

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXECUTIVE SESSION

TUESDAY, JUNE 15, 1982

U.S. Senate

Committee on Finance

The committee met at 10:20 a.m. in room 2221, Dirksen Senate Office Building, Hon. Robert Dole (chairman) presiding.

Present: Senators Dole, Danforth, Chafee, Heinz, Armstrong, Symms, Grassley, Long, Bentsen, Matsunaga, Baucus, Bradley and Mitchell. Also present: Messrs. Lang, Gingrich, Hathaway, Stern, and Kassinger.

(The prepared statements of the senators follow:)

1 The Chairman. We are here to mark up S. 2094, the
2 Reciprocal Trade and Investment Act of 1982. And I would
3 ask that a summary of the bill be made a part of the record
4 at this point.

5 (THE SUMMARY FOLLOWS:)

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CURRENT LAW

MAJOR PROPOSED AMENDMENT 5

- | | |
|---|---|
| <p>1. Section 104 - provides specific sector negotiating objectives for authorized trade negotiations.</p> | <p>1. Would amend current law by adding three new subsections providing new negotiating objectives with respect to trade in services, high technology and restrictions on U.S. foreign direct investment.</p> |
| <p>2. No similar provision.</p> | <p>2. Would add a <u>new section 128</u> to give the President a limited <u>tariff modification authority</u> with respect to undefined high technology products.</p> |
| <p>3. No similar provision.</p> | <p>3. Would add a new section 181 requiring a study and reports and consultations on barriers to exports of U.S. goods and services and restrictions on U.S. foreign direct investment.</p> |
| <p>4. 301(a) directs the President to take all actions within his power to retaliate against any act, policy, or practice of a foreign government which is unreasonable, unjustifiable or discriminatory and burdens or restricts U.S. commerce. The President is authorized to retaliate on a non-discriminatory basis or solely against the products or services of the foreign country involved.</p> | <p>4. Would amend current law to provide the President with specific authority to retaliate against <u>any product or sector</u> whether or not involved in the act against which action is taken.</p> |
| <p>5. 301(b) provides the President with authority to retaliate by withdrawing trade agreement concessions or imposing fees on <u>restrictions on products or services.</u></p> | <p>5. (a) Would amend current law to specifically provide that the President could impose fees or restrictions <u>"notwithstanding any other provision of law."</u>
 (b) Would amend current law to include authority to retaliate against <u>"suppliers of services."</u>
 (c) Would amend current law to include authority for the President to propose fast track legislation to carry out the objectives of section 301(a).</p> |
| <p>5. 301(d) provides a definition of the term commerce as including services associated with international trade.</p> | <p>6. (a) Would amend current law to provide that the definition of commerce also includes U.S. foreign direct investment.
 (b) Would amend current law to define the terms "unreasonable", "unjustifiable" and "discriminatory." The first two would include denial of right of establishment and denial of protection of industrial property rights.</p> |

CURRENT LAW

MAJOR PROPOSED AMENDMENT

- 7. 302 provides procedures and time limits on the filing of petitions and institution and conduct of investigations.
- 8. 303 provides for procedures for international consultations on cases instituted under Section 301.
- 9. 305 provides procedures for the public to request information of foreign government trade products.

- 7. Would amend existing law to provide for self-initiation of 301 investigations by USTR.
- 8. Would amend current law to provide for a delay of up to 90 days in the required initiation of international consultations.
- 9. Would amend current law to provide a specific exemption from the FOIA for information received during an investigation under section 301.

1 The Chairman. I would call on Senator Danforth at
2 this time, the Subcommittee chairman, and then other
3 others who would like to make comments before we proceed to
4 mark-up. Senator Danforth.

5 Senator Danforth. Mr. Chairman, thank you very much.
6 I would like to have my full statement put in the
7 record but I would like to read a page or so of it.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

S. 2094: THE RECIPROCAL TRADE AND INVESTMENT ACT

STATEMENT OF SENATOR JOHN C. DANFORTH

June 15, 1982

Today marks the completion of a process that began at the end of March--when the Committee conducted its first hearing on S. 2094 and other "reciprocity" trade bills. Three hearings, two and a half months and dozens of meetings later, I am pleased to submit to the Committee the revised "Reciprocal Trade and Investment Act of 1982."

The present version of the bill is the product of extensive consultations within this Committee and discussions with the Administration, labor and the private sector. Although based on the original language and concepts contained in S. 2094, the bill contains major provisions based on bills introduced by Senators Bentsen, Roth, Chafee, Bradley, Heinz and Hart. In addition, I should like to acknowledge the support and advice contributed by Chairman Dole and Senators Wallop, Moynihan, Symms, Boren, Grassley and Mitchell throughout the process.

The end result is a bill that should serve to further the objectives we all share--namely, the maintenance and expansion of market opportunities abroad for United States exports of goods and services and for foreign investment of the United States. The legislation builds on the broad concept of reciprocity of market access that is fundamental to U. S. trade policy. It strengthens enforcement of the legal rights of the United States under existing trade agreements and it sets the stage for the expansion of those international rights through the negotiation of agreements in the service and investment areas. Finally, the bill addresses itself to the problems encountered by high technology industries as a result of government intervention that distorts international trade in such high growth sectors.

Overall, the bill is designed to liberalize international trade and to curb protectionist pressures in the U. S. by demonstrating that we will enforce our rights under international agreements. The idea is to close the credibility gap created when we consistently refuse to take protectionist action in spite of the widespread perception that we are the only country practicing what everyone else preaches--namely, free trade.

The bill's requirement for annual reports identifying and analyzing the major barriers to U. S. trade and investment is a means of bringing into focus those barriers with the greatest impact on the U. S. economy. Of particular interest to the Committee would be the use of authority under Section 301 of the Trade Act, including the provisions for self-initiation contained in this bill to achieve their elimination and the use of this bill's negotiating authority to broaden the scope of existing international agreements. Developing countries--particularly those in advanced stages of development--would be included in this effort, in addition to our traditional developed country trading partners.

It is my hope, and that of others on this Committee with whom I've spoken, that the annual reports will be used by this and subsequent Administration to identify the most onerous barriers to U. S. trade and investment and thereby set comprehensive market enhancement priorities for U. S. trade policy.

The treatment of Section 301 in this legislation broadens its scope and increases its flexibility for dealing with foreign unfair trade practices. For the first time, foreign barriers to

direct investment by the United States will be incorporated in Section 301. Of particular concern are such trade-distorting measures as performance requirements and barriers which limit the establishment of an enterprise or deny national treatment.

To clarify and expand the existing causes of action under Section 301, the bill clarifies provisions involving "unreasonable" or "unjustifiable" measures which burden or restrict U. S. commerce. While other provisions deal with acts, policies and practices which violate, or which nullify and impair, benefits under existing trade agreements, these additional causes of action take into account those measures which violate or are inconsistent with the legal rights of the United States under other agreements ("unjustifiable") and those measures which are not necessarily in violation of existing international legal rights but otherwise burden or restrict U. S. trade and investment ("unreasonable").

With respect to retaliatory action authorized under Section 301, the bill clarifies and enhances Presidential authority. While the role of regulatory agencies is recognized with respect to trade in services, the Committee does not intend regulatory agencies to make trade policy. Instead, the bill clarifies the President's authority to impose fees and restrictions on foreign services or suppliers of those services.

In addition, the President is given new authority to propose legislation, to be treated on an accelerated basis, in such areas as foreign direct investment. It goes without saying that the

Committee expects the President, in choosing a means of retaliation, to take into account the national interest -- including the impact such retaliatory action would have on the U.S. economy.

Finally, the bill sets the stage for negotiations in areas not covered adequately in existing international law. Hence, the bill includes negotiating mandates and objectives in the areas of services, investment and government intervention in growth industries.

Of particular concern to me is the situation involving foreign direct investment -- which has major implications for international trade. In developed and developing countries alike, restrictions on foreign investment are being put into place which severely distort access opportunities. The impact on international trade has never been measured and should be of immense concern in the development of U.S. trade policy. The United States has always maintained a liberal investment policy, to the benefit of our economy as well as those of foreign investors. The Administration must be prepared to move forward with all due speed to reach bilateral and multilateral agreements with our trading partners -- designed to reduce, eliminate or prevent restrictions on the flow of investment throughout the world.

Having outlined the legislation, let me comment briefly on modifications of the original language in S. 2094 to take into account concerns expressed by the Administration. In general such changes were relatively minor and were made with a view to ensuring that the "worst case" scenarios anticipated by the Administration are not precipitated by the legislation. For example, the annual reporting requirement has been drafted in a manner so as not to prejudice

cases under Section 301 or the GATT. .

One additional change pertains to the new "fair and equitable market opportunities" standard contained in Section 301. S. 2094, as introduced, did not specifically require product-by-product or sector-by-sector comparisons as a separate course of action under Section 301. The use of the "fair and equitable" formulation clarifies that intent, although it does not preclude sectoral comparisons in cases where such a comparison is appropriate. In fact, the Committee originally expressly set out its intentions for the use of Section 301 in the 1974 Trade Act when it stated:

"The Committee intends that these powers be exercised vigorously to insure fair and equitable conditions for U.S. commerce."

Finally, I should like to remind the members of this Committee that if we wish to show the American people and our trading partners that we intend to pursue actively an open trading system through the passage of this legislation, it is imperative that the bill go forward without the addition of protectionist amendments. I would urge all of my colleagues to join with me in voting against any such protectionist amendments on the Senate floor.

1 Senator Danforth. Today marks the completion of a
2 process that began at the end of March when the Committee
3 conducted its first hearing on S. 2094 and other
4 reciprocity trade bills. Three hearings, two and a half
5 months and dozens of meetings later, I am pleased to submit
6 to the Committee the revised Reciprocal Trade and Investment
7 Act of 1982.

8 The present version of the bill is a product of
9 extensive consultations within this Committee, and
10 discussions with the Administration, labor and the private
11 sector. Although based on the original language and
12 concept contained in S. 2094, the bill contains major
13 provisions based on bills introduced by Senators Bentsen,
14 Roth, Chafee, Bradley, Heinz and Hart. In addition, I
15 should like to acknowledge the support and advice
16 contributed by you, Mr. Chairman, and by Senators Wallop,
17 Moynihan, Symms, Boren, Grassley, Mitchell and others
18 throughout the process.

19 The end result is a bill which should serve to further
20 the objectives we all share -- namely, the maintenance
21 and expansion of market opportunities abroad for United
22 States exports of goods and services and for foreign
23 investment of the United States. The legislation builds on
24 the concept of reciprocity of market access that is
25 fundamental to U.S. trade policy. It strengthens the

1 enforcement of the legal rights of the United States under
2 existing trade agreements. And it sets the stage for the
3 expansion of those international rights through the
4 negotiation of agreements in the service and investment
5 areas.

6 Finally, the bill addresses itself to the problems
7 encountered by high technology industries as a result of
8 government intervention that distorts international trade
9 in such high growth sectors. Overall, the bill is
10 designed to liberalize international trade and to curb
11 protectionist pressures in the U.S. by demonstrating that
12 we will enforce our rights under international agreements.
13 The idea is to close the credibility gap created when we
14 consistently refused to take protectionist action in spite
15 of the widespread perception that we are the only country
16 practicing what every one else preaches -- namely, free
17 trade.

18 The Chairman. Are there others who would like to make
19 an opening statement or comments? Senator Mitchell.

20 Senator Mitchell. Mr. Chairman, just briefly I
21 commend Senator Danforth for his efforts in this area. He
22 has outlined the specifics of the bill; I won't repeat
23 those. But I will merely comment that much of the time
24 when we deal with trade legislation in recent years it has
25 been defensive in nature, an expression of concern that we

1 are dealing with areas of trade in which the competitive
2 advantage that the United States once enjoyed is in the
3 process of being lost or has been lost to other areas.

4 This bill is a welcome change. It is heavily export
5 oriented. And it deals with some areas in which the United
6 States retains a marked advantage -- a competitive
7 advantage -- with respect to other nations and seeks to
8 permit open access for those areas such as services, and
9 high technology to break down barriers in foreign countries.
10 So it is a positive step and a welcome change of pace from
11 the defensive nature that we have adopted in recent years.

12 Thank you, Mr. Chairman.

13 The Chairman. Senator Chafee and then Senator Grassley.

14 Senator Chafee. Thank you, Mr. Chairman. I want to
15 commend you and, of course, commend Senator Danforth for
16 the efforts that have been made on this bill. You, Mr.
17 Chairman, and Senator Danforth have made every effort to be
18 fair and to accommodate the wide variety of viewpoints
19 represented on this Committee.

20 Now, Mr. Chairman, as you know, I am of the view that
21 retaliatory reciprocity legislation is not in our national
22 interest and would undermine our multi-lateral trading
23 system. However, in my view, the substitute bill we have
24 before us today reinforces our multi-lateral trading
25 system and our commitment to deal with trade problems through

1 negotiation rather than through retaliation.

2 But first, Mr. Chairman, I want to make note of
3 Section 5 of the bill which provides the President with a
4 negotiating mandate in the area of trading services. And
5 provides for a work program to catalog trade barriers and
6 to develop negotiating objectives. This section, Mr.
7 Chairman, incorporates the provisions of S. 2058, the
8 Trade and Services Act of 1982 that Senator Roth and I
9 introduced earlier this year. And I regard the inclusion
10 of Section 5 of this bill as a major step toward giving
11 services the priority that it deserves in U.S. trade policy.

12 Mr. Chairman, I also have a number of comments about
13 other sections of the bill. The definition of reciprocity.
14 Now the first title of the bill remains the "Reciprocal
15 Trade and Investment Act of 1982," and thus will continue
16 to be referred to as reciprocity legislation. It is my hope
17 that after months of effort and negotiations that have
18 been put into this bill that we now agree that reciprocity
19 is a negotiating concept and is not appropriate as the
20 basis for an independent cause of action.

21 Furthermore, as a negotiating concept, we have
22 accepted the definition of reciprocity as global reciprocity
23 suggested by Ambassador Brock in his testimony before this
24 Committee in March. Global reciprocity is a concept
25 embodied in the general agreement on tariffs and trade,

1 which means that the aggregate benefits of being a party
2 to GATT are roughly equal to the concessions given to others.
3 In conjunction with this, we are agreeing to extend the
4 application of this principle to such areas as services and
5 investment through the initiation of negotiations to include
6 those areas within GATT.

7 The adoption of this definition of reciprocity is,
8 therefore, merely a reaffirmation of what has been the
9 ultimate of our participation in GATT. The adoption of
10 this definition signals a rejection of the implementation of
11 a policy of bilateral or sectoral reciprocity as the
12 primary means for removing trade barriers. And, instead,
13 indicates the continuation of our long standing preference
14 for the elimination of such barriers through negotiations;
15 not unilateral retaliation. This approach also reflects
16 the need to maintain a global rather than a bilateral
17 perspective based on the recognition of the realities of
18 international trade flows in light of the fact that we have
19 deficits with some of our trading partners, such as Japan,
20 while we have trading surpluses with other trading partners,
21 such as the EEC.

22 Now the definition of fair and equitable. The bill
23 introduces a new concept of fair and equitable market
24 access as a factor to be considered in deciding whether a
25 foreign act or practice is unreasonable under Section 301

1 of the Trade Act of 1974.

2 Mr. Chairman, since this term is not defined in the
3 substitute bill, I believe that it is imperative that we
4 provide a definition in the Committee report. That defini-
5 tion, Mr. Chairman, should contain two elements.

6 First, I feel very strongly that this term should not
7 be interpreted to mean equal market access based on a
8 comparison of market shares. Instead, this term should be
9 defined as requiring a case-by-case determination of
10 fairness based on a variety of factors, such as (1) the
11 foreign country's level of economic development, (2) the
12 history of our trade relations with that country, (3)
13 patterns of consumption and various social and cultural
14 factors that influence them, (4) relative exchange rates,
15 (5) whether the denial of market access is the result of
16 an act or a practice which violates international trade
17 agreements or impairs or denies us the benefits to which we
18 are entitled under such agreements, and (6) whether the
19 product, service or investment affected is a subject of
20 on-going bilateral or multi-lateral negotiation.

21 This list is not exclusive, but is intended to provide
22 an indication of the kinds of factors that should be taken
23 into consideration.

24 The second point that should be clarified in the
25 Committee report with respect to the inclusion of fair

1 and equitable market opportunities in Section 301 is the
2 denial of market access is not automatically a denial of
3 fair and equitable competitive opportunity. The decision
4 as to whether a denial of market access is actionable
5 under 301 depends on the circumstances of the particular
6 case in consideration of a variety of factors including the
7 six listed above.

8 Third, I support the Administration's suggested
9 amendment to Sub-Section A-1 of 301, inserting language
10 indicating that the President is to consider the impact of
11 any action he may decide to take under 301 on U.S. rights
12 and obligations under international trade agreements.

13 Now on page 10, line 24 through 28, the term
14 "discriminatory" is defined. My question is what does the
15 phrase "where appropriate" mean? Does it mean that the
16 bill adopts the GATT definition of discriminatory, which
17 excludes all programs or policies such as GST or customs
18 unions for which a GATT waiver has been obtained?

19 In conclusion, Mr. Chairman, I am very pleased with
20 the provisions of the bill pertaining to trade and
21 services. And think that if the definition of fair and
22 equitable is included in the Committee report, we will have
23 made significant progress in eliminating any questions about
24 protectionist elements in the bill.

25 Thank you very much, Mr. Chairman.

1 The Chairman. Senator Bradley.

2 Senator Bradley. Thank you very much, Mr. Chairman.

3 Led by Senator Danforth, many of us on the Trade
4 Subcommittee have worked to develop a compromise trade bill
5 aimed at liberalizing world trade in investment practices,
6 strengthening and expanding the coverage of GATT and other
7 national agreements, and improving market opportunities for
8 the United States. Most importantly, the legislation
9 affirms and seeks to build on the rule of law in
10 international commerce.

11 The mandate given to the President by this bill is to
12 negotiate aggressively; not to resort to self-defeating
13 economic war. The commercial rights of all countries,
14 particularly the United States, are best protected by a
15 multi-lateral system or rules and procedures. Whatever
16 weakens this system weakens our rights and our interests.

17 Unilateral departures from the multi-lateral system
18 and special bilateral deals weaken the system. Strengthening
19 international rules and the President's ability to enforce
20 vigorously our trade rights have been my major objective
21 since the subject of new trade legislation was introduced
22 to the Committee. I am pleased that these objectives are
23 central to the legislation. I was concerned that certain
24 language in the original version of the bill could have set
25 the U.S. on a course of retaliation against those trading

1 partners whose laws and practices differ substantially from
2 our on. An affect, I believe, Senator Danforth did not
3 intend.

4 Bilateral balancing, sectoral or overall, defeats the
5 gains we seek to achieve through trade based on comparative
6 advantage. Scoring foreign economies against the uniquely
7 American scale is unworkable, and retaliating against them
8 simply because they have failed to measure up to our
9 standards is untenable and unfair.

10 The new legislation is free of these unfortunate
11 implications and reflects more accurately what I believe to
12 be the Committee's intent to insist on fairness and equity
13 in trade and investment practices.

14 Use of the term "fair and equitable" instead of
15 "substantially equivalent" to describe the opportunities
16 we expect makes clear that foreign failure to mere U.S.
17 laws and practices or to show a balance on their trade
18 account with the U.S. is not per se a cause of action under
19 Section 301. Nor is the absence or denial of market or
20 investment opportunities always unfair or inequitable. It
21 depends on surrounding circumstances. Fairness and equity
22 are contextual standards for which no single measure is
23 always controlling. There is no single universal test. A
24 determination of fairness and equity in trade and invest-
25 ment requires the consideration of a number of factors.

1 The nature of these factors and their relative
2 weight varies from case to case. In general, the President,
3 in determining whether a foreign act policy or practice
4 denied fair and equitable market or other opportunities,
5 should consider among other things the foreign country's
6 ability to offer market opportunities to the U.S., including
7 the degree to which its markets are developed, its economic
8 structure, its level and pattern of consumption, its
9 economic growth trends, its political institution, its
10 culture and values and the balance of concessions it offers
11 overall. It should also compare the country's practice
12 with international rules and norms and with the prevailing
13 practices for countries having similar conditions.

14 The President of this country, as the leader of the
15 free world, must weigh all his actions, including actions
16 taken by authority of this legislation on the scale of the
17 national interest.

18 For example, I believe the President should proceed
19 cautiously if he considers restricting foreign investment
20 in the United States. Changes in the status of an
21 established business which impairs its ability to continue
22 its business operations in the U.S. could significantly
23 injure our broader economic interests.

24 First, foreign investors help supply the capital,
25 technology and jobs we badly need to revitalize our

1 economy. Second, the U.S. has over \$200 billion sunk into
2 direct investment overseas. That investment is made
3 vulnerable by any U.S. practice which suggests that we have
4 relaxed our historic claim that government should not take
5 or expropriate property without due process.

6 U.S. impairment of the status of an on-going foreign
7 business could be used by foreign governments to justify
8 as a sovereign right the uncompensated expropriation of U.S.
9 business.

10 These are hard times. And they are testing our
11 capacity for foresight. In a short fit of recrimination,
12 we could destroy the liberal trading system which took us
13 more than three decades to build from the rubble of war
14 and mercantilism. The great depression was testimony to the
15 fact that competitive protection provides no relief from
16 economic hardships. The Smoot-Holley tariffs cut U.S.
17 tariffs in half within four years. In addition, we owe it
18 to the future to safeguard our liberal trading system.
19 International commerce is becoming more diversified as well
20 as increasing. Trade in services, trade in high technology
21 products and investment in these sectors, as well as others,
22 share characteristics with trade in goods, but they also
23 differ importantly in certain respects.

24 The rules we have for trade in goods can't simply
25 be handed down to all services and investments or stretched

1 to cover industrial policy. Sovereignty will have to be
2 balanced against the logic of open markets in a new way,
3 because the process of setting fair rules in these
4 sovereignty areas will place heavy strains on the trading
5 system; we must prepare that system by strengthening it
6 today.

7 This is a compelling reason to resist the current
8 pressures which weaken the system. The economy of the
9 future depends on maintaining a strong foundation on which
10 can be built an expanding and liberal world economic
11 order.

12 Thank you, Mr. Chairman.

13 Senator Heinz. I will yield to Senator Armstrong.

14 Senator Armstrong. Mr. Chairman, I want to join with
15 the others who have congratulated you and also Senator
16 Danforth for bringing this bill before us.

17 My own instinct is that we are really at a time of
18 great peril in our trading relationships with other countries
19 because while we all give lip service to the notion of
20 increasingly free trade, in fact, that is a very delicately
21 balanced relationship which is greatly hazarded by a whole
22 array of impediments to free trade.

23 My hope is that this legislation, which we are marking
24 up today, will put us in a position of competitive bidding
25 for freer trade rather than competitive bidding for

1 protectionism in each individual country.

2 I, myself, consider free trade to be an important
3 national policy goal. And yet I think we are kidding
4 ourselves if we believe that this country will, as a
5 practical matter, stand by and permit other countries to
6 close down their markets to us through a variety of
7 truly ingenious non-tariff barriers while letting a virtually
8 unlimited access to U.S. markets exist. And so my hope
9 and, in fact, my belief is that this legislation will put
10 us in a position where our negotiators can really have the
11 leverage they need to open up some markets in other countries
12 in a way that is consistent with the best interest not only
13 of U.S. producers, but the consumers of other countries.

14 Mr. Chairman, I want to mention briefly some
15 amendments which I intend to offer to this bill, but which
16 I will not offer this morning. And explain why I do not
17 feel I can offer them today.

18 One is a series of amendments which I am considering
19 and which I expect to offer on the floor. It has to do
20 with some restrictions on U.S. trading with nations which
21 violate the forced labor provisions of the Helsinki
22 accord, specifically dealing with conscript labor and other
23 kinds of forced labor in the Soviet Union and Eastern Block
24 countries. I am simply not prepared to offer those
25 amendments this morning because I want to nail down

1 absolutely the factual basis. We have received some very
2 serious allegations that gross violations of human rights
3 are occurring which bear on trade practices. And I want to
4 be sure of my facts before I present those. I am reasonably
5 confident of the testimony that has been received by
6 committees of the Senate, but I want to be sure first of
7 what the facts are. And, second, what constitutes an
8 appropriate remedy with respect to export licenses, the
9 importation of goods from such nations, and what is the
10 appropriate test of whether or not such human rights
11 violations have occurred.

12 The Chairman. Will the Senator yield? The Committee
13 on Security on Cooperation in Europe, which is a
14 House/Senate committee has information on that area. They
15 could be helpful.

16 Senator Armstrong. We are looking into that. And
17 also, Mr. Chairman, on Friday a second in a series of
18 hearings will be held by a subcommittee of the banking
19 committee which bears directly on this subject.

20 It seems to me since we are in the process of developing
21 that information that this is not the time to raise it for
22 the Finance Committee.

23 Second, Mr. Chairman, I do plan to offer, when this
24 bill comes to the floor, amendments which would extend the
25 reciprocity principle to the chartering of financial

1 institutions in this country. The reason for it is very
 2 simple. That while entry into the U.S. financial markets
 3 is virtually wide open for foreign countries, other
 4 countries do not have similar opportunities for our
 5 financial institutions. In fact, in many areas of the world,
 6 the norm is a total prohibition on any banking presence by
 7 a foreign bank. That is, by a U.S. bank, for example,
 8 seeking entry into another country. Or a restriction on the
 9 proportion of stock ownership in a bank which may be owned
 10 by U.S. nationals. Or a limitation, for example, in the
 11 case of Canada on the proportion of the banking market
 12 which may be accounted for by U.S. or other non-Canadian
 13 banks.

14 I think the issue is very clear. And the amendment
 15 which I will propose, I think, will be entirely consistent
 16 with the thrust of this bill. However, technically I
 17 believe that the amendment which I will offer is within the
 18 jurisdiction of the banking committee. And if it were
 19 proposed here, I think it would be easily adopted because
 20 I do not think it will be a controversial amendment. But
 21 if it were adopted by this committee, it would technically
 22 impinge upon the jurisdiction of the banking committee. And
 23 for that reason, I shall offer it as a floor amendment.

24 Thank you, Mr. Chairman.

25 The Chairman. Senator Bentsen.

PENGAD CO., BAYONNE, N.J. 07002 • FORM 740

1 Senator Bentsen. Thank you very much, Mr. Chairman.
2 Let me first join with the rest in congratulating Senator
3 Danforth. As the co-chairman of the trade caucus, I have
4 been very interested for a long time in what we do about
5 trade. And in listening to comments here of the members shows
6 that no longer do people of this country look on it as some
7 arcane, technical subject. They know that it often means
8 the difference -- trade does -- between prosperity and
9 joblessness in this country. And that we can't just sit
10 on our hands until the next round of trade talks to do
11 something. It is important that we proceed.

12 I sponsored a bill -- S. 2223 -- along with a number of
13 my colleagues, but Senator Danforth has worked with us and
14 has taken some pieces of that legislation. And the overall
15 impression I think of Section 3 of the substitute
16 language -- the part of the bill which amends Section 301 --
17 is that the Executive Branch will begin actively to enforce
18 trade agreements. And specifically, Section 3 requires
19 analysis of the trade problems, including a description of
20 action to be taken about these problems under Section 301.

21 It also clarifies the self-initiation provisions of
22 Section 301. I think that is a very important step to take.
23 The trade agreements approved in multi-lateral trade
24 negotiations are worthless without an active, even an
25 aggressive U.S. policy of identifying barriers to our

1 exports, and getting those barriers removed.

2 If we don't try this kind of a policy, then I think
3 protectionism is the only alternative. And I would hate to
4 see us get into that.

5 There are some minor, but nonetheless useful,
6 provisions in the bill that I favor. I am certainly
7 encouraged to see that it no longer represents reciprocity
8 in the basic sense.

9 I think the explicit recognition of protecting
10 international intellectual property rights is actionable
11 under Section 301; is also a useful step. So I am pleased
12 to co-sponsor the piece of legislation with Senator
13 Danforth and the others. And I think it is certainly a
14 step in the right direction.

15 The Chairman. Senator Heinz.

16 Senator Heinz. Mr. Chairman, thank you very much.

17 First of all, I want to compliment Senator Danforth
18 in having negotiated the legislative shoals of today with
19 tremendous expertise.

20 As the author of the first reciprocity bill that was
21 introduced in the Senate -- S. 2071 -- I have had an
22 opportunity to work very closely with the chairman of the
23 Trade Subcommittee, and he has done an excellent job. He
24 and I last summer held three days of hearings on
25 international trade jointly between his Trade Subcommittee

1 and my Subcommittee on International Finance of the
2 Senate Banking Committee.

3 Out of those hearings, which suggested very strongly
4 that we had a number of great difficulties in implementing
5 the concept of free trade worldwide, my Subcommittee held
6 two additional days of hearings on explicit barriers to U.S.
7 trade and services, investment and merchandise trade in the
8 International Finance Subcommittee. The sum total of all
9 of those hearings was that the 1979 Trade Agreements Act,
10 which I think was supported enthusiastically by virtually
11 every member of the Finance Committee and almost every
12 member of the Senate, was that those agreements and that
13 bill had been a step in the right direction toward
14 liberalization of world trade, but had failed to achieve
15 its objectives. Failed to achieve its objectives because
16 although this country and other countries engaged in the
17 tariff cuttings agreed to in the MTN, as other countries
18 reduced their tariffs, non-tariff barriers to trade
19 services and investment, indeed, proliferated at a much
20 more rapid rate than the tariffs were reduced.

21 The result is that in a sense our hope for the '79
22 trade agreements, our hopes for the Tokoyo Rounds, our hopes
23 for liberalized world trade have not been realized. And
24 that the United States and the world are drifting into a
25 doldrum of protectionism where the United States remains

1 a country committed to the principle of free and fair
2 trade.

3 But, Mr. Chairman, what has happened is that the
4 shores of this country, dedicated though they are to free
5 trade, are currently awash in a sea of protectionist
6 policies of other nations. And it is a sea in which our
7 determination to provide a liberalized world trading system
8 cannot long survive that kind of erosion unless we take
9 appropriate action to defend what we all believe is a
10 necessary and positive commitment to free trade.

11 I would note that in the bill before us that there are
12 a number of provisions which were in my bill, S. 2071.
13 They have been incorporated into this bill. I am delighted
14 to see that they are incorporated into this bill. In the
15 first place, the idea of covering of services and invest-
16 ments under Section 301 are unfair trade -- section of the
17 present Trade Bill is very much a part of this bill. It
18 was the most important part of my bill because it was clear
19 that we were encountering increased barriers to U.S. trade
20 and services and investments.

21 I am very pleased to see that the bill before us uses
22 the fast track provisions of Section 151 to enable the
23 President to submit legislation, fast track legislation,
24 to solve trade problems. And if the circumstances warrant
25 and it is so called for, indeed, to take appropriate

1 retaliatory action against an unrecalcitrant protectionistic
2 situation.

3 I am pleased that this legislation also includes the
4 authority for the President to direct the regulatory
5 agencies to implement a bid or regulatory actions, as was
6 contained in my bill, S. 2071.

7 I am also extremely gratified to see that the high
8 technology provisions that were a part of my legislation,
9 and Senator Hart's bill, have equally been incorporated
10 into the draft before us. In doing so, the bill recognizes
11 the growing importance of high technology industries to our
12 economic future, and assigns them very special attention to
13 and for our trade policy makers.

14 But I suppose the thing that others have commented on;
15 makes me feel particularly pleased with the bill and is pointed
16 in the right direction is in the standards that Senator
17 Danforth has adopted for judging the trade behavior of other
18 nations. Senator Danforth's original bill contained the
19 SECO concept, the Substantially Equivalent Competitive
20 Opportunities Concept. And I must say that concept had me
21 troubled. It sounded like we were going to measure other
22 countries by precisely the way we did business in this
23 country; leaving out, therefore, of our consideration,
24 cultural, economic and other differences fundamental to
25 the kinds of diversities we do find among other nations.

1 Instead, Senator Danforth has adopted the standard of
 2 fair and equitable market access, which in many respects I
 3 take to be very similar to the standards advanced in my
 4 legislation. Namely, that of national treatment. Indeed,
 5 there are times when I wish, Mr. Chairman, that we had
 6 talked about this legislation in terms not so much as
 7 reciprocity but in trying to get the same kind of treatment
 8 for American, and for that matter, and foreign firms trying
 9 to do business in third countries based on the way those
 10 third countries treat their own firms.

11 I take it that the concept of fair and equitable market
 12 access is really just another way of saying that we and
 13 other countries don't expect to be discriminated against.
 14 We and other countries expect to be treated in a fair and
 15 equitable way -- the way you treat them in your country
 16 whether you are Japan or Mexico or Canada or the EEC. The
 17 way you treat your own domestic firms.

18 Indeed, the pattern in the United States has been to
 19 treat foreign companies, foreign investors, foreign
 20 financial institutions not just as well as we treat our own
 21 firms but sometimes better. We allow foreign banks, for
 22 example, to do things American banks up to now couldn't do.

23 So I want to compliment Senator Danforth on his
 24 adoption of a fair and equitable market access standard.
 25 I think it improves his legislation. And I am very grateful

PENGAD CO., BAYONNE, N.J. 07002 - FORM 240

1 to see those changes and incorporations that I have mentioned.

2 Mr. Chairman, I do have a number of questions that I
3 want to get on the record, here, in this mark-up today.
4 A few clarifications; one or two technical amendments. I
5 won't list all of those things right now and wear my
6 colleagues' patience. But I do have a number of items as
7 we go through the bill. And I appreciate the opportunity
8 that we have today because I think this is going to be a
9 historic day for the Senate Finance Committee. I think if
10 all of us will eventually conclude our opening statements
11 that we will today have an opportunity to say to the world
12 that this country doesn't want trade to be a one-way
13 street. We want it to be a two-way street. And the time
14 has come to change that rhetoric into reality.

15 The Chairman. Senator Baucus.

16 (No response)

17 The Chairman. Senator Grassley.

18 Senator Grassley. I hope that wasn't for me. That
19 reminds me of the people on the floor of the Senate who
20 always say that the debate ought to end, therefore, there is
21 hope.

22 Colleagues, this mark-up of this legislation,
23 obviously, opens a new era of trade relations. The concept
24 of trade responsibility can be used as a tool to open new
25 markets, which this bill is meant to do. Or it can be used

1 negatively to erect barriers on a sector-by-sector basis
2 or a product-by-product basis, endangering the world trading
3 system as we know it.

4 Senator Danforth's careful drafting of this bill
5 has addressed these issues and received them in such a way
6 as to assure the viability of our system of free trade.

7 One of the provisions of Senator Danforth's bill -- and
8 I am a co-sponsor of it -- that he added to this bill
9 deserves special praise. Each year, the USTR has a list on a
10 country-by-country basis of unfair actions barring U.S.
11 market access. This requirement has been expanded to ask
12 USTR to submit to the Subcommittee on International Trade
13 an annual list so they can plan to take measures in each of
14 these nations to ensure better market access. This is an
15 important provision because it focuses the attention on both
16 the Subcommittee and the USTR on solution to our ever
17 growing list of market access grievances.

18 The additions to Section 301 are particularly
19 significant. The expansion of the grounds for bringing a
20 Section 301 action are very important to my constituents in
21 Iowa; particularly, agricultural related products.

22 Critical to this expansion is permitting a 301
23 action to be brought if an action of policy of a foreign
24 country is unreasonable, unjustifiable or discriminatory.
25 The importance of this language is the definition of

1 "unreasonable" as an action which denies fair and equitable
2 market opportunities, opportunities for establishing an
3 enterprise, or protection of industrial property rights.

4 Many nations deny American agricultural products fair
5 and equitable market access. This bill provides our
6 agricultural interests with a tool for redressing those
7 grievances, and is a very important step in expanding our
8 agricultural export market.

9 Finally, I support the Committee's action to instruct
10 our negotiators to begin work on a services, investments and
11 high technology international agreement. These rapidly
12 expanding sectors of our economy need the same international
13 protection accorded goods under the GATT agreement.

14 This framework is essential if we are to expand
15 American exports in these areas. The achievement of
16 worldwide fair and equitable market access is a big goal.
17 Reaching this goal will take years of patient and persistent
18 negotiations and difficult compromise on the part of all
19 nations. We must undertake this process to guarantee the
20 future of our world trading system. The enactment of this
21 bill is a good place to start and is going to afford
22 protectionist efforts throughout the world.

23 The Chairman. Senator Symms.

24 Senator Symms. Thank you very much, Mr. Chairman,
25 and my colleagues. I will be as brief as possible. But

1 I want to join with my colleagues who have passed praise
2 to both Senators Dole and Danforth for their efforts on
3 bringing this piece of legislation before the Committee.

4 I think we know as the 80s continue that we are finding
5 ourselves more dependent on international trade, and more
6 challenged by international competition than any time in
7 our history, with nearly a sixth of the goods produced in
8 the United States sold in foreign markets, 40 percent of
9 the oil we consume here comes from abroad. U.S. exporters
10 are encountering stiffer competition overseas in products
11 which traditionally we have dominated in world markets, such
12 as aircrafts, computers and other products.

13 Domestic producers of a growing number of products are
14 experiencing an intensified competition from imports. And
15 these developments have made it critical that the United
16 States develop and implement a comprehensive trade strategy.
17 An open and fair international economic system is essential
18 to promoting the revitalization of the U.S. economy. And
19 competition pressures from world trading systems help to
20 promote efficiency in the domestic economy.

21 If the United States is to continue to play a leadership
22 role in maintaining and improving the world trading system,
23 it will need a broad public concensus about U.S. trade
24 objectives and priorities. The effectiveness of U.S.
25 leadership in the trade area also has a significant

1 implication for U. S. success in addressing foreign policy
2 and national security objectives.

3 Efforts to revitalize the domestic economy and to
4 pursue appropriate adjustment policies must be accompanied
5 by measures to ensure fairness in world trading systems. If
6 U.S. producers are to benefit from improvements in their
7 competitiveness, they must not be denied promised access to
8 foreign markets or be confronted by unfair trading factors
9 of other governments.

10 Accordingly, the effective enforcement of U.S. trading
11 rights will be a critical element in the U.S. trade
12 strategy.

13 Now I believe that this legislation which we are
14 considering today has been very, very carefully crafted to
15 lay down the framework in which the United States could
16 work in pursuit of a worldwide goal of free trade. And the
17 legislation takes the necessary steps to insure an open and
18 fair trading system. And it lays the groundwork for timely
19 and certain enforcement of fair trade provisions of U.S.
20 laws.

21 I think that's the underlying point as to why the
22 legislation is needed. That is that we can no longer
23 continue to expect to leave the United States as an open
24 market when other markets -- both abilities to sell financial
25 instruments, as well as foreign investment across a broad

1 range of problems, such as the continuation of the
2 practice that the European community has to subsidize
3 agricultural products like sugar and then dump them on the
4 world markets. The impact that has on our domestic programs
5 and our domestic objectives that we are trying to maintain
6 here are totally unacceptable in my view for us to
7 continue to go ahead with.

8 So, again, Mr. Chairman, I am happy to add my support
9 to the general thrust of this legislation as a co-sponsor.
10 And I want to extend my thanks to you, Senator Danforth,
11 for the at least one year efforts that I know you worked on
12 this to make a broad based trade policy, which I believe
13 can lead to greater competition in world markets.

14 The Chairman. Thank you, Senator Symms. Senator Long.

15 Senator Long. My concern about this matter is that
16 bill is representative of being a reciprocal trade bill.
17 My impression, since I have been able to learn about this --
18 I haven't been able to attend many of the meetings -- when
19 the compromise is made, there is not much left in here to
20 call "reciprocal." I've got an amendment here that I would
21 be happy to offer if the Committee would be willing to go
22 along with to make this a reciprocal trade bill. I guess
23 I could read the amendment. It's along this line:

24 Whenever the President determines that any existing act,
25 practice, or policy of any foreign nation is unduly

1 burdening or restricting the foreign trade of the United
2 States, and that no United States act, policy, or practice
3 imposes a similar burden or restriction on the foreign
4 trade of that country, then the President may proclaim such
5 new or additional duties or other import restrictions
6 as are likely to burden or restrict the foreign trade of
7 that country to the same extent that country burdens or
8 restricts United States foreign trade.

9 The President, may, as necessary to carry out the
10 purposes of this section issue rules and regulations;
11 delegate responsibilities under this section as he deems
12 appropriate; conduct investigations and hearings as he
13 deems appropriate; and proclaim increases in the rates of
14 duty on discriminatory or a non-discriminatory basis, and
15 following any such increase may reduce duties, or remove
16 or reduce other import restrictions imposed under this
17 section, to levels equal to or higher than the level of such
18 duties or restrictions before he took action under this
19 section.

20 (THE PROPOSED AMENDMENT FOLLOWS:)

21
22
23
24
25

AMENDMENT INTENDED TO BE PROPOSED BY SENATOR LONG
TO S. 2094, "TO AMEND THE TRADE ACT OF 1974
TO INSURE RECIPROCAL TRADE OPPORTUNITIES,
AND FOR OTHER PURPOSES"

Strike all of the bill following line 12 on page 2 and
insert instead the following:

Section 3 Reciprocity.

(a) Whenever the President determines that any existing act, practice, or policy of any foreign country is unduly burdening and restricting the foreign trade of the United States, and that no United States act, policy, or practice imposes a similar burden or restriction on the foreign trade of that country, then the President may proclaim such new or additional duties or other import restrictions as are likely to burden or restrict the foreign trade of that country to the same extent that country burdens or restricts United States foreign trade.

(b) The President may, as necessary to carry out the purposes of this section --

(1) issue rules and regulations;

(2) delegate responsibilities under this section as he deems appropriate;

(3) conduct investigations and hearings as he deems appropriate; and

(4) proclaim increases in rates of duty on a discriminatory or a nondiscriminatory basis, and following any such increase may reduce duties, or remove or reduce any other import restriction imposed under this section, to levels equal to or higher than the level of such duties or restrictions before he took action under this section.

1 Senator Long. Now that to me is the kind it would take
2 to have a reciprocal trade bill. When we had Mr. Peterson
3 up here testifying on a different matter, I asked him about
4 his view of this trade situation. And he said, well, if
5 you go to Japan, we felt we ought to find some way of doing
6 something about the fact that they keep their currency
7 undervalued compared to ours.

8 And my understanding is it sounded like -- what he
9 had to say -- that they have got their currency undervalued
10 about 25 percent compared to ours. Now let me ask Mr.
11 Lang. How do they get away with that? Why can't we push
12 up the value of their currency the way they do ours by
13 buying dollars?

14 Mr. Lang. Well, there are a lot of indications that
15 their currency is very closely controlled, Senator. I
16 think we still have a lot to learn about exactly why that
17 currency is not internationalized. But the figures that I
18 think are widely used is that the yen is undervalued by
19 15 to 20 percent.

20 Senator Long. Well, that's just one thing it seems to
21 me we ought to do something about. Now here's an article
22 that appears in the Journal of Commerce today. I'd make
23 it available to all Senators. I would be glad to. It's
24 Japan's trade-offer meets with skepticism. And this is
25 interesting. It says that Japan is not going to do much to

1 modify their restrictionist policies because among other
2 things, they don't think the United States is going to do
3 anything worthy to note.

4 Let me read this paragraph: "Stating the problem in
5 a frank manner, Japan has maintained its awesome defensive
6 wars far too long, and now there is little propensity
7 in the country toward imports especially since the Tokyo
8 government has convinced itself that after all, there is
9 not going to be any forceful reciprocity legislation from
10 the United States Congress."

11 Now this legislation, as I understand it, meets what
12 they are talking about because they are not going to have
13 to do anything or very little because they found out the
14 gun ain't loaded. That after all this talk about reciprocity
15 that what we have got here -- nothing is about the same
16 thing. It's not going to do anything.

17 Now what I am talking about is the President would
18 still have to act. But he would have the authority to do
19 something.

20 Now I haven't been able to attend all the hearings
21 but my impression is that this is, in effect, telling
22 Japan to go right on ahead with what you are doing. The
23 United States is going to do so little it is not going to
24 amount to anything. That this is meaningless. And the
25 compromises here have pretty well satisfied the Japanese

1 objections. And if Japan is satisfied with this bill, as
2 far as I am concerned, it is not going to do any good.

3 My thought is that we ought to take the name
4 "reciprocal" off there. I'd like to add that if the
5 sponsor is willing to modify the bill to take the word
6 "reciprocal" off that bill -- just take it off the title
7 so we won't be taking about reciprocity --

8 Senator Danforth. No. I think it is all right
9 labled as is.

10 Senator Long. Because I might be able to vote for
11 the bill if you would take the word "reciprocal" out of
12 here.

13 (Laughter)

14 Senator Long. In other words, I might be able to vote
15 for it if it was, but it won't do much. But on the other
16 hand it doesn't do much harm either. But if you have got
17 this word "reciprocal" in here, it seems to me that that
18 is what you are telling these people. We have given a lot
19 of thought to this and this is about the best we can do.
20 And we are going to call this "reciprocal."

21 (Laughter)

22 The Chairman. Like tax reform.

23 (Laughter)

24 Senator Long. I believe that the time we had that
25 title on the last tax reform bill, I think we should have

1 taken that word "reform" out of there.

2 (Laughter)

3 Senator Bentsen. This is trade enhancement.

4 (Laughter)

5 Senator Long. But if the word "reciprocal"
6 stays in there, I will be compelled to vote against the bill
7 because I don't think that this is reciprocity. It doesn't
8 get reciprocity. And I may have to offer my amendment in
9 due course to try to make it a reciprocal bill.

10 The Chairman. Now has everybody concluded the opening
11 statements?

12 (Laughter)

13 The Chairman. Let me say while so many members are
14 here, on another matter, on spending reductions and revenues
15 that we are in the process of briefing members as well as
16 getting additional information. In fact, today there should
17 be available a printed copy of all the known options to
18 raise taxes. There are other that are unknown but --

19 (Laughter)

20 Senator Long. Well, Mr. Chairman, I have another one
21 that I am going to submit in due course. I don't think you
22 have got them all so far.

23 The Chairman. No. I'm just saying they are all the
24 known options. I assume at least one or two.
25 members will think of something not listed. But that will

1 be available.

2 In addition, I understand the joint committee will
3 brief member's legislative aides on the democratic side.
4 They have done that on our side. And, hopefully, we will
5 have an opportunity to meet with members on an individual
6 basis. And if you can't attend the mark-up, just give me
7 your proxy to speed up the hearings measurably.

8 (Laughter)

9 The Chairman. And I cannot give an exact date of when
10 that may happen. There are some who believe that the budget
11 resolution is so fragile on the House side that if we
12 even mention some specific tax that it will all go down the
13 drain. Or any spending reductions.

14 But we also have material available on Medicaid, SSI,
15 Medicare, unemployment comp, and any other changes that
16 may be under consideration. I would suggest to members if
17 we did pass a budget resolution, if in fact the conference
18 report is adopted, then there will be a mandate that we
19 proceed.

20 In addition, there is the little matter of extending
21 the debt ceiling. I'm certain nobody wants to amend that.
22 But there is always that possibility as I look back on it,
23 having done it a lot.

24 So there are a couple of items that we need to address
25 fairly soon; particularly, with the House scheduling a brief

1 rest period starting the 24th of June and extending to
2 July 12th. I'm not certain what they are resting from,
3 but it is scheduled.

4 Senator Chafee. Could you tell us the time schedule
5 there as you see it?

6 The Chairman. It's my understanding the House may take
7 it up some time this week. And what they suggest is an
8 extension of 45 days. Some members don't like to vote for
9 it at all, little lone on a monthly basis. So I am not
10 certain what will happen on this side. I have discussed
11 the matter with Don Regan, the Treasury Secretary. But we
12 will have to act, as I understand it, before the end of
13 this month.

14 Senator Chafee. In other words it has to be past both
15 Houses and signed before the end of the month, as you
16 understand it.

17 The Chairman. And I might suggest that if, in fact,
18 the House and the Senate are unable to agree on a budget,
19 the debt ceiling could provide a vehicle to put the revenues,
20 spending reductions -- they could be added to the debt
21 ceiling. Since this Committee has about 80 percent of the
22 deductions -- I think I have the rest in a sufficient
23 subcommittee, with one exception, I guess. COLA might need
24 to have something figured out.

25 Well, we are going to try to move quickly. I'm not

1 suggesting we can, but we can try.

2 Senator Bradley. Mr. Chairman, do you expect that we
3 will get to the spending and tax components of our
4 business -- when?

5 The Chairman. Probably not this week.

6 Senator Bradley. Not this week.

7 The Chairman. I'm not certain of that. I would like
8 to do it this week if there is -- there may less problems
9 with the budget than -- but if, in fact, they could finish
10 it up today, which I doubt, we might still be able to meet
11 on Thursday afternoon or Friday.

12 Senator Bradley. Then would it be your intention to
13 try to do the tax and spending all next week? Finish it
14 next week?

15 The Chairman. I would like to finish it next week.
16 If not, we have another week.

17 Now as I understand this legislation, there will be
18 a substitute by Senator Danforth and Senator Bentsen and
19 others. I think perhaps in the interest of time and orderly
20 procedure -- Claude, if you would discuss and outline the
21 main items in the substitutes. And then if there are no
22 objections, we can agree to the substitute. It will still
23 be open to amendment. And then those who have questions --
24 Senator Heinz, Senator Matsunaga -- or those who have
25 amendments could offer them as substitutes.

1 Mr. Gingrich. Mr. Chairman, if I may, I will describe
2 the proposed substitute bills in terms of this two page
3 summary, which I believe every member of the Committee has.

4 The substitute would amend current law by adding three
5 new subsections providing specific negotiating objectives
6 with respect to trade and services, investments and high
7 technology.

8 It would add a new section to give the President a
9 limited tariff modification authority with respect to high
10 technology products. It would add a new section requiring
11 a study and reports and consultations on significant barriers
12 to exports of U.S. goods and services and restrictions on
13 U.S. foreign direct investment. It would amend current
14 law to provide the President with specific authority to
15 retaliate against any product or sector whether or not
16 involved in the act against which the action is taken. It
17 would amend current law to specifically provide the
18 President with the authority to impose fees or restrictions
19 notwithstanding any other provision of law. It would
20 amend current law to include authority to retaliate against
21 suppliers of services. It would amend current law to
22 include authority for the President to propose fast track
23 legislation to carry out the objections of Section 301. It
24 would amend current law to provide that the definition of
25 "commerce" also includes U.S. foreign direct investments.

1 It would define the terms "unreasonable, unjustifiable
2 and discriminatory," which now exist in Section 301 but
3 are not statutorily defined. It would amend existing law to
4 provide for self-initiation of investigations by the USTR.
5 It would amend current law to provide for a delay of up to
6 90 days in the required initiation of international
7 consultations. And it would amend current law to provide
8 specific exemption from the FOYA for information received
9 during investigations conducted under Section 301.

10 Senator Danforth. Mr. Chairman, I will move adoption of
11 the substitute.

12 The Chairman. Is there an objection to the adoption
13 of the substitute?

14 Senator Long. I would have to vote against it.

15 The Chairman. Has anybody demanded a roll call? If
16 not, the record will indicate Senator Long's objection.

17 Without objection, the substitute is adopted.

18 Now the substitute is open for discussion or amendment.
19 Do you wish to -- can you summarize, then, in effect what
20 the substitute does, Mr. Gingrich? Does it address the
21 concerns expressed by Senator Long, for example, on
22 reciprocity?

23 Mr. Gingrich. No, sir. It contains a different
24 standard than the one suggested by Senator Long.

25 Senator Danforth. Would you explain how for us?

1 Mr. Gingrich. In just reading through the language
2 submitted by Senator Long very quickly, it seems to me that
3 it is pretty much akin to the substantially equivalent
4 commercial opportunity language which was in at the original
5 Danforth bill, S. 2094. And objected to by the
6 Administration.

7 The Chairman. What does it do? Does it do anything?

8 Mr. Gingrich. The substitute bill?

9 The Chairman. Yes.

10 Mr. Gingrich. Yes, sir.

11 The Chairman. Right.

12 Mr. Gingrich. First of all it provides negotiating
13 objectives in three areas, specific negotiating objectives,
14 which the Administration very much wanted. It adds a
15 modification authority with respect to high technology
16 products in the high technology industries who feel it would
17 be beneficial for the President to have a specific tariff
18 cutting authority to enable them to get access in other
19 markets.

20 It includes the concept of fair and equitable market
21 opportunities within the definition of unreasonable. That
22 term has previously not been defined in Section 301 so it
23 gives specific emphasis to the notion that in conducting a
24 301 investigation or deciding whether to initiate one, the
25 USTR would take into account the factors such as those

1 suggested by Senator Chafee -- market access factors.
2 It specifically becomes the basis on which the President
3 could initiate an investigation if he chose. It provides
4 for retaliatory authority for restrictions on U.S. foreign
5 direct investment which hitherto did not exist.

6 It would provide for self-initiation by USTR. That
7 authority is important in light of the amendment to existing
8 law which would provide for the USTR -- it would be required
9 to study significant barriers to U.S. exports. This would
10 allow them to study those barriers. And in their report
11 and consultations with this Committee and the Ways and
12 Means Committee, they could thereafter self-initiate if
13 they chose.

14 And, finally, I think there are two additional items.
15 There is the delay provision which I think the Administration
16 would very much like. Frequently we get in international
17 consultations on 301 cases and find that we are not as well
18 prepared as we should be. This would permit a delay of up
19 to 90 days.

20 The final provision is the exemption from FOYA --
21 there is a specific exemption from FOYA requirements for
22 information submitted in the context of a 301 investigation.
23 I think many people feel that businesses are reluctant to
24 bring 301 cases to the attention of the USTR for fear that
25 confidential information, which they provide to USTR, might

1 become public.

2 The Chairman. Now as I understand, Senator Danforth,
3 there is a letter as of this morning in support of the bill
4 from the Administration?

5 Senator Danforth. Yes. I have a letter, Mr. Chairman,
6 which I will put in the record with your permission, from
7 Ambassador Brock dated yesterday stating the Administration's
8 supports. It's my understanding this morning that the
9 President signed off on this bill.

10 (THE LETTER FOLLOWS:)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Senator Danforth. I would say, Mr. Chairman, of
2 course that there are people who believe that the bill should
3 be more protectionist than it is. There are others who
4 believe that the bill is a step in the direction of
5 protectionism. And it's impossible to make everybody totally
6 satisfied with the bill. I had never viewed this as an
7 effort to move in the direction of protectionism, but rather
8 to increase the opportunities of the U.S. to avail itself
9 of market opportunities in other countries. And it seems to
10 me that this bill is a very important step in that direction.
11 That it does provide for a systematic method of identifying
12 the barriers that do exist in other countries. And I think
13 the first step in eradicating barriers is to find out what
14 they are in the first place. And this does that.

15 And the second thing that it does is to strengthen
16 Section 301. It does move away from the language in the
17 original bill, the so-called SECO provision in the original
18 bill. But that particular provision in the original bill
19 was viewed by many to constitute a product-by-product,
20 sector-by-sector definition of unfair trade practices. And
21 to me, that was, frankly, never intended in the language in
22 its original form. So I think that the language in this
23 bill more accurately trapped what was intended in the
24 original bill, which was not sector-by-sector, product-by-
25 product, but was an attempt to strengthen the President's

1 hand in negotiating down or removing or offsetting, if
2 necessary, barriers to trade which preclude the U.S. from a
3 fair and equitable opportunity to trade in other countries.

4 The Chairman. Mr. Hathaway, you are representing
5 USTR?

6 Mr. Hathaway. The Administration, yes, sir.

7 The Chairman. Now do you have any modifications? Are
8 you willing to -- is the substitute satisfactory or are
9 there recommended changes from the Administration?

10 Mr. Hathaway. I believe, Mr. Chairman, that in
11 Ambassador Brock's letter there are two pages of points.
12 One in the first page, which is just a technical drafting
13 suggestion on the substitute bill, which I believe we are
14 in agreement with the staff on what the intent of the bill
15 was. But we felt that some clarification needed to be made.
16 So subject to those, I don't believe they need to be
17 mentioned here unless there is some question that the staff
18 wanted to bring up.

19 On the second page, there is one provision that the
20 Administration feels should be added to the bill. And that
21 is the provision authorizing the President specifically in
22 Section 301 to consider the national interest, including
23 the international obligations of the United States, prior to
24 taking action under Section 301. In fact, that if the
25 President does that now, and presumably would do it,

1 Section 301 authorizes the President to take appropriate
2 action. And when the initial concern on this bill was
3 raised that it was protectionist, one of the things that
4 the Administration sought was to clarify that the President
5 wasn't going to be forced into taking action that was
6 contrary to the national interest. And some of the private
7 sector witnesses that have testified before the Committee
8 supported that. And it is really a reaffirmation of existin
9 policy. That is the only substantive addition. There are
10 a couple of other points that we think that need clarifica-
11 tion possibly in the bill, one of them dealing with the
12 coverage of investment. Another dealing with the
13 relationship of the delegation to independent regulatory
14 agencies. And a third regarding the provision dealing with
15 the fliers of services.

16 I believe in our discussions that we have had with
17 the staff that we are in agreement in principle on those,
18 but I believe there are areas that still require some
19 further clarification or modification.

20 The Chairman. Is there objection to the suggested
21 changes under Section 301 from any member of the Committee?

22 Senator Bentsen. Well, I want to be sure that we are
23 not getting in a situation where we are hampering the
24 self-initiation of Section 301 by the Ambassador. That is
25 one of the things that I have been pushing for and was

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

assured by the Ambassador that he was going to be doing type of thing. I don't want to put any limitations around that that is going to make it easier to cop out on it.

Mr. Hathaway. That's not the intent of that provision. Actually the provision was raised initially by members of the private sector when we were talking about not initiating the action but on what eventual retaliation the President might take if he were unable to get the trade barrier removed. And the concern was expressed that we ought to have a formal recognition that the President will give a consideration to the impact on our economy or international obligations or the national interest more broadly before choosing a particular retaliatory action.

Now, as you know, most of the 301 cases don't result in retaliation anyway. They are solved by negotiation. But in the event that the President did --

Senator Bentsen. You Honor, we have got one of them on citrus that has been going on about seven years. And what I am trying to see is cases where industry is not in a position to start those cases; that we have the government actually starting them and pushing them.

Mr. Hathaway. There's a separate provision, Senator Bentsen, that authorizes specifically -- which is a new provision -- the self-initiation of Section 301 cases. That was previous authority for the President to take an action

PENGAD CO., SATONNE, N.J. 07002 - FORM 740

1 without a 301 case, but there wasn't a specific authority
2 referring to self-initiation. And that now is in the bill.
3 And the Administration supports that provision.

4 Senator Bentsen. Well, that's fine. I just want to be
5 sure you are not talking about clouding that. That is
6 specifically what I was referring to.

7 Mr. Hathaway. No. That isn't the intent of this
8 provision. It is really recognizing. It think, frankly, it
9 is a recognition that is almost self-evident that the
10 President would not be taking any action that was contrary
11 to the national interest. And I don't think anybody would
12 be saying that he would.

13 Senator Heinz. Mr. Chairman, do I understand what is
14 being proposed here is to add language to, in effect,
15 existing 301? That is the section of the bill that is
16 being amended. And as I understand the proposal is that
17 in addition to all the other discretion that is already
18 vested in Section 301, you want to add additional
19 discretionary authority. That's one interpretation. Or,
20 according to your interpretation, you don't want to do
21 anything at all except to add words. Is that right? One
22 or the other?

23 Mr. Hathaway. In the existing Section 301, the
24 President is only authorized to take appropriate action.
25 And the Administration has, of course --

1 Senator Heinz. I don't know, Mr. Chairman, what new
2 standards -- taking into account the national interest and
3 the economy -- is all about? I would sure want to know a
4 lot about that and hold hearings on it and take testimony
5 from the private sector before I would want off on that.
6 Unless you begin to think about all the implications of
7 that, you think, gee, it sounds so reasonable. But I'm not
8 so sure it is reasonable because I don't think we know what
9 the implications are. As Mr. Hathaway has pointed out,
10 the President is given discretion in Section 301. He is
11 given plenty of discretion in terms of the word
12 "appropriate." So I don't see why we should introduce into
13 the legislation at the 11th hour something that is vague,
14 ill-defined and could very well result in the neutering
15 of what I think is an otherwise fairly strong approach.

16 The Chairman. Claude.

17 Mr. Gingrich. Mr. Chairman, I might point out that
18 language like that set forth in paragraph 1 on page 3 was
19 included in the Trade Expansion Act of 1962. When the
20 Committee was considering the Trade Act of 1974, the House
21 passed version also contained that type of language -- H.R.
22 10710. When it came over to the Senate to the Finance
23 Committee, it was specifically removed by the Committee.
24 So the adoption of this language would be a change from
25 previous Committee position.

1 Mr. Hathaway. If I may, Mr. Chairman, one additional
2 point. I think it is really at the heart of the concern,
3 certainly within some agencies in the Administration on
4 this point.

5 We have the new provision which would authorize fast
6 track legislation, which is viewed by some as the appropriat
7 vehicle for providing for retaliation in areas that are not
8 now authorized by Section 301. And that could include
9 retaliation in inward investment into the United States.

10 And the concern is that that as a general proposition
11 is contrary to the economic interest of the United States.
12 That we would not be discouraging or it would not be in our
13 interest in responding to one burden on U.S. commerce to
14 impose yet another. And we have the concern that if we,
15 indeed, are going to be putting in a provision that could be
16 viewed by some as an encouragement to bringing 301 cases,
17 designed at doing things that may well be contrary to our
18 economic goals and to the purposes of this legislation, there
19 was a desire to have a recognition that would, in effect, be
20 able to be read as interests who seek to impose restrictions
21 in the United States that are contrary to our interests
22 through the vehicle of Section 301 should not be encouraged
23 to do so. And that's another reason for that position.

24 Senator Bradley. Could you give an example?

25 Mr. Hathaway. Well, if we were going to have -- if we

1 we had some problem with Japan and for some reason the
2 desire was to extract a retaliation against them, that we
3 might be -- some party -- I don't know of anyone that is
4 proposing it. But if there were a party that preferred not
5 to have investment by Japanese companies in the United
6 States, and they wanted to use a restriction to keep out
7 Japanese investment in the United States, as an end result
8 of the 301 case, that could increase pressure on the
9 President and the 301 action to impose a restriction on
10 inward investment into the United States, which would be
11 contrary to our economic interests.

12 And there, in fact, were some on the debates we
13 had on this bill, who have said that they wanted to create
14 at least that opportunity. And those in the Administration
15 whose responsibility is for investment are very concerned
16 at sending the wrong signal. That that is something, in
17 fact, that you would want to do in this legislation. So
18 that's another reason for this.

19 The Chairman. Well, I think there are probably a
20 lot of reasons, but unless there is some objection, let's
21 just eliminate the Administration's concern and knock out
22 number one. I think Senator Heinz made a good point.

23 Senator Heinz. When you say "knock out number one,"
24 what are you looking at, Mr. Chairman?

25 The Chairman. Well, they have four suggested changes

1 here.

2 Senator Heinz. Thank you.

3 The Chairman. Are there any other serious objections?

4 Senator Baucus. Mr. Chairman?

5 The Chairman. Yes.

6 Senator Baucus. Since we have knocked out number one,
7 I would like to know whether the Administration still
8 supports the bill.

9 Mr. Hathaway. Well, the Administration position on
10 having this provision was recognizing that this was going to
11 be considered. And we want to make it very clear that the
12 President will consider economic interests and the national
13 interest, and we think it is appropriate to have that
14 provision in the bill. If, in fact, a recognition that the
15 word "appropriate" already includes that, that may well be
16 sufficient for us. But we do believe that. And I know
17 that there were private sector interests that felt some --

18 Senator Baucus. Does the Administration support the
19 bill? Yes or no?

20 Mr. Hathaway. Yes. The Administration does support
21 the bill.

22 Senator Baucus. Even though we didn't include the
23 recommendation?

24 Mr. Hathaway. So long as we are clear on the intent
25 of the provision that these factors of the national interest

PERMANENT RECORDS, N.J. 07001 - FORM 740

1 and the consideration will be a part, the Administration
2 has a problem supporting it.

3 Senator Danforth. Let me ask the staff if this could
4 be pretty well covered in report language. I think that
5 it is implicit now. I mean when it comes right down to it,
6 301 is a provision of law which either is or is not
7 enforced by the Administration. And there is nothing
8 mandatory in 301. There never has been. So the question
9 is what does the Administration do and when does it do it
10 and what kinds of standards does it apply to. But let me
11 ask the staff.

12 I don't quite see the basis for the argument myself.

13 Mr. Gingrich. You are correct, Senator Danforth. It'
14 an absolutely discretionary authority of the President.
15 And the only constraint upon him at this point is that he
16 take any action that he deems appropriate. And I guess it
17 would be our feeling that that discretion, coupled with the
18 constraint on him to take appropriate action, would cer-
19 tainly contemplate that he would take into consideration
20 international obligations of the United States.

21 Senator Danforth. Clearly it would be bizarre if the
22 President would take an action not in the national interest
23 wouldn't it?

24 Mr. Gingrich. Yes, sir.

25 Senator Baucus. What did the Administration intend to

1 do since 301 is discretionary? What as a practical matter
2 is going to be different if this bill does or does not
3 pass?

4 Mr. Hathaway. I think the clarification of the
5 standards in 301 will be useful. But I, frankly, don't
6 see -- if you look at the list of cases that have been
7 brought under 301 in the past year, you will find the
8 preponderance of them having been brought since 1981. There
9 are more disputes pending in the GATT now brought to
-10 enforce our rights and obligations than we have ever had in
11 the history of the GATT. So there still may be some
12 questions remaining about whether all of the rights are
13 being enforced.

14 The Administration has been on record and has been in
15 practice -- and certainly Ambassador Brock's office has
16 been very actively involved in enforcing United States'
17 rights. And I don't think that I would want to say that
18 this bill will change the Administration's position because
19 with that purpose of this bill, the Administration has
20 always agreed with it.

21 Senator Baucus. Are you saying the Administration is
22 getting more aggressive?

23 Mr. Hathaway. I say it is right now.

24 Senator Baucus. As I look at this bill, I am frankly
25 worried. I hear the first step. I think it is going to be

1 the last step. There are too many members of this
 2 Committee and of the Administration who are talking about
 3 making the U.S. trade position. When we pass this bill,
 4 everything is great. I tend to see this as window-dressing.
 5 As we give the Administration discretion, I don't see the
 6 Administration doing much more, even though theoretically
 7 it has more discretionary authority. That's why I asked
 8 the question: What is the Administration as a practical
 9 matter going to do under this bill that it feels constrained
 10 from doing, that it cannot do now?

11 Mr. Hathaway. Well, what will be useful in the bill,
 12 actually in terms of the retaliatory authority -- it will
 13 make some of the standards more clear. And may well
 14 facilitate parties' ability to bring petition. And it will
 15 give more emphasis to market opportunities abroad.

16 But the other positive points of the bill are in the
 17 negotiating mandates. Because where the real effort is
 18 going on now is making the international trading system
 19 work better and to expand to cover those areas in which the
 20 United States is most competitive. This bill will give
 21 a higher profile and a larger purpose to those ends, which
 22 the Administration believes are very strongly in the
 23 national interest.

24 The Chairman. Could I just say that I don't see
 25 anything in the letter accompanying all these suggestions

PENGAD CO., BAYONNE, N.J. 07002 - FORM 740

1 that indicates any contingency that if we don't adopt
2 every little suggestion of the Administration then they
3 will not support the bill. The first statement says, "We
4 support the revised version of the bill." I don't see an
5 support for the Administration's proposal number one on t
6 last sheet. I suggest we forget it and move onto number
7 two.

8 Senator Matsunaga. Mr. Chairman, to follow up on a
9 point raised by Senator Baucus, what I would like to know
10 from the Administration's viewpoint is what can the trade
11 representative and the President do under the pending bill
12 as amended, which they cannot do now under existing law?

13 Mr. Hathaway. There is an enormous amount of
14 discretion now in the area on goods. The bill does
15 clarify the coverage with respect to services and invest-
16 ments, which could be subject to challenge. And it's one
17 of the other points that we raised that needed further
18 clarification to make sure we are doing right.

19 But in the area of goods, Section 301 has enormous
20 discretionary authority now. But in areas of services or
21 investments, there is some ambiguity about the coverage.
22 And one of the purposes of the Administration in supporting
23 an appropriately revised bill was to clarify the coverage
24 of 301 to those areas.

25 Senator Matsunaga. But is it the Administration's

1 position that the language of the bill might interfere with
2 services, investment in the United States?

3 Mr. Hathaway. The point of the clarification is to
4 make it clear that services and what we had referred to as
5 trade related investments were covered as items that were
6 acts, policies or practices of foreign governments that
7 might burden or restrict U.S. commerce. It does clarify that

8 Senator Matsunaga. In summary then, you are saying
9 that the proposal will serve a purpose?

10 Mr. Hathaway. Yes. And in response to Mr. Baucus'
11 comments as to the Administration's position in Ambassador
12 Brock's letter is that the Administration will support an
13 appropriately revised bill. There are some things, some
14 of these things that are technical, that are quite important.
15 And we believe we can solve those.

16 The Chairman. Let's move onto number two.

17 Senator Baucus. What if you can't resolve them? What
18 if there is no agreement? When are we going to know whether
19 the Administration supports this bill or not?

20 Mr. Hathaway. Well, I assume we will know that very
21 quickly because I know Senator Danforth will be instructing
22 a very rapid response on this, I would assume.

23 Senator Danforth. The Administration supports the
24 bill. The Secretary of the Treasury, the Secretary of
25 Commerce and the special trade representative sent a memo

1 to the President which the President signed off on today
2 supporting the bill.

3 The question here is whether or not discretion, which
4 is implicit in Section 301 and always has been, must be
5 made explicit. The position of Senator Heinz and others
6 that there is no need to do so. That question was faced
7 back in 1974. The position of the Administration is that
8 all things being equal it would rather have the discretion
9 being explicit. Clearly, the President is never going to
10 act in a way that is contrary to the economic interest of
11 the United States, at least not in enforcing Section 301.

12 So I think that it is actually a very minor bone of
13 contention. I happen to agree with Senator Heinz. I don't
14 see why it has to be included in here.

15 Senator Baucus. Mr. Chairman, may I ask a question
16 two. The memos -- I don't have them in front of me, but
17 just want to know what they say. This June 14th letter
18 that Senator Danforth distributed is very political. It
19 doesn't say that it does or does not support the bill. A
20 that's why I asked the question as to whether the
21 Administration does or does not.

22 Mr. Hathway. Formally in support of the normal
23 process, it is to actually have all of the language there
24 and then say we bless -- the Administration is in favor of
25 the actual text. And the way this process has worked is v

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

have had a substitute which there are other things which we have had grafting question on which we have not yet resolved the final language, which presumably will be done with the staff.

The Chairman. As far as I understand, the Administration supports the bill. If they don't support this one we will give them a real good bill.

(Laughter)

The Chairman. What about number two? Claude, could you address that? Is that a problem? Does that help the bill? What does it do?

Mr. Gingrich. I believe it goes to the problem Senator Heinz was talking about. As drafted, the substitute bill permits retaliation against foreign direct investment in this country and if foreign direct investment in a foreign country is discriminated against, the Administration apparently wants to add the language or would like to see the language "foreign direct investment with implication for trades, and products and services" added as a qualification to the phrase "foreign direct investment" in order to make clear that we are not attempting to get at situations where property, for instance, was expropriated in a foreign country, or a portfolio investment in a foreign country.

The Chairman. Senator Bradley.

PENGAD CO., BAYONNE, N.J. 07002 • FORM 746

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Senator Bradley. Mr. Chairman, I think this is an extremely helpful suggestion because I don't think we want to be put in the position of giving a kind of approval or right to expropriate which could be used against our \$200 billion in foreign direct investment.

Senator Heinz. Mr. Chairman, I would agree with Senator Bradley on the issue of expropriation. My concern is that the language, with implications for trade and products and services -- and by the way, as I understand it, that is actually in the substitute on page 2, line 32, is it not Claude?

Mr. Gingrich. Yes, sir.

Senator Heinz. Yes, it is. So the issue is not whether to put it in, it is already in. The question is whether to take it out or modify it in some way as far as I am concerned.

Mr. Hathaway. Clarify what it means, yes.

Senator Heinz. Beg your pardon?

Mr. Hathaway. Or clarify what it means.

Senator Heinz. Or clarify what it means. Now here is my concern. Portfolio investment as described by you would, in fact, not be covered. My interpretation of what that means is that if a U.S. businessman or a U.S. person wanted to make some kind of a direct investment -- portfolio or just --

1 I believe there is no life at all to
2 come and petition because this bill would not apply to that
3 kind of investment. Is that correct?

4 Mr. Hathaway. Under the investment provision, I think
5 most of the issues on portfolio investment or some of the
6 area of the question people have raised about banking are
7 more appropriately addressed in existing 301 authority
8 dealing with services. So if you are talking about a burden
9 on somebody being able to do any kind of commercial activity
10 because of a foreign restriction on a service, which is most
11 likely where that would come up, we think it would be dealt
12 with in that form rather than in investment, per se.

13 Senator Heinz. Well, here is my point. I have no
14 objection to making it very clear that the issue of
15 expropriation is a different issue, as Senator Bradley points
16 out. But why, since we are looking at legislation that is
17 called reciprocal trade in services and investments, do we
18 want to so circumscribe the word "investment"?

19 Previously it has been the history of this committee
20 when we were writing the 1979 Trade Act to take, for
21 example, the broadest possible definition of the term
22 "subsidy". Since this is all very discretionary, as you
23 know--Section 301 is discretionary--it seems unnecessary to
24 further circumscribe without being very clear as to the
25 reasons. I have not heard very good reasons as to why this

1 legislation shouldn't be available--and that's all it is, i
2 is just available--as a potential remedy to somebody engage
3 in direct investment, portfolio or otherwise. But let me
4 pose the question this way. Suppose a U.S. person or a
5 business firm decided that they saw a growth company in
6 Japan, and they wanted to invest in that company because five
7 or 10 years from now they thought that that company was going
8 to have the technology that was going to be vital to the
9 world, and they wanted a piece of that technology, and the
10 only way they could get it is to invest in that firm. For some
11 reason, they couldn't re-create a tier. Or the Japanese
12 Government said, listen, you know, we just don't allow you
13 Americans to do this. As I understand it, they would have
14 absolutely no redress under this method of drafting under
15 this legislation because they would be required to prove--
16 as I understand it, the burden of proof would be on them--that
17 what they were doing had an implication for trade in
18 products or services. I think that is an unreasonable
19 burden to place on a direct investor.

20 And, Mr. Chairman, what I would like to do, if we
21 can--I don't know that we are that far apart--I just think
22 we ought to solve their real problem and not worry about
23 these turf fights that Treasury and everybody else gets into.

24 The Chairman. Well, I was going to ask the staff if
25 they have any suggestions. I wanted to ask Mr. Lang if they

1 had any staff suggestions.

2 Mr. Gingrich. One option, Mr. Chairman, is to drop the
3 language and then try to get care of the particular problem,
4 like expropriated property and legislative history, and work
5 with the Administration in other areas that they are
6 concerned with.

7 Senator Bradley. Mr. Chairman, I think that any
8 report should state very explicitly that we do not consider
9 it a possibility that there be a taking of property under
10 this or an expropriation, whether it be in the form of a
11 discriminatory tax or even revoking a business charter. I
12 think that we are playing with fire if we get out there in
13 this area without clearly stating what our intent is, and I
14 think that is what the Administration was attempting to do
15 in their second point.

16 Senator Heinz. Mr. Chairman, I think you make an
17 excellent suggestion that we take for now these words out
18 and put in language, because that is what Senator Bradley and
19 I both would want to do.

20 Senator Bradley. Well, I would like to hear from
21 Mr. Hathaway. I am a little uncertain if you simply say you
22 are going to leave investment out there without it being
23 clearly defined what it is. And that is what we have done
24 when we say investment with regard to trade and services.
25 I mean, we have kind of said this is what it is. Everything

1 else is not included. I mean, we are not interfering with
2 the sovereign rights of a government to tax or to have
3 credit policies or regional development policies or any of
4 the sort. And I think we should be very clear that we don't
5 intend to do that by this.

6 Senator Heinz. Well, if the Senator will yield. He is
7 right, up to a point. There is a definition here, but the
8 definition may be much narrower than even the Senator intends
9 I am not arguing there is no definition. I am arguing it is
10 a wrong definition.

11 The Chairman. Could I suggest that we take a look at
12 this--we probably are not going to finish this bill this
13 morning. I assume we can work out the differences with the
14 different people who have an interest and with the
15 Administration. I doubt that we can do this by --

16 Mr. Hathaway. I believe you can, Mr. Chairman. I was
17 also not suggesting necessarily a change in the language
18 that is in the bill, but a clarification to cover the points
19 that Senator Bradley had raised as well.

20 Senator Danforth. Can we agree with the language in the
21 bill and can we just work it out in the committee report?

22 Senator Bradley. That would be satisfactory from my
23 standpoint.

24 Mr. Hathaway. It would be satisfactory from the
25 Administration's standpoint.

1 Senator Heinz. Well, I would need an assurance--maybe
2 we should just spell it out--but, however, this does not
3 apply to U.S. direct and portfolio investment.

4 Mr. Hathaway. I think we would want to have an
5 opportunity to explore the types of things which we wanted
6 to deal with and whether we were talking about dealing with
7 them as an investment or as a service. And if we can work
8 with the staff and what is in the report, we may be able to --

9 Senator Heinz. Well, I think reports are terrific, but
10 they count for nothing in the final analysis. I think that
11 we ought to clarify this in the statute. I don't think it
12 ought to be that hard. I mean, what is wrong with leaving
13 the words in here and adding, however, that "Foreign direct
14 investment with implications for trade and product and
15 services shall be deemed to include portfolio and other U.S.
16 direct investment"?

17 Senator Bradley. And then will you also put in, "Shall
18 not be deemed to include the long list of other things"? I
19 think that you would get into a swamp.

20 Senator Heinz. No. Having a list is not a list that
21 is exclusive, Senator Bradley.

22 The Chairman. We can vote now if we want to do that,
23 but we will try to work it out. If we can't, we will just
24 vote on it. Let's move on to number 3.

25 Mr. Gingrich. Mr. Chairman, under existing law, the

1 President has the authority to impose restrictions or fees
2 on products or services. The substitute bill would amend
3 that by inserting the provision, "Notwithstanding any other
4 provision of law, the President may impose fees or
5 restrictions on products or services."

6 What that is intended to do is clarify the existing law.
7 The legislative history of the current law says that, "In
8 imposing restrictions on services, the President should do
9 so in coordination with the particular agency involved."
10 This would make it clear that the President would be able to
11 override, say, the ICC which had granted a trucking license
12 to someone. It is intended to be in the nature of a
13 clarification. I think that the Administration's problem is
14 they don't want it to be read as overly broad clarifications.

15 The Chairman. Well, does the staff have some
16 suggestions?

17 Mr. Gingrich. We could certainly work on legislative
18 history which would indicate it was not intended to override
19 such things as treaties.

20 The Chairman. Is there any objection to see if they can
21 work out some language without getting into other areas?

22 (No response)

23 The Chairman. All right. What about number 4?

24 Mr. Gingrich. Under current law, the President can
25 impose, as I said, restrictions on services. The substitute

1 bill would modify that by inserting the words "or suppliers
2 thereof". I think the Administration's objection to the
3 insertion of that phrase rests on the belief that it might be
4 used to attack existing suppliers of services in the
5 United States, that is, actually shut down people who are
6 doing business here.

7 The Chairman. Senator Bradley, do you have any
8 objection to that change?

9 Senator Bradley. No.

10 The Chairman. Does anybody object to that change?

11 Senator Chafee. Well, I am not sure what you mean here
12 when you say this phrase should be deleted. It does not add
13 any desirable authority that is not now implicit. What are
14 you talking about?

15 Mr. Hathaway. Precisely the point of reaching to
16 established operations in the United States. We took an
17 example of an airline that had an office in the United States
18 for purposes of writing tickets and arranging the landing
19 rights and so forth. A restriction on a service, if that
20 were the chosen route, could imply either fees or
21 restrictions being imposed on their ability to sell tickets
22 or to utilize landing rights or future landing rights. But
23 it would not necessarily, as this particular language could
24 be read to mean, would be authority for the President to go
25 in and say to that local corporation engaged in

1 international services that you don't have the right to
2 exist in the United States. It would, in effect, be lik
3 revocation of a charter or revoking a right to establish.
4 And it is the same sort of point that Senator Bradley made
5 the expropriation question.

6 Senator Chafee. So you would say that under the
7 current law you don't have authority to do this and you
8 want it. Is that it?

9 Mr. Hathaway. We don't want it. That is correct.
10 to the extent that the term "suppliers of services" says
11 the President can impose his restrictions on a supplier of
12 service, what we are really talking about is, in the current
13 provision of law, that that is implicit already. And I
14 cannot envision any instance in which the President were
15 going to impose a restriction on some internationally traded
16 service in which he wouldn't impose the restriction either
17 directly or indirectly on the supplier of the service. In
18 the discussion has been that it is implicit that this
19 purpose is already in the bill, and there are possible
20 negative interpretations of it.

21 Senator Chafee. So, in summary, you think you
22 implicitly have got the power now to do it?

23 Mr. Hathaway. That is correct, Senator Chafee. And
24 would have no problem in that being confirmed. But this
25 particular phrase has been read by some to go substantial

1 on what I think the intent of the provision was.

2 Senator Chafee. Thank you.

3 The Chairman. Senator Bentsen, do you have a question
4 on this paragraph?

5 Senator Bentsen. No, no.

6 The Chairman. Is there any objection then to accepting
7 the Administration's recommendation?

8 Senator Heinz. Well, yes, Mr. Chairman, only because I
9 don't understand what their rationale is. They say it goes
10 beyond -- somebody telling them that it goes beyond the
11 interpretation. But they fail to say how it goes beyond. So
12 I don't know what to make of it. Outside of that, I have
13 no objection.

14 Senator Chafee. It leaves me a little confused,
15 Mr. Chairman. They say they have implicitly got the power
16 already, but they don't want to have that power, or they
17 don't want to talk about that power.

18 Mr. Hathaway. Now, is the question of whether that is
19 fair? I don't think so, Senator Chafee. The provision, as
20 it stands now, in 301 says, "The President may impose fees
21 or restrictions on services." All right. It is implicit
22 that he would be able to impose a fee or a restriction on
23 a supplier of a service. However, this particular phrase,
24 "extending a restriction against a supplier of a service"
25 has been read as being potentially extending, not to the

1 international trade in the service, which the statute is
2 intended to direct, but to the supplier of the service
3 possibly for wholly domestic operations or just that
4 supplier of services right to exist in the United States
5 a right of establishment or a continued utilization of a
6 charter if there were such a thing.

7 Senator Heinz. If I understand you, why can't you
8 "This is read as expropriation or elimination of due
9 process"? That is what I think you are saying. But I
10 seem to get you to say it.

11 Mr. Hathaway. That is correct, sir. The supplier
12 services is read--you have said it better, Senator Heinz
13 as an expropriation authority or as something that could
14 encouraging. Not necessarily a violation of due process
15 You might have a hearing, or so forth, first, but then
16 would still be a taking.

17 Senator Heinz. If that is the purpose, I can
18 understand it. But I sure wish the USTR would explain
19 concerns a little more directly. I cannot read your mind.

20 The Chairman. That is the concern?

21 Mr. Hathaway. That is the concern.

22 The Chairman. All right. Is there any objection?

23 (No response)

24 The Chairman. Without objection. Now, does anybody
25 have amendments?

1 Senator Bentsen. I have a question, if I may.

2 The Chairman. Oh, excuse me, Senator Bentsen.

3 Senator Bentsen. Mr. Chairman, if this area has been
4 covered--I had to step out a moment--then stop me, but I
5 notice on the back, the last page, you have areas that
6 require clarification, and I, in turn, am concerned about it,
7 on number 5 where you talk about Section 151 procedures or
8 legislation to implement Section 301, that they should be
9 available. I assume you are getting to the fast track
10 legislation.

11 Mr. Hathaway. Yes, sir.

12 Senator Bentsen. Now, if we add it in the 1974 Act,
13 Mr. Chairman, as I recall, if you got into a trade
14 agreement on non-tariff barriers, you are at a situation
15 where the President would give you 90 days notice, and then
16 the Congress had 90 days to react, and we voted it up or
17 down. And I could understand why it would not be amendable
18 if you are talking about some kind of a trade agreement
19 because you would never stop or you would never get to an
20 end in the negotiations. But if you are talking about a
21 specific piece of legislation rather than a trade
22 agreement, and that is then proposed to us on the provisions
23 that you have referred to, where it is not amendable and
24 would not be amendable in this committee or on the floor,
25 then I have some concern and serious question about it.

1 Mr. Hathaway. What this would do would be allowing
2 implementing provision. The reason for stating the point
3 here was the way it is technically drafted now, as it would
4 require any implementing legislation to be done under 15.
5 And we were going to make that permissive. And the question
6 of whether one submits implementing legislation even on
7 trade agreements has always been in consultation with the
8 Finance Committee and the Administration because the
9 Committee always have the option of not acting on the
10 legislation once it is submitted.

11 Senator Bentsen. I understand. But I don't want
12 see us in a situation where we just have to vote it up or
13 down and it is not amendable at all, if we are utilizing
14 that kind of fast track legislation. That is what I am
15 trying to understand and want you to clarify for me.

16 Mr. Hathaway. Once the bill is submitted, under
17 existing rules it would not be amendable. But we are
18 envisioning in this the same sort of consultative process
19 that went into the Trade Agreement Act in which it was --

20 Senator Bentsen. Yes. But you have got a different
21 situation. And, therefore, I would say, Mr. Chairman, I
22 have a concern in that one. And I am just having the same
23 kind of problems that Senator Heinz has had at in getting
24 you to tell me. So what you are talking about is something
25 I want you gentlemen to understand this because what he is

1 talking about is something that would be not amendable. The
2 would try to, supposedly, work out any differences ahead of
3 time and then submit the piece of legislation. But I don't
4 know how you do that with all the members of this committee,
5 and, in turn, with all the members of the United States
6 Senate. Now, I can understand some justification for fast
7 track legislation, but on this one, I think we ought to give
8 some additional thought to whether we maybe should say it is
9 amendable in this committee or on the floor, but it might be
10 limited to questions that were germane or amendments that
11 were germane. I would like to see some kind of fast track
12 but I would like to think about whether or not we allow no
13 amendments at all. It is not a trade agreement.

14 Mr. Hathaway. That is correct.

15 The Chairman. Does the staff have any comment on
16 Senator Bentsen's concern?

17 Mr. Gingrich. We can try to come up with an
18 amendment to the proposed language indicating that germane
19 amendments would be acceptable, either in the committee or
20 on the floor.

21 Mr. Lang. Mr. Chairman, we might create a rule of
22 germaneness that was a rule of the Senate and still allowed
23 some narrowing of the activities that could be attached to
24 this kind of bill. The kind of language I am thinking of
25 is the following: "Only amendments which relate to the

1 course of action to be taken by the President with respect
2 any act, policy or practice described in the 301
3 recommendation of the President shall be in order in either
4 House." I think that language would mean that the Senate
5 could change the course of action. The language would mean
6 that the Senate could change the course of action
7 recommended by the President, but it could not attach
8 legislation which did not relate to the trade problem
9 involved.

10 Senator Bentsen. Mr. Chairman, I think we ought to
11 explore this, and I would like to discuss it with Senator
12 Danforth and other members of the committee and try to get
13 satisfied on his point.

14 The Chairman. Let's just reserve on that until you
15 have had an opportunity to discuss it. As I understand
16 both Senator Heinz and Senator Matsunaga at least have
17 questions or clarifications. Senator Heinz?

18 Senator Heinz. Yes, Mr. Chairman. On page 9, line
19 the bill takes up the subject of a delay, "the delay of
20 request for consultations for up to 90 days." I think that
21 provision, in substance, is very, very necessary. It is
22 important for all GATT submissions for the USTR, as we
23 learned, Mr. Hathaway, recently on the specially sealed
24 case, that there be sufficient flexibility to allow a delay
25 in the submission to the GATT of any such petition. Now

1 first, Mr. Chairman, there seems to be a small drafting
2 error on line 11. I think it is meant to say: "delay for up
3 to 90 days," rather than "delay for 90 days."

4 Mr. Hathaway. That's fine with me.

5 Senator Heinz. And Mr. Hathaway says that is correct.
6 The second suggestion I would have is that we should make it
7 clear that this delay only applies to cases that are going to
8 be submitted to the GATT. That is what this is for. In
9 cases where there is no GATT mechanism, as there is none on
10 services or investment, we don't need that 90 day delay. Is
11 that correct?

12 Mr. Hathaway. It is unnecessary, no, sir.

13 Senator Heinz. All right. And, thirdly, I would also
14 like to make it clear that the only purpose for which the
15 delay may be used is for the purpose, if you will, of
16 improving the petitions as opposed to, there are some in the
17 Administration somewhere that just doesn't like the
18 petitioner because he is a troublesome petitioner. Do you
19 have any objection to that, Mr. Hathaway?

20 Mr. Hathaway. That is the purpose. Actually the
21 Administration had asked for flexibility throughout the 301
22 process and the time limits. And the purpose was not
23 designed to undercut effective dispute resolutions but to
24 really make it better so that if you had to take a brief
25 and go into consultation to the GATT that you could be ready.

1 And we have no problem with that.

2 Senator Heinz. All right. Well, Mr. Chairman, unless
3 there is some objection, I would ask that we do get some
4 language that says that because I think we are all together
5 and this could be misinterpreted further down the road.
6 thank my colleagues.

7 The Chairman. Yes. I think it probably isn't going
8 to be possible to vote this morning. We hope to convene
9 10:00 o'clock tomorrow for the purpose of reporting out the
10 bill. That will give everyone adequate time. And I think
11 Senator Bentsen has a problem. I just wonder whether Senator
12 Bradley has any. Senator Heinz has raised another area of
13 drafting. And I think Senator Matsunaga has questions
14 perhaps to be clarified. Do you have anything else, John?

15 Senator Heinz. Mr. Chairman, I have a technical
16 amendment, but I don't know if this is the time to get in
17 technical amendments. I could propose it now. It is at
18 will of the committee.

19 The Chairman. If it is technical, I think it might
20 be a good time to discuss it.

21 Senator Heinz. All right. This is my first--I think
22 my staff has it--it is my first text amendment, on page 17 of
23 the June 8th draft. The purpose of the amendment is to
24 remove certain language regarding the tariff cutting
25 authorities from the negotiating objectives section. The

1 same language appears elsewhere in the bill and it is
2 redundant in the place in which it appears. It is a very
3 technical amendment.

4 Mr. Gingrich. We have no problem with that.

5 The Chairman. Is it a technical amendment?

6 Mr. Gingrich. Yes.

7 The Chairman. Any objection to the amendment?

8 Senator Matsunaga?

9 Senator Matsunaga. Mr. Chairman, this is an overall
10 question to the Administration. Mr. Hathaway, you represent
11 the Special Trade Representative's office?

12 Mr. Hathaway. Yes, sir.

13 Senator Matsunaga. The concessions recently made by
14 the Japanese on 63 items, do you consider that to be a
15 consequence of successful negotiations?

16 Mr. Hathaway. I would prefer to defer to the
17 statements that the Administration has already made in
18 response to that. And I would be happy to give them to you.
19 But the question of whether we are completed with the
20 negotiations with Japan is like saying we are completed
21 with efforts to undo unfair trade barriers abroad. It is not
22 a process that ends after one step. It is a road that you
23 are traveling rather than coming to an ending point. So
24 they are useful liberalizations, but it doesn't mean that
25 there isn't more that needs to be done.

1 Senator Matsunaga. Well, from the standpoint of Hawa
2 I must commend your office and congratulate the Special Tr
3 Representative. We got something we have been working for
4 for years, that is, the removal of tariff on Macademia nut
5 and Macademia nut chocolates, and an increase in the quota
6 of pineapple shipments to Japan.

7 My question is now, with this new proposal, assuming
8 that this was enacted into law, would the negotiations hav
9 been easier, more difficult, or of no difference?

10 Mr. Hathaway. The fact that the legislation was in
11 process and the fact that it will be in U.S. law if all go
12 according to Senator Danforth's plan, will be an aid to ou
13 negotiating ability and an aid to solving these problems.
14 And the fact that the Congress is certainly paying close
15 attention to these problems is of great assistance to the
16 Administration.

17 Senator Matsunaga. Then you say it would be of aid
18 to your office?

19 Mr. Hathaway. Would be of aid.

20 Senator Matsunaga. Now, there is a provision in the
21 proposal where a public announcement of remedial action to
22 be taken of retaliation would be made. What is the view of
23 the Administration? Will this help or make it more
24 difficult?

25 Mr. Hathaway. The provision as it is now written

1 provides for a report to the Congress on actions that
2 being taken. And in some instances the Administration
3 that under separate provisions of law anyway. And the
4 Administration has no objection to stating, in fact, w
5 is doing. In the substitute bill there is another pro
6 that implies that a better use of the studies of barri
7 market access is for the Administration to --

8 Senator Matsunaga. No. You see, what I have be
9 trying to get from you is, would not the public announ
10 over remedial action to be taken against any country h
11 the position of that country?

12 Mr. Hathaway. It could well. And we are not co
13 about stating the actions that are being taken. The b
14 has been modified now so that the Administration would
15 be required to state actions that was contemplating be
16 we believe we can do that when appropriate without it.
17 it could be counterproductive.

18 Senator Matsunaga. All right. Do you find the
19 definition of "fair and equitable market opportunity"
20 adequate?

21 Mr. Hathaway. Yes, the Administration does. We
22 believe it gives an added emphasis to market opportuni
23 abroad, which is not at all inappropriate. But it doe
24 restrict the President to taking sectorial actions or
25 product by product balancing as the earlier provision

1 have.

2 Senator Matsunaga. So you feel that without further
3 language, the term "fair and equitable market opportunity"
4 is adequate as provided in the bill?

5 Mr. Hathaway. That is correct.

6 Senator Matsunaga. I am confused. How is it applie
7 to specific cases?

8 Mr. Hathaway. Well, it is defining really the catch
9 phrase in Section 301, which is unreasonable. And any Act
10 policy or practice, even after this list, which is just
11 including certain actions which deal with market opportuni
12 can still be actionable under Section 301. Unreasonable
13 covers those things that are not really otherwise specifie
14 like violations of trade agreements, or being
15 discriminatory. So it is a broad phrase. And this
16 highlights one element that is appropriately included.

17 The Chairman. Are there other technical amendments?
18 What I might suggest is that between now and tomorrow
19 morning at 10:00 o'clock members and staff who have some
20 concern about either the language or the Administration's
21 suggestions--the four suggestions or any of the others--th
22 we carefully review those so that we can meet tomorrow at
23 10:00 o'clock and hopefully quickly agree to any suggested
24 changes or disagree and have a vote, and report out the bi
25 as well as the Resolution of Senator Heinz on steel, and t.

1 proposal of Senator Armstrong. Now, if there are other
2 technical matters or --

3 Senator Heinz. There is one technical matter, at 1
4 as I understand it, Mr. Chairman. It is my understanding
5 that on page 18 the Administration is seeking to restore
6 authority to make bilateral or multilateral agreements in
7 the high tech area without necessarily using Section 102
8 procedures which require Congressional approval. And it
9 my understanding that such authority would extend to only
10 minor agreements. Any agreement that necessitated change
11 in U.S. law would still require Congressional approval.
12 I would like the Administration, if they say that is a
13 technical amendment, to demonstrate that, in fact, it is.

14 Mr. Hathaway. I don't believe there is a problem with
15 that. The Section 102 could be read now, "Procedures to
16 apply for Congressional approval, even though there were
17 legislation required to implement the agreement." And what
18 this would clarify, I think technically, is that that would
19 not be the case for this narrow exception of high
20 technology amendments. And I think the Administration is
21 perfectly satisfied with that amendment.

22 Senator Heinz. Does staff know of any problems with
23 that?

24 Mr. Gingrich. None that I am aware of, Senator Heir
25 Mr. Lang. I am not aware of any now, Senator.

1 Senator Heinz. Well, maybe we can adopt it as a
2 technical amendment. But if someone think there is a
3 problem with it, they have the right to come back.

4 The Chairman. Our forces are about depleted. And I
5 don't want to do anything without Senator Long or Senator
6 Matsunaga willing to stay.

7 Mr. Lang, are you familiar with the amendment of
8 Senator Roth? If not, we will carry it over until tomorrow
9 morning.

10 Mr. Lang. I believe I have the language, Mr. Chairman
11 Senator Danforth. Did we agree to Senator Heinz'
12 amendment?

13 The Chairman. Yes. But has that been cleared with
14 staff on both sides?

15 Mr. Gingrich. I believe it would be better to carry
16 it over until tomorrow so that we can check it with the
17 Administration.

18 The Chairman. All right. So let's between now and
19 the morning, if there are amendments, let's make certain th
20 they are made available to everyone on the committee. And,
21 secondly, if it is a change in language, let's work that ou
22 Because I know there are Senator Danforth, and others, who
23 would like to report this bill out tomorrow morning. We
24 stand in recess until 10:00 o'clock.

25

1 DRAFT STATEMENT OF SENATOR BRADLEY AT MARK-UP OF
2 RECIPROCITY BILL

3 Senator Bradley. Led by the distinguished Chairman,
4 many of us on the Trade Subcommittee have worked to develop
5 a compromise trade bill aimed at liberalizing world trade
6 investment practices, strengthening and expanding the coverage
7 of the GATT and other international agreements, and improving
8 market opportunities for the United States. Most important
9 the legislation affirms and seeks to build on the "rule of
10 law" in international commerce. It should be interpreted
11 seeking to open markets and lower barriers to trade and
12 investment by strengthening respect for international rule
13 not to close markets and raise barriers through protection
14 restriction and retaliation.

15 The mandate given to the President by this bill is to
16 negotiate aggressively, not to resort to self-deflating
17 economic war. It recognized negotiation, consultation and
18 dispute settlement as the customary tools of reducing
19 barriers and resolving differences. Retaliation is a
20 distasteful last resort and should not be used as a cloak
21 for protection. Since America's objective is to open
22 markets and lower barriers, our methods should advance, not
23 frustrate, this objective. Negotiation should be the rule
24 in particularly in handling problems concerning activities
25 not covered under the GATT or other agreements.

1 International rules are effective only when the
 2 countries they bind view them as legitimate. Legitimacy
 3 derives from consent, not coercion. Consequently, effecti
 4 rules are established by negotiation, not by fiat. No cou
 5 has a monopoly on virtue. All parties to an agreement are
 6 obliged to respect them consistently not just when it is
 7 convenient.

8 The commercial rights of all countries, particularly
 9 United States, are best protected by a multilateral system
 10 of rules and procedures. Whatever weakens this system wea
 11 our rights and our interests. Unilateral departures from
 12 multilateral system and special bilateral deals weaken the
 13 system.

14 The intent of this legislation is to strengthen and
 15 expand the rule of law in trade and investment, including
 16 GATT codes and mechanisms. It is also to encourage and
 17 strengthen the ability of the President to enforce U.S.
 18 rights more aggressively, as appropriate, under internatio
 19 agreements and U.S. law. Strengthening international rule
 20 and the President's ability to enforce vigorously our trad
 21 rights have been my major objectives since the subject of
 22 trade legislation was introduced to the committee. I am
 23 pleased that these objectives are central to the legislati

24 I am concerned that certain language in the original
 25 version of this bill could have set the U.S. on a course o

PENGAD CO., BAYONNE, N.J. 07002 - FORM 740

1 retaliation against those trading partners whose laws and
2 practices differed substantially from our own, an effect
3 believe Senator Danforth did not intend. Nonetheless, ma
4 the denial of "substantially equivalent commercial
5 opportunities", a cause of action under U.S. trade law,
6 suggested that we would close our markets to countries wh
7 history, culture, economic structures or values gave them
8 commercial environments which, on the whole or for a
9 sector, differed substantially from our own. Some people
10 interpreted the term to state that the U.S. would retaliate
11 simply because one of our trading partners enjoyed a surp
12 overall or with a sector, in its bilateral trade with the
13 U.S.

14 Neither of these interpretations constitute a desirable
15 basis for remedial action under law. Bilateral balancing
16 sectoral or overall, defeats the gains we aim to achieve
17 through trade based on comparative advantage. Scoring
18 foreign economies against a uniquely American scale is
19 unworkable, and retaliating against them simply because
20 fail to measure up to our standards is untenable and unfa

21 The new legislation is free of these unfortunate
22 implications and reflects more accurately what I believe
23 Senator Danforth intended - to insist on fairness and equ
24 in trade and investment practices. The new bill retains
25 existing causes of action in Section 301 of the 1974 Trade

1 Act, and does not create a new one. Instead, it explic
2 expands the coverage of existing causes of action to
3 services and investment, and clarifies their meaning.
4 example, the term which is used to describe a cause of
5 in Section 301 in the new bill is defined as including
6 policies or practices which deny "fair and equitable" m
7 investment and other opportunities. Use of the term "f
8 and equitable" instead of "substantially equivalent" to
9 describe the opportunities we expect makes clear that f
10 failure to mirror U.S. laws and practices, or to a show
11 balance on their trade account with the U.S. is not, pe
12 a cause of action under Section 301.

13 Certainly in an effort to determine whether foreign
14 market opportunities are fair and equitable, the Preside
15 may wish to compare foreign commercial law and practices
16 our own, or to assess the reasons for chronic bilateral
17 imbalances. But whether a foreign practice is fair or
18 equitable can not be determined simply by comparing it w
19 U.S. practices, or by checking the bilateral trade balan
20 overall or within a sector. Fair and equitable market
21 opportunities are not equal market opportunities or equa
22 market structures. Nor is the absence or denial of mark
23 or investment opportunities always unfair or inequitable
24 It depends on surrounding circumstances. Fairness and e
25 are contextual standards, for which no single measure is

1 always controlling. There is no single universal test.

2 A determination of fairness and equity in trade and
3 investment requires the consideration of a number of factors.
4 The nature of these factors, and their relative weight,
5 varies from case to case.

6 In general, the President, in determining whether
7 a foreign act, policy or practice denies fair and equitable
8 market, or other, opportunities should consider among other
9 things, the foreign country's ability to offer market
10 opportunities to the U.S., including the degree to which
11 markets are developed; its economic structure; its level of
12 pattern of consumption; its economic growth trends; its
13 political institutions; its cultural and values; and the
14 balance of concessions it offers overall. It should also
15 compare the country's practice with international rules and
16 norms and with the prevailing practices for countries in
17 similar conditions. By defining "unreasonable" as used in
18 Section 301 in part in terms of fairness and equity, we
19 avoid resting U.S. laws on arbitrary standards, which would
20 prove unenforceable and injurious to broader U.S. objectives.

21 This is important because the President of this
22 country, as the leader of the free world, must weigh his
23 actions, including actions taken by authority of this
24 legislation, on the scale of the national interest. He
25 balance the advantages of any trade action against the

1 potential damage it might do to other U.S. objectives. I
2 believe that as a rule, enforcing U.S. trade rights is a
3 priority, but, at times, the costs of action outweigh th
4 benefits.

5 For example, I believe the President should proceed
6 cautiously if he considers restricting foreign investment
7 in the U.S. Changes in the status of an established
8 business which impair its ability to continue its busines
9 operations in the U.S. could significantly injure our bro
10 economic interests. First, foreign investors help supply
11 the capital, technology and jobs we badly need to revital
12 our economy. Our overriding interest is to welcome forei
13 investment, not kill it. Second, the U.S. has over \$200
14 billion sunk in direct investment overseas. That investm
15 is made vulnerable by any U.S. practice which suggests we
16 have relaxed our historic claim that governments should n
17 take or expropriate property without due process. U.S.
18 impairment of the status of an ongoing foreign business c
19 be used by foreign governments to justify as a sovereign
20 right, the uncompensated expropriation of U.S. business.

21 Clearly, Presidential action affecting foreign inves
22 should steer clear of any domestic measure that could be
23 construed as an uncompensated expropriation or property
24 taking. Also, the United States leads aan alliance of
25 Democratic nations and sets the world standard for

1 development based on free institutions. That leadership
2 entails responsibilities.

3 Trade actions taken by the President must take into
4 account the potential consequences for our political and
5 security objectives. These are hard times and they are
6 testing our capacity for foresight. In a short fit of
7 recrimination, we could destroy the liberal trading syst
8 which took us more than three decades to build from the
9 rubble of war and mercantilism. The Great Depression wa
10 testimony to the fact that competitive protection provid
11 no relief from economic hardship. The Smoot-Hawley tari
12 cut U.S. exports in half within four years.

13 In addition, we owe it to the future to safeguard
14 liberal trading system. International commerce is becom
15 more diversified, as well as increasing. Trade in
16 services, trade in high technology products, and investm
17 in these sectors as well as others, share characteristic
18 trade in goods, but they also differ importantly in cert
19 respects. They raise different, often new, problems for
20 international commercial policy. Information-based serv
21 particularly add a new dimension to international commer
22 For example, the border regulation of services and
23 investment is more difficult than the border regulation
24 goods. Tariffs and quotas often cannot be easily applic
25 to what is crossing the border, for example, ideas. Nor
quantity or price generally what governments seek to

1 regulate. Technology transfer and job creation often are
2 important goals. In addition, many governments manipulate
3 markets within their borders in the hopes of pushing their
4 native industries to the cutting edge of technology. What
5 we have traditionally thought of as domestic policies, in
6 combination, take on the character of an industrial policy
7 that can shape the pattern of trade.

8 By the same token international investment brings
9 decisions made by foreigners deep inside national borders
10 where they visibly affect national welfare, and where rights
11 asserted for them appear to intrude on domestic policy.
12 In short, the levers on trade and investment flows more often
13 are found deeply inside national borders, thereby setting
14 the stage for the more frequent collision of sovereign rights
15 and the asserted commercial rights of foreigners.
16 Reconciling these rights requires new rules arising out
17 a new framework.

18 The rules we have for trade in goods cannot simply
19 be handed down to all services and investment, or stretched
20 to cover industrial policies. Sovereignty will have to be
21 balanced against the logic of open markets in a new way.
22 Recent legislation before us makes its more important contribution
23 in authorizing the President to enter negotiations in these
24 areas of services, investment and high technology. Because
25 the process of setting fair rules in these

1 sovereignty-sensitive areas will place heavy strains on the
2 trading system, we must prepare that system by strengthening
3 it today.

4 This is a compelling reason to resist current pressures
5 which weaken the system. The economy of the future depends
6 on maintaining a strong foundation on which we can build an
7 expanding and liberal world economic order.

8 (Whereupon, at 12:15 p.m., the meeting was recessed, to
9 reconvene at 10:00 a.m., Wednesday, June 16, 1982.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25