
4 same. The good has been changed from hot-rolled steel to  
5 cold-rolled steel and then sent to the United States.

6 It is my understanding that in that case the dumping  
7 order would not apply and there would be no remedy.

8 Ms. Esserman. That is correct, Senator, because  
9 those are different like products.

10 Senator Danforth. Right. But I mean what happened,  
11 the wrong -- the recognized wrong under trade law has  
12 been carried, has been effectuated, and the consequences  
13 of that wrong have affected producers in the United  
14 States. So it clearly is a loophole, is it not?

15 Ambassador Yerxa. You know, this was obviously an  
16 issue that we went around and around on and debated  
17 extensively in the 1988 Trade Act. There were  
18 diversionary dumping proposals during that conference and  
19 a number of problems arise.

20 First of all, a number of anti-dumping code  
21 constraints about whether it is a like product, imports  
22 from a country under investigation.

23 Second, the whole problem of examining whether sales  
24 of products from country A to country B are dumped  
25 products, that is of investigating what is the fair value

1 comparison between country A and country B and how to  
2 administer a system in which you can have a methodology  
3 and have the capacity to determine dumping in the third  
4 country.

5           So there are some very serious constraints as to how  
6 that could possibly be administered and quite frankly  
7 GATT consistency issues. But that is not to say we do  
8 not have provisions in the circumvention approach that is  
9 being outlined by Ms. Miller regarding third country  
10 assembly in order to circumvent dumping duties.

11           Senator Danforth. Is this not a problem that has  
12 existed with textiles?

13           Ambassador Yerxa. Well, there are questions of  
14 whether things are being assembled in another country to  
15 avoid quotas, for example, and we dealt with that through  
16 rules of origin and trans-shipment rules.

17           Senator Danforth. You do not think there is any  
18 model that exists for resolving this?

19           Ambassador Yerxa. Under the current kind of Code  
20 restraints, I think the proposals that have been made  
21 have very, very serious difficulties.

22           Senator Rockefeller. But would you not acknowledge  
23 at least that this is a problem, diversionary dumping,  
24 the example that Senator Danforth gave, and I have a  
25 similar example I can give?

1 Ms. Esserman. I just wanted to directly answer  
2 Senator Danforth's question about textiles. That problem  
3 has not been brought to our attention in the context of  
4 dumping. We have not had that problem.

5 We are trying wherever we can consistent with the  
6 GATT to strengthen our ability to get at circumvention  
7 and we think this new proposal will really expand our  
8 ability to attack circumvention.

9 The situation you address we cannot get to under the  
10 GATT Code because, in fact, there is a different product  
11 in a third country and the law requires that there be a  
12 separate dumping investigation and injury determination.  
13 But we do think that a proposal in the mark really does  
14 help to deal with the circumvention problem.

15 Senator Danforth. Let me just see if we can agree  
16 on two points. First of all, the mark and the  
17 administration's proposal do not remedy the question of  
18 diversionary dumping.

19 Ms. Esserman. The specific example that you gave  
20 where there is a different like product, no, it does not.

21 Senator Danforth. Right. But that specific example  
22 is more than a specific example. I mean, the purpose of  
23 the example was to try to be generic not specific, just  
24 an example of how diversionary dumping works.

25 So, I mean, we do agree that this proposal, either



1 the administration's proposal or the Chairman's mark, do  
2 not address the question of diversionary dumping.

3           Ambassador Yerxa. Well, I think there are two  
4 things. There is a procedure which is in U.S. law and  
5 which is now reflected in the Code on which the United  
6 States can request an anti-dumping action on behalf of a  
7 third country.

8           The reason that is important is that if other  
9 countries want us to do that with regard to situations  
10 involving possible diversion into their market and there  
11 is some incentive for them to cooperate with us in  
12 investigating those types of situations. So that does  
13 provide us -- that is reflected on page 64, third country  
14 dumping, anti-dumping action on behalf of a third  
15 country, which is in the Code.

16           I guess what I am suggesting to you is that while  
17 the U.S. in pursuing negotiations in this matter  
18 recognize that there are potential situations involving  
19 diversionary dumping that we were not able to obtain  
20 agreement for the expansive kind of provision that has  
21 been proposed in the past here in U.S. law and we would  
22 have serious difficulties with the Code in adopting that  
23 kind of provision.

24           Senator Danforth. All I wanted to just see if we  
25 can agree on right now is, first, that this does not deal

1 with it. And second, that it is a wrong. I mean, you  
2 would agree with that. Your concern, as I understand it,  
3 it is a wrong, but it is hard to figure out how to remedy  
4 the wrong. But it clearly would be a wrong. If country  
5 A dumped into country B which reprocessed the product and  
6 then shipped it to the United States, that would be a  
7 loophole and that it would amount to a wrong done to us.

8           Ambassador Yerxa. I understand your point. The  
9 provision we do have in here covers certain types of  
10 situations of that nature. For example, where you are  
11 dealing with assembly in the country that does not  
12 essentially turn it into a product of that country.  
13 Those we can deal with under the anti-circumvention  
14 provision. I recognize the further possibility you are  
15 referring to.

16           Senator Danforth. Well, would it be a good thing to  
17 deal with it if we could deal with it?

18           Ambassador Yerxa. And, in fact, we have sought to  
19 deal with it through the negotiations. We were not able  
20 to go that far in this agreement.

21           Senator Danforth. But it would be good to try. I  
22 just want to ask one more question. I have taken up too  
23 much time on this. But I would like to try to figure out  
24 along with Senator Rockefeller what, if anything, we  
25 could do about it.

1           Do I understand that the problem in dealing with  
2 this is that to deal with it is not permissible under  
3 GATT? Or, do I understand that the problem is that it is  
4 mechanically difficult?

5           Ms. Esserman. It is both a problem under the GATT.  
6 But if, in fact, it truly is a different product, then it  
7 would be appropriate to have a separate investigation to  
8 see whether or not dumping injury is occurring.

9           If there is a minor difference in the product, a  
10 small difference in the value-added, and unfortunately  
11 that would constitute a different like product, then we  
12 very much share your concern. It does seem like a  
13 technicality and a problem. But that does not mean in  
14 all cases where you have a dumping order against an input  
15 and the input is sent to a third country and value is  
16 added that it would be appropriate for that product  
17 coming from a third country to be covered by the prior  
18 existing dumping order. So it would depend on the  
19 circumstance.

20           Senator Danforth. All right. Well, I am not going  
21 to take up more time on it. But I would hope that, you  
22 know, in the next few days we could discuss what, if  
23 anything, could be done on it.

24           Ms. Esserman. We would be happy to do that.

25           Senator Baucus. Mr. Chairman, I wonder though what

1 is the definition of like product? If it is a different  
2 product, it is clear. But if it says like value-added  
3 then it is a problem. In the Code, what is the  
4 definition of like product and how much must the change  
5 be before it is actionable?

6 Ms. Esserman. The Code talks about a like product  
7 having characteristics closely resembling those of the  
8 product under consideration. Under U.S. law the  
9 International Trade Commission looks at the physical  
10 qualities of the good, the uses, the nature of the  
11 distribution, a number of factors.

12 So it is a combination of the physical  
13 characteristics of the good, and the uses of the good,  
14 and it is a fact-specific inquiry.

15 Senator Baucus. I wonder if there is a way to get  
16 at the definition. Maybe that is what the Senator is  
17 trying to do, the Statement of Administrative Action or  
18 somewhat, to deal with it here.

19 Ms. Esserman. Well, I do believe that to some  
20 extent we can get at the Senator's problem under existing  
21 law, and that is where the product coming from the third  
22 country really is the same like product. So to some  
23 extent we really are able to deal with the very  
24 circumstance that you are concerned about. It becomes a  
25 question of how different the product is, how much

1 different the final product coming from the third  
2 country. So to some extent we do deal with the problem.

3 Senator Baucus. Well, I hope that you can sit down  
4 and try to work something out here.

5 Ms. Esserman. We will try and do that.

6 Senator Baucus. I agree with Senator Danforth and  
7 Senator Rockefeller, it is a problem. I mean, I  
8 understand there are mechanical Code definition problems,  
9 but still there is, I think, an abuse here, that we  
10 should do our best to try and direct.

11 Senator Hatch?

12 Senator Hatch. Thank you, Mr. Chairman.

13 If I could just shift gears just a little bit. I  
14 would like to raise one issue regarding the concentration  
15 of imports in a regional dumping case. For instance, on  
16 page 46 of your mark under Article IV of the anti-dumping  
17 section of the Uruguay Round agreement, the agreement  
18 states that "when the domestic industry refers only to  
19 the producers in a certain region, anti-dumping duties  
20 shall be levied only on the products consigned for final  
21 consumption to that region."

22 In other words, as I read it, if there is a  
23 significant concentration of imports into a region of the  
24 country and there is injury found by the International  
25 Trade Commission to that particular region, then dumping

1 duties may be imposed on imports in that region only.

2 Your mark, which I am pleased to note, says,  
3 ``provides that in regional industry cases, Commerce  
4 shall to the maximum extent possible, direct that duties  
5 be assessed only on the merchandise of the specific  
6 producers that supplied the region during the period of  
7 investigation.''

8 Now, I think it might be helpful to the committee if  
9 the administration could clarify in layman's terms what  
10 the standard ITC practice has been in determining  
11 ``import concentration'' in regional industry cases.

12 So my question would be: Is it fair to say that the  
13 ITC exercises quite a bit of discretion in determining  
14 whether import concentration is high enough to declare  
15 injury and impose subsequent duties on a regional basis?

16 Ms. Miller. Senator Hatch, the General Counsel of  
17 the International Trade Commission is here and we would  
18 ask that she come up to respond to your question.

19 Senator Hatch. All right. That would be fine.

20 Ms. Miller. This is Lyn Schlitt, who is the General  
21 Counsel.

22 Senator Hatch. All right.

23 Ms. Schlitt. The Commission has used a number of  
24 means to determine whether imports are concentrated into  
25 the region. It has been concerned both that the volume

1 of imports into the region represented a significant  
2 volume of the subject imports into the United States and  
3 also that the imports within the region are higher than  
4 those outside of the region in the United States  
5 generally and has used a number of inquiries, a range of  
6 inquiries, to make that judgment.

7 I believe the administration has been working with  
8 sort of coming up with a description that was specific  
9 about how the Commission to standardize somewhat in the  
10 area, to reflect in the SAA, a more standardized  
11 description of how the Commission should be making that  
12 inquiry.

13 Ambassador Yerxa. Could I just say that yesterday  
14 in the House deliberations on this issue there was some  
15 SAA language that was discussed and adopted. We would be  
16 glad to sit down with your staff and see to what extent  
17 that addresses the concerns.

18 Senator Hatch. We are aware of that. Would you say  
19 then as General Counsel that generally the threshold for  
20 that determination of marked concentration is quite high  
21 or has been in prior decisions by the ITC?

22 Ms. Schlitt. The Commission makes a determination  
23 on a case-by-case basis. Because very often in these  
24 cases we are dealing with a single company or companies,  
25 all of the details with respect to how the Commission has

1 made that determination in each case has not necessarily  
2 come out.

3           There is not a specific threshold. There is no  
4 specific rule or specific penetration rate or specific  
5 percentage of imports that need to be entering that  
6 region to satisfy the Commission. It has made a range of  
7 inquiries. But it has not -- I would agree that it is a  
8 significant inquiry to get through that threshold.

9           Senator Hatch. Yes. Well, the reason I raised this  
10 issue, Mr. Chairman, is because I know some industries  
11 who have been involved in regional cases have raised  
12 some, what I consider, to be legitimate concerns  
13 regarding the ambiguity involved in determining injury in  
14 regional industry cases.

15           I just hope to be able to reach agreement with the  
16 committee and the administration in this area so that we  
17 do not have companies who are unable to obtain relief in  
18 cases where I think there seems to be clear indication of  
19 import concentration in regional cases. So you will work  
20 with us.

21           Ambassador Yerxa. We will be glad to work with you  
22 on it.

23           Senator Hatch. Thank you. I appreciate it.

24           Senator Baucus. Other questions?

25           (No response.)



1 Senator Baucus. Ms. Miller, why do you not proceed?

2 Ms. Miller. The next provision I would intend to  
3 describe is on page 68. It is the economies in  
4 transition proposal that the administration put forward.  
5 Essentially this proposal would suspend the anti-dumping  
6 law for the economies in transition in eastern Europe and  
7 the former Soviet Republics.

8 The idea is that rather than applying the anti-  
9 dumping law to these countries another possibility would  
10 be that an industry could petition the International  
11 Trade Commission to determine that serious injury was  
12 occurring to the industry. If the ITC made an  
13 affirmative finding, the President would then take action  
14 to grant some form of relief. The option in terms of the  
15 kinds of relief that could be provided is fairly broad.

16 The maximum term of any kind of relief would be for  
17 a five-year period. It is described and essentially  
18 follows the model of Section 201 import relief cases in  
19 terms of procedures and the mechanisms involved.

20 Senator Baucus. Is there any discussion?

21 Senator Rockefeller. Mr. Chairman?

22 Senator Baucus. Senator Rockefeller?

23 Senator Rockefeller. Just a couple of thoughts. I  
24 know this is a hard one. But what we are essentially  
25 doing in essence is doing foreign policy here. I am not

1 sure that we ought to be doing it on GATT. It puts us in  
2 the dilemma of saying on the one hand -- I mean, I think  
3 that we as a country should be helping these developing  
4 countries, the former Soviet countries, et cetera.

5 But on the one hand we are saying to them, we want  
6 you to develop your market economies and then we come  
7 right back and say, oh, but by the way, go ahead and  
8 become really good at avoiding, you know, dumping laws  
9 because you will be able to do that.

10 I have a second problem, which is that the Chinese  
11 appear to be excluded, to which I expect that you will  
12 probably answer that we include them in the privatization  
13 clause, to which I would respond that anybody who does  
14 not think that the Chinese are going to be able to scurry  
15 up a real fast apparent privatization effort, I think is  
16 whistling in the dark; and, therefore, I am really  
17 concerned about that -- Chinese exclusions of Chinese.

18 And third, the whole question including this on fast  
19 track on this subject when the rest of the Senate is not  
20 very happy about us having this anyway. This is a very  
21 emotional subject. You know, where 20 Senators get to  
22 say this is the way it is going to be and then it is non-  
23 amendable on the floor. So you have to vote up or down.

24 So the Chinese and is this a proper way, are we  
25 doing foreign policy or trade policy. Here is this

1 consistent. All of these things I raise as troubling and  
2 I do not know if others share that view. But I would be  
3 interested in the administration's comments.

4 Ms. Esserman. Senator, we appreciate your concerns  
5 and we have tried to address some of them in the  
6 proposal. We have put forward this proposal because we  
7 think it is a better mechanism for addressing the types  
8 of injuries that industries will face from economies in  
9 transition and at the same time we think that this kind  
10 of proposal will continue to encourage economic and  
11 political reform.

12 As you know, one of the serious problems that U.S.  
13 industries face from economies in transition, such as  
14 Russia, is a surge of imports under the world market and  
15 that has a price suppressing affect. And sometimes the  
16 anti-dumping order does not provide effective relief.

17 We think a benefit of this proposal is that if  
18 injury is proved the remedy is mandatory. The President  
19 must impose relief. But he has discretion in determining  
20 the form of the relief and, in fact, this could provide a  
21 more effective remedy for some of the injuries that U.S.  
22 industry faces -- a remedy that would be far more  
23 effective than the anti-dumping law.

24 For example, in the aluminum situation that came up  
25 last year and a resolution was concluded at the beginning

1 of this year, the aluminum industry did not choose to  
2 file a dumping case because, in fact, the problem really  
3 could not have been addressed well with an anti-dumping  
4 remedy.

5 So the administration strongly believes that this is  
6 a better mechanism for U.S. industry and that it provides  
7 a wider range of remedies and provides a better mechanism  
8 for dealing with the kinds of injuries that the industry  
9 will face.

10 We appreciate your comments about the countries to  
11 be subject to this new mechanism and it is intended to  
12 apply to the former Soviet countries as well as the  
13 central European countries and not to China. We provided  
14 criteria and the flexibility for the President to ensure  
15 that this is directed to those countries.

16 Ms. Miller. Senator Rockefeller?

17 Senator Rockefeller. Yes.

18 Ms. Miller. If I could point out one thing  
19 regarding the countries that would fall under this. The  
20 Chairman's proposal modified the administration's  
21 original proposal to confine it solely to eastern Europe  
22 and the Republics of the former Soviet Union.

23 Senator Rockefeller. I understand that. But I  
24 guess just to be frank about it, you know, those  
25 countries are not producing micro chips. They are

1 producing the things which are being competed on the  
2 world market for in the State that I represent -- heavy  
3 industry, steel, aluminum, exactly what we are talking  
4 about.

5 It is just a matter of a whole lot of concern to me.  
6 Then the China thing, I mean, is really even more of a  
7 concern to me because if you do think that the  
8 privatization thing is going to keep them out of it, I  
9 think they will develop privatization in ways that you  
10 will marvel at and then come right on in and be able to  
11 take advantage of all of this.

12 Ambassador Yerxa. Just one or two comments. You  
13 know, the whole problem of how the anti-dumping law  
14 applies to non-market economies obviously has been a  
15 dilemma for some time. This is a law that is based on  
16 the concept of fair pricing and on production costs and  
17 other things that really cannot be constructed in certain  
18 economies.

19 So what has evolved is sort of a convoluted  
20 methodology that is very unpredictable, both for domestic  
21 industries petitioning and for producers in those  
22 countries.

23 This is an attempt in one manner of trying to deal  
24 with that, the advantage to domestic industries in this  
25 is that they would no longer have to prove dumping.

1 There would not be any requirement that they come in and  
2 show that this product has been dumped. That would avoid  
3 getting into a whole convoluted sort of determination of  
4 surrogate country pricing and that sort of thing.

5 But at the same time, there would be a slightly  
6 different injury threshold that is under the existing  
7 dumping law. Once that is met, once they have  
8 demonstrated serious injury, they would then have a broad  
9 range of remedies that the President could apply, but he  
10 would be mandated to impose an effective remedy which  
11 would give the opportunity to deal with it in a creative  
12 manner, such as we did in the aluminum case.

13 But we do recognize the concerns you are raising and  
14 would want to keep talking with you about how we could  
15 deal with those problems.

16 Senator Rockefeller. Mr. Chairman, I will not take  
17 anymore of the committee's time. But I want to register  
18 this. That is all.

19 Senator Baucus. Any discussion?

20 (No response.)

21 Senator Baucus. I might say that I have great  
22 reservations about this as well, and for the same reasons  
23 voiced by Senator Rockefeller. In addition, it seems to  
24 me that if it is now difficult to pursue a dumping remedy  
25 now against companies in transition, then it is

1 difficult. I mean, I do not what is gained by saying --  
2 by prohibiting an industry from taking such an action.

3 I guess my basic problem is that this is a foreign  
4 policy matter. There are other ways to assist markets,  
5 economies in transition and I think there are much better  
6 ways, particularly ways to help them become more  
7 competitive, to help encourage them to be more  
8 competitive rather than this measure which I think will  
9 retard competitiveness. That is, it is going to  
10 encourage industries that are over capacity, et cetera.  
11 There is a better way to address the issue in my judgment  
12 than the one that is proposed here. I personally have  
13 quite grave reservations about it.

14 Ms. Miller?

15 Ms. Miller. Mr. Chairman, I would go on to page 71,  
16 which begins the agreement on subsidies and  
17 countervailing measures. Essentially, what the agreement  
18 on subsidies does is set up three categories of subsidies  
19 and the negotiators came to talk about them using a sort  
20 of traffic light metaphor.

21 Prohibited subsidies were described as red;  
22 actionable meaning subject to some kind of either  
23 domestic or international remedy, those subsidies were  
24 classified as yellow; and non-actionable subsidies came  
25 to be described as green light subsidies.

1           The agreement sets forth both international domestic  
2 remedies. The domestic remedy is the countervailing duty  
3 law. But that essentially only works when you have a  
4 situation involving imports. The international remedies  
5 are more applicable when you have a situation where the  
6 impact and the effect of the subsidies is on U.S. exports  
7 in third countries or in the country providing the  
8 subsidy.

9           The first articles and the first part of the  
10 agreement sets forth the definition of a subsidy. You  
11 see in Article I a subsidy is defined as existing if  
12 there is a financial contribution and a benefit is  
13 thereby conferred.

14           The changes in U.S. law that are included in the  
15 Chairman's implementing proposal are largely consistent  
16 with either U.S. statute as it exists today or the  
17 practice that has developed in the Commerce Department in  
18 implementing U.S. law. It brings forward the same  
19 concept of a subsidy existing when a government is  
20 providing a financial contribution and a benefit is being  
21 conferred.

22           On page 72 it goes on to speak to the issue that a  
23 benefit, how you determine whether a benefit is being  
24 conferred upon an industry, for example, in the case of a  
25 loan whether there is a difference in the amount of the



1 loan between the government loan and what would apply in  
2 terms of a comparable commercial loan to the recipient  
3 and again as has been the case under U.S. law the  
4 agreement adopts the concept that a subsidy is only  
5 subject to this agreement if it is specific. And the  
6 term specific, the concept of specificity relates to the  
7 idea that a subsidy has to be granted to a specific  
8 industry or enterprise either by law or by facts.

9 The agreement provides, as has U.S. law, and will  
10 continue to be the case that you look at the issue of  
11 specificity both visuary and de facto.

12 If there are no questions about the concept of  
13 defining the subsidy --

14 Senator Baucus. If I might ask is this the time  
15 raise an indirect issue?

16 Ms. Miller. This is the appropriate time to raise  
17 that question.

18 Senator Baucus. I think there are others here that  
19 share the same concern. An example, really is like say  
20 when Canada bans the export of raw logs, which has the  
21 effect of lowering the price of logs and lumber, say, to  
22 the Canadian producer. The question really is, is  
23 whether that is covered or not in the language.

24 It is my understanding that the language, it is  
25 A.1.4. which attempts to address these kinds of private

1 contributions influenced by governmental action is really  
2 quite vague. I am wondering if we could shore this up,  
3 Statement of Administration Action language, that makes  
4 it clear as to the kinds of example I just outlined, I  
5 gave, would be covered.

6 Mr. Joffe. Senator, the language of the Code, the  
7 new Uruguay Round Code, adds a phrase, "entrusts or  
8 directs" and perhaps that is what you are referring to  
9 as somewhat vague. It is our belief that the most  
10 effective way to ensure that we can succeed in future  
11 countervailing duty actions is to deal with them on a  
12 case-by-case basis, which I should say has been our  
13 approach in the past because indirection is a somewhat  
14 nonspecific notion.

15 That is the reason that we have actually said that.  
16 You will see on the right-hand side on the bottom of page  
17 71 that past situations may continue to be  
18 countervailable but that the actual determination would  
19 have to be made on a case-by-case basis.

20 Senator Baucus. I understand that. But in addition  
21 to case-by-case basis, is there not a way to ensure that  
22 examples like the one I gave could be covered? That is  
23 clear, it is a subsidy. It is indirect action encouraged  
24 by a government on a private party which confers a  
25 benefit.

1           Even though we are talking about case-by-case basis,  
2 it seems to me there should be language, SSA language,  
3 which clarifies this rather vague language.

4           Mr. Joffe. Well, the question is what meaning to  
5 give the phrase ``entrusts or directs.'' That is a  
6 phrase that was not previously in the Code.

7           Senator Baucus. I am trying to give some definition  
8 to that.

9           Mr. Joffe. Well, our concern is that we would be in  
10 the best posture to prevail in a case if we do not  
11 attempt to define in advance in this legislation and  
12 leave ourselves the latitude on the facts of a particular  
13 case to make the strongest case.

14           There have been instances in comparable situations  
15 where statutory language has caused us some difficulty  
16 when we came up against the facts of a particular case.  
17 So given the rather vague nature of that phrase  
18 ``entrusts or directs'' we just felt that we would be in  
19 the best position to make the strongest case if we did  
20 not try to prejudge it.

21           Senator Baucus. Ambassador?

22           Ambassador Yerxa. I would just like to add that we  
23 have been aware of your concern in this matter for some  
24 time. We have been talking, as you know, with your staff  
25 about it. I would suggest that we try to keep exploring

1 with you what possible formulations of language in the  
2 SAA we might think about that would try to address the  
3 concerns you have as well as the concerns we have.

4 Senator Baucus. It seems to me that the language  
5 can be more firm and phrased in a way -- this is a little  
6 paradoxical here -- that covers a wide variety of  
7 different circumstances that you are suggesting may occur  
8 off in the future sometime so we do not narrow ourselves  
9 down too much, but still be more aggressive and more  
10 affirmative in the language.

11 Mr. Joffe. The Commerce Department would concur  
12 that we would be glad to at least work with you on the  
13 language.

14 The Chairman. This is a question of judgment, what  
15 we think is the best service to the --

16 Senator Baucus. Well, it is a question of judgment  
17 so long as we agree on the goal. The goal is to address  
18 these kinds of situations. The one I gave is the  
19 Canadian ban on the export of raw logs. That is a  
20 government action and it has the effect of conferring the  
21 subsidy benefit on Canadian producers of softwood lumber.

22 Mr. Joffe. Well, we do want to work with you on the  
23 language. I think I would agree with your point that we  
24 would like to proceed in a way that by specifying a  
25 particular situation we do not somehow constrain our

1 latitude and ability to make the case in the facts.

2 Senator Baucus. Do you agree that the Canadian ban  
3 on raw logs should be covered?

4 Mr. Joffe. Well, let me answer that this way. The  
5 export bans were challenged by the Commerce Department  
6 only relatively recently, within the last few years. We  
7 now have a new phrase in the Code and when the facts of  
8 that situation are presented to us again we will have to  
9 assess it given this new phrase that appears in the Code  
10 so that we will have to attempt to provide a definitive  
11 answer when we are faced with a particular case.

12 But if we can provide some context by working with  
13 you on the Statement of Administrative Action, we would  
14 like to do that.

15 Senator Baucus. I am a little less concerned about  
16 your legal answer. I am more concerned about just your  
17 sense of fairness. I mean, just in the real world it  
18 just seems to me in the case, the example I gave, is one  
19 that it probably should be covered, although there are  
20 some legal problems with it.

21 I am just asking if you agree that in a sense of  
22 fairness it probably should be covered so that we can  
23 more clearly and more accurately find a solution.

24 Ambassador Yerxa. I think what we are saying,  
25 without commenting on hypothetical cases that are

1 presented to us under law, I think we are saying that we  
2 certainly understand the circumstances under which this  
3 would be found to be an indirect benefit.

4 Senator Baucus. Let us see what we can do. Thank  
5 you.

6 Senator Rockefeller. Mr. Chairman, just one  
7 comment. I am particularly glad that Senator Danforth  
8 has come back because I think we need to be very clear  
9 why we are where we are today. There were an enormous  
10 number of subsidy deficiencies in the Dunkel text and I  
11 think that the administration and the Chairman's staff  
12 has done a very, very good in clearing up a lot of these.

13 I just want to say that that is my view. I think it  
14 is very important, both for continuing public/private  
15 partnerships and developing technology and it is also  
16 very important in terms of the subsidies realm itself. I  
17 just wondered if the Ambassador would care to comment on  
18 that. It is a called a softball, sir.

19 Ambassador Yerxa. Yes, I know. I just want to make  
20 sure I hit it in the right direction. We have stated all  
21 along that we believe that there are significant  
22 improvements in this new agreement over what was the pre-  
23 existing situation in the GATT of not only very ambiguous  
24 disciplines on domestic subsidies, but a weak dispute  
25 settlement system that did not allow us to enforce those

1 disciplines.

2 Under this new agreement we are clarifying a number  
3 of standards related to serious prejudice and other  
4 points. We have created a category, an expansive  
5 category, of prohibited subsidies. We have created  
6 essentially a per se serious prejudice standard or a  
7 presumption of serious prejudice with regard to domestic  
8 subsidies.

9 The Chairman. Would you help with that term?

10 Ambassador Yerxa. I should not have used the term  
11 per se. I should have said a presumption of serious  
12 prejudice.

13 Under the Code in order to find that a subsidy is  
14 essentially having an adverse effect and should require a  
15 remedy in a Code dispute, not under our countervailing  
16 duty law but in a Code dispute, you have to assume --

17 The Chairman. Code referring to the --

18 Ambassador Yerxa. A dispute under the agreement,  
19 yes. You have to establish serious prejudice to your own  
20 economic interests.

21 The Chairman. Prejudice in the sense that when  
22 people's heads are cut off they have said they are  
23 treated with extreme prejudice?

24 Ambassador Yerxa. Well, there is a definition of  
25 serious prejudice under the agreement. Maybe I should

1 ask the expert to come up and explain to you a little bit  
2 more if you would like. But the concept is injury, is  
3 essentially injury to your economic interest because of  
4 the subsidy, that it has caused injury to another  
5 signatory to the agreement and serious prejudice is  
6 defined on page 76 of the --

7 The Chairman. Total ad valorem subsidization of a  
8 product exceeds 5 percent. All right.

9 Senator Baucus. You are talking about under Annex  
10 4.

11 The Chairman. Yes, and we have to find Annex 4.  
12 Well, all right, now I have it. Yes. But the 5 percent  
13 threshold does not apply to civil aircraft. Uh-oh. I am  
14 going to turn this over. Senator Rockefeller has the  
15 floor.

16 Ambassador Yerxa. You see what happens when I try  
17 to hit a softball. I was trying to explain that there  
18 are a number of features in this new agreement which will  
19 give us greater rights to attack the most pernicious  
20 kinds of subsidy practices and a better dispute  
21 settlement system to enforce it.

22 The Chairman. Good.

23 Senator Danforth. Mr. Chairman?

24 The Chairman. Senator Danforth?

25 Senator Danforth. Mr. Chairman, for a number of



1 months I have been singing one song on the whole question  
2 of this GATT agreement and it has had to do with the  
3 issue of subsidies.

4 The Chairman. Good.

5 Senator Danforth. And especially with the issue of  
6 the greenlighting of certain research and development  
7 subsidies.

8 I saw this as a terrible thing in the GATT  
9 agreement. I still think it is a terrible thing. I  
10 pointed this out when we had our initial meeting a few  
11 days ago. I think that the greenlighting of research and  
12 development subsidies opens the possibility where airbus  
13 will be the model for how countries are going to conduct  
14 themselves in the future, where there is going to be a  
15 race to try to subsidize certain industries that are  
16 viewed as promising for the future, particularly high  
17 tech industries, and where the world gets divided up, the  
18 United States not being able to subsidize everything, the  
19 Europeans not being able to subsidize everything, the  
20 Japanese not being able to subsidize everything. They  
21 simply pick their sector and subsidize them and nobody  
22 else can keep up.

23 The result of all of that is the opposite of an open  
24 trading situation throughout the world, but rather it is  
25 a very, very artificial situation. I have been making

1 that point for a long time now and continue to make the  
2 point and really do not like this part of the GATT  
3 agreement.

4 For quite awhile I have had discussions with  
5 Ambassador Kantor and with Ambassador Yerxa about this  
6 perceived problem. I know Senator Baucus and I have  
7 discussed it and he has similar views. The effort that  
8 we have tried to make is to see if there is anything in  
9 the enabling legislation that can be done to fix this.

10 Now, when a number of countries reach an  
11 international agreement and when it is generally viewed  
12 that that agreement is over and it is not going to be  
13 reopened -- I wish it could be reopened -- it is very  
14 hard to fix by enabling legislation enacted by the  
15 Congress of the United States a problem that has been  
16 created by an international agreement.

17 But we decided to do our best and to see if  
18 something could be fashioned in order to try to mitigate  
19 the worst of the problem that we thought had been  
20 created. There has been a lot of discussion, and  
21 particularly in the last day or two there has been a lot  
22 of discussion, with a lot of people involved in it.

23 The administration has been involved in it; and the  
24 Finance Committee staff has been involved in it; my staff  
25 has been involved in it. Kevin Dempsey of my staff has

1 just been very, very good on this. I believe that we are  
2 going to work this out. And I believe that we are going  
3 to deal with the subsidy issue, not in a way that makes  
4 my heart sing, but in a way that I think at least lessens  
5 the nightmare that I saw in the GATT agreement.

6       There are a few outstanding problems, but I think  
7 there are very few. One is the definition of  
8 precompetitive development. What is precompetitive  
9 development? Is it really development of a product or  
10 can it be used as a way of in essence subsidizing the  
11 production of a product? That is a very big issue and I  
12 think it is one that has to be resolved. I hope that the  
13 administration will be reasonable on that issue.

14       There is a question of sunseting. I think that  
15 this provision should be sunsetted. You do, Mr.  
16 Chairman. But I think basically it has been dealt with  
17 in a very effective way. I want to express my  
18 appreciation as usual to Ambassador Yerxa and the staff  
19 of USTR and to you, Mr. Chairman, and Senator Baucus, the  
20 staff of the committee.

21       The Chairman. Well, thank you, Senator Danforth.  
22 Can we make your heart hum?

23       (Laughter.)

24       Senator Danforth. I will let you know in a few  
25 days.

1           The Chairman. You will let me know in a few days.

2           Senator Danforth. You will hear me.

3           (Laughter.)

4           The Chairman. And I thank Senator Baucus.

5           I share the concerns that you both have had and I am  
6 sure there is no one here that does not. Say for one  
7 fact, subsidy is a very inexact art and I think the  
8 economics profession will typically tell you it is a good  
9 way to go broke fast.

10           You are trying to pick winners and you are not very  
11 good at it if you are government. Representative  
12 government is very bad at it. We would be awful at it --  
13 are awful at it.

14           The selling abroad at below cost is a pattern that  
15 can only go on for so long. I can see that airbus as an  
16 example. I mean, you know, you can make -- if they have  
17 never made any money out of airbus, it was not a very  
18 good idea, was it?

19           Senator Danforth. Mr. Chairman, it was a terrible  
20 idea. However, in the process of proceeding on this  
21 terrible idea, airbus is about a third of the  
22 international market. It has caused enormous damage in  
23 the United States.

24           The Chairman. And there are firms that would be  
25 making planes for the United States that are not now.

1           Senator Danforth. And because it is politicized --  
2 and you are absolutely right. I mean, subsidies are not  
3 decided by experts who are sitting there, but subsidies  
4 are really decided ultimately by politicians. I mean,  
5 why airbus? Why the European agricultural subsidies?  
6 Why have any kind of subsidy because they are politically  
7 popular?

8           A lot of people in our country, a lot of business  
9 people say, well, we just want government to get out of  
10 our hair. But we also want to get in government's  
11 pocket. So subsidies are done by governments and done by  
12 politicians because it is popular to have subsidies. The  
13 effect of those subsidies is really terrible.

14           I mean, how do you compete with a totally subsidized  
15 industry? That is what GATT tried to address from the  
16 standpoint of production subsidies, but in the process  
17 they created these greenlighted categories. So they said  
18 there were certain kinds of subsidies which are going to  
19 be okay. They are not going to be counted as subsidies,  
20 except if they exceed a certain very high percentage.

21           The research and development subsidy was a  
22 particular problem. So this is what we have been fussing  
23 around with. I mean, I in my own mind saw a world in  
24 which various countries would pick off various  
25 industries. In our country we would either have to say

1 we are going to keep up with those subsidies, how do you  
2 do it with a huge budget deficit, even if you wanted to  
3 do it, or we just give up. We just let those industries  
4 slide.

5 So I thought that this was a very, very bad  
6 situation. I still think it is a very bad situation. I  
7 want to support the GATT agreement. I cannot imagine  
8 that I will not support the GATT agreement. But I know  
9 that I will not support the GATT agreement if it makes  
10 the world worse rather than better.

11 Then I really believe that the subsidies issue --  
12 The Chairman. There is no way you can know that.  
13 Senator Danforth. Pardon?

14 The Chairman. Alas, there is no way you can know  
15 that until it goes into effect.

16 Senator Danforth. Well, I think you can know it,  
17 unless the subsidy issue is fixed. I really think you  
18 can know that if we have wide open R&D subsidies that is  
19 going to be something that is going to be very terrible.

20 So all I wanted to say is that I think we are moving  
21 right along. We are not there yet. There are these  
22 outstanding issues which I raised, especially the  
23 question of definition of pre-competitive development  
24 that I hope that we can work that out and I hope that we  
25 can create a situation where this agreement is a very

1 good agreement.

2 The Chairman. Good. Can I ask, Ambassador Yerxa,  
3 you might want to have -- thank you, Senator.

4 Ambassador Yerxa. Yes, sir. I would like to  
5 comment, Mr. Chairman, because Senator Danforth has been  
6 concerned about this issue from the very beginning and  
7 one thing I greatly admire is when someone deals with an  
8 issue of this nature with intellectual consistency, which  
9 has certainly been the case here.

10 We have, I think, from a period of quite some time  
11 ago right through the present moment been seeking to work  
12 with him on ways that will address the concern he has  
13 about greenlighting.

14 I think, Senator Danforth, you, yourself, have said  
15 that you do not think anything short of a change in the  
16 agreement could totally eliminate the concerns you have,  
17 but I think our effort here, and I think we are going to  
18 continue to work and determined to find some solution  
19 that will be a meaningful way of addressing the problem.

20 My view is that this agreement is going to provide  
21 substantial overall subsidy discipline in the world. I  
22 think Senator Danforth's concern is that there a category  
23 of exception here that could outweigh the rule or could  
24 out strip the rule. And our effort here is try to ensure  
25 that these greenlight categories are going to be

1 administered in such a way by the countries under this  
2 agreement that it will not do that, and that we have  
3 effective means, not only of monitoring them, but of, if  
4 necessary, attacking them under the agreement once they  
5 cause those effects.

6 There is a procedure in the code to do that and my  
7 effort is to try to formulate something that we could put  
8 in our implementing legislation that assures such a  
9 process. I want to pledge that we will continue to work  
10 with Senator Danforth in this and try to get it resolved.

11 The Chairman. Well, I thank you very much,  
12 Ambassador. I do not know if this helps or anything. It  
13 probably does not help, but let me say it anyway. Having  
14 been around this subject for, you know, 30 years or more  
15 the United States under Cordell Hull set out to do  
16 something which we had never done and to change our  
17 behavior with respect to tariffs, and to change the  
18 behavior of Europeans with respect to the role of  
19 government in their economies.

20 That is just as old as those economies are. To a  
21 lesser extent the Japanese, but because we were not  
22 paying enough attention. Those cultures change very  
23 slowly. The culture of France, the mercantilist  
24 tradition in France, never really changed. Adam Smith  
25 was a Scotsman as far as they are concerned and someone



1 on the Celtic fringe. He certainly did not have the  
2 necessary quarterings of noble ancestry to be a member of  
3 Mr. Cobere's collage, and be a colleague.

4 The British had a very long battle to break out of a  
5 futile protectionism, a protectionism that was designed  
6 to maintain the political power and social standing of a  
7 specific class, namely the agrarian aristocracy.

8 Do you know what broke the Dukes of Norfolk in  
9 Northumberland? It was wheat arriving from western New  
10 York via the Erie Canal. Suddenly you had wheat in  
11 Liverpool at half the price that the Duke of  
12 Northumberland could produce it and the corn laws were  
13 passed and British began to become an industrial nation  
14 in the 1840s. That recently.

15 We brought a toy railroad to Japan in 1958. Who can  
16 tell us when? You can tell us when. When did Peary  
17 arrive?

18 Senator Rockefeller. 1953.

19 The Chairman. 1953.

20 (Laughter.)

21 The Chairman. This committee knows a thing or two.  
22 Let the administration take notice.

23 They closed in futile society that had absolutely no  
24 interest in these things. They sent them back the first  
25 time he arrived and said go away. Come back again later.

1 He said, I might come back with more ships. What do you  
2 think about that? They said go away. So he went down to  
3 McCowen and came back.

4 Hamilton had a mercantilist view. His report on  
5 manufactures was that, that high tariffs would produce a  
6 domestic manufacture and we would not be a supplier of  
7 raw materials elsewhere.

8 You know, free trade is an enormous intellectual  
9 gamble and flight. I mean, it is against most people's  
10 instincts, most systems. That we have come so far is  
11 extraordinary. Remember, we are here talking the  
12 aftermath of Smoot-Hawley. There were 1,015 economists  
13 in the United States in 1930 and 1,000 wrote Herbert  
14 Hoover, who was a hugely intelligent man, who spent half  
15 his life overseas, a mining engineer, translated the  
16 classic fourteenth century text in Latin on how to  
17 construct the iron ore mine. He used to translate Latin  
18 medieval texts on steamships as he was making his way  
19 back and forth in the Orient. But he signed that bill.

20 And in three years time the world trade had dropped  
21 60 percent and we were on our way to world war. I think  
22 it is amazing how much they have done rather than how  
23 little, only because I just assume the normal condition  
24 of government is to be wrong, to be mistaken in these  
25 matters. And then stay with your mistakes until the

1 point of doom.

2 I think there is one other thing and I will shut up,  
3 which is that there is a certain kind of subsidy which  
4 takes place. Relative prices change a lot faster than we  
5 realize. I think. Is anybody here an economist? Figel,  
6 are you an economist?

7 Mr. Figel. No, sir.

8 The Chairman. You are all lawyers.

9 Ambassador Yerxa. Nobody who will admit to it.

10 The Chairman. Nobody will admit to it. Relative  
11 prices change with great rapidity and some do not change  
12 at all. The handicraft industries do not. It always  
13 seems to me that one of the reasons we have such,  
14 agricultural subsidies are near universal.

15 Does anybody know a major country that does not  
16 spend a lot of money on agricultural subsidies?

17 Ambassador Yerxa?

18 Ambassador Yerxa. Well, the only ones are the  
19 countries that were lucky enough not to have any  
20 agriculture to subsidize, like Singapore and Hong Kong.

21 The Chairman. Right. Right.

22 Ambassador Yerxa. Other than that, I think most of  
23 them do.

24 The Chairman. Right. Yes. Leaving out Singapore  
25 and Hong Kong to City States.

1           I have always assumed that it was in part this  
2 responds to the fact that there has been such enormous  
3 increases in productivity in agriculture, that relative  
4 prices keep going down, down, down. And absent some  
5 subsidies, people who are doing everything they are  
6 supposed to do will find themselves enstraightened to  
7 circumstances.

8           I mean, you can run a 1,000 acre -- I mean, what was  
9 it, the food was one-third of the American budget in  
10 1960, was it not? It is one-sixth today of the household  
11 budget. I have always had a certain soft spot for those  
12 subsidies because I think they have been trying to keep  
13 people from falling under who have done everything right  
14 by making things cheaper. Do you follow me on that? You  
15 probably do not agree.

16           Senator Danforth. No, I do not agree, but I follow  
17 you.

18           The Chairman. You can disagree on two grounds.  
19 One, that you think I am wrong; or, two, that you think  
20 the policies, even though there had been relative price  
21 changes we should not try to adjust for them. I should  
22 say it is normal that you would. The economists would  
23 say do not, you know. I have not gotten very far with  
24 Senator Danforth.

25           (Laughter.)

1           The Chairman. Ms. Miller, proceed.

2           Ms. Miller. Mr. Chairman, you may have given us a  
3 basis to go straight to the agreement on agriculture.

4           The Chairman. Oh, yes, that is an important  
5 agreement. I think it is a hugely important agreement.

6           Ms. Miller. It begins on page 110 of the side-by-  
7 side.

8           The Chairman. What page?

9           Ms. Miller. Page 110.

10          The Chairman. That is the spirit. Let us just go  
11 through this and then we will --

12          Ms. Miller. Essentially the agreement covers three  
13 areas in general -- export subsidies, internal support  
14 programs and market access issues. In each of these  
15 areas countries have agreed to make reductions either in  
16 their subsidies or in opening their market over a six-  
17 year period.

18          The main area that falls in the Finance Committee's  
19 jurisdiction has to do with the market access provisions  
20 of the agreement which are described at the bottom of  
21 page 110, Articles 4 and 5. The other provisions related  
22 to export subsidies and support programs to the degree  
23 they require implementing legislation will be handled by  
24 the Agriculture Committee.

25          The Chairman. Yes, but describe them to begin with.

1 Will we have a proposal that in 10 years time -- about  
2 export subsidies. Let us hear what we have here.

3 Ms. Miller. The export subsidy commitments are  
4 described on page 115.

5 The Chairman. Right.

6 Ms. Miller. The agreement requires that agriculture  
7 export subsidies must be reduced by 21 percent in volume  
8 and 36 percent in budget outlays over six years. The  
9 requirement for developing countries is somewhat less --  
10 14 and 24 percent respectively.

11 That, I believe, affects the U.S. export enhancement  
12 program primarily, but again that is under the  
13 jurisdiction of the Agriculture Committee.

14 The Chairman. The United States subsidizes the  
15 export of food, does it not?

16 Ms. Miller. Yes, it does have exports subsidies on  
17 agricultural products.

18 The Chairman. Sure, we do. So does Canada.

19 Ambassador Yerxa. But I must say that on a value  
20 basis --

21 The Chairman. Compared to Butterburg in the Wine  
22 Lake, no.

23 Ambassador Yerxa. Yes, compared to the European  
24 Union they are significantly smaller. What we have  
25 negotiated here are significant percentage reductions in

1 subsidies which takes an enormous share out of their  
2 current export subsidies.

3 Let us recall that in numerous sectors where the  
4 European Union through heavy export subsidies and heavy  
5 import protection has moved from largest net importer in  
6 the world to the largest net exporter in many sectors.  
7 Their real costs are so much higher than ours in the  
8 grain sector, for example, that a proportionate reduction  
9 in export subsidies gives the United States a significant  
10 advantage on world markets by reducing the European  
11 Union's presence in those products in world markets.

12 The Chairman. Now, the European Union, you have a  
13 situation where there is increased productivity, but it  
14 is not at the rate of the United States.

15 Ambassador Yerxa. Correct.

16 The Chairman. But the British, the United Kingdom  
17 once again is self-sufficient in grain. Is that not  
18 right?

19 Ambassador Yerxa. I am not sure about the United  
20 Kingdom itself. I know that the community as a whole is.

21 The Chairman. These are all Scottish theories. Who  
22 knows about the United Kingdom? They are self-sufficient  
23 in food, are they not?

24 Ambassador Yerxa. I would have to check for you.  
25 We know that the community itself is self-sufficient in

1 grains. The French, for example, are large producers of  
2 feed grains and certainly the British who have undergone  
3 quite substantial rationalization of agriculture have  
4 become more efficient as producers.

5 The Chairman. So we do not sell it. I mean,  
6 western New York is desolate. There is no market in  
7 Liverpool.

8 Do you have any idea, it would be nice to be able to  
9 quantify this. Because this export subsidy commitment,  
10 you must have some sense of what this means for American  
11 agricultural export, do you not?

12 Ambassador Yerxa. We do. I do not have it with me  
13 here today, but I can give it to you. The Department of  
14 Agriculture has prepared a sector-by-sector analysis of  
15 exactly what the Uruguay Round subsidy commitments,  
16 market access commitments mean in terms of higher  
17 exports, in terms of higher prices in the agricultural  
18 sector, and in terms of what commitments it would mean  
19 from our point of view with respect to things like the  
20 export enhancement reductions.

21 Senator Baucus. Mr. Chairman?

22 The Chairman. Sure.

23 Senator Baucus. I think basically, and this is a  
24 rough rule of thumb, that our export enhancement program  
25 last year is lowered to, say, the community. The



1 European Union was about a billion dollars roughly. And  
2 the Europeans on the other hand, their total export  
3 subsidies, as I recall, is about \$11 billion.

4 The Chairman. Good.

5 Senator Baucus. That is their export subsidy. Let  
6 alone the other subsidies. So we are talking basically  
7 only about export subsidies right here and it is  
8 basically a one to ten ratio.

9 Ambassador Yerxa. That is exactly right.

10 Senator Baucus. Our export subsidies versus their  
11 export subsidies, let alone all the other subsidies that  
12 exist. So the point is, this is a 21 percent, you know,  
13 and 36 percent reduction on a percentage reduction. But  
14 if the same percentage is applied to them as applied to  
15 us. So they are ahead still by a factor of 10.

16 Senator Roth. Could I ask a question?

17 The Chairman. Senator Roth?

18 Senator Roth. Did we make any savings that can help  
19 pay for the cost of this legislation? What is the in-  
20 cash from CBO?

21 Ambassador Yerxa. The CBO analysis is that with  
22 respect to expected savings from higher prices for  
23 agricultural products, thereby reducing the costs of CCC  
24 outlays would be about, I think, over the five-year  
25 period it is about \$700 million in reduced outlays and

1 then an additional over a five-year period, an additional  
2 \$1 billion savings in lower export enhancement payments.

3 So the combined total would be about \$1.7 billion in  
4 lower agricultural costs. Now contrast that with what we  
5 are expected to see in terms of increases in agricultural  
6 exports, the range is somewhere between \$1.6 and \$4.7  
7 billion by the year 2000 and the range by the year 2005  
8 would be \$4.7 to \$8.7 billion.

9 And, of course, also as we said higher farm incomes.  
10 The Uruguay Round agreement is expected to raise net farm  
11 sector income by as much as \$1.3 billion in the year 2000  
12 and as much as \$2.5 billion in the year 2005. Government  
13 outlays in 2000 could decline by almost \$1.3 billion.

14 So overall in our agricultural sector this means  
15 fewer government outlays and higher incomes to farmers.

16 Senator Roth. To what extent can they be counted  
17 towards supplying the revenue for the legislation?

18 Ms. Miller. Senator Roth, the amount that  
19 Ambassador Yerxa referred to, the \$1.7 billion, would be  
20 counted as savings against the total cost of the Uruguay  
21 Round bill.

22 Senator Roth. So it is \$1.7 billion?

23 Ms. Miller. Yes.

24 Senator Baucus. I might say there is a disagreement  
25 on that because other countries use -- like say the

1 European Union, here is what they are going to do. They  
2 are going to take the reduced dollars -- whatever, marcs,  
3 French francs or whatever -- that would otherwise go to  
4 export subsidies and they are going to convert that over  
5 to a subsidy that is greenlighted for agriculture,  
6 whether it is market development or whatever it might be.  
7 That is what the Canadians are doing too.

8 So there are many of us on this committee who think  
9 that, frankly because you have to fight fire with fire  
10 here is to protect our industry just like they are  
11 protecting theirs. It makes a lot more sense for that  
12 EEP savings, the Export Enhancement Program savings, to  
13 go to similar agriculture promotion and other  
14 greenlighted subsidies or programs just like other  
15 countries are doing. Because otherwise we are just  
16 taking a big hit.

17 Frankly, the budget for agriculture in this country  
18 has fallen dramatically. Not too many years ago it was  
19 \$26 billion in the budget spent on agriculture. Now I  
20 think it is about \$10 billion, I think. It is a major  
21 reduction over all.

22 So the basic question then obviously is, what is the  
23 appropriate use for those funds.

24 Senator Roth. But as I understand it technically  
25 \$1.7 billion would be counted as increased revenue for

1 the purposes of legislation.

2 Ms. Miller. I think the issue here is whether or  
3 not the Agriculture Committees in their process of  
4 putting together a bill will have some interest in trying  
5 to use some of that money for other purposes. The \$1.7  
6 billion would be counted as a savings for the whole bill,  
7 but then the question is what other provisions are  
8 included in the bill that might have a revenue impact.

9 Senator Roth. Thank you.

10 Senator Baucus. All right.

11 Senator Roth. I have a couple of questions.

12 Senator Baucus. Go ahead. Sure.

13 Senator Roth. That I would like to ask on poultry.  
14 The spreadsheet on page 111 specifically states that  
15 under the agriculture agreement members must maintain  
16 current access opportunity for those products where  
17 imports represent more than 5 percent of domestic  
18 consumption.

19 My question is: How is that Canada was allowed to  
20 table a final market access proposal on poultry of just  
21 over 39,000 metric tons when our exports to Canada well  
22 exceed that level and were over 5 percent of the market?

23 Ambassador Yerxa. Senator Roth, I do not have  
24 somebody from the Agriculture Department here that can  
25 answer that question. We will get someone to produce an

1 answer for you and perhaps be here at the next  
2 opportunity. But certainly we will make sure we get the  
3 answer.

4 Senator Roth. I have another question, Mr.  
5 Chairman, in this same area. Maybe I ought to go ahead  
6 and propound it or should I wait? Are you going to bring  
7 somebody here later, an expert on this?

8 What I would like to know is if the implementing  
9 bill contains any change to the NAFTA with respect to  
10 Canada's tariffication of its poultry, eggs and dairy  
11 supply management system. I have a letter from former  
12 Ambassador Carla Hills which specifically states that the  
13 U.S.-Canada Free Trade Agreement tariff rules, which are  
14 now the first part of NAFTA, require the ultimate  
15 elimination of all tariffs between our two countries.

16 And as quoted from that letter verbatim that "any  
17 relief from that provision would require an amendment to  
18 the free trade agreement." Does the administration  
19 still adhere to that position?

20 Ambassador Yerxa. Yes, we do. This implementing  
21 bill does not contain any provisions which would alter  
22 the respective obligations between the United States and  
23 Canada to eliminate tariffs on all products. So the  
24 NAFTA obligation would still exist.

25 Senator Roth. Mr. Chairman, I would just I think it

1 important that this matter be clearly addressed in the  
2 administration's Statement of Administration Action  
3 accompanying the Uruguay Round implementing bill as well  
4 as the committee's reported language.

5 The Chairman. Is that something agreeable to the  
6 administration?

7 Ambassador Yerxa. We do not see any problem with  
8 stating that fact in the SAA language.

9 The Chairman. Then let us do it.

10 Ambassador Yerxa. We can do that.

11 Senator Roth. I have one further question, Mr.  
12 Chairman. I do understand that we are trying to resolve  
13 this problem with Canada through bilateral negotiations.  
14 It is my view and the Senate recently endorsed it in a  
15 Senate resolution that any bilateral agreement should  
16 provide significant new export opportunities on immediate  
17 and gradual basis as well as a specific time table for  
18 the eventual elimination of all bilateral poultry  
19 tariffs. There are, of course, similar concerns with  
20 respect to U.S. dairy and egg producers.

21 If we cannot settle this matter before the effective  
22 date of the WTO, then serious consideration must be given  
23 to pursuing a solution through NAFTA's dispute settlement  
24 mechanism. That is clearly a primary goal of both the  
25 WTO and the NAFTA dispute settlement provisions are all

1 about, to ensure of course that U.S. trade agreements are  
2 upheld.

3 It is time for our free trade agreement with Canada  
4 to mean free trade for our poultry exporters as well as  
5 eggs and dairy producers. I think the implementing  
6 legislation should call for this reasonable approach.

7 The Chairman. Well, let me ask, Ambassador Yerxa,  
8 does that strike you as something we can do?

9 Ambassador Yerxa. Mr. Chairman, we will be glad to  
10 sit down with Senator Roth's staff and see what language  
11 we can work out.

12 The Chairman. Good. Senator Roth has been  
13 concerned about this for some time. He would appreciate  
14 that if you would do.

15 Senator Roth. No more questions for the Ambassador.

16 The Chairman. Good.

17 Senator Roth. Thank you, Mr. Chairman.

18 The Chairman. Thank you.

19 Well, tariffication. Where is the Agricultural  
20 Committee on the issue of the phasing out of export  
21 subsidies? Have they taken any action that we are aware  
22 of?

23 Ambassador Yerxa. Because of the way the base  
24 period in the negotiations were concluded, as I  
25 understand it, the legislation to actually accomplish

1 this is minimal or what they need to do is minimal.  
2 Maybe Mr. Brinza can explain.

3 The Chairman. Mr. Brinza.

4 Mr. Brinza. Thank you, Mr. Chairman.

5 As Ambassador Yerxa just mentioned, yes, as it turns  
6 out the way that the time frames work, most of the  
7 legislation that is currently in place with respect to  
8 export subsidies would remain as is. There is a minor  
9 provision that we will need to be working on with respect  
10 to mandatory sales of dairy products.

11 We have also proposed an amendment to ensure that  
12 the export enhancement program is operated consistent  
13 with our export subsidy reduction commitments. But other  
14 than that, there are no other legislative changes that we  
15 have identified to our current export authorities.

16 Some changes may need to be looked at or this issue  
17 may need to be looked at in the context of the 1995 farm  
18 bill.

19 The Chairman. Well, now I hope I understand you.  
20 If total domestic support must be reduced 20 percent to  
21 equal annual installments over six years and then the  
22 export subsidies must be reduced 21 percent, even though  
23 the volume is not large, it is still a reduction of 21  
24 percent, does that not make difficulties for the  
25 Agriculture Committee?



1           Ambassador Yerxa. Well, the point is that with very  
2 few changes in law we have the authority to implement  
3 those kinds of reduction commitments.

4           The Chairman. Oh, you can reduce subsidies by  
5 Executive action; is that right?

6           Ambassador Yerxa. That is correct.

7           The Chairman. Mr. Brinza, you are Deputy Counsel.  
8 Do you agree?

9           Mr. Brinza. Mr. Chairman, that is correct. The  
10 current law in many cases does not provide a fixed amount  
11 of export subsidy that needs to be provided to a  
12 particular commodity. So there is room within existing  
13 law to implement our export subsidy reduction  
14 commitments.

15           I would also mention, of course, those reductions  
16 are from the base period level. In many cases we have  
17 already reduced from that level; and, therefore, there is  
18 not a problem with our existing levels.

19           The Chairman. I see. Mr. Figel, do you agree with  
20 that? Do you all understand this?

21           Mr. Figel. Yes.

22           The Chairman. I had thought there would be more  
23 action required.

24           Senator Baucus. No. It is pretty much a done deal.  
25 There is not a lot to be done.

1           The Chairman. All right.

2           Senator Baucus. Not a lot for the committee to do.

3           The Chairman. For the Agriculture Committee to do.

4           But there are some things to do.

5           Senator Baucus. Yes. And it gets I think to the  
6           question Ambassador Yerxa referred to, is what is to be  
7           done with authorizing language I think.

8           Ms. Miller. And also, Mr. Chairman, I think the  
9           point about the reductions being from an earlier base  
10          period, under the last farm bill and other previous acts  
11          of Congress have reduced our subsidies in these areas to  
12          a certain extent and, therefore, at this point in time we  
13          have met this commitment.

14          The Chairman. I am not trying to make this more  
15          complicated.

16          Ambassador Yerxa. There are, of course, changes  
17          that are needed with regard to tariffication. That is we  
18          could access tariffication changes.

19          The Chairman. Yes.

20          Ambassador Yerxa. They come under your  
21          jurisdiction.

22          The Chairman. We handle them. All right.

23          What else do you have that we should know about?

24          Ms. Miller. I think having probably adequately  
25          covered agriculture, I would only mention one last

1 provision in the Chairman's proposal. Senator Roth has  
2 left, but I know it was of interest to him as well as  
3 Senator Baucus. That is, on page 123 in connection with  
4 the agreement on intellectual property rights, referred  
5 to as the TRIPS agreement, the trade related aspects of  
6 intellectual property rights.

7 The Chairman's proposal both clarifies what are  
8 referred to as the Special 301 provisions in U.S. law  
9 that is a sort of Special Section 301 relating to  
10 intellectual property protection.

11 The Chairman's proposal also requires the USTR to  
12 develop and maintain a model intellectual property  
13 agreement. That specifically, because of knowing of the  
14 interest of some members of this committee I wanted to  
15 mention that it is in the Chairman's proposal.

16 The Chairman. It is indeed.

17 Senator Roth. Could I just make a statement, Mr.  
18 Chairman?

19 The Chairman. Please.

20 Senator Roth. As I understand it, the provisions  
21 are very similar to what I included in my legislation. I  
22 would just to congratulate you for foresight.

23 The Chairman. We congratulate you for your  
24 appreciation.

25 Senator Roth. Thank you.

1           Senator Baucus. If I may say, too, Mr. Chairman, I  
2 think it includes broadening the President's retaliatory  
3 options. That is a part of this change.

4           Ms. Miller. Exactly. That is part of the proposal.

5           The Chairman. And for the record, in which ways are  
6 they broadened? The retaliatory.

7           Ms. Miller. Under Section 301 the President does  
8 have fairly broad authority to take action in response to  
9 intellectual property rights violations and the lack of  
10 protection. The implementing bill in the amendments to  
11 Section 301 clarifies that that authority does go beyond  
12 just the issue of import restrictions.

13           That is the case in current law, but it is  
14 essentially limited to whatever authority the President  
15 would have by law. It may relate to preferential  
16 arrangements like the generalized system of preferences  
17 or other preferential programs that the United States  
18 would have.

19           The Chairman. Again, for the record, and in this  
20 case I do not know the answer at all, that in updating  
21 the list of intellectual property protection, it is to  
22 include mask works. What is a mask work?

23           Ms. Miller. Mask works relates to semi-conductor  
24 chips.

25           The Chairman. Semi-conductors, all right. And

1 trade secrets, that is a term in property law knows the  
2 use of the term trade secrets.

3 Ms. Miller. Our intellectual property expert on the  
4 committee is sitting behind me at the moment. But trade  
5 secrets relate to the formula apparently for making a  
6 particular product.

7 The Chairman. As I say, this is common usage in  
8 property law.

9 Ms. Miller. Yes.

10 The Chairman. Mask works is a new word to me. Make  
11 a note on that. If I can find occasion to drop it. Very  
12 well.

13 Ms. Miller. Mr. Chairman, I think the only other  
14 thought for today -- I do not know if you want to do it  
15 at this point -- was to let the administration describe  
16 its proposals on other issues, things like fast track and  
17 extension of the generalized system of preferences. In  
18 the hour, I do not know if you want to do that now.

19 The Chairman. I think that is -- you mean  
20 provisions that are not in our mark?

21 Ms. Miller. Exactly.

22 The Chairman. If it is all right with you,  
23 Ambassador, we would like to perhaps leave that for a  
24 time when there are -- but if there is anything you want  
25 to say, by all means say it.

1           Ambassador Yerxa. I want to accommodate the  
2 committee's schedule. Maybe I could do this. We have  
3 essentially four very brief summaries of the four issues  
4 I was prepared to describe today. Maybe we could leave  
5 them with you.

6           They go to first of all the interim trade program  
7 for the Caribbean Basin that we have proposed.

8           The Chairman. Right.

9           Ambassador Yerxa. The administration's proposal for  
10 GSP renewal, which incidently we had a full hearing on in  
11 Senator Baucus' subcommittee not too long ago.

12          The Chairman. Right.

13          Ambassador Yerxa. I believe June 20th we had a  
14 hearing on that. So that is another summary.

15          And then there is a summary of our proposal for fast  
16 track authority.

17          The Chairman. Fast Track.

18          Ambassador Yerxa. And finally our proposal for  
19 broad Article 28 compensation authority related to  
20 products for which we might seek to renegotiate our GATT  
21 bindings.

22          I would give you a summary of all four of those for  
23 the Senators' benefit and then at any time that is  
24 convenient maybe we could come back in the next few days  
25 and describe it all to you or discuss it.

1           The Chairman. Right. I know that Senator Chafee  
2 would like to talk about fast track. I guess I would  
3 like to know a little more about the Article 28. We can  
4 do that and we will.

5           Senator Roth. Mr. Chairman?

6           The Chairman. Senator Roth.

7           Senator Roth. Could I just say in respect to  
8 Article 28 that I have very, very strong objections to  
9 that. I think as I understand the proposal, it could be  
10 very damaging in areas like poultry, dairy and so forth.  
11 As far as I am concerned would cast the whole agreement  
12 in a different light.

13          The Chairman. Well, Mr. Ambassador, you have been  
14 put on notice.

15          Ambassador Yerxa. I think we have some explaining  
16 to do and I am prepared to come back and do that as soon  
17 as possible.

18          Senator Baucus. Also because it was rejected in the  
19 House. So you are on notice for that reason.

20          Ambassador Yerxa. And we are still hopeful of  
21 persuading it as a proposal.

22          The Chairman. These people have been negotiating in  
23 this round for seven years.

24          Senator Baucus. Exactly.

25          The Chairman. They do not discourage easily.

1           Senator Baucus. That is true.

2           The Chairman. Well, again, we thank you very much,  
3 the members of the administration, and we thank our own  
4 indefatigable staff and we will stand in adjournment  
5 subject to the call of the Chair to address these matters  
6 that Ambassador Yerxa has mentioned and any other subject  
7 that any members wants to bring up.

8           (Whereupon, at 12:45 p.m., the meeting was adjourned  
9 subject to the call of the Chair.)

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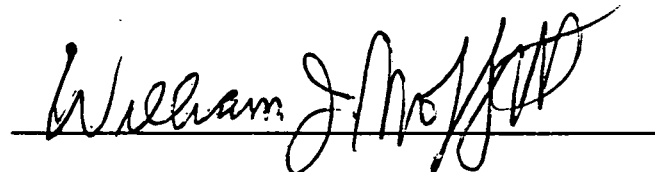
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C E R T I F I C A T E

This is to certify that the foregoing proceedings of a Executive Committee Meeting held before the United States Senate Committee on Finance on July 21, 1994, were transcribed as herein appears and that this is the original transcript thereof.

A handwritten signature in cursive script, reading "William J. Moffitt", is written over a horizontal line.

WILLIAM J. MOFFITT  
Official Court Reporter

My Commission Expires April 14, 1999

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# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 205 10-6200

LAWRENCE O'DONNELL, JR., STAFF DIRECTOR  
EDMUND J. MIHALSKI, MINORITY CHIEF OF STAFF

## EXECUTIVE SESSION

Thursday, July 21, 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.

## SUMMARY OF ADMINISTRATION'S GSP PROPOSAL

- o The GSP program provides preferential duty free access on imports of over 4,000 selected items from 147 developing economies. Last year, nearly \$20 billion entered the U.S. duty free under GSP. GSP expires on September 30, 1994.
- o The aim of GSP is to promote economic development in developing countries by granting them preferential access to the U.S. market. All other developed economies have GSP programs.
  - The point of GSP is to focus on trade rather than aid to foster economic development in developing and transitioning economies.
  - In addition, our GSP program is designed to encourage developing countries to adopt international trade and labor standards, which also fosters development.
- o For these reasons, the Administration strongly supports GSP renewal. The Administration's proposal would achieve the above aims in the following ways:
  - **It retains the current criteria for country eligibility** (with some minor modifications, including the removal of anachronistic provisions on communist countries and OPEC members). This is to ensure that countries receiving GSP are working to meet international standards on trade and on worker rights.
  - **It lowers the program's "competitive need limits."** This allows us to better monitor and control the use of GSP by the largest, most competitive beneficiaries, whose share of GSP benefits has increased dramatically. It also lowers the threshold for "graduating" advanced countries from GSP.
  - **It gives the President the authority to grant expanded benefits to the least developed countries.** This would increase the program's value to them, in accordance with the Uruguay Round Ministerial Declaration on Measures in Favor of Least-Developed Countries.
  - **It reforms the GSP review process, establishing clearer standards for the acceptance of petitions.** This will improve the transparency and predictability of the program's administration, to the benefit of both interested U.S. parties and beneficiary countries.

## GSP FACTSHEET

- o **Total 1993 GSP Imports from all countries: \$19.6 billion**
  - 3% of total US imports, 15% of total imports from beneficiary countries
  - \$5 billion of last year's total was Mexico, which no longer gets GSP due to NAFTA
- o **Eligible Items: Over 4,000 eligible items. Chief exclusions: textiles and apparel, footwear and leather, much glassware and ceramics, most steel.**
- o **Eligible countries: 147 eligible countries, including now most of Eastern Europe and FSU, as well as South Africa**
- o **Largest Beneficiaries, 1993 (exlcuding Mexico):**

Malaysia	\$3 billion
Thailand	\$2.1 billion
Brazil	\$1.9 billion
Philippines	\$1.3 billion
Indonesia	\$900 million
India	\$750 million
- o **Key Sectors:**

Electronics and electrical machinery:	22% of total
Other machinery	11%
Furniture	8%
Toys	5%

## INTERIM TRADE PROGRAM FOR THE CARIBBEAN BASIN

### INTRODUCTION

- o Since 1984, the CBI has provided beneficiary countries duty-free access to the U.S. market for all exports, except textiles/apparel, petroleum, footwear, some leather goods.
- o The ITP is expected to be a central element of the trade theme for the December 1994 "Summit of the Americas."
- o The Southern Governors and the leaders of Central America and Caribbean support the Interim Trade Program.

### ITP BENEFITS THE UNITED STATES AND THE CBI

#### **Two-way Trade Benefits**

- o U.S. exports to the CBI jumped from \$5.8 billion in 1983 to \$12.3 billion in 1993, 112% increase; a rate that is three times the rate of U.S. global exports.
- o A U.S. trade deficit with the region of \$2.6 billion in 1984 turned into a U.S. surplus of about \$2 billion.
- o Countries in the region purchase over 40 percent of their total imports from the United States. This compares to 10-15 percent by the developing Asian countries.

#### **Textile/Apparel**

- o U.S. exports of fiber, yarn, fabric and apparel to the CBI countries was \$2.25 billion in 1993.
- o Apparel production in the Caribbean is done largely by U.S. manufacturers, who operate in the Caribbean using American components. Over 70 percent of U.S. imports of apparel from the CBI countries involve U.S. components.
- o The CBI program shifts market share from Asian countries to the Caribbean Basin, which uses U.S. cut and formed fabric instead of Asian fabric.
- o The CBI helps keep cutting, marketing and fabric jobs (which require specialized skills) in the United States. We do not believe the ITP would induce sewing jobs to go.
- o Without the ITP, CBI countries' apparel exports to the U.S. would face higher duties than Mexican products.

#### **Investment-Intellectual Property Protection**

- o The requirements in the ITP that countries must improve the protection of investment and intellectual property would

help U.S. companies. Investment disputes would be more quickly resolved. Stronger patent, trademark, and copyright protection would stem losses caused by pirated products.

#### **Investment Diversion**

- o The textile/apparel sector accounts for about 35 percent of U.S. imports from the region; 75 percent of products excluded from the CBI program and 99 percent of non-petroleum products excluded from the program.
- o U.S. imports from the CBI have contributed tremendously to the region's growth. The Congressional Research Service said any shifts of investment out of this industry "could have significant consequences for the Caribbean countries."

#### **MAIN PROVISIONS OF THE INTERIM TRADE PROGRAM**

##### **Textiles/Apparel**

The United States and the CBI countries would expand access.

- o NAFTA-like tariff and quota treatment would apply to imports into the United States from CBI beneficiaries for articles which meet NAFTA-like rules of origin.
- o CBI beneficiaries would expand market access on an MFN basis on specific textile/apparel products and would agree to the U.S. formulation on anti-circumvention.

##### **Investment/Intellectual Property**

To begin benefitting from the program, interested CBI countries would agree in writing to achieve the standards in the U.S. bilateral investment treaty and the U.S. prototype intellectual property agreement within two years. These agreements would be implemented within 18 months.

##### **Worker Rights**

The need to pursue internationally recognized worker rights is enshrined in the criteria for the CBI and would apply to benefits of the textile/apparel in this interim trade program.

##### **GATT**

CBI countries would be expected to join the WTO.

##### **Effective Date**

This interim trade program would take effect after the United States and the CBI nation reached a written agreement.

July 21, 1994

**SUMMARY OF ADMINISTRATION PROPOSAL TO AMEND  
AUTHORITY TO RAISE TARIFFS AND PROVIDE COMPENSATION**

Description

Amend the President's current authority under section 125 of the Trade Act of 1974 to raise tariffs pursuant to U.S. rights and obligations under a specified trade agreement to permit an increase in tariffs to 350 percent ad valorem above the rate in effect on January 1, 1975.

Amend the current provisions in section 123 of the Trade Act of 1974 (authorizing the President to proclaim modifications to any current duty provisions to provide compensation for trade actions) to include actions taken under section 125, as amended.

Rationale

Under section 125, the President currently has authority to increase tariffs up to 20 percent ad valorem above the the rate in effect on January 1, 1975, or 50 percent above the column 2 rate, whichever is higher. Section 125 provides the President the domestic law authority he would need to proclaim increased tariffs to reflect changes in U.S. tariff concessions under a trade agreement.

This existing authority needs to be increased to reflect the levels of tariffs that may now be needed to implement an Article XXVIII agreement in light of the provisions of the WTO under which tariff equivalents are established for imports. These tariff equivalents may be at rates far in excess of the 20 percent ad valorem increase authorized under current law.

When the President modifies a tariff concession under a trade agreement, other parties to that agreement may have a claim to compensation. This is similar to other instances in which the U.S. takes trade action resulting in a claim for compensation. Section 123 currently authorizes compensation for section 201 and 301 actions and certain tariff reclassifications. The proposed amendment would add authority to provide compensation when the President proclaims an increased duty under section 125.

July 21, 1994

**SUMMARY OF ADMINISTRATION'S PROPOSAL TO AMEND  
THE TOBACCO PROVISIONS OF OBRA 1993**

Description

Amend the provisions of law under section 1106 of the Omnibus Budget Reconciliation Act of 1993 (known as the "Ford Amendment") to:

- 1) make inapplicable with respect to cigarette production after 1994 the requirement for U.S. cigarette manufacturers to use 75 percent U.S. tobacco in their products.
- 2) make budget deficit assessments on imported flue-cured and burley tobacco identical to such assessments on like domestic tobacco, while making them non-applicable to oriental tobacco, which is not produced in the United States.
- 3) authorize the President to waive the budget deficit assessments, the no-net cost assessments, and the provision on inspection fees in section 1106 if he determines such waivers for imports to be necessary or appropriate pursuant to an international agreement entered into by the United States.

The proposed amendment would enter into force only if the President proclaimed a tariff rate quota on tobacco pursuant to Article XXVIII.

Rationale

Section 1106 of the Omnibus Budget Reconciliation Act of 1993 in relevant part:

- 1) required cigarette manufacturers to use at least 75 percent domestically grown tobacco;
- 2) imposed a budget deficit assessment on all imported tobacco;
- 3) extended the current no net cost assessment to imported tobacco; and
- 4) required inspection fees on imported tobacco to be comparable to fees on domestic tobacco.

A tariff-rate quota on tobacco pursuant to Article XXVIII of the GATT would replace the existing Ford amendment domestic content requirement. The amendment also corrects several errors in the budget deficit assessment to ensure that imports are treated the same as domestic tobacco.



COMMITTEE ON FINANCE  
CONSIDERATION OF LEGISLATION IMPLEMENTING  
THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

Wednesday, July 27, 1994

Staff Recommendation on Amendments

Agreement Establishing the World Trade Organization (WTO)

1. Opposition to WTO membership for countries supporting boycott of Israel (page 6)

*Opposite Article XII (Accession), insert the following:*

"States the Sense of the Congress that the U.S. Trade Representative should vigorously oppose the admission into the WTO of any country that fosters or imposes any boycott of Israel.

"SAA to provide that the Administration is committed to eliminating the Arab boycott of Israel, both with respect to Israel directly and to companies doing business with Israel, and will oppose the admission of countries fostering or imposing such a boycott."

Marrakesh Protocol to GATT 1994

2. Proclamation authority (page 11)

*After the first paragraph, insert the following:*

"Subject to consultation and layover procedures, the President may proclaim:

"(1) a modification of a duty or staged rate reduction of a duty in U.S. Schedule XX to the Marrakesh Protocol, if

"(a) the United States agrees to such modification in a negotiation under the auspices of the WTO, and

"(b) the modification applies to articles in a sector that was the subject of reciprocal duty elimination or harmonization negotiations during the Uruguay Round; and

"(2) modifications necessary to correct technical errors or make other rectifications to Schedule XX.

"SAA and Committee report to provide that the sectors referenced in (1)(b) above are: (1) distilled spirits, electronics, non-ferrous metals, wood products, and oilseeds (in which the United States sought the reciprocal elimination of duties among major trading countries but was unable to negotiate complete duty elimination); (2) furniture, paper, medical equipment, steel, agricultural equipment, construction equipment, scientific equipment, and toys (in which reciprocal duty elimination was achieved but the United States intends to seek to accelerate the phase-out of duties); and (3) chemicals, in which the United States intends to continue efforts to expand country participation in the harmonization of tariffs (e.g., cyclohexane). SAA to amplify on the specific U.S. objectives for further negotiations in the above sectors.

"SAA and Committee report to provide further that such authority also may be used to grant duty-free treatment to new pharmaceutical products, consistent with an agreement in the Uruguay Round negotiations on reciprocal tariff elimination on existing pharmaceutical products and not to impose duties on new products.

"SAA and Committee report to clarify that the term 'rectifications' under (2) above means technical adjustments to Schedule XX necessary to incorporate U.S. commitments made in the Uruguay Round negotiations."

**3. Objectives for unfinished Uruguay Round negotiations (page 14)**

*After the paragraph at the top of the page, insert the following:*

"Establishes principal U.S. objectives for further multilateral negotiations in three sectors in which agreements were not concluded during the Uruguay Round: (1) civil aircraft; (2) financial services; and (3) telecommunications services.

"SAA and Committee report to elaborate on the objectives and the specific concerns of the relevant U.S. industries."

Understanding on Rules and Procedures Governing the Settlement of Disputes

4. Authority to restrict GSP benefits in actions taken under section 301 (page 15)

*After the last paragraph on page 15, insert the following:*

"Clarifies that, in taking action under section 301, one of the options available to USTR is the withdrawal, suspension, or partial suspension of the GSP benefits of the country in question."

5. Implementation of panel reports by foreign countries (page 23)

*At the bottom of the page, insert the following:*

"Amends section 306 of the Trade Act of 1974 to provide that USTR shall (1) monitor the implementation of panel and Appellate Body reports by other WTO Members, and (2) determine, within 30 days of the expiration of any "reasonable period of time" established under Article 21 for implementation of such report, whether a country has failed to implement such report so as to deny the United States its rights under a trade agreement."

6. Semi-annual report on the WTO and dispute settlement (page 25)

*Replace the first paragraph with the following:*

"Requires USTR to report semi-annually to Congress concerning the WTO dispute settlement system and other WTO actions affecting U.S. interests during the preceding six-month period. Such report shall include a listing of all cases decided by dispute settlement panels and the Appellate Body during such period, and a description of each case in which the United States was a party (including a summary of the U.S. legal position and any federal or sub-federal measures challenged). It shall also include a description of any action taken by the WTO Ministerial Conference or General Council, or other councils or committees, that may affect adversely U.S. obligations under any Uruguay Round agreement, including whether the action was taken by a vote of the Members and, if so, the position of the United States."

7. Nonrubber footwear from Brazil (page 25)

*At the bottom of the page, insert the following:*

"Provides for the assessment of countervailing duties on certain unliquidated entries of nonrubber footwear from Brazil at rates equal to the estimated duties required at the time of importation.

"SAA to explain that this provision is intended to conform with a 1991 GATT dispute settlement panel decision that U.S. collection of countervailing duties on imports of nonrubber footwear from Brazil from January 1, 1980 to October 28, 1981 was inconsistent with U.S. GATT obligations."

Amendments to section 337 of the Tariff Act of 1930

8. Limitations on injunctive relief (page 26)

*Strike the final paragraph on page 26 relating to limitations on seeking injunctive relief at the ITC. Conforming amendments are to be made to provisions in the jurisdiction of the Committee on the Judiciary (paragraphs (4) and (5) on page 29).*

Agreement on Safeguards

9. Zinc alloy imports (page 30)

*After the first paragraph, insert the following:*

"SAA to provide that the Administration shall monitor U.S. imports of zinc alloys. If there is reason to believe that imports are causing serious injury or a threat of serious injury to the domestic industry, USTR shall request the ITC to conduct a safeguard investigation under section 201. Alternatively, if there is reason to believe that imports threaten to impair U.S. national security, USTR shall request Commerce to conduct an investigation under section 232 of the Trade Expansion Act of 1962. SAA to clarify that such measures are consistent with Articles XIX and XXI of GATT 1994."

10. **Relation of safeguard action to action under other provisions (page 32)**

*After the first paragraph, insert the following:*

"SAA to clarify that the ITC, in its report to the President under section 202 recommending the amount of relief to be taken under section 203, will describe how it has taken into account the presence of existing actions under other provisions of law, such as the antidumping and countervailing duty laws."

11. **Duration and review of safeguard measures (page 33)**

*Replace the language in the paragraph opposite Article 7 with the following:*

"Provides that a safeguard action may be imposed initially for no more than four years. It may be renewed for one or more additional periods, provided that the initial period of the action and any extensions do not exceed an aggregate of eight years, if the President determines, after receiving an affirmative determination from the ITC, that (1) the action continues to be necessary and (2) there is evidence that the domestic industry is making a positive adjustment to import competition."

12. **Procedure for extending safeguard actions (page 33)**

*After the first paragraph opposite Article 7, insert the following:*

"Replaces the current procedure for extending a safeguard action with a requirement that the ITC, at the request of the President or in response to an industry petition, will investigate to determine whether (1) the safeguard action continues to be necessary; and (2) whether there is evidence that the industry is making a positive adjustment to import competition. Further requires the ITC to publish notice, hold a public hearing, and afford interested parties an opportunity to be heard. The ITC shall generally make its determination no later than 60 days before expiration of the safeguard action."

Agreement on Implementation of Article VI of GATT 1994  
(Antidumping)

13. Start-up adjustment (page 39)

*After the first paragraph on page 39, insert the following:*

"SAA to elaborate on the types of new facilities that are eligible for startup adjustments and clarify, with examples, that such adjustments do not apply to products requiring retooling for routine model year change."

14. Allocation of costs (page 39)

*After the first paragraph on page 39, insert the following:*

"SAA to provide that costs shall be allocated using a methodology that most accurately captures all of the actual costs incurred in producing and selling the product under investigation. The Administration will consider the production cost information available to the producer and whether such information could reasonably be used to compute a more precise measure of materials, labor, and other costs, including financing costs. SAA to provide further that the Administration will consider whether the producer has actually used its submitted cost allocation methods. If costs, including financing costs, have been shifted away from production of the subject merchandise, Commerce will make appropriate adjustments."

15. Price averaging (page 42)

*At the end of the first paragraph on page 42, insert the following:*

"SAA to provide that, in administrative reviews, the Commerce Department intends to limit the averaging of normal values to periods not exceeding the calendar month which corresponds most closely to the month of each individual export sale."

16. Cross-cumulation (page 44)

*After the third paragraph on page 44, insert the following:*

"Provides that cross-cumulation of dumped and subsidized imports is permitted only when the imports are simultaneously subject to antidumping and countervailing duty investigations."

17. Injury to domestic growers and processors of agricultural commodities (page 44)

*After the last paragraph on page 44, insert the following:*

"SAA to note that domestic growers and interim processors of agricultural commodities can be injured by dumped or subsidized imports of processed agricultural products even if the domestic processors themselves are not injured by such imports; however, there is no remedy under current law for such growers or interim processors. SAA to provide further that the relevant agencies will review all possible remedies permitted under the GATT and propose appropriate legislation to provide growers and interim processors the broadest range of remedies to address this situation."

18. Import concentration in regional industries (page 46)

*Opposite the first paragraph on page 46, insert the following:*

"SAA to elaborate on the factors the ITC will take into account in determining whether imports are sufficiently concentrated in a region to justify a finding that the industry is a regional industry. These factors include the volume of imports entering the region relative to total imports entering the United States, the market share of imports in the region relative to the market share of imports in the rest of the United States, and the region's relative share of national consumption of the like product."

19. Anticircumvention (page 67)

*With respect to merchandise completed or assembled in the United States, strike the end of the first line on page 67 through the period and insert the following:*

"(4) the value of the parts or components is a significant portion of the total value of the merchandise, the imported parts or components may be included within the scope of the antidumping order."

*With respect to merchandise completed or assembled in other foreign countries, strike the clause beginning with "(4)" on the 11th line of the second paragraph through "and" and insert the following:*

"(4) the merchandise produced in the foreign country to which the antidumping order applies is a significant portion of the total value of the merchandise exported to the United States; and"

20. Diversionary Input Dumping (page 68)

*At the end of the first full paragraph on page 68, insert the following:*

"SAA to note that the question of affiliation is relevant to the special rule for major inputs, under which the Commerce Department is authorized to inquire whether the transfer of an input between affiliated persons is below the cost of production. SAA to elaborate further that the Agreement expands the definition of "affiliated persons" to include entities operationally in a position to exercise control over another entity. Accordingly, Commerce may examine input transfers when the purchaser of the major input is in a position to exercise operational control over the input supplier, or vice versa. SAA also to provide that if an antidumping investigation is initiated with respect to certain merchandise and an antidumping order is in effect on a product that is an input to the newly-investigated merchandise, the major input rule may apply if there is an affiliation between the producer of the input and the producer of the product under investigation. SAA to elaborate further on the application of the major input rule in such circumstances."



Agreement on Subsidies and Countervailing Measures

21. Change of Ownership (page 72)

*After the second paragraph, add the following:*

"A change in the ownership of a firm, even if through an arm's-length transaction, does not by itself require Commerce to find that countervailable subsidies received by the firm prior to the change in ownership are no longer countervailable.

"SAA to define the term "arm's-length transaction" and clarify that the sale of a firm at arm's length acting does not automatically extinguish any previously-conferred subsidies. Commerce shall continue to exercise the discretion to determine whether, and to what extent, the 'privatization' of a government-owned firm eliminates such subsidies."

22. Definition and notification of "green light" subsidies (pages 78 and 80)

*After the second paragraph on page 78, add the following:*

"SAA and Committee report to provide that the term 'pre-competitive development activity' must be construed strictly to ensure that it does not permit subsidies for production or export (e.g., to make clear that as a general rule, a prototype must undergo substantial modification in order to be capable of any commercial use)."

*After the paragraph at the top of page 80, add the following:*

"USTR shall promptly submit to Congress all notifications from foreign governments of proposed 'green light' subsidies, publish notice of these in the Federal Register, and consult with the appropriate Congressional Committees and private sector. USTR shall object to any foreign programs that fail to meet the Agreement criteria for 'green light' treatment, based on the interpretations of such criteria in the SAA and Committee report.

"SAA and Committee report to state that the United States intends to use the notification process aggressively to monitor the operation of the 'green light' categories. With respect to U.S. programs believed to be consistent with the Agreement criteria, USTR shall decide which programs to notify to the Subsidies Committee after consulting with the Departments of Commerce, Defense, and other interested agencies, interested private parties, and the Finance and Ways and Means Committees and other appropriate Congressional Committees.

"SAA and Committee report to provide further that in a CVD investigation or review involving a subsidy that has not been notified under Article 8, the respondent shall have the burden of showing compliance with all of the Agreement criteria for 'green light' status, and that absent substantial evidence doing so, Commerce shall determine that the criteria have not been met. In an investigation or review of a notified subsidy, Commerce shall analyze all aspects of the program and its implementation to ensure that the purposes and terms of Article 8 have been satisfied."

23. Annual report on subsidies enforcement (page 108)

*After the first paragraph, insert the following:*

"Requires Commerce and USTR to issue jointly each February 1 a report describing the subsidies practices of major U.S. trading partners, including prohibited subsidies, subsidies believed to cause serious prejudice, and 'green light' subsidies, as well as all monitoring and enforcement activities of Commerce and USTR with respect to such subsidies."

Agreement on Agriculture

24. Quota cheese (page 113)

*After the sentence at the top of the page, insert the following:*

"Repeals sections 701 and 703 of the Trade Agreements Act of 1979 to reflect the conversion of quotas on cheese and chocolate crumb imports to tariff rate quotas. Strikes the authority in section 702 to impose a quantitative limitation on cheese imports in response to price undercutting."

25. Sugar TRQ (page 113)

*At the bottom of the page (across from the description of the sugar headnote in the U.S. tariff schedule), insert the following:*

"Authorizes the President to modify the headnote to reflect the changes in the sugar tariff rate quota resulting from tariffication under Schedule XX."

26. Special agricultural safeguard (page 114)

*Replace the last line on the page with the following:*

"The President is authorized to prohibit the imposition of an additional duty on any good originating in a NAFTA country (based on NAFTA rules of origin)."

Agreement on Trade-Related Investment Measures (TRIMs)

27. Reporting requirement (page 136)

*Across from the description of Articles 6-9, insert the following:*

"SAA to provide that the Administration shall review the implementation of the TRIMs Agreement and report annually to the Congress on the results of such review, as well as on the use of TRIMs not covered by the Agreement (e.g., equity requirements)."

## PROPOSAL FOR FAST TRACK AUTHORITY

### I. TRADE AGREEMENT AUTHORITIES

#### A. Tariff Proclamation Authority Regarding Tariff Barriers

Provides authority to the President for seven years (until December 15, 2001) to enter into trade agreements and proclaim the modification or continuation of existing tariffs or the imposition of additional duties whenever he determines that one or more existing duties or other import restrictions are unduly burdening the foreign trade of the United States and the agreement promotes the objectives of the title.

#### B. Unified Fast Track Authority

Provides that the President may until December 15, 2001 enter into bilateral, regional or multilateral trade agreements providing for the reduction or elimination of tariff and non-tariff barriers. The President may exercise this authority whenever he determines that such barriers unduly burden or restrict U.S. foreign trade and will make progress toward meeting the objectives of this title. If the conditions set forth in paragraphs (c) and (d) are satisfied, such agreements will be eligible for consideration under the fast track procedures.

#### C. Prenegotiation Notice and Consultations

At least sixty-calendar days prior to starting formal negotiations, the President must provide written notice to the Congress of his intent to enter into negotiations on an agreement and consult with the relevant committees regarding the negotiations. The notice should set forth the specific U.S. objectives for the negotiations. During the 60-calendar days following the notice or the first 15 legislative days following the notice, whichever is longer, the Ways and Means or Finance Committee could disapprove the application of fast track procedures to the particular agreement,

The agreement resulting from the ongoing multilateral shipbuilding negotiations will be exempt from this prenegotiation notification requirement. In addition, the prenegotiation notification requirement will not apply to agreements such as the Multilateral Steel Agreement and the Agreement on Trade in Civil Aircraft which were previously notified as part of the Administration's Uruguay Round notification in the event such negotiations result in agreements.

The pre-negotiation procedural requirements (public hearings, ITC and other agency advice) under sections 131-134, reservation requirements under section 127, and the private sector advisory committee requirements under section 135 of the 1974 Trade Act would continue to apply and conforming amendments would be

required in each of these provisions.

#### **D. Post-negotiation Consultations**

The President must give Congress at least 120 calendar days advance notice of his intention to enter into an agreement and consult with the House and Senate committees of jurisdiction on the provisions of the agreement, how and to what extent it will achieve the negotiating objectives, and all matters relating to implementation. The private sector advisory committees must submit their reports evaluating the agreement to the President, USTR and the Congress within 45 days after the notice date.

### **II. FAST TRACK PROCEDURES**

#### **A. Documentation**

After the President enters into an agreement, he must submit certain documentation, including a copy of the final legal text of the agreement together with a draft implementing bill, a statement of administrative action and certain specified supporting information. In the list of supporting information, the President will now be asked to include a statement describing any environmental and conservation issues for the United States associated with the agreement.

#### **B. Fast Track Procedures**

Formal fast track procedures of sections 151 and 152 of the 1974 Act (19 U.S.C. 2191) would apply with the following amendment:

The committee consideration period would be 30 rather than 45 legislative days, subject to automatic discharge, plus 15 legislative days for floor action, for a total 45 (rather than 60) legislative days in the House; the senate would have 15 additional legislative days for revenue measures, for a total 60 (rather than 90) legislative days for congressional consideration.

### **III. NEGOTIATING OBJECTIVES**

The proposal sets forth both overall and principal negotiating objectives for agreements which will be subject to the "fast track procedures." The overall objectives are to obtain more open, equitable, and reciprocal market access; to obtain the reduction or elimination of barriers and other trade distorting policies and practices; to further strengthen the system of international trading disciplines and procedures, and to foster economic growth and full employment in the United States and the global economy. The first three objectives are similar to those set forth in the Omnibus Trade and Competitiveness Act of 1988 and the fourth draws from the purposes set forth for that Act and the Trade Act of 1974.

Principal negotiating objectives are set forth for services, financial services, foreign direct investment, intellectual property, labor standards, trade and the environment and transparency. They provide for the elimination and reduction of barriers in the areas of trade in services, trade in financial services and foreign direct investment; they also provide for furthering the promotion of adequate and effective protection of intellectual property and improving market access opportunities for persons relying on such protection. The objectives also address issues such as the promotion of internationally recognized labor standards and ensuring that their denial is not used to gain competitive advantage in trade; ensuring the compatibility of international trade rules with environmental protection, and obtaining broader application of the principle of transparency.

While many of the principal objectives in the proposal are similar to those set forth in the 1988 Act, the list is shorter because many of the principal objectives in that Act were accomplished as a result of the Uruguay Round. The objectives that are included concern some of the issues that must still be addressed after the Uruguay Round; the overall objectives cover a number of other issue areas for which no principal objectives have been provided. Before entering into negotiations on any agreement that would be subject to the fast track procedures, the President as part of the prenegotiation notification and consultation process would be required to consult with the Congress on the specific United States objectives for the negotiation. The formulation of specific objectives would be guided by the overall and principal negotiating objectives in the proposal.

#### **IV. Other Tariff Authority**

During the Uruguay Round, the United States initiated negotiations on several sectors to achieve reciprocal elimination of duties--the so-called zero-for-zero initiative-- or harmonization of duties. Zero-for-zero negotiations related to certain pharmaceuticals, distilled spirits, electronics, furniture, paper, medical equipment, steel, agricultural equipment, construction equipment, scientific equipment, non-ferrous metals, wood products, oilseeds and toys. The harmonization negotiations concerned chemicals.

The proposal provides the President the authority to proclaim modifications or changes in the staged reductions of duties in these sectors. These modifications or changes in staging must be agreed multilaterally and are subject to the consultation and layover procedures set forth in section 104 of the bill.

The Administration expects to use this authority to expand the coverage of some sectors. For example, in the pharmaceutical sector, governments have agreed to meet

periodically to add newly approved pharmaceutical products to the zero duty category. In addition, we will continue to negotiate in sectors where a zero duty rate was not agreed. In particular progress in obtaining further tariff reductions in the areas of wood products and distilled spirits is an Administration priority. Furthermore, the Administration will seek accelerated staging of tariff reductions, for example, in respect to paper products and soda ash. Finally, achieving the harmonization of rates of duty on chemical items at levels comparable to, or below, those agreed to by Canada, the European Union, and Japan in the Uruguay Round will also be a major Administration objective.

# Oregon Tries Its Own Welfare Reform, Offering Companies an Incentive to Put People to Work

By HILARY STOUT

Staff Reporter of THE WALL STREET JOURNAL  
Carolina Bowen wasn't an ideal candidate for the new registrar job at New Care Directions, a medical training school in a suburb of Portland, Ore. She had mostly worked in the fast-food industry. She knew little about the medical field. And she had been unemployed and on welfare for more than two years.

But Ms. Bowen got the job. The school's owner, Jeri Hendricks, hired the 30-year-old mother of four in December through a new pilot state program designed to entice private employers to hire welfare recipients and give them the work experience necessary to point them toward self-sufficiency.

The success of the movement to restructure the nation's welfare system largely depends on the willingness of companies to hire people like Ms. Bowen, who now wins praise from her employer. The problem is many aren't. Oregon has come up with a simple carrot: Take the money now being spent to provide food stamps and cash welfare benefits, and use it instead to offer employers temporary subsidies to hire welfare recipients into newly created jobs.

The Senate Finance Committee will take up the cry to move welfare recipients into work today when it begins considering a welfare-overhaul bill that would turn billions of dollars now spent on federal assistance over to states to design their own antipoverty programs. The proposal by committee chairman Bob Packwood, an Oregon Republican, would impose fewer requirements on states than a House-passed bill. But, like the House bill, it would require that welfare recipients work for their benefits after two years of collecting assistance. And just how to achieve that goal would be left entirely up to the states.

## Other States Follow Suit

Oregon is already pushing ahead. Its jobs program, which is operating in six counties, is only six months old, and its effectiveness won't be gauged for some time. But the idea has been intriguing enough to lead other states, most recently Ohio and Massachusetts, to set up similar initiatives. And the Oregon legislature is working on a bill to expand the program statewide.

"I think it begins to indicate a way of tackling what I think is a major challenge of welfare employment: not just to connect people with jobs but to get them on a career track where they're not just one [position] away from welfare," says Robert Friedman, chairman of the Corporation for Enterprise Development, a nonprofit research and consulting organization.

Specifically, the program, known as JOBS Plus, works this way: The state of Oregon, using federal money for food stamps and Aid to Families with Dependent Children, agrees to pay the wages and payroll expenses, including workers compensation and Social Security taxes, for nine months for employees hired from the welfare rolls into a newly created job. The employers agree to provide the new workers with a workplace "mentor."

More important, some people believe, the employers pledge to contribute \$1 for every hour the employees work after 30 days to an "individual education account" that employees can use to continue their education after finding unsubsidized employment. The state continues to pay child care and medical costs, through Medicaid. If the employers decide not to offer the JOBS Plus workers a permanent position after six months, the firms are still obligated to keep them on another three months — and allow them one day off a week, with pay, to search for a job.

Ms. Hendricks used the new enticement to take a risk on Ms. Bowen. Through Oregon's welfare system, Ms. Bowen had received training in word processing and other office skills. Nevertheless, Ms. Hendricks knew she would have to spend more time training the employee, but the nine-month wage subsidy lessened the gamble. "I said . . . I'm going to have to spend 20 hours a month extra because there's such a high learning curve."

## Effort Pays Off

Indeed, in the initial weeks Ms. Hendricks found herself teaching Ms. Bowen skills as basic as telephone etiquette. The lesson: "You don't pick up the phone and say, 'Yeah, what do you want.'"

But the effort was well worth it, Ms. Hendricks says. "Yes, it's cost me a couple more hours but so what. I have a very motivated, intelligent lady who's proud of what she's done, and she should be." Ms. Bowen recently received a 50-cent-per-hour raise, to \$6.50, and an offer of a permanent job with increased responsibilities at New Care.

Despite success stories such as Ms. Bowen's, some advocates for the poor believe JOBS Plus amounts mostly to a corporate handout. "It's a free-labor program for business," says Sylvia Mitchell, executive director of the Oregon Human Rights Coalition, a nonprofit organization devoted to "empowering" low-income people.

But state officials point out that most of the 161 employers taking on JOBS Plus employees so far are paying the workers more than the \$4.75-per-hour state minimum wage even though the program will only subsidize pay up to that level. "I think that dispels the myth that employers would be in this only for their personal



## Working on Welfare

Proposed Senate Finance Committee welfare bill:

- Requires cash welfare recipients to work for benefits after two years. Five-year life time limit on benefits. (States can set tougher requirements.)
- Has no restrictions on whom states may give benefits.
- Ends the "entitlement" guarantee of cash assistance to all who meet income eligibility requirement.
- Establishes block grant for cash welfare and child care.

gain," says James Neely, assistant administrator of the Oregon family services administration.

The program was conceived by a businessman, Dick Wendt, chairman of JELD-WEN Inc., a large door and window manufacturer in Klamath Falls, Ore. The 9,000-employee firm isn't participating in the program for now because it has no facilities in the six counties in which the program is operating. Bill Early, senior vice president of JELD-WEN, says subsidizing wages is critical to bringing welfare recipients into the workplace.

"It would be much more difficult" to hire someone without the subsidy, he says. "The concept of subsidy is: it's provided during this period of training. We feel an employer can determine within this time whether or not the individual is going to be able to undertake a regular position or not."

However Mr. Friedman of the Corporation for Enterprise Development, while expressing interest in the Oregon program, cautions: "There's a pretty long history of experimentation with wage subsidies, from targeted job tax credit to various wage subsidy schemes. It's a pretty spotty scheme. It sometimes backfires."

For example, he explains, "They stigmatize. An employer says you're offering me money to take this person. They must

be damaged goods. I think that's always a concern."

State officials hope to place 5,000 welfare recipients into jobs in the first three years of the program. So far they have placed 183 people. They privately admit that they have been steering their most promising welfare recipients to the JOBS Plus jobs in the initial months. But even so, some haven't worked out.

Linda Carpenter, the owner of Soak Tubs, which sells spas, hot tubs and swimming pool supplies in the Portland suburbs, had been operating the store by herself for 14 years. When she read about JOBS Plus in the newspaper she thought it might be a good way to take on another person.

But the worker Ms. Carpenter hired had never had a job and seemed oblivious to the basic tenets of the workplace — like coming to work on time. She was supposed to start at 10 a.m. "One day she called at 1 p.m. and said she'd overslept," Ms. Carpenter recalls. She also wore inappropriate clothes to work, such as exercise leggings.

The employee quit after a month, but Ms. Carpenter took a chance on another JOBS Plus applicant, this time interviewing candidates more carefully. The new employee, Michelle Haag, a 27-year-old mother of two, has been terrific, Ms. Carpenter says. She's earning \$5 per hour—plus commission on selling spas—and Ms. Carpenter hopes soon to be able to give her a raise.

After trying over and over for more than 18 years, Rosie Watson finally got her whole family a no-strings-attached handout from America's taxpayers

# WELFARE GONE HAYWIRE

*Condensed from*  
BALTIMORE SUN  
JOHN B. O'DONNELL  
AND JIM HANER

**E**VERY MONTH, Rosie Watson goes to the Lake Providence, La. post office and picks up nine federal welfare checks totaling \$3893—tax-free income that adds up to \$46,716 a year. Few working families in this bleak, impoverished Mississippi River backwater earn more.

Except that Rosie, 44, doesn't earn it. She gets \$343.50 a month from the government in disability payments because she was found by a Social Security law judge to be too stressed out to work. Her common-law husband, L. C. Lyons, 56, gets the same amount for obesity (he weighed 386 pounds when he qualified for payments).

Watson has seven children, ages 13 to 22. All of them have lagged behind in school and at various times scored poorly on psychological tests. Under the government's rules, this translated into a failure to demonstrate "age-appropriate behavior" and qualified them to get \$458 each. Welfare payments such as these are so widespread in Lake Providence and other communities around the nation that they are popularly known as "crazy checks."

A visitor to Rosie Watson's small bungalow would be hard pressed to find any sign of high living, however. The screen door hangs open. Soaps blare from the television. Roaches crawl the walls in the living room; the kitchen is caked with dirt. The house lacks a telephone, but Rosie does have two scanners to monitor police calls. "That's so I know what's going on," she explains.

The welfare program that supports Rosie's family is run by the Social Security Administration (SSA) and is called Supplemental Security Income (SSI). Established by Congress in 1974, SSI was originally aimed at providing life's necessities for poor adults too old, ill or handicapped to work. Now its 6.3 million recipients include alcoholics and drug addicts who stoke their habits with the cash; legal aliens; and nearly 900,000 children, 67 percent of whom get checks for mental retardation or for other hard-to-disprove mental problems. It has become the nation's most generous welfare plan.

The cost of SSI, now over \$25 billion annually, has more than doubled in the past five years. It is expected to grow another 50 percent in the next four years. Sen. Robert Byrd (D., W.Va.) calls it a "well-intentioned entitlement program run amok."

**Right to Benefits.** Rosie Watson first tried to get aboard this check-writing behemoth at age 24. When SSI was set up, she was an eighth-grade dropout with an infant and a toddler, collecting \$90 a month in Aid to Families with Dependent Children (AFDC). The new disability plan paid even better than traditional welfare based only on need, and she filed her first application.

She was turned down, but she would persist over the years with 17 more applications for herself and her family. The rules permit unlimited applications and unlimited SSI checks to a household. She was merely exercising her right to seek

benefits from a government program. First in the family to be accepted to the SSI rolls was her second child, Sam. He was four in 1978 when Watson filed for him. He had just been declared mildly "mentally retarded" by evaluators at Northeast Louisiana University. His mother had told them that he was violent, a threat to other children.

Relying on that report, Social Security decided that Sam should get benefits. But then a pediatrician reviewing Sam's file said his behavior was normal for a child. SSI tossed out his claim. Watson applied three more times unsuccessfully for Sam, then gave up—temporarily.

For 27 months she made no claims. During that period the SSA underwent a profound change. The agency had admitted in 1980 that a fifth of disability recipients shouldn't be getting checks, prompting Congress and the Reagan Administration to order a purge of the undeserving.

Social Security kicked thousands of people off the rolls, generating a public outcry that forced President Reagan to end the crackdown in 1984. Congress, the courts and Social Security reacted by opening up the rules, producing a sharp rise in new cases—including a tripling of the children's rolls between 1989 and 1995.

**Bonus Time.** In February 1984, at the peak of the backlash, Rosie Watson filed Sam's fifth application, again alleging that he was retarded and had behavior problems. "I have to keep knives or weapons away from

him—he has injured his brother,” she said. Sam, at age ten, began getting his checks. Now 21 and unemployed, he is still receiving them.

Not only was Sam the first Watson to win benefits, he was also the first to get a retroactive “bonus.” Because SSI payments are backdated to the day of application, no matter how long it takes Social Security to process the request, each successful applicant gets a retroactive payout. In 1984, Sam’s was almost \$900, covering the three months between application and approval.

Eight years later, Social Security sent Rosie Watson nearly \$10,000 after concluding that Sam really should have been put on the rolls in 1980. In all, the Watson family has received over \$36,000 in tax-free retroactive bonuses.

By November 1991, six of Rosie’s seven children were on the rolls. Cary became the last, finally making it in February 1993. Rosie filed Cary’s first application in 1989 when he was 16. A psychologist found him “easily irritated... aggressive and explosive” and noted that he had stabbed a man in self-defense. Caseworkers turned him down. Rosie applied again and got the same answer. Then she appealed to a judge.

The appeal was put on hold when Cary went to prison for nearly two years on a second-degree battery conviction, resulting from kicking his pregnant girlfriend. When he was freed, Social Security sent him to Bobby L. Stephenson, a psychologist in Monroe, La., who told the SSA that he had an I.Q. of 53, “strong

antisocial features in his personality and is volatile and explosive.” And, the psychologist added, “he said he does not want to work.”

A month later, the judge awarded Cary monthly checks and gave him a \$9694 retroactive payment, excluding his jail time.

Today, mental disability, real or imagined, is the primary diagnosis for 58 percent of the 4.7 million disabled SSI recipients. In the case of children, there is no requirement that the money be spent to overcome a disability. Indeed, there is no requirement that a parent demonstrate that the disability requires added expenses.

**Government Wards.** Start to finish, Rosie Watson’s quest for her children took 15 years. Her own pursuit of benefits took 11, longest in the family. She applied five times before finally persuading the right people that she is disabled.

Her persistence is reflected in the shifting array of physical complaints she claimed. In 1974, it was high blood pressure, heart trouble and bad nerves that prevented her from working. In 1975: anemia, dizziness, nerves and bad kidneys. In 1976: *low* blood pressure and heart problems. In 1984, she blamed stomach problems, epilepsy and sinus trouble. The following year it was epilepsy again, along with “female problems.” A physician who examined her in 1976 wrote, “Patient is determined to become a ward of the government.”

In 1985, after her fifth rejection, Rosie Watson appealed. Two days

before Christmas, an administrative law judge wrote that she couldn't cope with the stress of work, blaming her problems on "her home life" and "lack of finances." He awarded her benefits and recommended a re-examination of the case "within one year." Social Security did review Watson's condition four years later, in 1989, and concluded that she was still unable to work. It has not checked her since. And as of March 1995, no one from the SSA had visited anyone else in the family since they began getting payments.

Ten months after Watson was accepted by SSI, her common-law husband applied, saying he had a "bad back, swollen feet and bad eyes." A former logger and carpenter who still does odd jobs around Lake Providence, Lyons was turned down. He, too, appealed. A judge in 1987 granted him benefits, saying Lyons's obesity automatically qualified him.

"They Need Money." Sitting in her living room, Rosie Watson offers a sharp contrast to the woman who emerges from her SSI records. In the past ten years she has told caseworkers and doctors that she "doesn't know what country we live in," that her "ability to recall is almost void," that she can't handle money or count. In conversation now, she is able to recall intricate details of the family's two-decade quest for SSI and is in charge of paying the family's bills.

She pulls a thick wad of bills and

monthly payment books from her purse. After she cashes the nine checks she receives, she gives Sam, 21, and Cary, 22, their full \$458 and makes sure they pay their bills. (Cary, a father now, has moved out of the house.) George, 15, David, 17, Willie, 18, and Danny, 19, all get allowances. "Being the age they is and being out there with their little girlfriends, they need the money," she says.

From the rest of the \$3893 a month the family gets, Rosie pays bills, includ-

***A physician who examined Rosie Watson in 1976 wrote, "Patient is determined to become a ward of the government."***

ing car payments, utilities, cable TV and insurance policies, that total about \$1300. Loans, including payments for furniture, a washing machine and storm-damage repair, cost another \$300. She spends \$700 a month on food, supplemented by a back-yard garden.

She need not budget for medical expenses. Each member of the Watson family on SSI automatically gets Medicaid for health care. Potentially that could cost taxpayers as much as the SSI payments do.

**Coached to Fail.** Critics claim that among the worst aspects of SSI is the encouragement its recipients receive to lead unproductive lives. And Shirley S. Chater, the Social Security commissioner, acknowledges concern about labeling children as

disabled. That "could be a self-fulfilling prophecy," she has said.

Willie Lee Bell, principal of Southside Elementary School, across the street from the Watson house, is a man who despises SSI. He knows poverty firsthand too. He grew up with ten brothers and sisters in a four-room sharecropper's house on Epps Plantation in West Carroll Parish, where his father worked 12 hours a day. Broad-shouldered and soft-spoken, Bell has failed kidneys that would automatically qualify him for disability payments from Social Security if he chose not to work.

He has watched the tidal wave of SSI applications up close. For each pupil who applies, he gets a questionnaire from Social Security. Echoing complaints made in other states, he and his staff say parents are encouraging—some say coaching—their children to perform poorly and misbehave in school to get SSI checks. "The children don't want to fail," he says. "They are doing what Mamma wants."

Mike Baumann, who makes disability decisions in Shreveport, where the Watson cases were decided, says, "The kids are being told that their worth is in sucking off the government teat, that their worth is in not achieving."

Social Security says that coaching is not widespread, and federal investigators, thwarted by privacy laws, have been unable to document its dimensions. But, as June Gibbs Brown, chief investigator in the Department of Health and Human Services, wrote last October: "If Congress intended that the SSI program should help children overcome their disabilities and grow into adults capable of engaging in substantial gainful activity, then changes are needed."

Meanwhile, the history of SSI suggests that the Watson family will remain permanently on the program. "I've got nothing to hide," Rosie says. "SSI has done a lot for our family. We're not able to work, and it's the best income."

*Reprints of this article are available. See page 252.*

### ***The Trouble With...***

... a three-day weekend is that it turns Tuesday into Monday.

—Doug Larson, *United Feature Syndicate*

... bucket seats is that not everyone has the same size bucket.

—Mary Waldrip in Dawsonville, Ga., *Advertiser & News*

... the voice of experience is that it won't keep its mouth shut.

—Al Bernstein

... giving advice is that people want to repay you.

—Franklin P. Jones in *Woman's World*

... wearing a name tag at a convention is that everybody knows exactly who you are when you fall asleep.

—Melanie Clark in *Contemporary Comedy*