

1 EXECUTIVE COMMITTEE MEETING

2 THURSDAY, JULY 28, 1994

3 U.S. Senate,

4 Committee on Finance,

5 Washington, DC.

6 The meeting was convened, pursuant to notice, at  
7 10:04 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, Pryor,  
11 Rockefeller, Daschle, Breaux, Conrad, Packwood, Roth,  
12 Danforth, Chafee, Grassley, Hatch and Wallop.

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

15 Also present: Rufus Yerxa, Deputy U.S. Trade  
16 Representative; Ira Shapiro, General Counsel, USTR.

17 Also present: Leslie Samuels, Assistant Secretary  
18 for Tax Policy, Treasury Department; John Buckley, Chief  
19 of Staff, Joint Committee on Taxation; Joe Gale, Chief Tax  
20 Counsel, Majority; Mark Prater, Chief Tax Counsel,  
21 Minority.

22 Also present: Marcia Miller, Chief, International  
23 Trade Counsel; Deborah Lamb, Trade Counsel; and Brad  
24 Figel, Chief Trade Counsel, Minority.

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1           The Chairman. The committee will be in order. I  
2 must state that there will be a funeral service for the  
3 late Hugh Scott this afternoon, starting at noon, and  
4 therefore we will only be able to proceed until then.

5           It was our purpose today to begin consideration of  
6 the administration proposals by which we are going to be  
7 able to pay for the program for the Uruguay Round for the  
8 next five years. It has been understood that we would not  
9 be able to find in this particular time span the full 10  
10 years and we were going to ask for a waiver on the floor  
11 of the second 5 years, which is perfectly reasonable.

12           I believe I have said in this committee, and I know I  
13 have said on the floor, that the administration really has  
14 got to take this funding matter seriously, not that we  
15 have not had serious and able persons involved. But we  
16 have evidently not been able to communicate our concern  
17 that the Uruguay Round is in jeopardy if it is not funded.

18           We face a floor where budget issues are primary for a  
19 very great number of Senators, such that any appearance of  
20 disingenuousness or just plain inadequacy puts this whole  
21 monumental enterprise at risk and for derisory reasons or  
22 reasons incomprehensible to me.

23           I have to state my disappointment as our very good  
24 friend, the Secretary of Treasury met yesterday afternoon  
25 with Senator Packwood and with me -- Secretary Samuels was

1 there -- and presented the latest of the administration  
2 proposals. And overnight we learned from the Joint Tax  
3 Committee that they are utterly inadequate.

4 This is a blow. I learned this an hour ago. So I  
5 have not really absorbed it entirely. But I wonder what  
6 my colleague, Senator Packwood, who was very positive when  
7 we concluded our meeting yesterday, what he might think.

8 Senator Packwood. Well, I know the proposals, Mr.  
9 Chairman. One of them, the Treasury Department had scored  
10 one of them at \$1.4 billion less than OMB. This was not a  
11 surprise. CBO has frequently differed on this subject.  
12 So it should not have come as a surprise to the  
13 administration and it makes the bill short. But it was  
14 short anyway because of the so-called pay go.

15 If you would indulge me, Mr. Chairman, I would like  
16 to make a statement a big about where we are.

17 The Chairman. Would you please? I am sorry to have  
18 to tell you we have plenty of time.

19 Senator Packwood. My dad was a great card player in  
20 his very, very young days, when he was four, five, six and  
21 seven. My grandmother, his mother, ran a boarding house,  
22 saloon and whatever went with that in Nome, Alaska during  
23 the Gold Rush. My dad can recall as a very young boy  
24 standing at the card table with his eyes just up to the  
25 level of the table watching the gamblers betting gold and

1 playing all kinds of games.

2 He taught me pitch and bridge. He said the miners  
3 were not big on bridge. But a game called Pan which you  
4 played with seven cards, seven decks, Panginki, which is a  
5 wonderful card game and he taught me all. It has served  
6 me well in life. But one thing he always said to me was,  
7 he said, do not be confused, son, by the fact that there  
8 are gamblers and nongamblers in life. He says, everybody  
9 is a gambler. There is only a question of dumb gamblers  
10 and smart gamblers.

11 He says dumb gamblers will always draw to an inside  
12 straight. He said, do not be bitten by that. And I think  
13 the administration is a dumb gambler in this game. They  
14 are not drawing to an inside straight. They are drawing  
15 to an inside royal flush in the hopes of getting it  
16 because they need a royal flush to win this game.

17 And the likelihood of hitting it, and what they are  
18 risking is simply unjustified, and I am going to allay  
19 myself with them. I am going to warn them what they are  
20 up against and I will do the best I can to save them, but  
21 I think they are putting us in an impossible position.

22 For this reason. This bill has to be budget neutral  
23 or it is subject to a point of order. It has to be budget  
24 neutral over one year, over five years and over ten years.  
25 And it takes 60 votes to overcome the point of order. Do

1 not argue as to whether or not these are dumb or wise  
2 rules. These are the rules that we live by in the Senate.

3 This bill was last night, when I drafted this  
4 statement, \$2.5 billion short of money that the CBO will  
5 score because of the so-called pay go. I will explain  
6 what that is in a minute. Whether it is a bit shorter now  
7 or longer now because of the overnight change in estimates  
8 on some other things, I do not know. But it was short in  
9 any event.

10 And as of last night the administration was talking  
11 about making up what we then thought was a \$2.7 billion  
12 shortfall. It is not lot in a five-year economy, but it  
13 is enough to make this subject to a point of order. They  
14 were making it up with the pay go.

15 This is what the pay go is. You have two kinds of  
16 spending. You have discretionary spending, your  
17 appropriated funds for education in environmental  
18 protection and what not; and then you have your mandatory,  
19 your entitlement spending. This is the automatic side of  
20 our budget.

21 And the Federal Government, without taking any  
22 action, spends this money on mandatory programs or  
23 interest on the debt and the revenues are automatically  
24 collected. The budget rules require legislation that  
25 increases mandatory spending or decreases revenues and

1 allegedly this bill decreases revenues to be financed on a  
2 pay-as-you-go basis, i.e. pay go, deficit neutral.

3 And the Executive Branch is required to keep a  
4 running tally on these mandatory spending programs. This  
5 is the pay go score card. And if at the end of a year the  
6 pay go score card shows that the impact of all of the  
7 legislation that it covers is in deficit, then there is an  
8 across-the-board sequester, but of course we have exempted  
9 Social Security. If there is a surplus, that is another  
10 matter.

11 And as there is a present score card surplus of a  
12 slight amount at the moment, that is what the  
13 administration is using to make up this \$2.7 billion, but  
14 CBO will not score that. Therefore, the point of order  
15 can be raised. And if 41 votes sustain the point of  
16 order, this bill is dead, dead, dead.

17 Now, we start out with probably 33 to 35 votes  
18 against ratifying this GATT agreement. It does not matter  
19 if we fund it or do not fund it. It does not matter if we  
20 add all kinds of irrelevant, unnecessary, in appropriate  
21 things to it or not, we start out with about a third of  
22 the Senate in opposition to it. A third of this country  
23 is protectionist all the time and the Senate reasonably  
24 reflects that.

25 Therefore, we have a margin of about 6 to 8 votes

1 between 33 or 35 and 41 to play with. And if we risk  
2 losing those votes, we lose the entire thing. I am  
3 convinced we can get 60 votes to waive a point of order on  
4 the second 5 years if the first 5 years are paid for as  
5 scored by CBO. I am equally convinced we cannot get 60  
6 votes for a point of order on either the first 5 years or  
7 the second 5 years if we do not pay for the first 5 as CBO  
8 would score it.

9 Further, however, I think the administration has  
10 failed to realize something. They stand to lose even more  
11 votes if this bill is loaded up with unnecessary and  
12 inappropriate amendments that have no relation to  
13 approving the GATT agreement.

14 After yesterday's markup there is no question in mind  
15 that they do not understand this. I want to explain once  
16 more so that there is no confusion. Under the fast track  
17 procedures, the bill should only include necessary or  
18 appropriate measures to implement the legislation.

19 Now let us say we add something. Some Senator thinks  
20 it is not necessary or appropriate. He has two choices.  
21 He can raise a point of order on the floor that the  
22 provision is not necessary or appropriate. Normally the  
23 Chair will rule that it is appropriate because they will  
24 say the Finance Committee put it in. The Finance  
25 Committee presumably knows what it is doing and,

1 therefore, I rule that it is appropriate. You then appeal  
2 the ruling of the Chair.

3 If you get 51 votes, you have overruled the Chair.  
4 And this addition to the legislation is inappropriate and  
5 because it must be taken out and because this cannot be  
6 amended, the bill is dead. Everything we have striven for  
7 in these negotiations is gone because we put something in  
8 the bill that managed to get 51 votes on the floor.

9 But the greater problem is this, and it does not take  
10 a very smart gambler to figure it out. If you can kill  
11 this bill with 41 votes on a point of order, that is a lot  
12 better than 51 votes on overruling the Chair. So if we  
13 put into this bill ill-conceived amendments that are  
14 clearly not necessary or appropriate, and you do not like  
15 that amendment, and a point of order is raised on the  
16 budget matter at the start, you think to yourself, this is  
17 a win-win.

18 I can vote for sustaining the point of order on the  
19 budget which needs only 41 votes and kill this bill and  
20 thereby the provision which I do not like anyway, which I  
21 would otherwise have to get 51 votes for. So that is what  
22 the smart gambler is going to do.

23 Now, the administration wants to add to this  
24 legislation new seven-year fast track authority to  
25 negotiate further trade agreements. I regard this as so



1 important that I am going to support it, even if others  
2 would argue that it is not necessary and appropriate, and  
3 if a point of order is raised on the floor of that  
4 extension of the fast track for seven years to negotiate  
5 new trade agreements, and specifically with Latin America  
6 and some of the Pacific nations, I am going to vote to  
7 hold that it is necessary and appropriate.

8 But if the legislation includes anything about fast  
9 tracking labor or fast tracking environment, then I am  
10 going to vote to sustain the point of order on the budget.  
11 And if it includes other unnecessary and inappropriate  
12 matters, I will vote to sustain the point of order on the  
13 budget and drag as many people with me as I can on that.

14 Now, this is where I say the administration is a dumb  
15 gambler. This to them is very critical and it is very  
16 critical to me and I want it to pass. But to use  
17 something very critical to risk great things to gain small  
18 things is foolish.

19 If this administration in a five-year budget that is  
20 going to spend roughly \$7.5 trillion cannot find \$2 or \$3  
21 billion more of real scoreable money, there is something  
22 wrong with this administration. If they do not want to do  
23 it, I will try to stick with them. But I think it is a  
24 risk that is not worth running.

25 But then I expect this administration to stand firm

1 against the addition of any other unnecessary or  
2 inappropriate amendments other than asking for an  
3 extension of the fast track negotiating authority.

4 Now, Mr. Chairman, as I say, it is a shaky ally, but  
5 we have so much at stake. If this administration wants  
6 this so badly, and they should want it, and I support  
7 them, then let us find the additional \$2 to \$3 billion  
8 that we need that can be scored. If they do not want to  
9 do that, I will run the risk with them that we can win the  
10 point of order. But I can assure them of this, if there  
11 are other unnecessary or inappropriate amendments added to  
12 this bill, then I will do everything I can to bring it  
13 down.

14 Thank you, Mr. Chairman.

15 The Chairman. Thank you, Senator Packwood.

16 Senator Danforth. Mr. Chairman, could Senator  
17 Packwood yield for one question on this matter?

18 The Chairman. Of course. Would the Senator hold  
19 just a moment so I can tell those Senators who have  
20 arrived after Senator Packwood began that I opened the  
21 session by saying that yesterday late afternoon the  
22 Secretary of the Treasury very generously came up to meet  
23 with us, Senator Packwood and I, and to give us the final  
24 proposals for paying for the bill. But overnight the  
25 estimates from Joint Tax dropped one of the estimates by a

1 billion dollars.

2           Then there is this pay go issue which has always been  
3 there. So we are not in a position to address the  
4 question of financing this morning, that we will go  
5 forward with some agreed on amendments that Ms. Miller and  
6 Mr. Figel will take up. Senator Packwood? Senator  
7 Danforth? Your grace.

8           Senator Roth. As Senator Packwood would rush to tell  
9 you, I am Senator Danforth.

10           I would just like to ask Senator Packwood for a point  
11 of clarification in what he just said. Senator Packwood  
12 said that he thought that it was important to have fast  
13 track authority for further negotiations. However, if  
14 there was anything in that fast track authority that  
15 expressly authorized a blue/green round type of  
16 negotiation he would oppose it.

17           I would point out that with respect to NAFTA it is my  
18 understanding that there was not any express reference to  
19 blue/green negotiations or side agreements in NAFTA, but  
20 rather the administration just took it upon itself to add  
21 that.

22           So- I think that the administration would very likely  
23 rise to the debate that was just put out by Senator  
24 Packwood and that the administration would say, fine, we  
25 will not have any specific reference in the fast track

1 authority to environment or to workers' rights, labor  
2 matters. But there is nothing that would preclude us from  
3 doing that. And, therefore, when the time comes we will  
4 proceed to do it anyhow.

5 My question, therefore, to my ranking member is,  
6 whether it would be sufficient to say nothing in this  
7 legislation or whether the Senator would be satisfied with  
8 nothing less than an express prohibition.

9 Senator Packwood. I want to make sure I understand  
10 what you are asking. You are suggesting the  
11 administration would try to do what they did on NAFTA, and  
12 even though there was nothing in this legislation attempt  
13 to say, well, we will make some negotiable side  
14 agreements. We will put them somehow in a fast track.

15 Senator Danforth. Sure, just to include it in the  
16 negotiations. I mean, if we are silent in what we say  
17 about fast track authority respecting these two areas,  
18 they would view silence as just opening the door. It is  
19 not precluded. Therefore, it is included.

20 Senator Packwood. Well, I said green or blue. I  
21 think I would include azure or aqua in that definition. I  
22 have not thought about whether or not we would attempt to  
23 put into it and I do not know if that would be necessary  
24 and appropriate and, therefore, subject to a point of  
25 order.

1           We also say that you shall never, never put on the  
2 fast track in anything relating to environment or labor.  
3 And if you do, what? If we put that in the legislation, I  
4 do not know what happens on our point of order. Let me  
5 weigh that. I am not sure what I would do.

6           Senator Danforth. Well, I think that my point is, if  
7 you do not do anything, I think they would view that as  
8 being a carte blanche, that they would view that as being  
9 something that would allow it to be. You have not done  
10 anything to prohibit it.

11           On the other hand, I think if you attempted to be  
12 express in stating that the fast track authority does not  
13 include these areas, it would be pretty hard with a  
14 straight face to come back and give the Congress something  
15 that included it later.

16           The Chairman. Fine.

17           Senator Baucus, who is Chairman of the Subcommittee  
18 on International Trade.

19           Senator Baucus. Mr. Chairman, just a couple of  
20 thoughts here that unfortunately will further complicate  
21 the matter. With respect to financing, I think it is  
22 inappropriate for this committee to include EEP reduction  
23 in the package because this committee is on that  
24 jurisdiction over EEP or the Agriculture Committee does.

25           I think that any questions with regard to the export

1 enhancement program should be appropriately under the  
2 Senate rules, referred to that committee. We should not  
3 take credit for any reduction in EEP because that is a  
4 matter for the Agriculture Committee to be concerned with.

5 Second, I might say to my friend from Oregon and  
6 Missouri, I do believe, and it is because it is the trend  
7 in the world, that environmental provisions should  
8 appropriately be included in trade negotiations. It is a  
9 question of what appropriate means. But I do think they  
10 should be appropriately included. That, to me, is  
11 categorically clear.

12 I mean, if there is any effort to add language  
13 prohibiting, I mean, it would meet with my vigorous  
14 opposition. In fact, if such legislation were precluded,  
15 the would definitely to defeat the implementation of the  
16 Uruguay Round. That is a gigantic step backwards. I  
17 mean, that is unconscionable as I see it. I just think  
18 that all Senators should be aware, at least this Senator  
19 would treat that kind of an effort that way.

20 The Chairman. Can I say to Senator Baucus that the  
21 Treasury proposal included the -- what is it, the  
22 export --

23 Senator Baucus. Export enhancement.

24 The Chairman. How do you enhance an export? You can  
25 increase it, but -- it does not matter. It was included

1 in their items that would add up to the \$12.3 billion or  
2 whatever. But it was always assumed that this would  
3 require a specific action by the Agriculture Committees  
4 and that we would not presume to reach into their  
5 jurisdiction. I just want to let them know that.

6 Senator Roth?

7 Senator Roth. Well, it seems to me that Senator  
8 Danforth has raised an interesting point in the sense that  
9 when we pass fast track, is there any limitation as to  
10 what can be included in a negotiated agreement and brought  
11 back and run through the fast track? We are talking bout  
12 environmental and labor. But there has been any legal  
13 opinion as to exactly what we are authorizing in respect  
14 to fast track? Is this an open door? I do not know what  
15 the answer to that is and I think it would be interesting  
16 to know.

17 The Chairman. Well, can I offer an answer to the  
18 Senator?

19 Senator Roth. Please.

20 The Chairman. I said on the floor, it will be three  
21 weeks ago when I began to be concerned, we have had, you  
22 know, 60 years of experience here, beginning with the  
23 reciprocal trade agreements under President Roosevelt and  
24 Secretary Hull in the aftermath of the disastrous Smoot-  
25 Hawley Tariff which began in this building. Well, no, it

1 would not have been this building, but in this committee.

2 Our Presidents are not setting out to suborn the  
3 statutes of the United States by executive agreements with  
4 120 other countries. These are trade matters. They have  
5 invariably concerned themselves with trade. They have  
6 required -- they are ever more complex. In this case it  
7 is 120 or 116 -- I think there are 116 signatories at  
8 Marakesh and there have been further --

9 Ambassador Yerxa. There were 123 signatories in  
10 Marakesh.

11 The Chairman. And 116 in Geneva and it keeps  
12 growing.

13 Ambassador Yerxa. Exactly.

14 The Chairman. But these are trade matters. I repeat  
15 again, and I just do not want to have our committee, which  
16 is not that kind of committee anyway, that for the whole  
17 of this century, the United States Government has accepted  
18 the idea that trade matters involve labor standards.

19 We have negotiated within three years ago on the  
20 Senate floor 97 to 0. We adopted the international labor  
21 convention on forced labor, after the recommendation of a  
22 Joint Labor and Business Council. These are not new  
23 ideas. The risk is that we will not do this. The risk is  
24 that in the aftermath of the Cold War, as you, Senator  
25 Packwood, very carefully have said, that we will lapse



1 back into the trading blocks and protectionism that we  
2 sought after World War -- well, which certainly came in  
3 the 1930s, and which we have been trying to get away from  
4 for 60 years.

5 Senator Baucus. Mr. Chairman?

6 The Chairman. Senator Baucus?

7 Senator Roth. But before we --

8 The Chairman. Yes, Senator Roth?

9 Senator Roth. The basic question I am asking is, is  
10 there any limit. I would be interested in what Mr.  
11 Shapiro might have to say on this.

12 The Chairman. Mr. Shapiro, why do you not give us  
13 counsel's advice?

14 Senator Roth. Any limit as to what can be included  
15 in agreement under fast track?

16 The Chairman. Fast track has nothing to do with the  
17 agreement, per se. The agreement is an executive  
18 agreement on matters of trade. Fast track is our  
19 procedure for dealing with it.

20 Senator Roth. But what I am interested, under our  
21 procedure of fast track, can anything be included? And if  
22 there are limits, what are those limits?

23 Mr. Shapiro. Mr. Chairman, traditionally and as it  
24 has evolved, the definition has been with fast track if  
25 Congress chooses to give it to the President for

1 negotiating authority. The test is whether the  
2 implementing legislation that comes back and is offered is  
3 as Senator Packwood has said, necessary or appropriate for  
4 the implementation of the trade agreement.

5 Now, there have not been that many tests of what that  
6 means. It has been regarded as a test pretty much for the  
7 committees and the Congress to determine as to what is  
8 necessary or appropriate.

9 Senator Packwood. I do not think that is Senator  
10 Roth's question. If we pass fast track and the President  
11 brings us back some kind of international tax agreement --

12 The Chairman. Right.

13 Senator Packwood. -- and Senator Roth wants to know  
14 if that is -- he said, well, I negotiated this in a -- he  
15 calls it a trade agreement and taxation affects trade, is  
16 that under the fast track.

17 The Chairman. Yes. Now, let the Chairman of the  
18 committee announce, if the President brings us back an  
19 international tax treatment measure which says that taxes  
20 on poultry in the State of Delaware are hereby doubled, I  
21 will simply not hold a hearing.

22 (Laughter.)

23 The Chairman. There will be no fast track  
24 legislation. We are the ones who write it. It is a  
25 process that has been worked very well and nothing will be

1 in that legislation that we do not approve in this  
2 committee.

3 Senator Roth. But if I understand what you are  
4 saying, Mr. Chairman, the safety valve is when it comes  
5 back here.

6 The Chairman. Yes. We write the bill.

7 Senator Roth. But as far as the Executive Branch is  
8 concerned they are free if they so choose to move in these  
9 different areas.

10 The Chairman. Right and we will dispose.

11 Mr. Shapiro. Well, I think at our peril, Senator.

12 The Chairman. I mean at your peril. The President  
13 is free to send us any kind of legislation he proposes in  
14 other fields.

15 Mr. Shapiro. And with respect even to the side  
16 agreements, which have obviously caused concern among  
17 some, we spent a great deal of time talking about them,  
18 consulting with both the House and the Senate on those  
19 side agreements. There were obviously disagreements about  
20 it.

21 Senator Roth. But if I understand what you are  
22 saying, that under the fast track procedures there is no  
23 limitation as to what can be submitted. There may be a  
24 practical limitation, I mean. But anything including  
25 taxes could be.

1           The Chairman. Fine. Could I just say that now, this  
2 is not the setting in which to discuss a cooperative  
3 pattern that we have had over many years and it has worked  
4 very well. I mean, the consultations in the back room,  
5 the trips to Geneva, we have always gone hand-in-hand in  
6 this matter and with great success.

7           We have brought the world a level of prosperity that  
8 it has never known. Our issue right now are the issues  
9 that Senator Packwood raised.

10          With that, I am going to have Senator Baucus make a  
11 concluding remark so we can get on with the business at  
12 hand, which is the amendments.

13          Senator Baucus. Thank you, Mr. Chairman. I just  
14 want to point out other developments which show that  
15 environment and trade is upon us and it behooves us to try  
16 to find ways to work out conflicts between trade and  
17 environment.

18          For example, the Pell Amendment. The Pell Amendment  
19 passed by the Congress essentially imposes sanctions on  
20 countries that use drift nets in certain ways when they  
21 are fishing. You know, that is a trade matter, it is an  
22 environmental matter.

23          Another example is the Marine Mammal Protection Act  
24 passed by the Congress which essentially says, there will  
25 be no tuna imported into the United States in they are

1 caught in a way that destroys dolphins. That is a trade  
2 matter; that is an environmental matter. In fact, that,  
3 as we all know went to the GATT and the GATT said sorry,  
4 United States, you cannot do that. So there, we are  
5 stuck.

6 What do we do? We decided to not honor the GATT. We  
7 decided to go ahead with the statute anyway, I mean to go  
8 ahead and enforce the statute anyway.

9 So all I am saying is, because of the way the GATT is  
10 written and because of the rules today, we are going to  
11 find a lot of conflicts between trade and environment. It  
12 behooves us, I think, in the future to try to address  
13 those issues in trade agreements, how to best work all  
14 that out.

15 The Chairman. We have a difference here. We will  
16 work it out.

17 Senator Baucus. Yes. I would just point out, Mr.  
18 Chairman, there are examples where we tried to address  
19 that conflict, but the present rules prohibit us from  
20 resolving those satisfactorily.

21 Second, you know, it was 20 years ago intellectual  
22 property was not part of the GATT. People thought, gee,  
23 that is not part of the GATT. That is improper. You do  
24 that differently. But now times have changed and we  
25 include intellectual property in the Uruguay Round.

1 I think in the same vein that times are changing and  
2 it is just important to consider these matters, like the  
3 Pell Amendment, in future trade agreements.

4 The Chairman. Very well.

5 Now, our purpose this morning, our object, and we  
6 will, which we shall achieve, is to walk through the  
7 bipartisan, agreed upon amendments which are before us and  
8 if it is agreeable I would like to have a vote on that  
9 when we are through, on the bipartisan amendments that  
10 have been agreed to. All staff know about them.

11 Ms. Miller, would you proceed?

12 Ms. Miller. Yes, Mr. Chairman.

13 The Chairman. Mr. Figel, will you interject whenever  
14 you feel it is appropriate.

15 Mr. Figel. Thank you.

16 Ms. Miller. I will be working from a document that I  
17 believe is before all Senators. It may be under a package  
18 related to the funding issue. The next document should be  
19 entitled or have a subtitle of ``Staff Recommendation on  
20 Amendments,`` dated Wednesday, July 27.

21 The Chairman. Staff Recommendation on Amendments,  
22 dated July 27. It is before this Senator at least. So  
23 you proceed.

24 Ms. Miller. All right.

25 The Chairman. A very short document.

1 Ms. Miller. Exactly. This document was distributed  
2 to all offices on Tuesday evening. It reflects the  
3 discussions that have gone on among the legislative  
4 assistants for the committee members since our first  
5 meeting last week, and reflects amendments where there was  
6 basically a consensus that they should be included in the  
7 implementing bill.

8 I will just briefly go through them. They are keyed  
9 to the side-by-side description of the agreement in the  
10 Chairman's proposal. So if members have questions we can  
11 refer to the appropriate provisions in the larger  
12 document.

13 The first proposal includes a sense of the Congress  
14 resolution that the USTR should oppose the admission into  
15 the World Trade Organization of any country that fosters  
16 or imposes any boycott on Israel and the Statement of  
17 Administration Action would amplify on that language.

18 The second proposal relates to the authority for the  
19 administration to proclaim future reductions in tariffs.  
20 The purpose here is to allow the administration to  
21 continue negotiations in a certain number of sectors where  
22 the administration's goal was to reduce tariffs  
23 internationally to zero. This was referred to as the  
24 zero-for-zero initiative.

25 There was also a proposal in the chemical area for

1 harmonization of tariffs. This grants the authority to  
2 the President subject to consultation and lay over  
3 procedures which are essentially a consultation mechanism  
4 with the Congress to reduce duties in these particular  
5 sectors. It is limited to these sectors.

6 Also, there is authority here to proclaim  
7 modifications that are necessary to correct technical  
8 errors in the schedule of commitments that the United  
9 States has made on tariff reductions.

10 The Statement of Administration Action in the  
11 committee report --

12 The Chairman. This is the Marakesh protocol that you  
13 are addressing here?

14 Ms. Miller. Yes. Yes, it is under that particular  
15 part of the agreement, addresses that part of the  
16 agreement.

17 The Statement of Administration Action in the  
18 committee reporting, going on to page 2, would  
19 specifically spell out these sectors and would also  
20 amplify on the U.S. objectives for further negotiations in  
21 the sectors. A number of them are of interest to members  
22 of this committee and therefore the report would amplify  
23 on those interests.

24 At the bottom of the second page, the third item  
25 establishes objectives for further negotiations in areas



1 where the Uruguay Round negotiations were somewhat  
2 incomplete. Specifically in the areas of civil aircraft,  
3 financial services and telecommunication services. Where  
4 there will be ongoing negotiations, the proposal is to set  
5 forth some objectives regarding the Congress' hopes and  
6 intent for those negotiations.

7 The Chairman. Now, what is the consultative process  
8 with respect to, let us say, a further agreement on civil  
9 aircraft? How does the Congress have a chance to review  
10 that? Perhaps Ambassador Yerxa would want to respond.

11 Ambassador Yerxa. Well, we would of course -- these  
12 negotiations have been underway for some time. The United  
13 States has significant concerns about the proposals being  
14 put forward by certain other parties and these negotiating  
15 objectives address the kinds of concerns that the  
16 aerospace industry in the United States has and that the  
17 U.S. Government has about what type of agreement would be  
18 acceptable.

19 We would follow the normal consultation procedures  
20 which are set forth in the existing trade legislation. Of  
21 course, if we were contemplating bringing anything back to  
22 the Congress for implementation under fast track -- and I  
23 must say at this juncture I cannot think of anything in  
24 the civil aircraft sector that we would be thinking of  
25 bringing back in order to change U.S. statutes.

1           Then it would of course depend on a fast track  
2 consultative process.

3           The Chairman. Authority to be in place.

4           Ambassador Yerxa. And the existence of that  
5 authority. But otherwise, as we go through the civil  
6 aircraft negotiations over the next several years, we will  
7 continue the normal consultative process.

8           The Chairman. You do not anticipate any  
9 breakthroughs?

10          Ambassador Yerxa. The issues are very difficult and  
11 the positions are quite far apart on a number of issues.

12          The Chairman. Financial services.

13          Ambassador Yerxa. The United States feels very  
14 strongly about many of its positions.

15          The Chairman. Good. Good. Thank you.

16          Ms. Miller. Beginning on page 3 there are several  
17 amendments relating to the dispute settlement  
18 understanding of the Uruguay Round. The proposal listed  
19 at number four would clarify that under Section 301 one of  
20 the options that the USTR has is the withdrawal of GSP  
21 benefits in a Section 301 case and that that withdrawal  
22 could be either partial or total if there was a finding of  
23 an unreasonable trade practice or a violation of a trade  
24 agreement.

25          The fifth item listed relates to the implementation

1 of panel reports by foreign countries. That is,  
2 circumstances in which a dispute settlement panel has  
3 found in favor of the United States and against the  
4 practice of a foreign country, and the issue is how that  
5 foreign country will implement the panel report.

6 The provision would amend Section 306 of the 1974  
7 Trade Act to require USTR to monitor the implementation of  
8 any resolution, any proposal to resolve a panel dispute.  
9 Then normally under a dispute settlement process a  
10 reasonable period of time for implementation of the panel  
11 decision is included and USTR would be required to  
12 determine within 30 days of the expiration of that  
13 reasonable period of time whether or not the country had  
14 implemented the report or not.

15 Number six essentially requires that USTR produce a  
16 semi-annual report to Congress regarding the WTO dispute  
17 settlement system and actions taken by the WTO that would  
18 affect U.S. interests during the preceding six-month  
19 period. There were a number of proposals in the  
20 Chairman's mark regarding this and there were others of  
21 interest to the committee and this consolidates several  
22 reports into a semi-annual report on the WTO action.

23 On page 4, top of page 4, we have a provision that  
24 would essentially bring the United States into conformity  
25 with a 1991 dispute settlement decision against the United

1 States on countervailing duties that were being assessed  
2 on imports of non-rubber footwear from Brazil. It allows  
3 for the assessment of duties at a certain rate on  
4 unliquidated entries of imports of this kind of footwear.

5 Going on to item number eight, this is an amendment  
6 to the provisions in the bill that bring the United States  
7 into conformity with a panel decision against the United  
8 States on our Section 337 law, which is part of the 1930  
9 Tariff Act.

10 Essentially, this would strike the limitations that  
11 were in the current proposal on seeking injunctive relief  
12 at the ITC, that being something that had become fairly  
13 controversial and the general decision was that the  
14 limitations on seeking such relief should be eliminated.

15 The Chairman. I wonder if I could ask Mr. Shapiro if  
16 he would explain to us what has happened to require this  
17 change in our internal procedures, the injunctive relief  
18 from the ITC.

19 Mr. Shapiro. Mr. Chairman, our goal throughout in  
20 terms of responding to this panel report was to come up  
21 with a reform of 337 that met the requirements of the GATT  
22 panel on the one hand and preserved the elements of 337  
23 that have made it a useful tool to U.S. industries moving  
24 against infringing imports in the intellectual property  
25 area.

1           We started with legislation that had been put forth  
2 by Senator Rockefeller and had the broad support of the  
3 private sector. In the course of considering ways of  
4 approaching this we worked on the question of an  
5 injunctive bar. But as we worked on it, it became clearer  
6 that we were actually precluding injunctive relief in very  
7 narrow cases and making the statute increasingly difficult  
8 to work with.

9           As a consequence the decision was made that we were  
10 better off with the original approach that had been taken  
11 in S.148, which we think satisfies the concerns that the  
12 panel raised.

13           The Chairman. And basically this is designed to make  
14 it easier for American complainants to proceed.

15           Mr. Shapiro. Well, it is designed to keep some of  
16 the advantages that 337 accords to American Plaintiffs  
17 against infringing imports. But we have made other  
18 changes that bring us toward compliance with the panel  
19 report.

20           The Chairman. Thank you.

21           Ms. Miller?

22           Ms. Miller. Thank you, Mr. Chairman.

23           At the bottom of page 4, number nine relates to zinc  
24 alloy imports. Here the Statement of Administrative  
25 Action would provide that the administration will monitor

1 U.S. imports of zinc alloys. And if there is reason to  
2 believe that there is either a serious injury to the  
3 domestic industry or that imports are threatening U.S.  
4 national security, the USTR could pursue investigations  
5 under provisions already existing in U.S. law as to take  
6 action for those reasons.

7 Page 5, top of page 5, and Items 10, 11 and 12 relate  
8 to Section 201 of the 1974 Trade Act, which is the means  
9 by which the United States grants import relief to  
10 industries that are being injured by imports. Item number  
11 10 would clarify that in the Statement of Administrative  
12 Action that the ITC when it recommends import relief to  
13 the President would describe how it is taken into account  
14 any other actions under the anti-dumping or countervailing  
15 duty laws that have been taken in granting some form of  
16 relief to imports.

17 Senator Chafee. Mr. Chairman?

18 The Chairman. Yes, sir, Senator Chafee?

19 Senator Chafee. That was the item I had an interest  
20 in. I want to thank you and Senator Packwood and your  
21 staffs for including that. I appreciate it.

22 The Chairman. You are very kind, sir.

23 Ms. Miller. Item number 11, 11 and 12 were  
24 additional technical amendments raised by the  
25 administration during the course of our recent

1 discussions. Number 11 relates to the ability of what the  
2 time frames for granting relief under Section 201 would  
3 be. The total time frame the committee may recall is  
4 eight years, a maximum of four in the beginning with a  
5 possible extension of up to eight years.

6 This clarifies that not just one extension is  
7 possible, but it can be done in smaller increments for one  
8 or more additional extensions.

9 The Chairman. Yes.

10 Ms. Miller. Item number 12 clarifies the procedures  
11 that would apply if the President was extending an action  
12 in that kind of way. That is that the ITC would have to  
13 investigate to determine whether the safeguard action  
14 continued to be necessary and whether there is evidence  
15 that the industry is making a positive adjustment to  
16 import competition.

17 On page 6 begins several different amendments to the  
18 anti-dumping agreement. Most of these are changes that  
19 the administration would make in the Statement of  
20 Administrative Action. Item number 13 relates to the  
21 issue of how an adjustment for start-up is made in  
22 determining the cost of production and in calculating the  
23 foreign value of a product.

24 The point here is to clarify that start-up  
25 adjustments do not apply in cases where the new product

1 involved is just requiring a retooling, for example, in  
2 changing from one model year to the next.

3 Item number 14 would clarify that again in the  
4 Statement of Administrative Action that costs shall be  
5 allocated using a methodology that captures all of the  
6 actual costs. The emphasis here is on actual costs  
7 incurred in producing and selling the product under  
8 investigation.

9 Senator Roth. Mr. Chairman, could I express my  
10 appreciation to the staff as well as to you and others for  
11 including this.

12 The Chairman. You are very generous, Senator Roth.  
13 Thank you.

14 Ms. Miller. Item number 15 clarifies the practice in  
15 administrative reviews for averaging of normal -- what are  
16 referred to as normal values that when the administration  
17 compares the U.S. price to the normal value, that it  
18 typically would look at averaging of a normal value in a  
19 period of a month and it would be the month that  
20 corresponds most closely to the sale in the United States.

21 On page 7, Item number 16 provides that what is  
22 referred to as cross-cumulation. That is, accumulation in  
23 the injury part of an investigation that cases that  
24 involve anti-dumping cases and countervailing duty cases  
25 would only be cumulated when the imports are



1 simultaneously subject to investigation. That is the  
2 standard separately in anti-dumping and countervailing  
3 duty investigations. The point here is that in cumulating  
4 those two kinds of cases, the same standard exists.

5 Item number 17 speaks to again in the Statement of  
6 Administration Action the fact that domestic growers and  
7 processors of agricultural commodities can both be injured  
8 by imports of process to agricultural products, but that  
9 essentially under current law there is no remedy for the  
10 growers or the interim processors.

11 The SAA would essentially provide that the relevant  
12 agencies -- I think we are essentially talking about the  
13 Commerce Department and the ITC -- would review what  
14 remedies are permissible under the GATT and perhaps  
15 propose legislation if appropriate.

16 Item number 18 speaks to the issue of cases that are  
17 determined, where injury is determined and dumping is  
18 determined to be in a regional industry. The Statement of  
19 Administration Action would elaborate on the factors that  
20 the ITC takes into account in determining whether imports  
21 are sufficiently concentrated in a region to justify the  
22 finding that there is a regional industry.

23 Turning to page 8, Item number 19, continuing on  
24 anti-dumping provisions, relates to the anti-circumvention  
25 provisions of the bill. The Chairman's proposal included

1 that one part of the standard for determining whether or  
2 not there was anti-circumvention occurring was whether or  
3 not the parts or components were significant.

4 This clarifies that the test here is one of value.  
5 The issue is whether the value of the parts or components  
6 is a significant portion of the total value of the  
7 merchandise. That would apply both in cases involving  
8 U.S. assembly and assembly in a third country.

9 At the bottom of page 8, Item number 20, relates to  
10 diversionary input dumping. The issue here relates to a  
11 special rule under the anti-dumping law for major inputs.  
12 It essentially speaks to how the related party test  
13 applies in these circumstances when there is diversionary  
14 dumping.

15 To go on to page 9, we have several amendments that  
16 relate to the subsidies agreement. The first item, number  
17 21, would specifically provide that a change in the  
18 ownership of a firm, even if that is through an arm's  
19 length transaction, does not require Commerce to find that  
20 countervailable subsidies are no longer countervailable.

21 The issue here being, when there is a sale of a firm  
22 in an arm's length transaction, it does not necessarily  
23 mean that the subsidies are erased or essentially non-  
24 countervailable at that point.

25 Number 22 begins a description of some of the

1 provisions. I would mention that Senator Danforth  
2 specifically worked with the administration regarding his  
3 concerns on subsidies. The first point here is that the  
4 Statement of Administrative Action and the committee  
5 report would provide that the term pre-competitive  
6 development activity must be construed strictly, with the  
7 point being that it does not permit subsidies for  
8 production or export.

9 At the bottom of the page you have a provision that  
10 essentially begins or creates a sort of -- enforces the  
11 monitoring of the green light subsidies. It requires that  
12 USTR submit to the Congress notifications from foreign  
13 governments of proposed green light subsidies, also  
14 publish notice of them in the Federal Register and object  
15 to any foreign programs that might be notified that do not  
16 meet the agreement's criteria for green light treatment.

17 Continuing on page 10, the same provision, the point  
18 would be for the Statement of Administrative Action and  
19 the committee report to state that the United States  
20 intends to use the notification process aggressively to  
21 monitor the operation of the green light categories.

22 Also in the following paragraph it would point out  
23 that essentially the Respondent in a countervailing duty  
24 case has the burden of showing compliance with all of the  
25 agreement's criteria for green light status.

1 Item number 23 --

2 Senator Danforth. Mr. Chairman?

3 The Chairman. Senator Danforth?

4 Senator Danforth. As I have raised numerous times  
5 before, the subsidies issue has been the one that has been  
6 most troublesome to me. I appreciate the administration's  
7 willingness to work with this I think successfully on this  
8 issue to resolve the problems.

9 In the list of points that was just read, we are in  
10 total agreement with all of those. There is a further  
11 point relating to Article 9, which has been agreed to  
12 between the administration and me and I think Senator  
13 Baucus has been involved in this.

14 However, in the staff discussions the question was  
15 raised about it, so it has been left out of this package,  
16 even though it has been something that the administration  
17 and we have agreed to. It will be raised when the time  
18 comes for amendment.

19 The Chairman. When we are discussing here amendments  
20 to the Uruguay Round?

21 Senator Danforth. That is right. I mean, it is not  
22 in the package of agreed to amendments.

23 The Chairman. Fine. And that is agreeable to  
24 Senator Baucus.

25 Senator Danforth. It is sort of quasi agreed to.

1           The Chairman. Fine. We want to thank you for your  
2 working this out.

3           Ms. Miller. The last item relating to the subsidies  
4 agreement I would mention is Item number 23 which would  
5 require Commerce and USTR to issue a report, each February  
6 1, describing the subsidy practices of major U.S. trading  
7 partners, again all part of the effort to monitor and  
8 enforce our rights under the subsidies agreement.

9           Beginning on the bottom of page 10 we have three  
10 provisions, again technical provisions, which the  
11 administration brought to our attention just recently,  
12 which they believed were necessary to --

13           The Chairman. On quota cheese.

14           Ms. Miller. Exactly. To comply with our obligations  
15 under the agricultural agreement. The first one repeals a  
16 provision in current law that allows --

17           The Chairman. To reflect the conversion of quotas  
18 into a tariff status, which is a guiding theme of this  
19 larger agreement.

20           Ms. Miller. Correct.

21           The Chairman. Usually in the way of technical  
22 changes.

23           Ms. Miller. Yes, exactly.

24           The Chairman. Technical corrections.

25           Ms. Miller. Exactly. On the top of page 11 we have

1 one that relates to the tariff rate quota on sugar,  
2 essentially authorize the President to modify the existing  
3 tariff head note into conformity.

4 The Chairman. Again, the tariffication.

5 Ms. Miller. Exactly.

6 And the last time under number 26 relates to the  
7 administration's preference that the President be  
8 authorized to prohibit the imposition of a duty on a NAFTA  
9 country rather than actually required to.

10 The Chairman. All right.

11 Ms. Miller. The final item in the staff package is a  
12 reporting requirement related to the agreement on trade  
13 related investment measures. This is an agreement that  
14 otherwise does not require legislation. But the proposal  
15 here would be for the administration to review the  
16 implementation of the TRIMS agreement and report annually  
17 to the Congress on its results.

18 The Chairman. Right.

19 Sir?

20 Mr. Figel. We are in agreement with all these.

21 The Chairman. You are in agreement with all these  
22 says Mr. Figel.

23 On that note of accord, a quorum having been present  
24 and being present, I would simply, unless anyone desires a  
25 roll call, just ask those in favor will say aye.

1 (A chorus of ayes.)

2 The Chairman. Those opposed?

3 (No response.)

4 The Chairman. The agreement is unanimous. We thank  
5 our staff and we thank Ambassador Yerxa and Mr. Shapiro  
6 for that matter.

7 So we have our technical work done. I wonder if it  
8 would not be useful in the time remaining, and there is  
9 good time remaining, to walk through the financing  
10 proposals to see what has been submitted to us by the  
11 administration and to see where there have been variations  
12 in the estimates forthcoming from the Joint Tax Committee  
13 and things like that.

14 We thank you, Ambassador.

15 Ambassador Yerxa. Thank you, sir.

16 The Chairman. We thank you, Counselor. Ms. Miller,  
17 Ms. Lamb, Mr. Figel, we thank you.

18 Now come the knight of the sharp pencils.

19 Senator Hatch. Mr. Chairman?

20 The Chairman. Senator Hatch?

21 Senator Hatch. Mr. Chairman, I apologize for jumping  
22 out of turn here. But I am not --

23 The Chairman. You are not out of turn. You are  
24 welcome.

25 Senator Hatch. Well, thank you. I have been in the

1 Crime Conference on White Water and on the health care  
2 problem and then we have the Supreme Court Justice  
3 nomination.

4 The Chairman. What else?

5 Senator Hatch. I have to apologize. But could I put  
6 a statement in the record? What I would like to do is, I  
7 wanted to let you and the committee know, and I may not be  
8 able to be here tomorrow and even the rest of the day, but  
9 I wanted to let you and the committee know that Senator  
10 Rockefeller and I, of course, would like to introduce an  
11 amendment ultimately when the appropriate time comes on  
12 captive production.

13 This amendment is extremely important to me.

14 The Chairman. On captive production.

15 Senator Hatch. On captive production. I want the  
16 committee to know that I strongly support Senator  
17 Rockefeller in his efforts on this and the strong  
18 background. But I have given Senator Rockefeller a  
19 statement to submit at the appropriate time, which would  
20 indicate my support for this provision in detail.

21 I hope our colleagues will give consideration to  
22 that. And if I could put a statement in at this time, I  
23 would appreciate that.

24 The Chairman. We would be happy to do and appreciate  
25 your doing. It is perfect timing. We have just been



1 dismissing amendments.

2 Senator Hatch. Thank you, Mr. Chairman. I  
3 appreciate that.

4 (The prepared statement of Senator Hatch appears in  
5 the appendix.)

6 The Chairman. All right. Will the financial  
7 counselors, advisors come forward.

8 Mr. Secretary, we welcome you again. Secretary  
9 Samuels, Mr. Buckley, and half the Joint Committee on  
10 Taxation, Mr. Gale and Mr. Prater.

11 Do you think it would be best if -- Mr. Buckley,  
12 would you like to walk us through these matters?

13 Mr. Buckley. I would be very happy to.

14 The Chairman. Please do, sir.

15 Now, we have this as a document in front of us. Each  
16 of us should have a description of the Chairman's mark  
17 relating to financing options dated July 28.

18 Mr. Buckley. As the Chairman points out, you do have  
19 a document describing this in great detail. I will go  
20 through it very quickly and just summarize what is here.

21 The Chairman. Some of these provisions the quicker  
22 you go by the better.

23 Mr. Buckley. I agree, Mr. Chairman.

24 (Laughter.)

25 Mr. Buckley. The first item relates to the estimated

1 tax treatment of inclusions under Subpart F in Section  
2 936. In very basic terms, these amendments would treat  
3 those inclusions for estimated tax purposes in a manner  
4 similar to partnership inclusions.

5 The one difference would be in the case of  
6 individuals in non-controlled foreign corporation and non-  
7 controlled Section 936 corporations they would be able to  
8 use a safe harbor based on last year's inclusions. This  
9 proposal would apply for estimated tax purposes for  
10 taxable years beginning after December 31, 1994.

11 The next proposal would have a series --

12 The Chairman. Would you label them A, B, C as you go  
13 along?

14 Mr. Buckley. The next item, B, would have several  
15 modifications to the inventory accounting rules. The  
16 first modification would be to eliminate the option to use  
17 the lower of cost or market valuation for taxpayers using  
18 the FIFO method of accounting. This change would not  
19 apply to small taxpayers, that is taxpayers with gross  
20 receipts of \$5 million or less.

21 Any change in the method of accounting required by  
22 this change would require Section 481 adjustments with a  
23 spread over four years.

24 The next item would disallow the use of the component  
25 of cost method of accounting for taxpayers on the LIFO

1 method of inventory accounting. Under the component of  
2 cost method, taxpayers can value their inventory  
3 separately for each item of cost, such as labor, material  
4 and overhead. This change would require taxpayers to use  
5 a total product cost which in effect requires them to look  
6 at the total cost of product.

7 They would be able to switch to this new method of  
8 accounting on a cut-off basis and, therefore, there would  
9 not be any Section 481 adjustments required. Some  
10 taxpayers would be permitted to use the component of cost  
11 method for raw materials and the raw material component of  
12 work in progress.

13 Finally, there would be a new simplified dollar value  
14 LIFO method provided for taxpayers using the LIFO method  
15 of accounting. These changes would be effective for  
16 taxable years beginning after December 31, 1994.

17 The next item, Item C, relates to the treatment of  
18 partnership distributions of marketable securities. This  
19 proposal would basically treat distributions of marketable  
20 securities in the same manner as distributions of cash.  
21 Therefore, the distributee partner would be required to  
22 recognize gain to the extent that the fair market value of  
23 the marketable securities exceeded its basis.

24 There would be several exceptions to this proposal.  
25 In the case of distribution of marketable securities that

1 the distributee partner contributed that do not exceed the  
2 proportions share of the marketable securities held by the  
3 partnership or by investment partnerships.

4 The Chairman. Now, the point here is that the  
5 distribution of marketable securities is, in fact, income  
6 in as much as they are instantly convertible into income.

7 Mr. Buckley. That is correct.

8 The Chairman. And so they should be treated as if it  
9 were.

10 Mr. Buckley. That is the theory of the proposal.  
11 There would be regulatory authority to prevent abuses  
12 through tiered partnerships or other arrangements. This  
13 proposal generally would apply to partnership  
14 distributions after the date of enactment, except that it  
15 would not apply to partnership distributions before  
16 January 1, 1995, of marketable securities held by the  
17 partnership on or before July 27, 1995. There also would  
18 be a transitional rule for written, binding contracts in  
19 effect on July 15, 1994.

20 The next item, Item D, relates to withholding of  
21 income tax on distribution of Indian casino profits to  
22 tribal members. This basically would require income tax  
23 withholding on taxable distribution of Indian casino  
24 profits.

25 The amount of the withholding generally would be

1 structured to approximate the income tax that would be  
2 imposed on the distribution if that tax were computed on  
3 the annualized basis. This proposal would be effective  
4 for payments on or after December 31, 1994.

5 The next proposal, Item E, would accelerate the due  
6 date for the deposit of certain excise taxes. This would  
7 not apply to certain excise taxes that are not remitted on  
8 an annual basis. This proposal would be effected on  
9 January 1, 1995 for all but the air transportation excise  
10 taxes and for those taxes it would be effective on January  
11 1, 1997.

12 The next item, Item F, would require taxpayers to  
13 provide Social Security numbers for all children,  
14 regardless of age. Under current law, you are required to  
15 do this for children who have attained age one. As of the  
16 close of the taxable year this would require it for all  
17 dependents.

18 Senator Bradley. Mr. Buckley, you mean right now we  
19 do it age one and this would be birth?

20 Mr. Buckley. That is correct.

21 Senator Bradley. Is that the difference?

22 Mr. Buckley. That is correct.

23 The Chairman. This is something we are supposed to  
24 hurry by. Senator Bradley --

25 Senator Bradley. Pardon?

1           The Chairman. I said some of these we wanted to  
2 hurry by.

3           (Laughter.)

4           The Chairman. This is one we wanted to hurry by.  
5 Senator Bradley, I implore you as a colleague and friend.

6           (Laughter.)

7           Senator Bradley. This is going to really offend a  
8 lot. Okay, we will hurry by it.

9           The Chairman. Do I recall -- I have not got the list  
10 in front of me -- that we are proposed to raise \$160  
11 million this way?

12          Mr. Buckley. \$94 million.

13          The Chairman. \$94 million over five years.

14          Mr. Buckley. That is correct.

15          Senator Bradley. So that is \$18 million a year or  
16 \$19 million a year.

17          Mr. Buckley. \$20 or \$25 million or so. There is  
18 nothing in the first year.

19          Senator Bradley. All right. Well, I would be  
20 curious how they got the revenue, but I assume I would not  
21 want to ask this question if it is embarrassing to the  
22 Joint Tax Committee.

23          Mr. Buckley. It is not embarrassing. We assume  
24 there is a certain amount of claims of dependencies for  
25 people who do not exist. This has occurred in the past

1 and there has been substantial revenue raised by requiring  
2 Social Security numbers. The amount of revenue has  
3 declined as the ages have declined.

4 The Chairman. Well, it is too late. Senator Bradley  
5 has raised the question. Do you tell the one-day-old  
6 child to sign up?

7 Mr. Buckley. You do not have to file your return  
8 until April 15. So it is --

9 The Chairman. So he or she has until they are three  
10 months old to file.

11 Mr. Buckley. That is right. It is the parent filing  
12 the return at that point.

13 (Laughter.)

14 The Chairman. Oh, it is the parent? I see.

15 Senator Bradley. Except for certain precocious  
16 newborn.

17 The Chairman. Yes. Our grandson could have done it,  
18 I am sure. And we are going to get \$18 million a year?

19 Mr. Buckley. That is our assumption.

20 Senator Bradley. Your point is that there are people  
21 filing false claims, saying they have dependents and they  
22 do not. And we cut it back to one year, we pick up a lot  
23 of money. So you assume if we cut it back to birth we  
24 would pick up a little bit more. Right?

25 Mr. Buckley. Well, several years ago they instituted

1 five years and it picked up a substantial amount of money  
2 and it has been cut down.

3 Mr. Samuels. Senator Bradley, we had discovered last  
4 year that there were a lot of newborn twins in a  
5 particular area of the country when the IRS was reviewing.

6 Senator Bradley. I think it had to do with the water  
7 supply.

8 (Laughter.)

9 The Chairman. I tried to warn us, but no one  
10 listens.

11 Mr. Buckley, you will proceed to Item G.

12 Mr. Buckley. The next item, G, relates to voluntary  
13 withholding on taxable Federal Government payments. This  
14 would provide taxpayers with the option to have federal  
15 agencies withhold income tax from certain specified  
16 federal payments such as Social Security payments, trade  
17 adjustment payments, property disaster payments, commodity  
18 credit corporation loans, agriculture price supports, and  
19 other federal payments specified by the Secretary.

20 The Chairman. Right. May I say, I think this is a  
21 sensible measure. It is entirely voluntary.

22 Mr. Buckley. That is correct.

23 The Chairman. There are those who think if they  
24 withhold quarterly or whatever well then at the end of the  
25 taxable year they do not face a big hit and it is a way of



1 managing your affairs. And if you wish to do it, fine.

2 Mr. Buckley. That proposal would be effective on and  
3 after January 1, 1997.

4 The next item, H --

5 Senator Baucus. Mr. Chairman?

6 The Chairman. Yes.

7 Senator Baucus. How do you calculate the degree to  
8 which people voluntarily withhold? I am just curious how  
9 you make that calculation.

10 Mr. Buckley. I think the revenue increase you get  
11 here is by people having withholding rather than making  
12 estimated tax benefit payments. So that there is an  
13 estimate as to the number of people who take advantage of  
14 this. This increases, speeds up the revenue slightly from  
15 those people because they would have to otherwise make  
16 estimated tax payments.

17 Senator Baucus. I understand. But how do you make  
18 that calculation?

19 Mr. Buckley. There has been voluntary withholding in  
20 the past and I assume our estimators have used utilization  
21 rates for those voluntary withholding provisions to make  
22 an estimate of to what extent people would utilize this.

23 Senator Bradley. Like last year it would be heavy  
24 taxes came out of Missouri and Iowa and Illinois because  
25 of the crop disaster payments.

1           The Chairman. Yes.

2           Senator Baucus. I am just curious. So how many  
3 people? What percent? I do not want to get into too much  
4 detail. But what percent do you think might withhold  
5 voluntarily?

6           Mr. Buckley. Senator, I do not know. Our estimate  
7 for the first year that this would be effective would show  
8 an increase of \$183 million. Now, that is pretty much a  
9 one-time pickup. But we assume that there will be a fair  
10 number of people who wish to avail themselves of this.

11          Senator Hatch. Max, I might say that this is one of  
12 the areas in which they quite willingly use a dynamic  
13 revenue estimating procedure. It is perfectly legitimate  
14 here when you need money. It is not just so legitimate  
15 when you think there are other ways of using it.

16          The Chairman. Well, yes. That is why I said hurry.  
17 Now, I want you particularly to hurry by Item I.

18          Mr. Buckley. Well, the next item, H, is the repeal  
19 of the same condition, drawback provision under the trade,  
20 Section 313(J)(12) of the Trade Act.

21          The next item, I, would decrease the rate of interest  
22 paid on overpayments of income tax to the federal rate,  
23 plus .5 percentage points.

24          The Chairman. Please, Mr. Buckley, we have to talk  
25 about this.

1           Mr. Buckley. This would apply to income tax with  
2 overpayments in excess of \$2,000 and to other overpayments  
3 of tax.

4           The Chairman. Fine. Now, stop right there. I think  
5 Senator Pryor was first.

6           Senator Pryor. I just think that Treasury is going  
7 the wrong way, Mr. Chairman, on this. Right now, if I  
8 understand the existing law, if the government owes a  
9 taxpayer for any reason, the government pays 2 percent  
10 over the federal short-term interest rate. I think that  
11 is correct. Am I doing this correct? I am going to walk  
12 through this.

13          Mr. Buckley. Yes.

14          Senator Pryor. But if a taxpayer owes the  
15 government, that taxpayer has to pay 3 percent interest.  
16 And now rather than bringing these together we are further  
17 widening this. And the concept it appears to me, or the  
18 philosophy appears, that we are trying to make the  
19 Internal Revenue Service of a bank of some sort, to make  
20 money off of those taxpayers, off of the interest that  
21 they owe to the government.

22          This concerns me and gives me some problem. I just  
23 want to state that. What revenue, by the way, do we --

24          The Chairman. Well, I have to report -- and Mr.  
25 Buckley confirm, and Secretary Samuels, and Mr. Gale, and

1 Mr. Prater -- yesterday the estimates given us by Treasury  
2 held that this would provide \$2.6 billion over the five-  
3 year period. Where am I here -- \$2.682 -- why this does  
4 not say \$2682.5 I will never know, but it says \$2.682.

5 Anyway, overnight the Joint Tax Committee, I believe,  
6 Mr. Buckley --

7 Senator Pryor. CBO.

8 The Chairman. CBO.

9 Mr. Buckley. These are CBO figures.

10 The Chairman. The CBO changed that estimate from  
11 \$2.6 to \$1.3 billion, which is --

12 Senator Pryor. Over five years?

13 The Chairman. Over five years. They cut it in half.  
14 I think we ought to first of all -- I invite Secretary  
15 Samuels to comment on Senator Pryor who has been talking  
16 about the taxpayer's bill of rights for a good many years  
17 in this committee.

18 Mr. Samuels. Senator Pryor, if I could say, first,  
19 the proposal will affect approximately one percent of the  
20 refunds that the Internal Revenue Service pays. So it  
21 will affect only a very small number of the refunds, of  
22 the refunds with interest that are paid to individuals  
23 because that is all refunds. That one percent is all  
24 refunds.

25 Of the refunds that are paid with interest, almost 90

1 percent of the refunds would not be affected by this  
2 proposal. So it only applies to larger refunds.

3 In the Tax Reform Act of 1986 Congress recognized  
4 that interest rates for over payments and under payments,  
5 one, did not reflect market conditions and having the same  
6 rate could distort taxpayer behavior. We have been  
7 looking at this proposal for some time because two over  
8 the operable federal rate, at today's rates, is 7 percent  
9 which is, of course, very much higher than what a taxpayer  
10 would get if the taxpayer purchased a short-term  
11 government security.

12 So there is a bonus element of interest where the  
13 government goes out to the debt markets, borrows at a much  
14 lower rate. But if you happen to invest in government, in  
15 effect government securities because you have a tax  
16 refund, the rate under current law is 7 percent.

17 Our proposal would reduce that under today's  
18 conditions to 5.5 percent and that compares to, if you  
19 were talking about money market fund rates, they are under  
20 4 percent. So it is still, if you look at the economics  
21 for taxpayers in terms of comparing what they would get if  
22 they bought short-term government securities and they get  
23 interest on refunds, it is still a good deal.

24 So we were reducing in effect the bonus that is being  
25 paid to taxpayers through interest on refunds. As I say,

1 this affects a very small number of taxpayers. Of all the  
2 taxpayers getting refunds, it is approximately one  
3 percent.

4 Senator Bradley. What is the biggest amount of a  
5 single return, the largest amount? In other words, what  
6 you just said to us is under current law if you have a lot  
7 of money overpay your taxes and you will get more interest  
8 back than you would if you take the same amount of money  
9 and bought government treasuries.

10 Now, was somebody smart enough to figure this out and  
11 put a hefty sum of money into --

12 Mr. Samuels. We had heard anecdotal evidence that  
13 there was that behavior, which is why we had been thinking  
14 about this proposal for some time.

15 The Chairman. I would like to say that the  
16 cautionary tale that Senator Packwood gave us early on  
17 about his grandmother's boarding house in Nome, everybody  
18 is a gambler -- some are smart and some are dumb. I think  
19 anybody who sent an extra million dollars to the Treasury  
20 betting that the IRS would send it back with interest,  
21 that is my idea of an inside straight.

22 (Laughter.)

23 Mr. Samuels. Mr. Chairman, these refunds primarily  
24 arise from amended returns, not the original return,  
25 amended returns, and from audits.

1           The Chairman. And from audits. All right, sir.  
2           Senator Baucus?

3           Senator Baucus. Mr. Chairman, I just think it is a  
4 matter of equity, it is unseemly to not provide the same  
5 interest rate, deficiency payments compared with refunds.  
6 I mean, it just seems to me, what is sauce for the goose  
7 is sauce for the gander. I know it helps Uncle Sam raise  
8 a little money with the proposal that you have, that is  
9 the spread. And there may be anecdotal evidence.

10           But I just do not think -- I think it is the  
11 difference which causes people in the country to really  
12 start to tune out and have less competence in the Federal  
13 Government. When the interest rates they get, you know,  
14 on a refund is different from a deficiency payment. You  
15 know, you can rationalize the difference, as you have, Mr.  
16 Samuels. But I think for most Americans that is a  
17 rationalization. It just does not ring true.

18           The more we go down this road and kind of pad or  
19 tilting the deck more toward Federal Government against  
20 the taxpayers, the more it just breeds discontent and I  
21 just think it is wrong. I just think we should correct it  
22 while we have a chance.

23           Senator Grassley. Mr. Chairman?

24           The Chairman. Yes, sir.

25           May I just record that the Treasury had estimated

1 that this would bring in \$2.6 billion; but by end of late  
2 last evening, at midnight, CBO estimated \$1.3 billion.

3 Senator Wallop. They dropped an anecdote.

4 The Chairman. We dropped an anecdote.

5 Senator Grassley, did you have something?

6 Senator Grassley. Well, Mr. Chairman, there are  
7 several factors that are involved here. I know we are  
8 only talking about a very isolated issue. But this is all  
9 part of another game that goes on between the Treasury on  
10 the one hand and Senator Pryor and I on the other hand. I  
11 mean, Senator Pryor and other members of this committee on  
12 the other hand. I have been involved to some extent.

13 Anyway, this cannot be divided from this whole issue  
14 of taxpayer's bill of rights. This is a very small  
15 provision of that, but we seek this equity in here. On  
16 the other hand, Treasury does not want us to pass the  
17 taxpayer's bill of rights and they are always trying to  
18 impress upon us everything that they are doing to enhance  
19 the taxpayer's bill of rights.

20 In the recent budget there was a proposal striking  
21 money that had been in there to better educate IRS agents  
22 about working with the taxpayers and being concerned about  
23 taxpayer's rights. They do not want us to pass this bill,  
24 but they say we are going to be working with our people to  
25 be more concerned about the rights of taxpayers.



1           Another instance this year, when the budget was up we  
2 had a situation where they wanted 5,000 more agents. So  
3 we agreed in the Senate budget process to provide for  
4 5,000 more agents on the condition -- this was worked out  
5 with Senator Pryor -- that these 5,000 agents would not be  
6 passed or hired until we got taxpayer's bill of rights.  
7 Then out of conference, you know, 5,000 agents come out  
8 but not the taxpayer's bill of rights.

9           Why? Because they tell us downtown that they are  
10 going to do it administratively and through education and  
11 through a lot of other ways enhance taxpayer's bill of  
12 rights. Well, now here for a third time we have the  
13 department up here trying to extract certain things out of  
14 the taxpayer's bill of rights without carrying through on  
15 their efforts.

16           I just do not think it should be done, regardless of  
17 the need of the revenue, regardless of the legitimacy of  
18 it. As described by Mr. Samuels this is a good deal.  
19 Well, if it is a good deal for people over \$2,000 refund  
20 it ought to be a good deal for everybody as far as I see  
21 it.

22           The Chairman. Thank you, Senator Grassley.

23           Senator Conrad?

24           Senator Conrad. Mr. Chairman, I think this is an  
25 issue that has important symbolic value that goes way

1 beyond the dollars involved and it goes really to a  
2 principle that Senator Grassley has raised, Senator Baucus  
3 has raised, Senator Pryor has raised in the past  
4 circumstances. I am sure we will be talking about it  
5 today.

6 It is just a mistake. We should not do this. We  
7 should not differentiate what the government pays from  
8 what taxpayers are expected to pay. That is the kind of  
9 circumstance that causes a decline in respect for  
10 government I believe. I really think it is very  
11 fundamental.

12 There is enough cynicism abroad in the land about  
13 government and the elitist nature of government for us not  
14 to adopt this kind of differential that sends a signal  
15 that the Federal Government pays at one rate and taxpayers  
16 pay at a higher rate. I just think it is wrong.

17 I hope very much that we do not pursue this as a  
18 funding source.

19 The Chairman. There speaks a sometime Tax  
20 Commissioner.

21 Senator Pryor. Mr. Chairman?

22 The Chairman. Just a second.

23 Senator Wallop had a comment.

24 Senator Wallop. Mr. Chairman, I will be brief.

25 The Chairman. You do not have to be brief.

1           Senator Wallop. No need to be. We have lots of  
2 time.

3           The Chairman. Well, say what you want.

4           Senator Pryor. If he does not have to be brief, I  
5 would like to be recognized one more time.

6           (Laughter.)

7           The Chairman. Senator Wallop?

8           Senator Wallop. I want to just align myself with  
9 those comments. I think one of the most reassuring things  
10 about American politics is it does not matter who is in  
11 the White House, Treasury behaves the same way.

12          (Laughter.)

13          Senator Wallop. I am from the IRS and we collect  
14 taxes. That is what we do. What I find terribly  
15 offensive about the conversation here this morning in this  
16 thing is that it only applies, meaning you know that there  
17 is a class of Americans about whom we need not squander  
18 our concern.

19          The other thing about distorting taxpayer behavior,  
20 it all comes down to the feeling Mr. Samuels said, the  
21 government has an inalienable right to our money and we  
22 keep what we keep by grace. I think that does exactly  
23 what Senator Conrad says. It adds to cynicism, disrespect  
24 and it adds to your need for another 5,000 agents because  
25 people are stopping paying their taxes because they do not

1 respect it or us anymore.

2 The Chairman. I take your point, sir. But I think  
3 it should be said for the American people and the  
4 government that we are the only major nation in the world  
5 in which citizens self-assess. Is that not right, Mr.  
6 Samuels, or one of the few?

7 Mr. Samuels. One of the few, yes.

8 The Chairman. And the rates of --

9 Senator Wallop. But the rates decline. The rates of  
10 cooperation are declining. I think we have to examine  
11 why.

12 The Chairman. Then if they do, we should be worried.

13 Senator Wallop. And it is the taxpayer's bill of  
14 rights.

15 The Chairman. If they are, we should be concerned.  
16 You are absolutely right.

17 Senator Pryor?

18 Senator Pryor. Thank you, Mr. Chairman. Mr.  
19 Chairman, in response to Senator Wallop there are about  
20 117,000 employees of the Internal Revenue Service, and we  
21 have to have them. I am not arguing that. But I might  
22 add that the Internal Revenue Service Commissioner, the  
23 IRS Commissioner, stays on the average, at least for the  
24 last 30 years, of two-and-one-half years at their post.

25 I asked one of the Commissioners a few years back,

1 how many people do you get to hire when you come in as  
2 Commissioner? I think the answer was six. The rest of  
3 them pretty well stay there. And as you can see, it is  
4 very, very hard to change the mentality of the IRS.

5 Having said that, very few people I imagine at this  
6 dias would recognize the name of Raymon Portillo. He is a  
7 74-year-old house painter from El Paso, Texas. Mr.  
8 Portillo seven years ago was determined by the IRS to owe  
9 them \$8,000 -- owe the IRS \$8,000. He questioned this  
10 finding of the IRS. He finally fought it as long as he  
11 could. The penalties and interest, Mr. Chairman, grew to  
12 \$24,000. He finally had to go and borrow the money from  
13 his family to pay the IRS.

14 His attorney who took the case on a pro bono case in  
15 El Paso appealed this matter to the Fifth Circuit Court of  
16 Appeals. The Fifth Circuit Court of Appeals determined --  
17 and I think there are a lot of people with the Department  
18 who recognized the Portillo case -- the Fifth Circuit  
19 determined that the IRS had wronged Mr. Portillo. They  
20 ordered the Internal Revenue Service to pay him back, plus  
21 pay his attorney's fees, which by the way is in the  
22 taxpayer's bill of rights we passed in 1989.

23 What has happened since then? One, the IRS, I do not  
24 think, has paid Mr. Portillo back.

25 The Chairman. Oh, no.

1           Senator Pryor. Second, when they do pay him back  
2 they are going to be paying him, Secretary Samuels, at a  
3 lesser rate than he had been charged in interest by the  
4 Internal Revenue Service. This case has broken this man.  
5 Had it not been for a pro bono lawyer taking this case to  
6 the Court of Appeals and perhaps to the U.S. Supreme  
7 Court, I do not know what would have happened to him.

8           The Internal Revenue Service has probably spent  
9 \$200,000 to collect \$8,000 and the interest we are going  
10 to pay Mr. Portillo eventually is going to be less than he  
11 has been paying to the Federal Government. I urge you,  
12 sir, to reconsider your position.

13          The Chairman. Thank you, Senator Pryor. I am sure  
14 Secretary Samuels will do that.

15          (Laughter.)

16          Senator Hatch. Senator Pryor is from Arkansas, too.

17          Senator Pryor. And if President Clinton knew about  
18 Mr. Portillo I think he would share my view. I hope so.

19          The Chairman. Are you saying that there is a citizen  
20 in this country, a taxpayer, the President does not know  
21 about?

22          Senator Pryor. Well, he relates to the Portillos of  
23 the world. I can tell you that.

24          The Chairman. There you are.

25          Item J.

1           Mr. Buckley. Item J is a modification to rounding  
2 rules for cost of living adjustments, to certain dollar  
3 limits that apply for pension purposes. This basically  
4 provides indexing in increments rather than just in  
5 dollars. This proposal would be effective for years  
6 beginning after December 31, 1994.

7           The next item, K, would extend --

8           The Chairman. Mr. Buckley, it will help us if you  
9 just record the five-year revenue gain.

10          Mr. Buckley. The five-year would be \$458 million.

11          The Chairman. Fine.

12          Mr. Buckley. The next item would extend the current  
13 Internal Revenue Service user fee program. This would  
14 apply to requests made after September 30, 1995 and before  
15 October 1, 2000; and the five-year number is \$124 million.

16          The next item is increasing the inclusion of Social  
17 Security and railroad retirement benefits paid to  
18 nonresident aliens. In 1982 when they first taxed Social  
19 Security it provided that in the case of a nonresident  
20 alien 50 percent of the benefit would be subject to the 30  
21 percent withholding tax regardless of the income of the  
22 nonresident alien.

23          Last year when they increased the income tax to 85  
24 percent for domestic taxpayers, this was not changed. The  
25 proposal would increase the 50 percent inclusion for

1 nonresident aliens to 85 percent, which is consistent with  
2 what was done last year.

3 Also consistent with what was done in last year's  
4 bill, the additional revenues provided by this change,  
5 would be deposited in the Medicare trust fund. This  
6 change would raise \$303 million over five years.

7 The next provision would deny the earned income  
8 credit for nonresident aliens. We do not have a separate  
9 item with this proposal. We have estimated this with Item  
10 N. So let me describe Item N and then I will give you the  
11 revenue for the two items.

12 Item N would make two changes to the earned income  
13 credit for members of the Armed Services. First, it would  
14 provide that members of the armed forces stationed outside  
15 the United States would be eligible for the earned income  
16 credit.

17 Second, it would require the Department of Defense to  
18 report to members of the Armed Services of certain  
19 nontaxable allowances that are taken into account in  
20 determining the amount of the earned income credit. These  
21 changes in addition with the other earned income credit  
22 changes would raise \$298 million over five years.

23 The next item, O, would permit the use of certain  
24 excess pension assets for retiree health. This would be a  
25 five-year extension of the current law provisions



1 permitting use of excess defined benefit assets to provide  
2 retiree health benefits. This provision would raise \$362  
3 million over five years.

4 Senator Danforth. Mr. Chairman?

5 The Chairman. Senator Danforth?

6 Senator Danforth. Mr. Chairman, on this last Item O,  
7 I am going to make a request, that is that Mr. Gale who is  
8 very familiar with this issue be asked to look at it and  
9 see if he can come up with a constructive recommendation  
10 on this matter.

11 The purpose of this section of the Internal Revenue  
12 Code, Section 420, is to allow businesses to transfer  
13 excess funds from pension plans into their health plans to  
14 fund their health plans. It is assumed by this Section of  
15 the Code that there are cases where there are excess funds  
16 and it is defined, as I understand, in the law what is  
17 meant by excess funds.

18 Now, this recommendation which is a simple extension  
19 of this provision of the Code raises \$362 billion over  
20 five years simply by extending it. However, we are told  
21 by constituents that the present form of Section 420  
22 really does not work very well.

23 One of the reasons it does not work very well is that  
24 it requires if you are going to transfer into the health  
25 plan a maintenance of effort. That is that the employer

1 must maintain the current level of health plan  
2 contribution per employee for at least five years.

3 Now, we are addressing the question of health care  
4 and how to try to get a grip on health care and how to get  
5 people to move into managed competition, managed care, to  
6 try to provide health coverage for more Americans, but to  
7 try to contain the cost of health care.

8 The maintenance of effort requirement is, I think,  
9 antithetical to what we are attempting to do because it  
10 makes an artificial freeze of maintenance of effort as  
11 part of the Internal Revenue Code.

12 Another thing that it does is that it requires that  
13 all pension plan participants be vested in their accrued  
14 benefits. I think that this presents a bookkeeping  
15 problem, because as I understand it all means people who  
16 have been there just one day.

17 But the particular problem as far as employers are  
18 concerned is the maintenance of effort requirement. So,  
19 therefore, those companies that would otherwise want to  
20 make this transfer and should be encouraged to make this  
21 transfer do not do so.

22 Now, why is this a question that helps us with  
23 respect to our money problem on the GATT agreement? Well,  
24 when an employer contributes money from the excess funds  
25 from a pension fund to the health plan, that contribution

1 is not deductible.

2           However, when it comes from the earnings of the  
3 company, it is deductible. Therefore, to the extent that  
4 Section 420 is utilized by employers, it helps the  
5 employers but it also helps us raise money. This is one  
6 case where increasing the revenues for the Treasury is a  
7 benefit to those employers that use it.

8           So we have made certain recommendations and Mr. Gale  
9 is familiar with those recommendations. I would hope that  
10 those recommendations could be included in this, both from  
11 the standpoint of trying to help us with our money  
12 problem, and from the standpoint of making Section 420  
13 more usable for employers. That would be my request, Mr.  
14 Chairman, that Mr. Gale serve as the emissary on this  
15 issue.

16           The Chairman. Senator Danforth, thank you.

17           Mr. Gale, you are obviously familiar with this  
18 question.

19           Mr. Gale. Yes, we have discussed the issue with  
20 Senator Danforth's staff. Let me say that the original  
21 concept here was to simply extend current law without  
22 getting into decisions of changing the policy reflected in  
23 the 1990 Budget Act when this provision was originally  
24 enacted.

25           But I think there are issues that Senator Danforth

1 has raised that we should give a look to and see what we  
2 can come up with.

3 The Chairman. Well, we surely will do.

4 Does Secretary Samuels wish to comment?

5 Mr. Samuels. Mr. Chairman, we have evaluated the  
6 proposal and we are satisfied with extending the provision  
7 as it is under current law. When this provision was  
8 adopted in 1990 there were obviously considerations that  
9 required balancing of the employer's interest as well as  
10 the employee's interest.

11 We were satisfied with that agreement. So at this  
12 point in connection with kind of moving the Uruguay Round  
13 financing package forward, we were thinking that it was  
14 not really useful to start changing the policy.

15 The Chairman. Yes. But Senator Danforth has some  
16 concerns that address health matters. Is that not  
17 basically it?

18 Senator Danforth. Well, I think it will help with  
19 our money problem and I think that it will make the  
20 program which is now part of the law usable by employers  
21 that are not now using it.

22 The Chairman. Right. Well, I think we will just  
23 proceed with some expedition in that matter. Thank you,  
24 Senator Danforth.

25 I think that about concludes our work this morning.

1 I have to tell you, Mr. Secretary, that you are \$4 billion  
2 short.

3 Senator Baucus. At least.

4 The Chairman. At least says Senator Baucus. We will  
5 get to work on this. I mean, we are a big government and  
6 we can handle it.

7 Mr. Samuels. Mr. Chairman, if I could say, the  
8 package that is in the Chairman's mark does not cover the  
9 whole amount needed. The balance is and will be covered  
10 by actions that are going to be taken with other  
11 committees that are in the jurisdiction of the other  
12 committees.

13 The Chairman. That is right.

14 Mr. Samuels. And those actions plus the use of the  
15 pay-go balances, which has been used before numerous  
16 times. There have been five times when pay-go balances --

17 The Chairman. Five times exactly.

18 Mr. Samuels. -- have been used. Will add up to meet  
19 the revenue target that we are required to meet. As you  
20 know, this is because we are reducing taxes and we are  
21 trying to have ultimately a net tax cut and we believe  
22 that in the end that is the package we will --

23 The Chairman. Right. We are not in any way  
24 objecting to what you -- taking any exception to whatever  
25 you said. I repeat, we are short.

1 Senator Packwood?

2 Senator Packwood. I think, Mr. Secretary, you were  
3 here when I made my opening statement. If you are going  
4 to go with the pay go, I will go with you. But the  
5 administration understands this is an all or nothing roll  
6 of the dice. And if we lose, it is all dead. I mean,  
7 that is a hell of a gamble.

8 The Chairman. That was drawing to an inside royal  
9 flush. I just also want to record that my reading of the  
10 committee's response to Item I -- Senator Grassley,  
11 Senator Pryor, Senator Baucus, Senator Wallop, Senator  
12 Conrad -- I see a major absolving pretty fast there.

13 Senator Danforth, you wished to comment.

14 Senator Danforth. Well, Mr. Chairman, just a matter  
15 of information. But does the administration's program  
16 include the pioneer preference provision?

17 Mr. Samuels. Senator Danforth, the matters that are  
18 within the jurisdiction of the other committees includes  
19 the pioneer preference program.

20 Senator Danforth. Thank you, Mr. Chairman.

21 Senator Wallop. We would have a similar problem on  
22 the marianas in the Energy Committee. I think that bears  
23 an assumption that that will be done without complaint,  
24 and I am not certain that is a good assumption.

25 Senator Baucus. Mr. Chairman, might I ask, too. Mr.

1 Samuels, does that mean that the export enhancement  
2 program is in the Agriculture Committee?

3 The Chairman. EEP.

4 Mr. Samuels. Senator Baucus, the outlay savings  
5 include reductions in agricultural programs that flow from  
6 the Uruguay Round Agreement.

7 Senator Baucus. That is correct. \$700 million were  
8 but not the \$1 billion. That is another matter. We have  
9 a choice what to do with the \$1 billion reduction in EEP  
10 required under the Uruguay Round. All other countries and  
11 taking their cuts and transferring them over to green  
12 light programs.

13 The Chairman. Do not tell him about green light  
14 programs.

15 Senator Baucus. Programs that are properly used for  
16 agriculture. So the point here is that the Agriculture  
17 Committee does have jurisdiction over export enhancement  
18 and the Agriculture Committee has within its power, I  
19 understand, to recommend whether that \$1 billion, not the  
20 \$700 million, but the \$1 billion just evaporates and is  
21 gone. Therefore it counts as the budget matter or, in the  
22 alternative is used for other agriculture programs, which  
23 means that it cannot be counted.

24 Mr. Samuels. Right. I understand that if the  
25 Agricultural Committee decides to spend the EEP savings

1 then we will not have the EEP savings to finance GATT. Of  
2 course, we will not have any spendings to spend unless we  
3 can get our financing package.

4 The Chairman. Unless we get a Uruguay Round, yes,  
5 which is hugely advantageous to American agriculture. I  
6 mean, just the tariffication of quotas and the phasing out  
7 of export subsidies is hugely important.

8 Senator Chafee. Mr. Chairman?

9 The Chairman. Yes, sir, Senator Chafee.

10 Senator Chafee. I wonder if you might outline for us  
11 what the next step is.

12 The Chairman. Well, we will meet tomorrow morning  
13 and see if we have not got a more secure financing  
14 package.

15 Senator Chafee. I was wondering what your intentions  
16 might be on voting on the other votes.

17 The Chairman. Well, I do not think -- which others?

18 Senator Chafee. Well, I was thinking of the durum  
19 wheat.

20 The Chairman. Well, we will get to them as time  
21 happens and it goes along. But I think we have this  
22 financing issue which is the compelling one at this time.

23 Senator Chafee. Yes.

24 The Chairman. There is a Republican Conference at  
25 10:00 tomorrow?



1           Senator Packwood.   Yes.

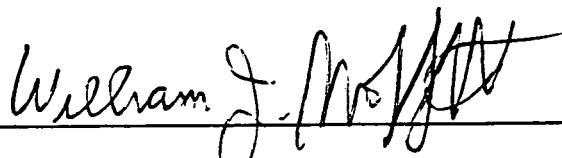
2           The Chairman.   Then we will come in at 11:00.   All  
3 right, with thanks to all, we stand adjourned until 11:00.  
4 We appreciate very much the staff work that got us a  
5 unanimous agreement.

6           (Whereupon, at 11:51 a.m., the above-entitled meeting  
7 was recessed, to resume at 11:00 a.m. on July 29, 1994.)

8

C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Committee Meeting held before the United States Senate Committee on Finance on July 8, 1994, were transcribed as herein appears and that this is the original transcript thereof.



WILLIAM J. MOFFITT  
Official Court Reporter

My Commission Expires April 14, 1999