

Gilmour
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1 EXECUTIVE COMMITTEE MEETING
2 TUESDAY, AUGUST 2, 1994
3 U.S. Senate,
4 Committee on Finance,
5 Washington, DC.

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

10 Also present: Senators Baucus, Boren, Bradley, Pryor,
11 Rockefeller, Daschle, Breaux, Conrad, Packwood, Dole,
12 Danforth, Chafee, Grassley and Wallop.

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

15 Also present: Rufus Yerxa, Deputy U.S. Trade
16 Representative; Ira Shapiro, General Counsel, USTR; Susan
17 Esserman, Assistant Secretary for Import Administration,
18 U.S. Department of Commerce; Jennifer A. Hillman, Chief
19 Textile Negotiator, USTR.

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

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1 The Chairman. A very good morning to our distinguished
2 guests and our indefatigable staff, Ambassador Yerxa, and
3 Counselor Shapiro. This will be, if all goes well, the
4 concluding session of our consultative work on the fast-
5 track legislation that will be informally passed to the
6 President and then returned to us as legislation. It is an
7 epic event.

8 The Uruguay Round, if I may say one last time, is the
9 culmination of 60 years in American foreign trade policy,
10 and bodes hugely well for the world economy and for our
11 economy, and we do not want to put that in jeopardy.

12 I have to report to the committee, respectfully,
13 particularly to my colleague, Senator Packwood, that we
14 make decisions by vote in this committee, as in this body,
15 and there are not now, nor is there any prospect of there
16 being, sufficient votes to provide for a further fast-track
17 extension in this fast-track legislation.

18 There are arguments in principle against doing that,
19 and they have been made very well by a number of Senators--
20 most effectively, Senator Packwood--that the full Senate
21 should have the right to decide whether to give up its
22 Article I rights or to cede some of its Article I authority
23 to the President in these matters -- not just this
24 committee, but the full Senate. The same applies to the
25 CBI and the GSP measures.

1 So, having successfully and on a bipartisan basis
2 agreed to the financing for the measure, I would like this
3 morning to take up amendments which several Senators have
4 indicated they have wished to offer, and at the end of the
5 day send the matter to conference with the House.

6 The Senators who were present at the Social Security
7 conference will recall that Acting Chairman Gibbens said
8 that the House had not settled yet on the matter I have
9 just discussed, nor yet on financing, so when we get there
10 there will still be some work to do. But, there we are.

11 Senator Packwood?

12 Senator Packwood. Well, Mr. Chairman, I have mixed
13 emotions. I wish we could extent fast-track authority.

14 The Chairman. As do I.

15 Senator Packwood. I just talked with Mickey Kantor,
16 the Trade Representative, and he said they now have a new
17 proposal, if I understand it, Mr. Ambassador, of two and a
18 half years, and labor and environment would be in Section
19 I and not the fast-track.

20 Rufus, do I have that roughly right, or has he
21 communicated this to you yet?

22 Ambassador Yerxa. Yes, he has.

23 Senator Packwood. All right.

24 The Chairman. No one has told me.

25 Senator Packwood. Well, I was just on the phone right

1 there when he got me when I came in.

2 And then I look at this article in the Journal of
3 Commerce, "Pressed by Labor, Administration Kills Fast-
4 Track Compromise in the House." Apparently, Labor just
5 will not back off and will not support the Uruguay Round,
6 period, unless there is fast-track authority with labor and
7 environmental provisions in it, if I read this article
8 correctly.

9 I told the Chairman, for any kind of fast-track
10 legislation that is absolutely clean, I am not sure there
11 are very many votes on this side, with any in it. Forget
12 labor and environment; if there is anything else in it, I
13 may be the only vote. And, I think the Chairman said, you
14 may be the only vote on your side, if it is clean.

15 But I have got a number that are not even going to vote
16 for it if it is clean. Apparently, the Administration just
17 cannot bring itself to say that they will go clean, so I do
18 not know where that leaves us.

19 My highest priority is to ratify the Uruguay Round. My
20 second next priority would have been to have a clean
21 extension of fast-track so that we can get on with
22 negotiating what I would hope to be a Western Hemisphere
23 Free Trade Agreement over the next decade and start to
24 bring in some of the Pacific nations. But I cannot risk
25 the Uruguay Round for the hope of getting the fast-track.

1 The Chairman. Which we will get to first thing in the
2 next Congress.

3 Senator Packwood. We will get to it next year, but
4 then we will have to go through it on straight legislation
5 and pass it by a majority vote.

6 The Chairman. Sure.

7 Senator Packwood. And it will be open to amendment and
8 all of that, which is difficult. But I am not sure that we
9 have any choice, Mr. Chairman. I don't quite want to sign
10 off. I keep hoping, praying, but I fear your assessment is
11 correct.

12 The Chairman. Thank you, sir.

13 Senator Baucus?

14 Senator Baucus. Mr. Chairman, I essentially agree with
15 Senator Packwood. I think that it would be helpful if we
16 could pass fast-track extension on ratification of the
17 Uruguay Round, and it was my understanding that the
18 Administration did have pretty good compromise, basically,
19 as outlined by Senator Packwood.

20 The argument has been made here, and I think it is an
21 appropriate argument, that in the future the Administration
22 always have environmental side agreements or include
23 environmental provisions or labor provisions in any
24 subsequent trade agreement it may reach that it would then
25 send to the Congress, and certainly Congress could

1 implement that or not implement it. We really do not need
2 the labor language, we do not need the environmental
3 language. Although it is helpful, agreements can still be
4 reached without them.

5 And I would hope that we would still find a way to
6 extend fast-track on this fast-track, but in a much
7 modified, watered down way, as the Administration has
8 suggested.

9 Now, I understand that is three years, or two and a
10 half years with a two-year extension request and so forth,
11 and labor and environment put in Title I, and to oppose
12 language that would prevent considering environmental and
13 labor matters, and I forgot the other provision that I
14 talked to Ambassador to suggest.

15 There is always a way around here. It is only August
16 2nd. I would suggest that we keep our minds open and we
17 will find a way to do it.

18 The Chairman. We will be going ahead.

19 Senator Baucus. That is right. That is right.

20 The Chairman. We want to congratulate Senator Conrad
21 on the wheat agreement.

22 Senator Baucus. There are lots here, Mr. Chairman.
23 Senator Conrad, Senator Daschle.

24 The Chairman. Senator Daschle.

25 Senator Baucus. There is a large number for that.

1 The Chairman. The dispute mechanisms work, and that is
2 what trade is about.

3 Senator Dole?

4 Senator Dole. No questions, Mr. Chairman.

5 The Chairman. Senator Danforth?

6 Senator Danforth. Mr. Chairman, I think that you made
7 the right decision about fast-track. I compliment you for
8 that.

9 The Chairman. Thank you, sir.

10 Very well. The bill is open to amendment.

11 Senator Baucus. Mr. Chairman?

12 The Chairman. Senator Baucus.

13 Senator Baucus. Mr. Chairman, I have an amendment on
14 Super 301.

15 The Chairman. Yes, sir.

16 Senator Baucus. Essentially, the amendment I am
17 offering is co-sponsored by Senators Danforth, Riegle, and
18 Daschle. It extends Super 301, in statute, for five years.
19 It is exactly the same Super 301 that we have enacted in
20 previous years; it is the same as the 1988 Trade Act
21 language. This committee passed the same language in the
22 NAFTA implementing bill by a vote of 9-2.

23 Third, it is weaker than the provision the President
24 proposed in putting people first when he campaigned for
25 President. When the President campaigned for President he

1 said that we should not only enact Super 301, we should be
2 stronger and sharper. Well, this is not stronger and
3 sharper, this is the garden-variety Super 301.

4 Beyond that, Super 301 has worked. It has been very
5 helpful. It has encouraged Japan to agree to supercomputer
6 permits and satellites. As far as product provisions, it
7 has helped Brazil resolve import licensing problems.

8 I must say, Mr. Chairman, too, Super 301 has helped
9 bring around countries to avoid being named. Good examples
10 are Korea, and Taiwan.

11 The Chairman. I think that is true.

12 Senator Baucus. I must say also that Super 301 has
13 been supported by the Reagan Administration, by the Bush
14 Administration, and I strongly urge the committee to adopt
15 it and put it in statute for five years.

16 The Chairman. Fine.

17 Senator Baucus. It is not permanent, it would just be
18 for five years and we would have an opportunity to renew.

19 The Chairman. Senator Danforth, would you like to say
20 something about this creature of yours?

21 Senator Danforth. It is a very, very handsome
22 creature, Mr. Chairman. I think Senator Baucus is correct.
23 Really, Super 301 only had a one-year life. It was
24 supposed to be for two years, but it existed for one year.
25 And I think it was Carla Hills who was then the U.S. Trade

1 Representative.

2 The Chairman. I believe so.

3 Senator Danforth. And I remember her saying that the
4 month before the date for naming the priority countries was
5 the most active and successful period of trade negotiations
6 that USTR ever had.

7 I think that, as opposed to dealing with trade
8 barriers, there are just so many things that crop up one
9 after another, so that as soon as you get rid of one after
10 a tremendous effort, another one pops up. Super 301 offers
11 the possibility of dealing with them in the aggregate, and,
12 therefore, it is very constructive.

13 The Chairman. Good.

14 Senator Rockefeller. Mr. Chairman.

15 The Chairman. Thank you, Senator Danforth.

16 Senator Rockefeller?

17 Senator Rockefeller. I do think that pressure and
18 accountability are important in this world economic future
19 which is called trade. Things tend to happen at the last
20 moment.

21 I do not count myself a great fan of Heath Shuler at
22 this particular point because of his negotiations with the
23 Washington Redskins. I mean, my God, the fellow just got
24 a degree, I assume. Actually, he did not. He just
25 probably left Tennessee. But pressure counts. Pressure

1 works.

2 I would just be interested if USTR had any comments
3 they wanted to make on this. I support this amendment very
4 strongly. I do not think it is the beast that some
5 countries make it out to be. I do think it encourages
6 accountability and I think accountability is the name of
7 the game for the future. Thank you.

8 The Chairman. Senator Bradley, did you have something?

9 Senator Bradley. No questions, Mr. Chairman.

10 The Chairman. Ambassador Yerxa, would you like to
11 respond?

12 Ambassador Yerxa. Well, I do not have any comment on
13 Heath Shuler, but I might ask Mr. Shapiro to comment on
14 Super 301.

15 Mr. Shapiro. Mr. Chairman, the Administration has
16 obviously supported Super 301, and the President put it
17 into an Executive Order earlier this year in consultation
18 with members of the committee, particularly Senator Baucus,
19 because he wanted our trading partners to know what we saw
20 as the schedule and when we were going to highlight the
21 priorities.

22 We also appreciate the flexibility that Senator Baucus
23 and other sponsors have shown in meeting some of the
24 concerns we had here with respect to the amendment as first
25 put forth.

1 We have shared with them, and I would restate now, a
2 preference for the way the Executive Order referred to
3 priority foreign country practices as opposed to a separate
4 listing of countries and practices.

5 I realize, from consultation with the committee, that
6 committee members do not agree with that, or many of the
7 sponsors do not agree with it. But we have found that it
8 highlights the trade barriers and makes the point without
9 essentially listing countries as unfair traders, which can
10 have some effects positive and some negative as well.

11 The Chairman. Thank you, counselor.

12 I think we are ready to vote.

13 Senator Bradley. Mr. Chairman?

14 The Chairman. Senator Bradley.

15 Senator Bradley. Let me just make the point that the
16 problem is trade distorting practices, whatever country
17 they take place in. I think the Administration's point is
18 well taken.

19 If your objective here is really to bash a particular
20 country, I am not sure 301 gives you the best tool to do
21 that. It is one that we have used to some, although
22 limited, effect, so I am a little more skeptical about its
23 value than the proponent of the amendment.

24 Five years is a long time. I do not know why we chose
25 five years as opposed to three years. The President

1 extended it on a yearly basis with an Executive Order. Why
2 we want to lock in five years, I am not sure. I think that
3 cutting it back to something like two might make more
4 sense.

5 It would be a little bit more than the President, but
6 we are not buying into the concept for a five-year period,
7 although I am not certain that it is of tremendous value.
8 We like to think it is, but I am not sure it is. It just
9 creates a lot of problems for us out there in the world.

10 Senator Baucus. Mr. Chairman.

11 The Chairman. Senator Baucus.

12 Senator Baucus. Mr. Chairman, essentially this comes
13 down to whether you name priority foreign country
14 practices, on the one hand, which the Administration
15 suggests, or, on the other hand, whether, as prior Super
16 301s, there is a separation between priority countries and
17 priority practice. That is the first issue that Senator
18 Bradley raised.

19 In response to that, consider several points. Number
20 one, the Administration still is free, under the language
21 I am proposing--which is the earlier Super 301 language we
22 have had for years and years in the past--to use the option
23 of naming practices only, or it can name countries. I
24 mean, that is still an option. So, if the concern is
25 naming only practices, that is still an option that the

1 Administration could follow-up on.

2 Second, it is, I think, generally agreed that the
3 potential of naming a country does have a very salutary
4 effect. It certainly helped with respect to Taiwan and
5 Korea. Taiwan and Korea did not want to be named. Taiwan
6 and Korea were not named. And why were they not named?
7 Because they reformed their practices.

8 If I might just say, Mr. Chairman, it is important to
9 realize that the Administration still has that --

10 The Chairman. We are committed to it. Does the
11 Senator wish to --

12 Senator Baucus. Mr. Chairman, I have not finished yet.

13 Second, we have other trade provisions which are
14 permanent, countervailing duty, antidumping. I mean, most
15 of our trade laws are permanent. They are not sunsetted.
16 301 is not sunsetted.

17 This is a provision which has worked. So, I thought
18 five years--between permanent, which is the standard
19 practice, and a very, very short sunset--is a pretty good
20 compromise.

21 The Chairman. Does the Senator wish to offer a second
22 degree amendment?

23 Senator Bradley. Well, I do not know. I would like to
24 hear how much support there is for the idea of cutting it
25 back to two as a possibility before I would consider

1 offering it. I mean, I might just vote against the whole
2 thing.

3 Senator Rockefeller. Mr. Chairman.

4 The Chairman. Senator Rockefeller.

5 Senator Rockefeller. It is unclear to me. What is the
6 Administration's position, do you support the Baucus
7 amendment? Would you support the Baucus amendment if it
8 were a shorter period of time, or do you want no amendment,
9 preferring an Executive Order?

10 Senator Grassley. Did you not hear the Chairman say,
11 do not ask?

12 Senator Bradley. I did not hear that.

13 Senator Grassley. Well, he just told Senator Dole
14 that.

15 Senator Bradley. Oh. Pardon me. Well, then I defer
16 to the Chairman.

17 The Chairman. I think, if I could say to my friend,
18 Senator Bradley, I think that this is a Baucus-Danforth
19 amendment and I think that we will vote on it.

20 Senator Packwood. Mr. Chairman.

21 The Chairman. Sir?

22 Senator Packwood. I have a statement from Senator
23 Chafee supporting this amendment. He would like the
24 statement in the record.

25 The Chairman. So agreed.

1 [The letter of Senator Chafee appears in the appendix.]

2 The Chairman. All those in favor will say aye.

3 (A chorus of ayes)

4 The Chairman. Those opposed?

5 (A chorus of nays)

6 The Chairman. There are two opposed. The ayes appear
7 to have it. The ayes have it.

8 The bill is open to amendment.

9 Senator Grassley. Mr. Chairman?

10 The Chairman. Senator Grassley, then Senator Wallop.

11 Senator Grassley. Mr. Chairman, my amendment will be
12 passed around. It is an amendment that strikes the
13 provisions that are entitled, "Certain Economies in
14 Transition."

15 First of all, Mr. Chairman, this provision is a non-
16 GATT issue and it is not required to implement GATT. Now,
17 that may be true of a lot of provisions in this bill, so I
18 do not want to say that this is a single issue of this
19 category, but I want to emphasize that.

20 The proposal that I am striking, that if it were to
21 become law, would represent a very significant shift in
22 U.S. trade policy. It would do this by suspending the
23 application of antidumping laws for a specific group of
24 exporting countries. More important, it does not belong,
25 I think, on a piece of fast-track legislation.

1 This proposal is going to make it much more difficult
2 for U.S. industries to obtain relief from dumping from
3 these countries that are categorized as economies in
4 transition, and I do not know whether those economies are
5 beyond Eastern Europe or just limited to Eastern Europe; I
6 do not know.

7 The Chairman. The present provision is Eastern Europe
8 and the CIS states.

9 Senator Grassley. All right.

10 But, anyway, it is going to make it difficult for U.S.
11 industries who have a legitimate complaint to obtain
12 relief, and it would remove the certainty of effective
13 relief, in any event.

14 This proposal, if left in here, is going to leave
15 seriously injured U.S. industries without recourse if the
16 resolution selected by any Administration is ineffective or
17 otherwise unacceptable.

18 Put plainly and simply, Mr. Chairman and members of the
19 committee, it would be an unfair trade dispute that would
20 be handled in an entirely political manner.

21 The Administration's proposal is motivated, probably,
22 with good meaning, and it is by a desire to maintain the
23 flow of hard currency from exports by these economies in
24 transition countries.

25 But here is the problem. If we apply the normal rules

1 of fair trade, and yet, at the same time, we have got to
2 make a political decision here to help these countries by
3 allowing them to dump, then industries in the United States
4 are hurt.

5 Those workers and those industries then are going to
6 suffer and pay for what really ought to be a burden for the
7 entire people of the country, not just small segments of
8 the country.

9 It is a little bit like, you know, if we do not allow
10 exports of agricultural products--as we did not in 1979 and
11 1980 because of the Afghanistan war--to Russia, then the
12 people who are farming pay the cost of our foreign policy.

13 So, I think if there is a legitimacy for doing
14 something special for economies in transition, it ought to
15 be done some other way, and so that is why I strike.

16 The Chairman. Thank you, Senator Grassley.

17 I think I want to ask Ambassador Yerxa to present the
18 Administration's view. I would like to say that I have
19 been called by the Vice President to say how important he
20 and the President feel about this measure, and for the
21 clear reasons that we are not in the situation to provide
22 the kind of direct economic assistance which we had hoped
23 for where trade is equal.

24 Senator Wallop. Mr. Chairman?

25 The Chairman. Senator Wallop, of course.

1 Senator Wallop. You may not be in a position to
2 provide the kind of direct economic assistance that those
3 countries wish, but you will have to produce the same
4 amount at home to take care of a domestic industry that you
5 will kill by this amendment.

6 The Chairman. That is an argument.

7 Senator Bradley?

8 Senator Bradley. Mr. Chairman, it seems to me that
9 everybody knows that we are in tough budget circumstances.
10 I mean, that is the problem that we labor under. So we try
11 to find ways around our inability to assist newly-
12 democratizing countries and we come up with the idea, well,
13 it is all right, let them dump. Let them sell for a lower
14 price and have no penalty.

15 To me, that sends a negative message domestically to
16 workers that Senator Grassley says are competing with those
17 industries, and it sends a negative message to the former
18 states of the Soviet Union and Eastern Europe.

19 They will not be able to enter the world market on the
20 cheap. And, if we allow them to dump, then at what point
21 are we going to say, now you have to adjust to the overall
22 market mechanism?

23 I think it perpetuates a sense of unreality that many
24 of the leaders of those countries already experience, and
25 that the sooner they adjust to what a market means, the

1 better. So, I would support Senator Grassley's amendment.

2 The Chairman. Thank you, Senator Bradley.

3 Senator Dole?

4 Senator Dole. I think Senator Grassley is right. I
5 mean, this is a foreign policy issue we are trying to add
6 to a trade bill, and I think we all have concerns about
7 helping the Eastern European countries and the former
8 Soviet Union. In fact, we have appropriated, I think,
9 about \$1.8 billion which has not been expended.

10 But, now, as I understand this amendment, we would be
11 giving their workers superior rights to our workers when it
12 comes to jobs and opportunities, and I think it is unfair.
13 It sets a higher standard. Our workers have to go to the
14 ITC and prove serious injury, which is a higher standard
15 than current law.

16 This may be something that ought to be considered
17 separately, but I hope we do not start adding everything we
18 can think of onto this legislation. This legislation may
19 be in enough difficulty as it is as we keep adding
20 controversial amendments. So, I hope Senator Grassley
21 would prevail.

22 The Chairman. Thank you, Senator Dole.

23 Senator Packwood?

24 Senator Packwood. I agree with the substance of the
25 Administration's position, but I think, Mr. Ambassador,

1 this is the amendment that buys you the votes on the point
2 of order that defeats the whole thing. This is
3 controversial, I think, probably appropriately.

4 I do not know if it is necessary to implement the
5 legislation, but it is probably appropriate. But there are
6 enough strong feelings about inviting these transition
7 countries into our country on a different basis that I
8 think you pick up the votes that defeat it, and, therefore,
9 much as I agree with what you want to do, I am going to
10 have to support the amendment.

11 The Chairman. Thank you, Senator Packwood. An
12 important point.

13 Senator Danforth?

14 Senator Danforth. Mr. Chairman, I agree.

15 Senator Grassley. You are a co-sponsor.

16 Senator Danforth. All right.

17 (Laughter)

18 Senator Danforth. I think that the points have been
19 pretty well made. I think that Senator Bradley's argument
20 is exactly right. The way to help these Eastern bloc
21 countries is to encourage them to adopt a market type
22 economy, not to encourage them to adopt a subsidized
23 economy, or an economy that thrives on dumping.

24 So I think that this is something that does not serve
25 their interests or our interests, and I think Senator

1 Grassley is right.

2 The Chairman. Senator Rockefeller?

3 Senator Rockefeller. No statement, Mr. Chairman.

4 The Chairman. I would like to make a proposal. I do
5 not want to put Ambassador Yerxa in an awkward position,
6 but, for the reasons that Senator Packwood stated and I
7 state, I would hope the Finance Committee need not go on
8 record as opposed to the Administration in this regard.

9 Would you want to suggest that we simply take the
10 measure down?

11 Ambassador Yerxa. Well, Mr. Chairman, obviously I am
12 in a bit of an awkward position here in being --

13 (Laughter)

14 Ambassador Yerxa. -- able to count the votes. I want
15 to, first of all, stress a couple of points before I
16 respond directly to your question.

17 The Chairman. Please do.

18 Ambassador Yerxa. The first point, is that the
19 Administration does believe very strongly that this
20 proposal we submitted is an appropriate trade policy
21 response to a very, very difficult and complex problem.

22 We are dealing with economies that are in transition
23 from non-market to market economies, but we are dealing
24 with laws--that is, the antidumping law--which are based on
25 certain assumptions about market-based pricing. That is

1 what establishes a dumping margin in the first place, is to
2 compare prices or costs in the home market with prices in
3 the United States.

4 The Chairman. Right. Complementary economies.

5 Ambassador Yerxa. Exactly.

6 So an entire methodology for dealing with these
7 countries has grown up over the years that really bears no
8 relationship whatsoever to the underlying fundamental
9 realities of the price and cost structure.

10 We were trying to deal here with a mechanism which
11 would make this system of dealing with increased imports
12 from economies in transition fairer and more reasonable for
13 all parties because domestic industries would no longer
14 have to establish through a convoluted methodology that
15 there is dumping occurring. But, at the same time, it
16 would recognize some flexibility in administering remedies
17 for injurious pricing in the U.S.

18 So, I want it to be clear on the record that we believe
19 that this was a carefully crafted proposal that dealt with
20 a real problem. Now, we obviously do not want to force the
21 committee to vote down something that we think bears
22 serious consideration.

23 So, I guess I am in a position of suggesting that this
24 was put forward in your mark, Mr. Chairman, very much at
25 the Administration's request. If it is the will of the

1 committee not to press it at this point, that is the will
2 of the committee. Obviously, we want to work with you in
3 this fast-track process.

4 The Chairman. Because you will return to this subject.
5 Madam Secretary, I see you nodding. You will return to
6 this subject and we will have --

7 Ambassador Yerxa. Yes. Obviously, we will return to
8 it. I should point out that, in the House, they have
9 approved language, not containing our proposal, but
10 containing certain treatment of suspension agreements
11 relating to these countries that we would want the
12 committee to consider seriously in conference.

13 The Chairman. Senator Packwood, did you want to say
14 something?

15 Senator Packwood. No.

16 The Chairman. No. Then I am going to make the
17 somewhat unusual proposal that the measure be stricken from
18 the Chairman's mark.

19 Senator Grassley. Before you make that final, could I
20 ask for clarification that would follow on a statement that
21 you made last week about what will end up in this bill or
22 not end up in it as far as what can happen in conference?

23 At that point, you said that nothing would end up in
24 the bill in conference if it did not have the support of
25 this committee. So, I assume that if this does not have

1 the support of this committee, this would not find its way
2 into the bill in conference.

3 The Chairman. Yes. But I have to reserve the need of
4 the conferees to give and take in the general context.

5 Senator Grassley. Sure. But this would be new subject
6 matter and that would not be stuck in in conference if it
7 did not have the support of this committee.

8 The Chairman. You have every reason to be confident in
9 that regard, sir.

10 Senator Grassley. All right. Thank you.

11 Senator Wallop. Mr. Chairman?

12 The Chairman. Senator Wallop, and then Senator
13 Rockefeller.

14 Is this a new matter?

15 Senator Wallop. Yes, sir.

16 The Chairman. Oh. Then the measure is stricken from
17 the Chairman's mark, and I thank the committee for that.

18 Senator Wallop, you were recognized, then Senator
19 Rockefeller. Senator Wallop.

20 Senator Wallop. Yes. Mr. Chairman, last Wednesday, in
21 the 1994 GATT implementing bill mark-up, on the staff
22 recommendation on amendments, references made on page two
23 to various sectors in which the United States sought
24 reciprocal elimination of duties amongst major trading
25 parties, i.e., zero for zero, was unable to negotiate the

1 complete duty elimination, omitted from that list is soda
2 ash. The United States is the world's largest producer of
3 natural soda ash, environmentally sound. Wyoming is the
4 largest producer of the United States.

5 I would propose a technical addition, that soda ash was
6 one of the principal chemicals which was negotiated over on
7 a zero for zero basis, and we should specify that the
8 Administration should continue to pursue this objective on
9 the same basis.

10 The Chairman. I have no objection to that whatsoever,
11 but I would like to hear from the Administration.

12 Ambassador Yerxa. It was one of the sectors that was
13 in our zero for zero proposals, and we would have no
14 objection.

15 Senator Wallop. We think it was merely inadvertent.

16 The Chairman. It was inadvertent. But, even so, may
17 I have a vote? Those in favor will say aye.

18 (A chorus of ayes)

19 The Chairman. Those opposed?

20 (No response)

21 The Chairman. Mr. Wallop's amendment is agreed to.

22 Senator Rockefeller?

23 Senator Rockefeller. Mr. Chairman, I have an amendment
24 on captive reduction. And this amendment, although it
25 seems tricky, it really is not. It clarifies how dumping

1 margins are determined by the ITC and it does that by
2 trying to distinguish properly--it is GATT legal--as to how
3 steel is counted in its act of production.

4 I hold in my hand, Mr. Chairman, a ruler.

5 The Chairman. A ruler.

6 Senator Rockefeller. And this makes my point better
7 than I could. This ruler is made of steel and it is
8 coated. It has to go through three processes to get to
9 this. It has to be hot-rolled --

10 The Chairman. Cold-rolled, and coated.

11 Senator Rockefeller. Correct.

12 (Laughter)

13 Senator Rockefeller. That was my best line.

14 (Laughter)

15 Senator Rockefeller. And, in the process of being hot-
16 rolled, cold-rolled, and coated, it is all the same piece
17 of steel, it just moves from one section to another section
18 of the integrated steel mill.

19 The problem is that the ITC counts this as three pieces
20 of steel, hot-rolled steel, cold-rolled steel, coated
21 steel. And the result of that, therefore, is that the
22 amount of steel which is produced in this country goes way
23 up. Therefore, when imports are measured --

24 The Chairman. This is a form of double counting.

25 Senator Rockefeller. Triple counting.

1 The Chairman. Triple counting in that case.

2 Senator Rockefeller. Double-R, triple counting.

3 The Chairman. Yes.

4 Senator Rockefeller. So that when one is looking at
5 the amount of imports of steel, they obviously have a much
6 smaller percentage because the amount is artificially high
7 because this is three pieces of steel, which it is not.
8 And so the amendment simply clarifies --

9 I want to say several things, first of all. I want to
10 really thank Senator Hatch. He and I are prime co-sponsors
11 of this amendment.

12 We could not have done this without Senator Packwood
13 and his staff, who wisely made us be sure that we treated
14 imports the same way as we treated our own production.

15 I want to thank Senator Grassley, and he may wish to
16 speak to an amendment which he has made, which is fully
17 acceptable to me.

18 All I am trying to do, Mr. Chairman, is to get a sense
19 of fairness in the way the ITC, in its discretion, counts
20 steel. Sue Esserman has been enormously helpful on this,
21 as has the Ambassador, and Ira Shapiro.

22 I would be glad to hear what Sue Esserman would have to
23 say about it, and answer any questions. It is simply a
24 matter of fairness, fair counting.

25 The Chairman. Madam Secretary?

1 Secretary Esserman. The Administration agrees to this
2 amendment. We think it is fair, as the Senator has said.
3 We think it is GATT consistent and it directs the
4 commission to focus on the point of competition in the
5 market.

6 The Chairman. Thank you. Succinct and direct.

7 All those in favor will say --

8 Senator Bradley. Mr. Chairman, could I ask the
9 Administration a question?

10 The Chairman. Of course, Senator Bradley.

11 Senator Bradley. In your view, would this lead to an
12 increase in import costs? Would this lead to an increase
13 in the cost of imports?

14 Secretary Esserman. No, we would not think that it
15 would lead to increase in the cost of the imports.

16 Senator Bradley. All right.

17 Senator Rockefeller. Because they would be dealt with
18 exactly in the same manner.

19 The Chairman. Thank you, Senator Bradley.

20 I do not want to hurry the committee, but I want to
21 move along. You say you have another amendment?

22 Senator Grassley. No. It would be a substitute for a
23 portion of his dealing with a statement of administrative
24 action, and I will pass it around. It is my understanding
25 that you will accept it.

1 Senator Rockefeller. It is fully agreeable.

2 The Chairman. I have a note to that effect.

3 Senator Grassley. All right. Then let me stop there
4 then.

5 The Chairman. Stop there.

6 Mr. Rockefeller's amendment, as amended, is before the
7 committee. Those in favor will say aye.

8 (A chorus of ayes)

9 The Chairman. Those opposed?

10 (No response)

11 The Chairman. The ayes have it, most emphatically.

12 Senator Rockefeller. Mr. Chairman, could I also
13 particularly thank Ken Levinson, who was very helpful to me
14 on this one?

15 The Chairman. You may thank whomsoever you wish.

16 I think Senator Danforth has one, then you have one.

17 Senator Danforth. Well, Mr. Chairman, this is an
18 amendment for both Senator Baucus and myself, and it
19 relates to the subsidies issue, which we have talked about
20 very frequently --

21 The Chairman. Oh, yes.

22 Senator Danforth. -- over the whole question of green
23 lighting subsidies and the problem that that raises, and
24 whether we are going to have a whole series of air buses in
25 the future. The Administration has been very helpful in

1 working this out. This is an amendment which I believe the
2 Administration agrees with.

3 In the agreement there is a process called an Article
4 9 process, and the point of it is that, notwithstanding
5 certain subsidies are green-lighted and, therefore,
6 permissible, if there are adverse effects from those
7 subsidies, then this Article 9 process can be used;
8 appropriate countermeasures can be recommended by the WTO
9 Subsidy Committee.

10 The question is, well, what happens if action by this
11 Subsidies Committee is blocked because the agreements have
12 to be reached by consensus, which means that any country
13 can block action, which means that the offending country
14 can block action, or the offending country could gin up
15 some support from countries closely related to it to block
16 action?

17 We could have a repeat of what we had with the oil seed
18 matter, where the U.S., I think, a couple of times took
19 cases to GATT and there was not any remedy because nothing
20 came of it.

21 So, what this amendment does is provide for USTR action
22 under Section 301, where the subsidizing country, either by
23 itself or with a few allied countries, blocks the ability
24 of the WTO Subsidy Committee to act under Article 9, and
25 also where the subsidizing country just does not comply

1 with an Article 9 procedure for six months.

2 The Chairman. Yes. Ambassador Yerxa, could we ask
3 your views?

4 Ambassador Yerxa. Certainly, Mr. Chairman. We did
5 work very closely with Senator Danforth, Senator Baucus,
6 and others, on this language. We believe that this is an
7 appropriate and important means to address situations in
8 which essentially there is an effort by a country to
9 frustrate the appropriate resolution of a matter in the
10 Subsidies Code. It provides important protection against
11 that kind of practice by an individual country --

12 The Chairman. Good.

13 Ambassador Yerxa. -- and we can support the amendment.

14 The Chairman. Thank you.

15 Senator Baucus, would you like to make a statement?

16 Senator Baucus. Mr. Chairman, I want to thank Senator
17 Danforth and his principal staff person on trade, Kevin
18 Dempsey, as well as Ambassador Yerxa and the USTR for
19 working out the agreement here. I think it is very clear
20 that there is potential for abuse by other countries with
21 respect to some of these green-lighted, green-boxed
22 subsidies.

23 We are just trying to be consistent with the WTO and
24 the other provisions of the Uruguay Round and find a way to
25 minimize that abuse. There are arguments on both sides on

1 this, but I do compliment the parties involved. I think
2 Senator Danforth, Ambassador Yerxa, and others have worked
3 very hard in applying this. I thank them all.

4 The Chairman. Senator Bradley?

5 Senator Bradley. Mr. Chairman, I would like to ask a
6 question of Ambassador Yerxa. In the dispute settlement
7 section of the agreement there is a specific provision that
8 would deny the right of the offending country to block
9 resolution of the dispute settlement panel; is that not
10 correct?

11 Ambassador Yerxa. That is correct.

12 Senator Bradley. And the anomaly is that such an
13 inability does not apply to the subsidies area. So, as I
14 understand it, there was a letter agreement that said that,
15 on the issue of subsidies, you would operate by consensus.
16 Is that not correct?

17 Ambassador Yerxa. In this particular area, in making
18 determinations of this type, there are other subsidies
19 issues which could go to a dispute settlement panel, but
20 the particular decision about serious adverse effects is a
21 Subsidies Code function and it is subject to the consensus
22 rule.

23 Senator Bradley. Right. So would this amendment not
24 violate, if nothing less, the spirit of that agreement? I
25 mean, how can it be consensus if one country can take

1 unilateral action against another country's subsidies?

2 Ambassador Yerxa. I think we are focusing in here,
3 Senator, on situations in which, really, the offending
4 country--the country that has a program that obviously
5 other members of the code feel causes adverse effects
6 through its blockage--is frustrating the resolution of the
7 matter in the Subsidies Code. And what this directs us to
8 do is to determine what action to take in that kind of a
9 situation.

10 Now, we believe there is scope for that, both within
11 international law and under our understanding of how this
12 arrangement should operate and should relate to U.S. law.
13 It is analogous to certain other situations we have had in
14 the past in the GATT, such as the oil seeds dispute.

15 Senator Bradley. Right. But when the Administration
16 agreed to operate on consensus, certainly you anticipated
17 this possibility. I mean, why did you agree to operate on
18 consensus as opposed to reserving your right to
19 unilaterally retaliate?

20 Ambassador Yerxa. Well, I do not think that would have
21 been achievable in the negotiations, frankly.

22 Senator Bradley. Right.

23 Ambassador Yerxa. But I want to point out, there is
24 nothing in this amendment that mandates that the United
25 States respond in a way which violates our obligations

1 under the WTO or the dispute settlement rules.

2 Senator Bradley. But would it violate the letter
3 agreement on subsidies? It says, "the Subsidies Committee
4 must operate on the basis of consensus."

5 Ambassador Yerxa. No. I do not believe it does.

6 Senator Bradley. It does not?

7 Ambassador Yerxa. I do not believe so. It deals with
8 situations in which there is an inability to obtain a
9 consensus because of the subsidizing country's refusal to
10 go along.

11 And, in those situations, it directs us to look at
12 appropriate responses of the United States, but that does
13 not mandate us to violate our obligations under the
14 agreement, nor does it necessarily result in a dispute
15 between the parties over whether or not we have a right,
16 under the agreement, to take such action.

17 Senator Bradley. I guess I do not understand it then.
18 Let me try to make it clear for me. Maybe it is just me.
19 You signed a letter agreement saying that, when it comes to
20 the issue of the subsidies here, you have to operate by
21 consensus.

22 When you agree to operate by consensus, you have
23 tacitly agreed to allow a country, whether it is the
24 offending country or not, to essentially say, no, veto any
25 recommendation.

1 Now, here you are saying, no, if a country is
2 determined to have a subsidy, it has to be changed, that
3 that country can veto the action. Now, that, to me, is not
4 consensus. I just want to know the clarification here.

5 The Chairman. Could I offer a thought there on what
6 you said? The consensus rule in the GATT has been the
7 practice by which you reach agreements about how to
8 proceed, we will do this, we will do that, and it does not
9 extend to the proposition that someone can block a
10 procedure that has been agreed to by not agreeing. It is
11 kind of a two-stage affair.

12 Do I have that right, Ambassador?

13 Ambassador Yerxa. Yes. We are dealing with situations
14 here in which the offending country really is frustrating
15 a consensus; not where it is reasonable to operate on the
16 basis of a broad consensus among countries, but where one
17 country is acting to frustrate that consensus, and this
18 directs us to look at appropriate means of dealing with
19 that situation.

20 And, as I said, it does not mandate us to do anything
21 that would be inconsistent with our obligations under the
22 agreement, otherwise the Administration could not agree
23 with it.

24 Senator Bradley. So this will not come as any surprise
25 to any other party to the negotiations. This amendment

1 will not be a surprise to them. They will not think that
2 this is contrary to what was negotiated.

3 Ambassador Yerxa. Well, of course, a country, in a
4 particular situation where they want to frustrate a
5 consensus, may argue that. But what I am suggesting to
6 you, Senator, is that I do not think we can make the
7 determination of what our rights are based on another
8 country's objections.

9 Senator Bradley. So you do not interpret this as an
10 agreement being made, and we then take our own unilateral
11 action that would kind of break it or violate it.

12 I mean, my point is, if we do this here will we put
13 ourselves in a position--when the Europeans decide to
14 modify unilaterally the Civil Aeronautics Agreement, for
15 example--that we will not be able to respond because we
16 will have been the first to cast the stone?

17 Ambassador Yerxa. Well, first of all, this is dealing
18 with very, very limited circumstances which would only
19 arise in cases after there had been a full airing of the
20 question of whether a green-lighted program was causing
21 serious adverse effects, and so this entire situation only
22 arises in a narrow set of circumstances.

23 Then this particular language only deals with
24 situations in which a particular country which is obviously
25 interested in frustrating a determination by the Subsidies

1 Code, that there are such effects, is acting in that
2 manner.

3 Now, I do not think it serves as a precedent for anyone
4 to say that you can unilaterally change your obligations
5 under the WTO, because obviously we cannot do that, nor can
6 another country.

7 Senator Bradley. All right.

8 The Chairman. Thank you, Senator Bradley.

9 I see no other Senator wishing recognition. Those in
10 favor of the Danforth amendment will say aye.

11 (A chorus of ayes)

12 The Chairman. Those opposed?

13 (No response)

14 The Chairman. The amendment is adopted unanimously.

15 The bill is open to amendment.

16 Senator Wallop. Mr. Chairman.

17 The Chairman. Just a second. We are going to go back
18 and forth.

19 Senator Breaux had his hand up first.

20 Senator Breaux. No. I will yield to Senator Baucus.

21 The Chairman. Senator Baucus.

22 Senator Baucus. I thank the Chairman.

23 Mr. Chairman, this is an amendment that clarifies the
24 availability of Section 301 with respect to restrictive
25 business practices tolerated by foreign governments. It is

1 a bit unclear currently the degree to which Section 301's
2 availability with respect to restrictive business
3 practices, restrictions by foreign purchasers only, are
4 also appropriately available with respect to not only
5 purchasers, but producers and manufacturers of products. It
6 is a bit technical, but it is an important clarification to
7 make. Let me give an example.

8 There is a bit of a question today whether the current
9 restrictive business practices provision currently with
10 respect to 301 is available to, say, glassware contractors
11 in, say, a country--this is not an actual case--like Japan.

12 The language today says purchasers, it does not say the
13 action applies with respect to producers or manufacturers.
14 But it is clear that if the purchasers--that is, the
15 contractors who buy the glass from the manufacturers or the
16 producers--restrict, it is arguable action that action lies
17 against those producers. But it is clear that the intent
18 is to go after not only producers, but manufacturers and
19 producers, so this amendment basically makes that clear.

20 The Chairman. All right.

21 Senator Baucus. The Administration, I understand,
22 supports the amendment. It is also in the House.

23 The Chairman. The Administration supports the
24 amendment, and it is also in the House, that measure. It
25 is clearly a practice that is a real world issue. It

1 happens, and it ought not to. I see no Senators wishing to
2 speak.

3 Senator Bradley?

4 Senator Bradley. Just a question.

5 Is this subject currently under negotiation with any
6 country?

7 Ambassador Yerxa. We currently do not have any 301
8 actions on this toleration of cartels issue. This would
9 make some changes in the underlying statute. But there are
10 certainly discussions all the time with foreign governments
11 about this problem, both by the anti-trust division and by
12 trade officials.

13 Senator Rockefeller. Mr. Chairman?

14 The Chairman. Yes, Senator Rockefeller.

15 Senator Rockefeller. Just a very quick comment. This
16 is also, to me, a good amendment, because, for example,
17 with the big conglomerates in Japan and Korea, this is
18 aimed at distribution/distributors, too.

19 The Chairman. Yes. Yes.

20 Senator Rockefeller. So it is a positive.

21 The Chairman. Very well. Given the Administration's
22 support, those in --

23 Senator Baucus. Mr. Chairman, if I might just follow
24 this very briefly, here. I would ask Ambassador Yerxa if
25 the Administration is agreeable to, say, Statement of

1 Administrative Action language that would define what
2 government toleration is so that it is a little bit more
3 clear that these actions do lie where it is?

4 The Chairman. That would help.

5 Ambassador Yerxa. We would be glad to work with the
6 committee on that. Obviously, we need some flexibility in
7 making those kinds of determinations, but we would be glad
8 to work with you on that.

9 The Chairman. Right. With Mr. Figel and Ms. Miller.
10 Senator Packwood. A quick question.

11 The Chairman. Sir?

12 Senator Packwood. Is this amendment either necessary
13 or appropriate for the implementing legislation?

14 Senator Baucus. If I might answer that.

15 The Chairman. Senator Baucus.

16 Senator Baucus. Yes, I do believe it is, because what
17 we are doing here is implementing the Uruguay Round as
18 applies to American law and it is appropriate to clarify
19 that Section 301, which is fully available. After the
20 Uruguay Round is adopted, 301 does apply to these
21 restrictive practices.

22 The Chairman. And I see Mr. Shapiro is nodding.

23 Mr. Shapiro. Mr. Chairman, we have always felt that
24 questions relating to 301 and other trade law statutes that
25 might be affected by the Round were appropriate subjects

1 for the committee. Obviously, it is up to the committee,
2 but we feel that way.

3 The Chairman. Thank you, sir.

4 Senator Packwood?

5 Senator Packwood. No questions.

6 The Chairman. Those in favor of the Baucus amendment
7 will say aye.

8 (A chorus of ayes)

9 The Chairman. Those opposed?

10 (A chorus of nays)

11 The Chairman. The ayes appear to have it. The ayes
12 have it.

13 Senator Wallop?

14 Senator Wallop. Thank you, Mr. Chairman. Mr.
15 Chairman, this amendment relates to the categories of
16 subsidies within the GATT which are deemed non-actionable
17 or non-countervailable.

18 We on this committee have referred to them as green-
19 lighted subsidies because governments can undertake them
20 without fear of other nations assessing duties against any
21 products exported which have benefitted from these
22 subsidies.

23 Mr. Chairman, my own belief is that this category ought
24 never to have been agreed to by the U.S. negotiators, but
25 I will not propose to change a multilateral agreement by

1 means of an amendment.

2 What the language I am offering will do, is to set up
3 definitive parameters for the environmental category of
4 these non-actionable subsidies to ensure that this
5 allowable subsidization is not abused by our government or
6 by other governments.

7 Once again, Mr. Chairman, I will not vote for a GATT
8 which sanctions the erections of less obvious trade
9 barriers while it tears down the more visible ones.

10 My amendment limits environmental subsidies to one
11 subsidy per environmental law and per facility. Its
12 language is broad to account for the multiple ways in which
13 foreign governments establish such laws, and it is intended
14 to prevent every new environmental regulation from
15 stimulating a new subsidy, and vice versa.

16 Any government's ability to subsidize the same
17 facilities over and over by slapping on new regulations and
18 then using taxpayers' money to absorb the cost of
19 compliance will be limited.

20 Government will be forced to choose those subsidies
21 carefully and estimate the overall costs imposed by these
22 general laws instead of subsidizing individual costs as
23 they are incurred in compliance.

24 Mr. Chairman, I commend Senator Danforth's efforts to
25 strictly define the bounds of subsidies allowable for pre-

1 competitive research and develop activity, another of those
2 green-lighted categories. My intention is to do no more,
3 no less, with this language on environmental compliance.

4 The Chairman. I understand that this has been worked
5 out with the Administration, as usual.

6 Ambassador Yerxa. Yes, that is correct. This
7 accurately states, we think, the parameters of the
8 environmental category.

9 The Chairman. Fine.

10 Senator Rockefeller. Mr. Chairman.

11 The Chairman. We are sensitive to time.

12 Senator Rockefeller?

13 Senator Rockefeller. I am sorry. Could I just ask the
14 Administration whether this amendment would unnecessarily
15 restrict other countries from taking constructive
16 environmental action?

17 Ambassador Yerxa. No, we do not believe so at all. It
18 maintains the ability to utilize this new green category in
19 appropriate circumstances.

20 The Chairman. Thank you, Senator Rockefeller.

21 There being no further comments, those in favor of the
22 Wallop amendment will say aye.

23 (A chorus of ayes)

24 The Chairman. Those opposed?

25 (No response)

1 The Chairman. The amendment is unanimously adopted.

2 The bill is open to amendment.

3 Senator Daschle. Mr. Chairman.

4 The Chairman. I think I saw Senator Conrad first.

5 Senator Conrad. Mr. Chairman, I have a very brief
6 amendment on behalf of myself, Senator Grassley, and
7 Senator Baucus that addresses concerns about the effect of
8 the World Trade Organization on State and local laws. It
9 improves the consultation between USTR and States, both
10 generally and in particular, in the dispute settlement
11 process.

12 Among other things, it makes absolutely clear that
13 there will be no private right of action of any sort based
14 in any way on the agreements and ensures that any ruling
15 that a State measure is consistent with the agreements has
16 only prospective effect.

17 It guarantees the rights of States to be involved
18 preparing the position of the United States in all stages
19 of the defense of any State measure challenged by any WTO
20 member, and it requires advance notification and
21 consultation with States before the U.S. requests
22 consultation or paneled proceedings regarding a sub-
23 national measure of another member.

24 Mr. Chairman, the Attorney Generals of the United
25 States have sent a letter to Ambassador Kantor reflecting

1 their central role in working out this amendment. I think
2 it is an important step forward. I think the governors are
3 also supportive of this, as well as other State officials
4 around the country.

5 I want to thank, especially, Ira Shapiro and Ken
6 Freiberg for the extraordinary effort they made to work
7 this out. I really think they did a superb job. I thank
8 my colleagues.

9 The Chairman. Thank you.

10 Senator Grassley. Mr. Chairman.

11 The Chairman. Thank you, Senator Conrad.

12 Senator Grassley?

13 Senator Grassley. As Senator Conrad said, I am a co-
14 sponsor. I think it takes care of a real preemption
15 problem we had and I strongly agree that we have to make a
16 priority out of preserving these prerogatives for our
17 States in any ultimate GATT agreement we approve.

18 Currently under GATT, our Executive Branch, as well as
19 private businesses and foreign governments, could challenge
20 or even overturn State laws and the States would not be
21 able to participate in defending themselves.

22 Now, we have worked with State Attorneys General and
23 tax commissioners, as well as the Administration, in order
24 to try to protect State and local sovereignties. Senator
25 Conrad's amendment is a culmination of these efforts, and

1 he should be commended for taking a leading role.

2 The Chairman. Thank you, Senator Grassley.

3 Senator Breaux. Mr. Chairman.

4 The Chairman. Senator Breaux.

5 Senator Breaux. I would object to the author's
6 characterization of the amendment as a small amendment; it
7 is 16 pages. But it is a good amendment.

8 (Laughter)

9 Senator Bradley. Could we read it in its entirety,
10 please?

11 Ambassador Yerxa. Every page a pearl, Mr. Chairman.

12 The Chairman. Mr. Shapiro, do you vouch for the
13 authenticity of this document?

14 Mr. Shapiro. I was smiling when I heard it was a brief
15 amendment. We do, and I want to thank Senators Conrad,
16 Grassley, and Baucus, and the efforts of their staff.
17 Attorneys General Burson, Carpenter, and Hidecamp, of
18 Tennessee, Maine, and North Dakota were very helpful, as
19 were the representatives of the tax commissioners and the
20 multi-State tax people.

21 The Chairman. Well, there is nothing you all like like
22 details.

23 Those in favor of the amendment offered by Senator
24 Conrad will say aye.

25 (A chorus of ayes)

1 come back to yours?

2 Senator Packwood. We have got three votes back to back
3 to back.

4 Senator Dole. We have a leadership meeting. We do not
5 have any leadership, but we have a meeting over which I
6 have to preside.

7 The Chairman. We can come back.

8 Senator Packwood. No, not that quickly, we cannot, Mr.
9 Chairman.

10 The Chairman. Well, we can hear from Senator Dole.

11 Senator Dole. Senator Packwood is going to make a
12 brief statement now.

13 The Chairman. All right. Make a brief statement now.

14 Senator Packwood. I want to make sure, is your
15 amendment what I understood it to be, which is, in one year
16 we change over?

17 Senator Breaux. The date I had was January 1, 1996.

18 Senator Packwood. January 1, 1996. Well, then here is
19 my objection. First, this is a deal breaker. I think this
20 will succeed in killing the GATT Round. This will pick up
21 the seven or eight votes to get you past 41, together with
22 those who do not like GATT anyway.

23 Two, we are entering into an agreement with all of our
24 GATT members on a three-year period for the harmonization
25 of point of origin and we are going to do that over the

1 three years.

2 Most of the apparel manufacturers in this country have
3 contracts now that go beyond 1996. They are willing to
4 accept the three years, and I think we are going to move
5 toward the point of origin on assembly.

6 But the Breaux amendment not only says we are going to
7 do it in 1996 and he has some kind of Treasury rule making,
8 but the amendment, in essence, tells Treasury where to come
9 out. There is no rule making here. The rule making is a
10 ruse, and it says at the end of the rule you are to come
11 out January 1, 1996.

12 I cannot support this and I cannot indicate how
13 strongly this will jeopardize GATT for something that we
14 are going to accomplish eventually within the three years
15 within GATT on harmonizing with all of our trading
16 partners.

17 Senator Breaux. Mr. Chairman, could we have the
18 Administration comment on the amendment?

19 The Chairman. Could I just ask, how many other
20 Senators want to speak on this?

21 Senator Bradley. Well, it depends on what the votes
22 are.

23 The Chairman. Senator Dole, I am afraid we have to go
24 and we will come back the very soonest we can. Let us get
25 this done today. But we have to hear from everybody.

1 (Whereupon, at 11:20 a.m., the meeting was recessed.)

2 AFTER RECESS

3 (12:00p.m.)

4 The Chairman. May I say to our guests and our
5 distinguished administrative witnesses that -- well, let me
6 say this sitting down because it is somehow more official.
7 Today is Health Care day as well as Uruguay Round day, and
8 the Majority Leader will be speaking at about 2:15, the
9 Republican Leader will be responding later in the day.

10 By mutual request, we are going to come back at 3:30.
11 We have approximately one hour's work to be done, if that.
12 Mr. Dole and Mr. Breaux are discussing some accommodation
13 on their matters.

14 So, I apologize if we have kept you unnecessarily. We
15 will be back here at 3:30.

16 Thank you, Ambassador.

17 Ambassador Yerxa. Thank you, Mr. Chairman.

18 The Chairman. Madam Secretary, Mr. Shapiro.

19 (Whereupon, at 12:02 p.m., the meeting was recessed, to
20 reconvene at 3:30 p.m. on Tuesday, August 2, 1994.)

21 AFTER RECESS

22 (3:55 p.m.)

23 The Chairman. The committee will come to order.

24 The pending amendment is that of the Senator from
25 Louisiana, Mr. Breaux. I believe that some accommodation

1 has been worked out.

2 Senator Packwood. We tried.

3 The Chairman. We are not able to do it.

4 Senator Packwood. I just think we ought to vote.

5 The Chairman. Senator Breaux, did you want to make one
6 last impassioned plea or do you want to have a vote?

7 Senator Breaux. Well, looking around at my colleagues
8 who are here, I am not sure that that would make a big
9 difference. I think most people have their minds made up.

10 I would just ask, since we have not heard from the
11 Administration on what we are proposing, I wonder if it
12 would be in order maybe for them to comment before the
13 vote.

14 The Chairman. Yes.

15 Ambassador Yerxa?

16 Ambassador Yerxa. Let me ask Ambassador Hillman, our
17 Chief Textile Negotiator, to comment.

18 The Chairman. Sure. There is a long-suffering
19 citizen.

20 Ambassador Hillman. The Administration's position on
21 this is that we do believe that, at this point, based on
22 what we know, that an assembly rule of origin, which is the
23 substance of the Breaux amendment, is a preferable rule of
24 origin. It would bring our rules of origin much closer to
25 the rules that exist with the rest of our trading partners

1 in terms of --

2 The Chairman. And reflects the economics of garment
3 manufacturing.

4 Ambassador Hillman. The numbers that we would have
5 would indicate that cutting, for example, is between 2-4
6 percent of the total cost of producing a garment. On the
7 timing of the amendment or the process of adopting an
8 amendment, that we would leave up to the Congress to
9 determine, what is the best process and timing for such a
10 rule.

11 Senator Packwood. Are you not moving toward a three-
12 year harmonization with the GATT members anyway?

13 Ambassador Hillman. The Uruguay Round agreement
14 contains a separate section on rules of origin that
15 provides for harmonization process and sets a goal of a
16 three-year timeframe for that. Yes, sir.

17 The Chairman. Fine. Well, those are the facts laid
18 out.

19 Senator Dole. If I could.

20 The Chairman. Of course, Senator Dole.

21 Senator Dole. We did make an effort to bring together
22 the two sides, because I think either side can get a pretty
23 good argument. It had been my hope that we might resolve
24 it in some way, but I do not think that is possible, though
25 I certainly thank the Senator from Louisiana for his

1 effort.

2 The Chairman. We cannot solve everything.

3 Senator Dole. If we did we would not have anything to
4 come back to.

5 The Chairman. We would not have anything to come back
6 to.

7 That being the case, the clerk will call the roll.

8 The Clerk. Mr. Baucus.

9 Senator Baucus. No.

10 The Clerk. Mr. Boren.

11 The Chairman. No, by proxy.

12 The Clerk. Mr. Bradley.

13 Senator Bradley. No.

14 The Clerk. Mr. Mitchell.

15 The Chairman. Aye, by proxy.

16 The Clerk. Mr. Pryor.

17 The Chairman. Aye, by proxy.

18 The Clerk. Mr. Riegle.

19 The Chairman. Aye, by proxy.

20 The Clerk. Mr. Rockefeller.

21 Senator Rockefeller. Aye.

22 The Clerk. Mr. Daschle.

23 Senator Daschle. Aye.

24 The Clerk. Mr. Breaux.

25 Senator Breaux. Aye.

1 The Clerk. Mr. Conrad.
2 The Chairman. Aye, by proxy.
3 The Clerk. Mr. Packwood.
4 Senator Packwood. No.
5 The Clerk. Mr. Dole.
6 Senator Dole. No.
7 The Clerk. Mr. Roth.
8 Senator Packwood. No, by proxy.
9 The Clerk. Mr. Danforth.
10 Senator Packwood. No, by proxy.
11 The Clerk. Mr. Chafee.
12 Senator Packwood. Yes, by proxy.
13 The Clerk. Mr. Durenberger.
14 Senator Packwood. No, by proxy.
15 The Clerk. Mr. Grassley.
16 Senator Grassley. No.
17 The Clerk. Mr. Hatch.
18 Senator Packwood. Yes, by proxy.
19 The Clerk. Mr. Wallop.
20 Senator Packwood. No, by proxy.
21 The Clerk. Mr. Chairman.
22 The Chairman. Yes.
23 Senator Packwood. Senator Durenberger has a statement
24 he would like placed in the record.
25 The Chairman. Without objection.

1 [The prepared statement of Senator Durenberger appears
2 in the appendix.]

3 The Chairman. The vote is 10-10, and the amendment,
4 accordingly, fails adoption.

5 Now, the bill is open to amendment. Senator Baucus?

6 Senator Baucus. Mr. Chairman, I have an amendment to
7 clarify the financial contributions of a portion of the
8 subsidies agreement.

9 This amendment, co-sponsored by Senators Mitchell and
10 Danforth, essentially supplies language for the Statement
11 of Administrative Action regarding definition of subsidy,
12 with a particular definition to financial contribution.

13 Essentially, it is language to make clear that the
14 subsidies agreement recognizes that subsidies need not be
15 direct government infusions, but, rather, can also be
16 indirect.

17 It really gets to the meaning of the language in the
18 subsidies agreement, namely, "entrusts or directs a private
19 body to carry out," et cetera, and it is clarification
20 which has been the practice of interpretation by the
21 Department of Commerce.

22 The Department has countervailed in these situations in
23 the past, and this is just, again, language in the
24 Statement of Administrative Action to make this practice
25 clear.

1 The Chairman. I see. Senator Packwood?

2 Senator Packwood. You are not asking for anything
3 other than a Statement of Administrative Action?

4 Senator Baucus. Correct.

5 The Chairman. But could we ask the Ambassador?

6 Ambassador Yerxa. Well, if it is the same language --

7 Senator Baucus. It is.

8 Ambassador Yerxa. -- we saw earlier, we have approved
9 the language.

10 The Chairman. Fine.

11 Senator Baucus. And, before we vote, Mr. Chairman, I
12 might ask Ambassador Yerxa, too, if also in the Statement
13 of Administrative Action we could have language that
14 addresses the Canadian lumber problem, mainly just a
15 recitation of the history of the problem, along with a
16 statement of the intent to resolve the Canadian lumber
17 issue. That would be helpful.

18 Ambassador Yerxa. We could work with you and see what
19 we could work out.

20 Senator Baucus. It is that kind of issue that this is
21 directed at.

22 Ambassador Yerxa. I do not think anything is wrong
23 with reciting some of the history, but I think we do have
24 to be careful here not to -- this is a matter that, you
25 know, there is a case under review and I would not want

1 to --

2 Senator Baucus. Right. Just a statement that we would
3 like to know that it is the Administration's intent to
4 resolve this issue, not to try to find a resolution to it,
5 if we could.

6 Ambassador Yerxa. We will get together with your folks
7 and see what we can work out.

8 The Chairman. Fine.

9 Senator Baucus. Thank you.

10 The Chairman. Senator Grassley?

11 Senator Grassley. I am sorry. Not yet.

12 The Chairman. All in favor of Senator Baucus'
13 amendment will say aye.

14 (A chorus of ayes)

15 The Chairman. Those opposed?

16 (No response)

17 The Chairman. The amendment is unanimously agreed to.

18 Senator Grassley?

19 Senator Grassley. I would like to have 30 seconds for
20 a point of personal privilege because my staff member right
21 here, Bob Ludwiczak, is going to leave government service
22 now after 20 years of service, 16 years as my Chief of
23 Staff, and 14 years of my work on this committee as my
24 Trade Advisor.

25 He is going to go to Florida to be a college professor,

1 and I want to wish him well and say that I am going to miss
2 his service. And a lot of people that have worked with him
3 around here. I wanted them to know that he is going to go,
4 and I wanted to pay a special tribute to him.

5 The Chairman. Well, how very generous of you. Shall
6 we just give him a round of applause?

7 (Applause)

8 Senator Baucus. Fine. Thank you.

9 Senator Bradley. Mr. Chairman, I would like to pay a
10 special tribute to Senator Grassley for paying a special
11 tribute.

12 (Laughter)

13 Senator Grassley. Well, thank you.

14 Senator Bradley. Does he need an assistant?

15 The Chairman. Just do not tell them everything you
16 have learned, all right? That would be too much.

17 The bill is open to amendment. Senator Daschle?

18 Senator Daschle. Mr. Chairman, I have an amendment
19 concerning trade policy in Africa. Countries which have
20 signed the Uruguay Round realized that there would not be
21 equal benefit to all countries when they signed it, and
22 they agreed that least developed countries should be given
23 some special attention.

24 They also agreed to facilitate and expand opportunities
25 for trade in those countries. There are only two countries

1 which are actually classified as least developed which are
2 not in Africa, and that is Haiti and Bangladesh.

3 From 1980 to 1990, African exports to the United States
4 dropped from 27 percent of their total down to four
5 percent. Total sub-Saharan exports to the United States
6 since 1989, excluding oil, has not exceeded \$2.7 billion.

7 So, my amendment would simply ask the Administration to
8 provide an annual report on African trade policy for the
9 next five years. It would be submitted to the Finance and
10 Ways and Means committees and produced by the International
11 Trade Commission, it would require an analysis of U.S.-
12 Africa trade practices and an assessment of the effect of
13 the Uruguay Round on U.S.-Africa trade.

14 It also encourages the Administration to urge that the
15 World Trade Organization consider ways to integrate African
16 countries into the international network and to implement
17 the ministerial decisions on food needs and food assistance
18 which was adopted in Marakesh.

19 Development of a comprehensive trade and development
20 policy certainly is in our best interests, for both
21 national as well as economic terms. Rwanda and Somalia are
22 only the most recent reasons why an economic development
23 and comprehensive trade policy ought to have higher
24 priority in this country. And, for other good reasons, so
25 is South Africa.

1 If this report causes us to focus on our activities
2 more appropriately and effectively, the results will
3 certainly be well worth the effort. As I understand it,
4 the Administration supports the amendment and I hope that
5 it can be adopted.

6 The Chairman. It seems a worthy purpose and a timely
7 one.

8 Mr. Ambassador, may I ask the Administration's view?

9 Ambassador Yerxa. We think this is a good amendment.
10 We have worked with Senator Daschle and his staff on it,
11 and would urge its adoption.

12 The Chairman. Thank you.

13 Senator Baucus. Mr. Chairman?

14 The Chairman. Senator Baucus.

15 Senator Baucus. Mr. Chairman, I think it is a good
16 amendment, but we do not necessarily tilt language toward
17 one continent as opposed to the others in our efforts to
18 develop trade policy. You know, there are other parts of
19 the world.

20 I mean, Africa is great, but there is Asia, for
21 example. I just want to make it clear that we should have
22 language here when we finally finish up that is neutral in
23 respect to, at the very least, what parts of the world we
24 are going to be focusing on.

25 The Chairman. I think that is a fair point, too.

1 Senator Rockefeller. Mr. Chairman?

2 The Chairman. Senator Rockefeller.

3 Senator Rockefeller. This is, I hope, not out of
4 order, but just before we go on to the next amendment, can
5 I ask a question of the Administration on a point which has
6 just been brought to my attention? It is tiny, very short.

7 The Chairman. Yes. Would you mind if we voted first?

8 Senator Rockefeller. Oh, I apologize.

9 The Chairman. Those in favor would say aye.

10 (A chorus of ayes)

11 The Chairman. Those opposed?

12 (No response)

13 The Chairman. The ayes have it unanimously.

14 Senator Rockefeller?

15 Senator Rockefeller. Thank you, Mr. Chairman. I
16 apologize for my timing.

17 I direct this to Sue Esserman. A problem has arisen
18 where there are simultaneous antidumping and countervailing
19 duty cases filed, and I understand that the Administration
20 has agreed that the Senate Finance Committee can provide
21 report language concerning a regulatory provision on the
22 direct reimbursement of countervailing duties in cases
23 where antidumping and countervailing duties are filed. The
24 Finance Committee staff knows about this.

25 Am I correct in what I have said?

1 Secretary Esserman. You are correct that the
2 Administration would have no problem with such a provision.

3 Senator Rockefeller. All right. I thank the Chairman.

4 The Chairman. Thank you, Senator Rockefeller. Thank
5 you, Madam Secretary.

6 The bill is open to amendment. Senator Wallop is on
7 his way.

8 Senator Dole. On a Short Supply amendment.

9 The Chairman. Yes. Which I would like to see us give
10 short shrift.

11 Senator Bradley?

12 Senator Bradley. Mr. Chairman, are we prepared to
13 vote?

14 The Chairman. I would like to show our characteristic
15 courtesy to Senator Wallop, and then we are ready to vote.

16 Senator Wallop. Mr. Chairman.

17 The Chairman. Senator Wallop.

18 Senator Wallop. Mr. Chairman, I have two amendments,
19 one of which will be quite quick, the other one of which
20 might be quite quick but may be a different result.

21 Mr. Chairman, I would like to be sure that the
22 Statement of Administrative Action clearly sets out the
23 intent of the Administration to protect against the
24 unauthorized copying and distribution of textile fabric
25 designs.

1 American manufacturers spend a great deal of money
2 every year developing and marketing unique, original, and
3 copyrighted fabric designs which are sold on a worldwide
4 basis.

5 Article 25 of the TRIPs provision of GATT requires that
6 the laws of each member nation provide for protection of
7 textile fabric designs, either under their copyright law or
8 industrial design law.

9 Unfortunately, the laws of many countries, such as
10 Pakistan, fail to provide any protection against the theft
11 of these designs, and U.S. manufacturers make an entire
12 line available to buyers throughout the world only to find
13 that foreign companies copy and sell their most popular
14 items at half the price of the U.S. goods. Companies
15 operate outside the reach of U.S. laws by selling their
16 pirated goods in other foreign countries.

17 My proposal is designed to encourage countries which
18 currently do not provide adequate protection against this
19 behavior to begin to do so. I propose that the USTR
20 regularly report to the Senate Finance Committee and House
21 Ways and Means on steps which countries are taking to
22 improve the protection of these designs.

23 Specifically, USTR, as part of its annual report,
24 provided for, in the Chairman's mark, language implementing
25 the TRIPs agreement would monitor progress made in

1 protecting against infringement of textile fabric design.

2 The Chairman. May I ask if that is acceptable to the
3 Administration?

4 Ambassador Yerxa. I have not seen the language yet.
5 This has not been brought to my attention yet.

6 The Chairman. Do we have a copy that we can give you?

7 Senator Wallop. It is my understanding that it has
8 been discussed with USTR and that they are --

9 The Chairman. Madam Ambassador, are you familiar with
10 this?

11 Ambassador Hillman. I am sorry, I am not familiar with
12 Senator Wallop's amendment. I am very familiar with the
13 issue, and I think he correctly states that the TRIPs text
14 provides protection for both copyrighted designs or designs
15 that are under our industrial design laws. I would be
16 delighted to take a look at the amendment. As it is
17 described, I do not --

18 The Chairman. Could we set this amendment aside for
19 the few minutes that it will take the Ambassador to look at
20 it and then go to the other amendment you have, Senator
21 Wallop?

22 Senator Wallop. Well, I can only suggest that we
23 talked to Kathy Fields and said it was no problem.

24 Ambassador Yerxa. We need to check the language.
25 There apparently is a miscommunication somewhere.

1 Senator Wallop. The language is technically within the
2 jurisdiction of the Judiciary Committee.

3 The Chairman. Would it be agreeable to the committee,
4 this being a somewhat informal process, that once the
5 Administration has -- we have no language. If the
6 Administration has the language and approves, and the
7 Ambassador says there are provisions of this kind in the
8 agreement --

9 Ambassador Hillman. Correct. Correct.

10 The Chairman. And Senator Packwood and I, on our
11 behalf and the committee's, if the conferees approve, that
12 we go forward. Is that agreeable?

13 Senator Bradley. I think that is an excellent
14 suggestion.

15 Senator Wallop. That is fine, Mr. Chairman. It is not
16 meant to be anything except the same kind of copyright
17 design protection we provide for --

18 The Chairman. Right. Now, having said that --

19 Senator Wallop. -- add this and other things.

20 The Chairman. Fine. That is agreed to.

21 Senator Bradley. Agreed.

22 The Chairman. I thank the committee.

23 May I say, however, you will not mind that American
24 textile manufacturers spend an enormous amount of time
25 copying the textile designs of Mogul emperors who lived in

1 the region of India that is now Pakistan.

2 Senator Wallop. Well, exactly. And to the extent that
3 the Mogul emperors have a copyright, they ought to be
4 protected.

5 (Laughter)

6 The Chairman. Well said.

7 Senator Wallop. You will get no quarrel from me, Mr.
8 Chairman.

9 Senator Bradley. Next amendment.

10 The Chairman. Next amendment.

11 Senator Wallop. Mr. Chairman, let me just quickly
12 begin the second one by reading a letter addressed to you
13 signed by the four of the five last Assistant Secretaries
14 of Commerce in favor and support of a No Supply amendment.

15 "Dear Senator Moynihan: We respectfully request your
16 consideration of our experiences as former administrators
17 of U.S. antidumping and countervailing duty laws and of the
18 Short Supply Program under the Steel Voluntary Restraint
19 Agreements.

20 Based on that experience, we support a "no supply"
21 provision in U.S. antidumping and countervailing duty law
22 that is time and quantity-limited, that permits Commerce to
23 reject a "no supply" request if Commerce determines that
24 significant price erosion would result; and that ensures
25 that Commerce notifies all prior participants in the case

1 of the request, as well as publishing a notice in the
2 Federal Register.

3 We are convinced that the Commerce Department could
4 administer such a provision well. Within the Department's
5 International Trade Administration, Import Administration
6 has regained 70 people formerly dedicated to implementation
7 of programs which have terminated (steel VRAs, machine tool
8 VRAs, and semiconductor FMVs).

9 A "no supply" proposal would not require more than a
10 fraction of that. In addition, Import Administration could
11 call on the 405 people authorized for the ITA offices in
12 Trade Development," et cetera.

13 You have the rest of the letter, signed by Alan Holmer,
14 no stranger to this committee, Jon Mares, no stranger, Alan
15 Dunn, and Eric Garfinkel.

16 I propose the amendment, known as the No Supply
17 amendment, a provision that authorizes the Department of
18 Commerce to temporarily suspend antidumping and
19 countervailing duties on specified imported products only
20 when such products have been found unavailable from
21 producers within the United States.

22 The scope of the amendment is narrow and its use by
23 industrial customers/consumers will be rare. The amendment
24 allows the Department of Commerce wide discretion in
25 investigating the market situation which has given rise to

1 the "no supply" situation and empowers that agency to deny
2 request for "no supply" relief when there is domestic
3 production of the product specified in the application.

4 The amendment addressed is a problem faced by
5 industrial consumers in industries as diverse as natural
6 gas, computers, steel metal forming, and rubber tire
7 production.

8 Under the current law, antidumping and countervailing
9 duty determinations apply to broad categories of products.
10 Duties averaging 40-60 percent of the total value are
11 assessed on these broad categories before the U.S. Customs
12 even lets them in.

13 Within these categories are numerous specialized
14 products needed by American industrial consumers that are
15 unavailable from domestic industry. It is these
16 specialized products that are essentially taxed at our
17 borders to protect domestic industries, despite the fact
18 that they are not producing these products.

19 Thus, the adoption of the amendment will assist U.S.
20 industrial consumers in obtaining needed inputs for
21 manufacturing without undermining the effectiveness of our
22 trade laws.

23 The Chairman. Thank you, Senator Wallop.

24 Senator Bradley?

25 Senator Bradley. Mr. Chairman, I would support Senator

1 Wallop's amendment. I think that frequently not providing
2 this short supply relief has unintended consequences. I
3 know of one specific case. In 1991, there was a flat panel
4 display case in which a 63 percent duty was put on that
5 flat panel displays, even though we did not produce any in
6 the United States.

7 And what happened was, the country that was selling the
8 flat panel displays, even with the 63 percent duty, simply
9 did not sell them to the United States and our production
10 here moved offshore. And Apple, Tandy, Compac and IBM now
11 do not produce here because they could not get that flat
12 panel display.

13 I think this is an important amendment and I support
14 it.

15 Senator Wallop. Thank you.

16 Senator Rockefeller. Mr. Chairman?

17 The Chairman. Senator Rockefeller.

18 Senator Rockefeller. If this amendment is what I think
19 it is, one of the problems is that Senator Wallop, in
20 trying to come up with the votes, with all due respect sir,
21 has changed this amendment so many times that it is hard to
22 keep up with it.

23 I mean, it used to be semiconductors, and then it was
24 timber, and then it was all exemptions, then it was short
25 supply, and now it is no supply.

1 I would like to get the Administration's point of view,
2 but I have several views. I think, one, it eviscerates our
3 antidumping laws. If that is correct, it ought to be
4 defeated.

5 Secondly, I think it, in a sense, says to dumpers, do
6 not just dump a little bit, do not dump at the edges, but
7 really go in there and dump so badly that you just kind of
8 ruin the industry so there is no supply.

9 It puts, almost, exporters in the position wherein they
10 have to say, I cannot export because I cannot get caught
11 with no supply, so I have to stop exporting in order to
12 keep my product local so that there will not be either
13 short supply or no supply. I think it is very perverse.
14 I think it is a very, very serious amendment, potentially
15 very dangerous, and I would like to get the
16 Administration's view on it.

17 The Chairman. Ambassador Yerxa?

18 Ambassador Yerxa. Yes, Mr. Chairman. I am going to
19 make a couple of comments about it and then ask Assistant
20 Secretary Esserman also to comment, because we do have
21 serious reservations and concerns with this amendment.

22 I know that it has, at first glance, some appeal to
23 people, but I do believe that the overall effect of this
24 amendment would be to cause serious problems in the
25 administration of the antidumping law.

1 First of all, I think we ought to point out that we
2 have had 70 years of administration of the antidumping law.
3 And, in fact, during the period that all these gentlemen
4 were administering the law we never had a short supply or
5 no supply procedure under the law, and they seemed to
6 administer it quite effectively and never requested such
7 authority.

8 Senator Wallop. If that is the case, then it should
9 not worry you.

10 Ambassador Yerxa. Well, my point is that they felt
11 that the law operated effectively without it. But, more
12 importantly, there are a number of aspects of this
13 amendment that I think would create all kinds of problems
14 and lead to essentially a bureaucracy in the Commerce
15 Department that would have to make considerable
16 determinations in each and every case because these no
17 supply requests would be made in virtually every instance,
18 they would be forced to make determinations --

19 The Chairman. Could I ask Secretary Esserman? We are
20 running the clock.

21 Ambassador Yerxa. Yes. Go ahead.

22 Secretary Esserman. Well, as the administrator of the
23 antidumping and countervailing duty laws, I strongly oppose
24 this amendment. I believe it would undermine the laws,
25 deny effective relief, and substantially raise the cost for

1 petitioning domestic industries.

2 There is no need for this proposal. If a U.S. importer
3 truly cannot obtain a product subject to an antidumping
4 order from a domestic source, there is no economic
5 incentive for the foreign producer to sell at dump prices.

6 To the contrary, the foreign producer will maximize its
7 prices in such a situation, thereby avoiding any
8 antidumping liability. Indeed, the explanation attached to
9 yesterday's version of the amendment makes this very point
10 and shows why there is no need for this proposal.

11 It states, "foreign producers which would be the only
12 available suppliers would have every incentive to charge
13 high prices because there would be no U.S. competition."
14 It further recognizes, "under these conditions, foreign
15 producers would have no incentive to dump."

16 If, as the proponents of this amendment suggest, there
17 is no need to dump, then why would there be a need to waive
18 the antidumping duty? We believe, as Senator Rockefeller
19 has suggested, that this amendment would reward the most
20 effective dumpers, and we are very, very concerned about
21 it.

22 The Chairman. Thank you very much.

23 Senator Baucus. Mr. Chairman?

24 The Chairman. Senator Baucus.

25 Senator Baucus. Yes. Very briefly, I think the

1 Administration has made a very good case. The fact is,
2 also, this amendment, as I understand it, has been extended
3 to apply not only to antidumping, but to countervailing
4 duties. Countervailing duties are imposed against other
5 countries' illegal governmental acts.

6 The Chairman. As against specific products.

7 Senator Baucus. That is right. And, also, it seems
8 pretty clear to me that, if this were to pass, it would be
9 very hard for a company to get started, faced with
10 subsidies and dumping from overseas. For all those
11 reasons, I would oppose it.

12 The Chairman. Thank you.

13 Senator Bradley?

14 Senator Bradley. Mr. Chairman, I would just observe
15 that I think that the focus is too narrow because the
16 country that is involved has other options, such as in the
17 case I mentioned with flat panel displays. Basically, we
18 do not get the product then.

19 The Chairman. Right.

20 Senator Bradley. And the production then moves
21 offshore. I would also observe that, in the Chairman's
22 draft, I think there is still a short supply provision for
23 implementing the agricultural agreement.

24 The Chairman. There is. I am afraid time is running.

25 Senator Wallop. Mr. Chairman, could I have a closing

1 word?

2 The Chairman. Of course.

3 Senator Wallop. I would say to the Administration, I
4 am a little bit startled by the vehemence of the
5 opposition. You are fighting this so hard when all you are
6 giving up with the amendment is the discretion to get out
7 of the way. There is not a single "no supply" application,
8 pursuant to this amendment, that has to be granted.

9 It is an opportunity for American business, and the
10 Administration, which prides itself on being on the side of
11 American business, ought at least to be grateful to have
12 the opportunity on one or two occasions to take that side.

13 It is not so narrow, Mr. Chairman. I have the No
14 Supply Group. There are 37, I believe, corporations as
15 diverse as the American Wire Producers, IBM, Panhandle
16 Eastern, Xerox, all of whom --

17 The Chairman. Would you like to place that in the
18 record?

19 Senator Wallop. Again, I say to the Administration,
20 there is nothing in here that requires you to grant
21 anything, except it gives you a tool to assist American
22 industry if it happens to need it. I am surprised at the
23 vehemence of the opposition.

24 The Chairman. On that note, I think, out of
25 consideration for Mr. Packwood, we have to call the roll.

1 The Clerk. Mr. Baucus.
2 Senator Baucus. No.
3 The Clerk. Mr. Boren.
4 The Chairman. No, by proxy.
5 The Clerk. Mr. Bradley.
6 Senator Bradley. Aye.
7 The Clerk. Mr. Mitchell.
8 The Chairman. No, by proxy.
9 The Clerk. Mr. Pryor.
10 The Chairman. No, by proxy.
11 The Clerk. Mr. Riegle.
12 The Chairman. No, by proxy.
13 The Clerk. Mr. Rockefeller.
14 Senator Rockefeller. No.
15 The Clerk. Mr. Daschle.
16 Senator Daschle. No.
17 The Clerk. Mr. Breaux.
18 Senator Breaux. Yes.
19 The Clerk. Mr. Conrad.
20 Senator Conrad. No.
21 The Clerk. Mr. Packwood.
22 Senator Packwood. Aye. And all these others will be
23 by proxy, so I will not announce it. Go ahead.
24 The Clerk. Mr. Dole.
25 Senator Packwood. No.

1 The Clerk. Mr. Roth.
2 Senator Packwood. Yes.
3 The Clerk. Mr. Danforth.
4 Senator Packwood. No.
5 The Clerk. Mr. Chafee.
6 Senator Packwood. Yes.
7 The Clerk. Mr. Durenberger.
8 Senator Packwood. Yes.
9 The Clerk. Mr. Grassley.
10 Senator Packwood. No.
11 The Clerk. Mr. Hatch.
12 Senator Packwood. No.
13 The Clerk. Mr. Wallop.
14 Senator Wallop. Aye.
15 The Clerk. Mr. Chairman.
16 The Chairman. No.
17 Senator Packwood. I have a statement by Senator
18 Durenberger he would like in the record, and by Senator
19 Chafee.
20 The Chairman. Thirteen no, seven ayes. The amendment
21 is not agreed to.
22 The statements are placed in the record.
23 (The prepared statements of Senators Durenberger and
24 Chafee appear in the appendix.)
25 The Chairman. Senator Dole has asked if we could ask

1 the GAO to do a study of the effectiveness of Section 301
2 as a tool for opening foreign markets for U.S. businesses,
3 and I would like to suggest that we do make that request of
4 the General Accounting Office.

5 Now, at the end of a very long process that began in
6 Punta del Estes eight years ago, I would like to move that
7 the committee approve the committee's recommendations for
8 the implementing legislation for the Uruguay Round.

9 Those in favor will say aye.

10 (A chorus of ayes)

11 The Chairman. Those opposed?

12 (No response)

13 The Chairman. The ayes have it unanimously. With
14 great thanks to our staff; thank you, Senator Packwood,
15 thank you Ambassador Yerxa, --

16 Ambassador Yerxa. Thank you, Mr. Chairman.

17 The Chairman. -- Mr. Shapiro, Madam Secretary.

18 (Whereupon, at 4:29 p.m., the meeting was concluded.)

19

20

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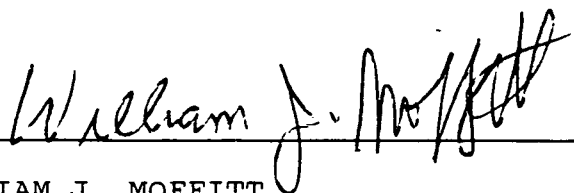
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C E R T I F I C A T E

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2 This is to certify that the foregoing proceedings of an
3 Executive Committee meeting of the Committee on Finance,
4 United States Senate, held on Tuesday, August 2, 1994, were
5 transcribed as herein appears and that this is the original
6 transcript thereof.

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WILLIAM J. MOFFITT

Official Court Reporter

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15 My Commission Expires April 14, 1998
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JOHN BREAUX, LOUISIANA
KENT CONRAD, NORTH DAKOTA

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WILLIAM V. ROTH, JR., DELAWARE
JOHN C. DANFORTH, MISSOURI
JOHN H. CHAFFEE, RHODE ISLAND
DAVE DURENBERGER, MINNESOTA
CHARLES E. GRASSLEY, IOWA
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MALCOLM WALLOP, WYOMING

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

LAWRENCE O'DONNELL, JR., STAFF DIRECTOR
LINDY L. PAULL, MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

EXECUTIVE SESSION

Tuesday, August 2, 1994 -- 10:00 a.m.

Room SD-215 Dirksen Senate Office Building

A G E N D A

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

Place in Committee Record
Chuck Grassley

MR. CHAIRMAN:

BEFORE WE CONCLUDE OUR BUSINESS THIS AFTERNOON ON THE IMPLEMENTING LANGUAGE TO THE GATT I WOULD LIKE TO TAKE A MOMENT TO PAY A SPECIAL TRIBUTE TO ONE OF THE MEMBERS OF MY STAFF.

FOR THE LAST SIXTEEN YEARS BOB LUDWICZAK HAS BEEN MY CHIEF-OF-STAFF AS WELL AS MY TRADE ADVISOR ON THE FINANCE COMMITTEE SINCE I CAME TO THE SENATE IN 1981. AFTER 20 YEARS OF DEDICATED SERVICE TO ME, MY OFFICE, AND THE NATION, BOB HAS DECIDED TO RETURN TO ACADEMIA AT THE CONCLUSION OF THIS SESSION OF CONGRESS.

SINCE THIS WILL PROBABLY BE THE LAST MAJOR PIECE OF TRADE LEGISLATION HE WILL BE INVOLVED WITH ON THIS COMMITTEE, I WOULD LIKE TO TAKE THIS MOMENT TO EXPRESS MY DEEP GRATITUDE FOR HIS HARD WORK AND LOYALTY.

I WOULD LIKE TO WISH BOB, HIS WIFE JOYCE, AND HIS TWO CHILDREN AMY AND ALYSSA WELL AS THEY DEPART FOR THE SUNSHINE OF STATE OF FLORIDA. HIS NEW EMPLOYER WILL BE FORTUNATE TO RECEIVE AN INDIVIDUAL OF SUCH INTEGRITY, HARD WORK, AND LOYALTY.

BOB.....I WISH YOU WELL IN THE CHALLENGE AHEAD OF YOU, THE BEST OF HEALTH FOR YOU AND YOUR FAMILY, AND GOD'S SPEED IN YOUR NEW FOUND JOURNEY. YOU'LL BE MISSED BY ME AND MANY OTHERS I'M SURE, WHOSE LIFE YOU HAD AN OPPORTUNITY TO TOUCH DURING YOUR TWO DECADES ON CAPITOL HILL.

for record
Sen. Conrad

GRASSLEY, BAUCUS
CONRAD AMENDMENT ON FEDERAL STATE RELATIONS
A

The Conrad amendment addresses concerns about the effect of WTO decisions on state and local laws. It enhances the consultation between USTR and States both generally and, in particular, in the dispute settlement process. Briefly, it:

- o requires the Executive to consult with Congress before bringing any action against a State based on the agreements, clarifies that a panel report shall not be considered binding or otherwise accorded deference in such an action and requires that the United States shall have the burden of proving that the State measure is inconsistent with the agreements;
- o makes it absolutely clear that there will be no private right of action of any sort based in any way on the agreements;
- o ensures that any ruling that a State measure is inconsistent with the agreements has only prospective effect;
- o guarantees the rights of States to be involved preparing the position of the United States in all stages of the defense of any state measure challenged by any WTO Member, including any action after an adverse dispute panel ruling; and
- o requires advance notification and consultation with States before the U.S. requests consultations or panel proceedings regarding a sub-national measure of another Member.

Thank Ira Shapiro & Ken Frisberg

Walter A. G. ...

for record
Jan. Conrad



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July 27, 1994

via fax and U.S. mail

Honorable Michael Kantor
U.S. Trade Representative
209A Winder Building
600 17th Street, N.W.
Washington, D.C. 20506

Dear Ambassador Kantor:

As the Attorneys General of our respective states and as the leadership of the National Association of Attorneys General (NAAG) workgroup on trade issues, we write to express our satisfaction with the proposed amendments to the GATT implementing legislation and statement of administrative action that our respective staffs have developed over the last ten days. The NAAG workgroup on trade issues has convened nearly daily since our July 15 meeting in Washington with your General Counsel, Ira Shapiro, to review the provisions which have been negotiated by our staffs.

The document which has been developed not only meets essential needs of the states but has also had the important byproduct of fostering the type of productive communication and interaction between your office and the states that gives us confidence that not only the letter, but the spirit, of this agreement will be adhered to.

The specific benefits of our agreement for states importantly include:

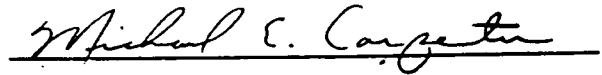
- the right of states to specific notice, information and participation in key proceedings affecting their state laws;
- substantial protections for the states that level the playing field between state and federal government where the federal government seeks to overturn state law in U.S. District Court, including a bar on retroactive relief; and
- the elimination of the private right of action so as to bar either the private sector or foreign governments from preempting state or local laws.

Page 2
Honorable Michael Kantor
July 27, 1994

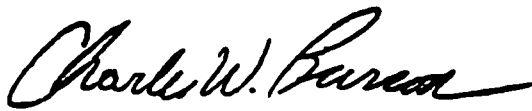
We would be remiss if we did not acknowledge the fine work that U.S. Senator Kent Conrad has done in championing these issues. His contribution to the process has been immeasurable.

The major points of our agreement should not belie the importance of the dozens of specific provisions which give clear and effective meaning to these federal obligations. In summary, in a separate communication, we are strongly recommending to our colleagues, the Attorneys General of the other states who joined us in initiating this dialogue, that this comprehensive agreement be supported as one that effectively preserves for the states a meaningful role and significant opportunity to defend and protect state law.

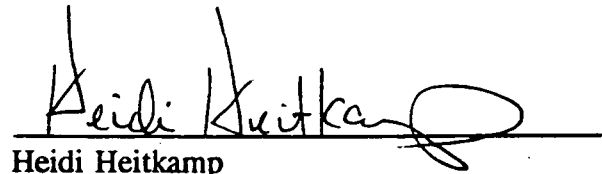
Sincerely,



Michael E. Carpenter
Attorney General of Maine
Chair, NAAG Trade Workgroup



Charles W. Burson
Attorney General of Tennessee
NAAG President



Heidi Heitkamp
Attorney General of North Dakota
Vice Chair, NAAG Trade Workgroup

cc: U.S. Senator Kent Conrad
MEC:lk

to be inserted in the
record

^{Billings}
Dave Dentinger

STATEMENT BY SENATOR DURENBERGER
IN SUPPORT OF THE WALLOP NO SUPPLY AMENDMENT

Mr. Chairman, I would like to briefly discuss my support of the Wallop no-supply amendment. This amendment has become one of the most controversial amendments we will discuss during the mock markup, but I believe it provides an important authority for the Administration to assist US companies which are forced to import due to lack of domestic production. At the same time, I do not believe it will gut our antidumping laws or negatively affect any domestic industry benefiting from an antidumping order.

I have some sympathies toward the views of those opponents who view this as an effort to weaken our trade remedy laws. I have been a strong supporter of those laws and the tools they offer to help us combat unfair trade practices. It was not an easy decision for me to support this amendment both because of the domestic industry opposition and because it represents a change that could be considered extraneous to the implementing legislation. I have shared the views of my colleague from Oregon that the implementing legislation should include the minimum changes necessary to implement the Uruguay Round Agreement.

However, in this case, I believe the amendment is justified and contains the necessary safeguards which will ensure that any domestic industry will not be injured.

First, the amendment will now include a waiver of antidumping and countervailing duties only for those items included in an order

which are not available in this country. The importer would have to prove that the item is not available in the US, not that it is not available at a reasonable price. This was a concern in the earlier short supply language, but, in my judgement, should no longer be a problem.

While it is true that Commerce does have discretion now to modify the scope of an investigation, that did not occur in the flat panel case. Further, the Administration does not have current authority to waive AD or CVD duties from any product included in an existing order.

I can understand the domestic industry concerns that dumping should not be permitted under any circumstances. But I share the concerns of many constituent companies in Minnesota which object to being forced to import inputs at premium prices due to the imposition of AD or CVDs. If a company can demonstrate that a product under order is not available domestically, it should not have to pay this premium. Many companies have communicated to me that they have asked domestic companies to produce certain products, only to be turned away as the industry concentrates on higher cost production. If an industry itself declines to produce certain low-end products, it should have no quarrel with a user's attempts to import the product at a reasonable price. When any US company is able to resume production of waived products, the waiver of AD or CVDs would terminate.

The other change agreed to by Senator Wallop was a limit of two years that these waivers would apply. Further, semiconductors were totally excluded from the amendment.

I find the Administration's opposition to the amendment curious and have been disappointed that a political motive may have surfaced. During the steel VRAs, Commerce had a short supply program which worked well. Commerce was not overwhelmed with requests--as I believe would be the case now.

The Administration also points out that it knows of no company or industry which needs this program. Considering the number of companies which have approached me with specific examples, I was also disappointed in this response.

Another disappointment to me was a concern brought to me by a steel company located in my state that steel companies supporting this amendment sought a compromise with the major steel companies but received no cooperation.

While I am reluctant to oppose my friends in the steel industry, I intend to vote for this amendment when it is offered by the Gentleman from Wyoming.

#####

Hatch: CIVE

Mr. Chairman, I would like to express my strong support for Senator Rockefeller's amendment on captive production and make a few brief comments.

As you and many of the members of the committee are aware, this proposal has been batted around for several months now, and I know that there are several members on this committee who may be unsure of this provision. As Senator Rockefeller has stated, this truly is a bipartisan effort to provide a fair approach to analyzing integrated production.

Unfortunately, there have been several misconceptions regarding captive production, and I think it is very important for all members of the committee to understand the evolution of this issue. The fact of the matter is that the

language we are considering goes a long way to address, even more so than the House provision, the concerns of members on both sides of the aisle.

To clearly illustrate this point, I want to emphasize something that Senator Rockefeller raised with respect to how captive production will be treated under this provision for both domestic and foreign producers.

This amendment is not making a drastic change in the way that the ITC looks at captive production. In fact, the amendment simply instructs the ITC to look "primarily," not exclusively, at the merchant market in which the products compete and only after the ITC has made a positive determination that there is indeed significant production that is consumed

internally. It should be emphasized that the ITC maintains discretion to look at all factors in making this determination.

In addition, the amendment treats captive production of like imports the same as domestics. This is important, because the ITC, to my knowledge, has never considered internally consumed production of related-party importers as domestically produced goods. This is a significant concession on the part of the domestic industries who will be effected by this provision.

To summarize, therefore, importers and domestics will have the same opportunity to have captive production discounted from the import penetration ratio that the ITC makes in dumping cases involving integrated production

industries. This is very important, Mr. Chairman, because I know that there are some members of this committee who are concerned that we are trying to carve out a privileged niche for the steel industry and make it easier for the industry to win dumping cases.

On the contrary, Mr. Chairman, this boils down to an issue of fairness, and I believe that this amendment goes a long way in treating all integrated producers, both domestic and foreign, in a fair manner.

Therefore, I hope my colleagues on both sides of the aisle will join Senator Rockefeller and I in passing this amendment.

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the record

STATEMENT BY SEN. CHAFEE ON
"NO SUPPLY" AMENDMENT

August 2, 1994

- I have some concerns about the amendment offered by my colleague from Wyoming, but I believe that the issue of "no supply" is worthy of serious consideration, and thus I will vote for the Wallop amendment.
- We need a system that can provide built-in flexibility to respond to "no supply" situations that demonstrably cause harm to US manufacturers. Yet at the same time we need to ensure that such flexibility does not result in a loophole in our critical dumping laws.
- The amendment offered by Senator Wallop attempts to walk this fine line. It provides a time- and quantity-limited escape clause that is to be used in only the most exceptional of circumstances.
- Crafting an effective and limited "no supply" provision is a difficult task. It may be that further refinements are needed to the Wallop amendment. But I do believe that this issue should be addressed, and I hope this amendment leads to the opportunity for Congress and the Administration to work together.
- Therefore, I will vote for the amendment.

For Record

TALKING POINTS: BAUCUS/DANFORTH SUPER 301

Sen. Chafee 8/2

- I think this is a good amendment, and I will support it.
- In 1988, we adopted Super 301 on what you might call a trial basis: for two calendar years, 1989 and 1990. In those two years, Super 301 proved it could do a good job of opening foreign markets by eliminating trade barriers.
- I am a cosponsor of the Baucus/Danforth bill to extend Super 301 permanently.
- This amendment is based on that bill, although it extends Super 301 for just five years.
- I am pleased that it provides for six months rather than one month between the release of the National Trade Estimates report and the identification by USTR. I think that makes sense. All due opportunity should be given to allow for a mutually-agreed upon solution, rather than confrontation.