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COMMITTEE ON FINANCE

UNITED STATES SENATE

EXECUTIVE SESSION

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EXECUTIVE SESSION

TUESDAY, SEPTEMBER 27, 1983

United States Senate,
Committee on Finance,
Washington, D.C.

The Committee met, pursuant to notice, at 10:27 a.m., in Room SD-215, Dirksen Senate Office Building, the Honorable Robert Dole (Chairman of the Committee) presiding.

Present: Senators Dole (presiding), Danforth, Chafee, Heinz, Wallop, Durenberger, Symms, Grassley, Long, Fentsen, Boren, and Bradley.

Also Present: Rod DeArment, Staff Director; Mike Stern, Minority Staff Director; Mr. Kassinger, Mr. Santos, Mr. Hardee, Mr. Wetzler, Mr. Lang, Mr. Brockway, and Mr. LeDuc.

Also Present: Elliot Hurwitz, Special Assistant to the Under Secretary of State for Economic Affairs, and Lionel Olmer, Under Secretary of Commerce for International Trade.

The Chairman: We need about two more members before we can start acting on amendments. What we would like to dispose of, and I appreciate very much Mr. Olmer making himself available, is this. We have been trying to work out some resolution to a difference of opinion on a couple of areas in the Export Administration Act where we think we have

1 jurisdiction.

2 Senator Heinz is highly interested in getting this matter
3 resolved, so there may be a chance of completing action yet
4 this week, at the latest next week, so we do not have to get
5 into some extension. Senator Danforth has concerns about two
6 specific areas which you are aware of. I have the same
7 concern about the first area as far as foreign policy is
8 concerned. I am concerned about its impact on agriculture,
9 its protectionist possibilities, and just the fact of giving
10 the President some authority he does not want, he says he
11 does not need.

12 I wonder, Mr. Olmer, if you could restate the
13 Administration's position, whether or not you believe there
14 is any viable way that we might accommodate the concerns that
15 Senator Heinz has and the concerns expressed by Senator
16 Danforth and others.

17 Mr. Olmer: Thank you, Senator Dole. I appreciate the
18 opportunity to come before you. I think you have stated the
19 Administration's position aptly. The President does not want
20 the authority which is proposed for the executive in the
21 Heinz-Garn bill. That is to say, the Administration does not
22 support inclusion of the authority to impose import controls
23 against a country for a violation of U.S. foreign policy
24 controls.

25 Secondly, with respect to the authority to impose import

1 controls for violations of national security provisions, the
2 Administration is of the view that the Act should provide
3 such authority, but only to be used where there is a
4 violation of U.S. national security regulations.

5 We therefore support the amendment proposed by Senator
6 Danforth in this regard to strike from the Heinz-Garn bill
7 that part of the national security import control measure
8 that would add COCOM violations as a reason for exercise of
9 the import control authority.

10 Our reason for this is, first, we feel that in almost
11 every single conceivable case we would be able to reach
12 violators of national security regulations without having to
13 involve ourselves in a further imbroglio regarding
14 extraterritorial assertions of jurisdiction. We could
15 conceive of a case where we might not be able to exercise
16 control and we do not think we should attempt to, and that
17 would be where a COCOM member state ships a product or a
18 technology to a proscribed destination, which product is
19 manufactured in that foreign country of completely foreign
20 technology, with no U.S. content and no U.S. connection.

21 We feel it would be inappropriate for the United States
22 government to assert jurisdiction or reach over it. We do
23 not think it would be enforceable. We think the use of an
24 import control measure to punish the company for doing such
25 would clearly invite retaliation of the sort that would have

1 a very damaging effect to our own national security interests
2 and to the attempt to make CCCOM a more cohesive and
3 cooperative multilateral arrangement.

4 Going back for just a moment to the foreign policy
5 control provision, foreign policy is a very delicate matter,
6 to put it oversimply. It seems to me the President ought to
7 be the initial determinant as regards the question of what
8 authorities are required. That has been very carefully
9 considered. It has been debated. I have checked with
10 appropriate authorities before coming up to see you this
11 morning, and I am prepared to reassert the Administration's
12 position as contained in the Administration's proposal. The
13 President does not believe he needs it. He does not want the
14 Congress to provide it. He feels it would be detrimental to
15 the foreign policy interests of the United States were it to
16 be enacted.

17 Thank you, sir.

18 Senator Heinz: Mr. Chairman, may I ask a question?

19 The Chairman: Yes, Senator Heinz.

20 Senator Heinz: Licnel, at the present time, there are no
21 import control authorities for the President with respect to
22 national security controls. That is correct, is it not?

23 Mr. Olmer: Yes, it is.

24 Senator Heinz: Now, in the case of the Japanese company,
25 Yazda, I think it was, that not only did not just sell, but

1 licensed the technology to produce either to the Czechs or
2 the Hungarians or both a five-axis machine tool, five-axis,
3 four-axis, and three-axis machine tools being on the COCCM do
4 not sell or distribute list. How would the authority that
5 you seek, not the authority we propose to give you, allow you
6 to solve that problem?

7 As I understand that case, a product or a technology
8 being on the COCCM list, which is an internationally agreed
9 upon list, and which is therefore in effect making the sale
10 of the technology as I would understand it a violation of
11 Japanese national security regulations, how do we interface,
12 how do we get a handle, how do we address that kind of
13 problem, which seems to be based on experience we have had
14 with some French companies as well, a recurring kind of
15 problem?

16 Mr. Clmer: Senator Heinz, in the first place, with very
17 few exceptions, COCCM does not control technology. It only
18 controls products. We are working very hard, because we
19 believe it terribly important that COCOM move on to control
20 technology, but at present, with very few exceptions, it is
21 not the case that technology is being controlled.

22 In the second place, we would say that if the product
23 were on the COCOM list, and I cannot recall for certain
24 whether it is on the COCOM list at the time the transfer that
25 you referred to was made, but if that is the case, and it was

1 totally the product of Japanese technology, produced in
2 Japan, with no U.S. connection to it through corporate
3 interests or otherwise, then all we can do is talk to the
4 Japanese about the severity of the offense and hope that they
5 will take such enforcement action as their law provides.

6 Now, I must say that they do not have at the present time
7 an enforcement law that makes violations punishable by any
8 substantial amount, and Number Two, they in the past have not
9 been as vigorous in the prosecution of violations as we would
10 like, but that is clearly changing. It has been changed
11 through public utterances of the Japanese government from on
12 high, and we clearly see a new intention on the part of the
13 Japanese government to deal with COCOM violations and to deal
14 with us to improve the technology and product control list.
15 We have achieved that not because we had a club under the
16 table, but through a process of bilateral and multilateral
17 negotiation, and that is the way we think we should pursue it
18 in the future.

19 Senator Heinz: But what would happen, I gather, and what
20 is happening with respect to these five-axis machine tools
21 is, if my information is correct, and I believe it to be
22 correct, currently five-axis machine tools are on the COCOM
23 list. A member of the COCOM, Japan, has permitted at least
24 one and maybe two Japanese companies to teach Soviet
25 satellite countries how to build them. They are building

1 them and they are selling them in the United States.

2 This particular machine was found at a trade show in
3 Chicago, but we cannot sell them except to CCCOM allies,
4 while the Soviets and their allies can sell them to us.

5 Mr. Olmer: Well, it is a tough question.

6 Senator Heinz: It is, but do you agree that is what is
7 happening?

8 Mr. Olmer: Well, I cannot from memory recall that the
9 Japanese have indeed permitted the sale of two five-axis
10 machine tools to the Soviets and the technology necessary.

11 Senator Heinz: This was testified to by other members of
12 the Administration.

13 Mr. Olmer: Then the second question, I suppose, would be
14 the complicity of the Japanese government in permitting that
15 sale, and the willingness of the Japanese government to reach
16 out and deal with the offenders.

17 Senator Heinz: Thank you, Mr. Olmer.

18 Senator Danforth: May I ask one question, Mr.
19 Secretary? Under present law, if a foreign company violates
20 U.S. law, or U.S. national security regulations, is there
21 authority today to impose import restrictions against that
22 company?

23 Mr. Olmer: Senator Danforth, we have no authority
24 presently to impose import controls. The sanctions available
25 to us for violations of our national security regulations are

1 limited to export control sanctions.

2 Senator Danforth: And under the amendment that I
3 proposed last week, would any import controls under any
4 circumstances be permitted?

5 Mr. Clmer: Oh, yes, indeed. We think they would be
6 permitted to cover 99 percent of the cases.

7 Senator Danforth: Ninety-nine percent of the cases would
8 be covered under the amendment that was proposed last week?

9 Mr. Clmer: Yes, sir.

10 Senator Danforth: And if under that amendment there were
11 a violation by a foreign company of U.S. national security
12 regulations, then import restrictions could be imposed?

13 Mr. Clmer: Exactly. If a Japanese company purchased a
14 machine tool from Cincinnati Milacron and re-exported that
15 Cincinnati Milacron machine to the Soviet Union, in violation
16 of a U.S. national security export control regulation, we
17 could prevent that Japanese company from exporting to the
18 United States as well as under current law of denying it
19 export privileges from the United States.

20 Senator Danforth: And those 1 percent of the cases which
21 are covered by the bill in its present form but which would
22 be excluded by the amendment would be what?

23 Mr. Clmer: They would be cases in which we felt we had
24 no jurisdictional reach. That is to say, where there was no
25 connection to the United States either through a corporate

1 affiliation or because the foreign product was based on U.S.
2 technology, or there was a violation of that re-export
3 restraint. If there were none of that, if it were purely
4 Japanese or purely French, produced in France, of French
5 technology, we would have no reason to assert jurisdiction,
6 or no authority to assert it.

7 Senator Danforth: Now, if the bill in its present form
8 were to become law, do you believe that that would make Cocom
9 a more or a less effective arrangement?

10 Mr. Clmer: In my judgment, it would make negotiations
11 far more difficult. Cocom is an informal body that only acts
12 on the basis of consensus. It has often times not been an
13 effective instrument, but it is better than nothing. It is
14 far better than nothing. The way to make it work is to bring
15 these countries, the 15 member states that are -- well, they
16 are not even signatories, but by common agreement they want
17 to do it, is to persuade them why they should adhere to the
18 regulations that are developed, and if we try to browbeat
19 them into it, I think that it would possibly lead to the
20 demise of Cocom in its entirety.

21 Senator Danforth: I have one final question. The very
22 fact that this bill has been in Congress and that there has
23 been action on it in Congress has been a matter for
24 discussion with our allies, has it not?

25 Mr. Clmer: I personally have received innumerable

1 questions from innumerable European government and private
2 sector officials as regards this, including people in the
3 media in western Europe who are quite familiar with the Act,
4 and without exception, they all voice in diplomatic parlance
5 serious concern with the development as they see it to an
6 import control measure which would reach out and punish as
7 that particular provision would authorize.

8 Senator Danforth: Have these expressions of serious
9 concern come from the British, the French, the West Germans,
10 the Japanese, from all of the members of COCCOM?

11 Mr. Olmer: I would not want to say all of the members of
12 COCCOM, but enough of them to make it clear that it represents
13 a consensus and also by the European Commission on behalf of
14 the Community itself.

15 Senator Danforth: Yes, Mr. Hurwitz?

16 Mr. Hurwitz: Senator, if I might add briefly to
17 reinforce Under Secretary Olmer's comments, we have heard
18 very directly from the British and Canadians on what they
19 regard as the extraterritorial reach of our present law. We
20 have heard from them very directly that they consider that
21 this extension of our authority is in their view something
22 that we have no grounds to assert, that we have no standing
23 to judge whether their laws have been violated or not. They
24 have made very plain to us that they would regard this as a
25 very difficult extension of our extraterritorial authority.

1 Senator Danforth: Would it be fair to say that even the
2 fact that Congress is considering a bill dealing with this
3 subject, that even at this stage it is a bone of contention
4 with our allies?

5 Mr. Hurwitz: Yes, sir, that would be fair to say.

6 Senator Danforth: And if the bill were to be enacted
7 into law, and if this authority with respect to national
8 security matters were invoked, would that be a very serious
9 bone of contention with our allies in your opinion?

10 Mr. Hurwitz: It would indeed. In our attempt to reach
11 what Under Secretary Olmer characterized as the 1 percent of
12 cases that are currently beyond the reach of our authority,
13 we will very greatly exacerbate our attempts to strengthen
14 CCCC in a myriad number of ways.

15 Senator Danforth: Would it tend to cloud any discussion
16 on other trade difficulties we might have with CCCC members?

17 Mr. Hurwitz: I think it would. Yes, Senator.

18 The Chairman: We now have seven members, and we can act
19 on amendments. We have tried to work this out, and there may
20 be some way to do it, but I have not discovered it, so I
21 think both Senator Heinz and Senator Danforth would like to
22 have us vote on this, and there is an amendment pending, I
23 guess, by Senator Danforth to strike. I am not sure. What
24 section is it?

25 Senator Danforth: Well, the first amendment was foreign

1 policy. Actually, both amendments are amendments to strike.
2 The first amendment was to strike the foreign policy
3 controls, well, the use of import controls for foreign policy
4 controls, whatever that section is.

5 Mr. Santos: That is Section 6 of the bill.

6 The Chairman: Are you ready to vote, John?

7 Senator Heinz: Well, I would like to offer an
8 alternative for the Committee to vote on.

9 The Chairman: All right.

10 Senator Heinz: Senator Danforth has proposed to strike
11 all the import controls in Section 6 on the foreign policy
12 part of the bill. The principal argument against that, as I
13 understand it, is that it contravenes GATT, and would be
14 inconsistent with our international obligations for us to do
15 so. In addition, it is argued that this might somehow be an
16 invitation to the imposition of export controls because it
17 would be an opportunity to gain import controls therewith.

18 What I would propose is to offer a modification of what
19 is in the bill that would say that the foreign policy import
20 controls will not apply to GATT members, nor may they be
21 applied inconsistent with our international obligations,
22 which includes the treaties of friendship and so forth.

23 It is my understanding from the standpoint of the State
24 Department and also from talking directly with Ken Dam, the
25 Deputy Secretary, that from a diplomatic point of view this

1 would solve virtually all of their problems.

2 That may not solve the allegation of the problem that
3 this would be an invitation to protectionism, although for
4 the life of me since the intent frankly is to make the
5 imposition of foreign policy controls more thoughtful, more
6 careful, and more rational, and to that extent more
7 difficult, and since an import control could only be imposed
8 under the bill in conjunction with export controls, and since
9 to impose any export control whatsoever, the President is
10 required to make a series of extensive foreign policy
11 findings which were read into the record at our last
12 discussion of it, it would seem to me that the fears of
13 people about the abuse of foreign policy import controls are
14 not well placed.

15 In addition to this, some would argue that this is
16 unprecedented. I would just point out to my colleagues that
17 we indeed have a foreign policy import control in the law now
18 -- it is called Jackson-Vanik -- whereby we deny MFN to
19 certain countries depending upon whether we judge their
20 emigration policies to be satisfactory or not.

21 The consequence of denying MFN is to increase tariffs 30
22 to 40 to 50 percent. It is a very effective import control.
23 I therefore would suggest that the idea that we never use
24 import controls for foreign policy purposes simply is not so.

25 It would be my concluding comment, Mr. Chairman, to say

1 that the reason for having the ability to resort to an import
2 control in this legislation is so that we do not always have
3 to resort where we cannot get cooperation from our allies to
4 shooting ourselves alone in the foot.

5 There are cases, such as the case of the Soviet Union,
6 where maybe it would be a good idea for foreign policy
7 purposes to embargo the importation, and I suspect I will
8 hear from all of the importers tomorrow, the importation of
9 Russian vodka and caviar. Americans seem to like them and
10 buy a lot of them, and I am sure the Soviet Union is grateful
11 to us for it. But right now there is no such authority to
12 take that kind of action, even in the wake of the KAI
13 disaster.

14 So, I would hope that we could vote on Senator Danforth's
15 amendment or, in the alternative, mine. A vote for Senator
16 Danforth's amendment would be for his position. A vote no
17 would be for my amended version.

18 The Chairman: Do you want to offer yours as a
19 substitute?

20 Senator Heinz: I will offer it as a substitute. Then
21 the vote would be aye in favor of my substitute.

22 The Chairman: Right.

23 Senator Heinz: Or no in favor of Senator Danforth's
24 position.

25 Senator Danforth: Now, Mr. Olmer, is the Heinz

1 substitute satisfactory to the Administration?

2 Mr. Clmer: Senator Danforth, it goes a long way toward
3 solving most of the problems that the Administration
4 identified as troublesome, but it does not entirely fix what
5 we perceive to be a major problem that could arise, and we
6 would prefer to see your amendment succeed. That is to say,
7 totally strike the foreign policy import control measure.

8 Senator Heinz: I will not characterize the
9 Administration's support of the Danforth amendment as weak.

10 [General laughter.]

11 The Chairman: Are there any other comments?

12 [No response.]

13 The Chairman: Well, then, we may as well vote on the
14 Heinz substitute, which is mildly opposed by the
15 Administration.

16 Mr. Clmer: It is opposed, sir. Yes, it is opposed.

17 The Chairman: Oh, it is strong.

18 Mr. DeArment: Mr. Packwood?

19 [No response.]

20 Mr. DeArment: Mr. Roth?

21 [No response.]

22 Mr. DeArment: Mr. Danforth?

23 Senator Danforth: No.

24 Mr. DeArment: Mr. Chafee.

25 [No response.]

1 Mr. DeArment: Mr. Heinz.
2 Senator Heinz: Aye.
3 Mr. DeArment: Mr. Wallcp.
4 Senator Wallcp: Nc.
5 Mr. DeArment: Mr. Durenberger.
6 [Nc response.]
7 Mr. DeArment: Mr. Armstrong.
8 [Nc response.]
9 Mr. DeArment: Mr. Symms.
10 [No response.]
11 Mr. DeArment: Mr. Grassley.
12 Senator Grassley: Aye.
13 Mr. DeArment: Mr. Long.
14 Senator Long: Aye.
15 Mr. DeArment: Mr. Bentsen.
16 [No response.]
17 Mr. DeArment: Mr. Matsunaga.
18 [Nc response.]
19 Mr. DeArment: Mr. Moynihan.
20 [Nc response.]
21 Mr. DeArment: Mr. Baucus.
22 [No response.]
23 Mr. DeArment: Mr. Boren.
24 [Nc response.]
25 Mr. DeArment: Mr. Bradley.

1 [No response.]

2 Mr. DeArment: Mr. Mitchell.

3 [No response.]

4 Mr. DeArment: Mr. Pryor.

5 [No response.]

6 Mr. DeArment: Mr. Chairman.

7 The Chairman: No.

8 Senator Chafee: I vote no.

9 [Pause.]

10 Senator Danforth: Senator Roth votes no.

11 Senator Bradley: Mr. Chairman, what is the vote?

12 The Chairman: We are voting on the Heinz substitute.

13 Would you give a 30-second review of that, John?

14 Senator Heinz: Senator Danforth proposes to strike all

15 import controls from the foreign policy section of the bill,

16 Section 6. I have proposed a substitute which says that

17 foreign policy import controls may not be used on GATT

18 members, and must be at all times consistent with our

19 international obligations, which are the multilateral

20 treaties we have.

21 Senator Bradley: So that they could be used against

22 non-GATT signatories?

23 Senator Heinz: They could be used against non-GATT

24 signatories or people with whom we do not have treaties of

25 understanding and friendship. They therefore could be used

1 against the Soviet Union, and the President would have the
2 authority to embargo caviar and vodka. Without that
3 authority, they would not.

4 The Chairman: I did not mean to get into this during the
5 vote, but could we hear one or two words from the
6 Administration, maybe three?

7 Mr. Olmer: A word that I think might help clarify this
8 question of GATT compatibility is this. That happens to be a
9 contentious issue among GATT signatories. Not everyone
10 agrees with what makes a particular action legal under the
11 GATT code, so I could foresee pressures building on the
12 President to use these import controls with an assertion made
13 that what you are doing is entirely compatible under the GATT
14 when in fact it might not be compatible under the GATT. It
15 is not a black or white simple answer, yes or no.

16 Senator Danforth: And furthermore, Mr. Chairman, this
17 would leave out, would it not, the People's Republic of
18 China?

19 Mr. Olmer: It would indeed.

20 Senator Danforth: Taiwan and Mexico, the U.S.S.R.,
21 Bulgaria, East Germany, all non-GATT members.

22 Mr. Olmer: [Nods affirmatively.]

23 Senator Heinz: I believe we have a treaty or some kind
24 of arrangement or understanding with the People's Republic.

25 Senator Danforth: Well, I do not know if the arrangement

1 covers trade. Does it, Lionel?

2 Mr. Clmer: I do not believe it does.

3 Senator Danforth: At best, it is a very iffy thing
4 whether it does anything at all with respect to non-GATT
5 members. If it does not cover non-GATT members, that means,
6 for example, that American companies or private interests
7 with the United States interested in using export and import
8 controls or import controls in order to protect themselves
9 are going to get involved in foreign policy questions
10 relating to, for example, our relations with the PRC or with
11 Taiwan, because they will want to invoke both export and
12 import controls for their own purposes. It is going to be, I
13 think, a very divisive matter within the United States, and
14 it will encourage private sector interests to try to wade
15 into foreign policy questions.

16 Senator Heinz: Mr. Chairman, I did not realize we were
17 going to get into a long debate on this.

18 The Chairman: I did not either, but I wanted Lloyd and
19 Bill to hear it.

20 Senator Heinz: May I clarify one thing? Because Senator
21 Danforth, I think, might have a stronger case if this import
22 control authority stood alone in the bill. It does not stand
23 alone in the bill. It is a prerequisite that the President
24 must first impose export controls before he can impose any
25 import controls. He must first shoot Americans in the foot

1 before he can shoot at anybody else's feet.

2 Secondly, before he can impose export controls on
3 American exporters, to go one step further back, the Banking
4 Committee bill requires that the President make a series of
5 certifications to the Congress submitted in advance.
6 Otherwise, he is prohibited from imposing any export controls
7 at all, and prohibited from imposing therefore any import
8 controls at all.

9 If there were only import controls standing alone,
10 unconstrained by a tremendous amount of experience that we
11 have had with export controls, unconstrained with the new
12 safeguards in this bill, to constrain the unwise imposition
13 of export controls, I think Senator Danforth would have a
14 stronger case on his point.

15 Senator Bentsen: Mr. Chairman, are we in the process of
16 voting?

17 The Chairman: Oh, yes. It is sort of like a voting crap
18 meet, here.

19 Mr. DeArment: We have called the roll.

20 Senator Bentsen: Mr. Chairman, I came over here prepared
21 to vote against that amendment, but I believe he has modified
22 it enough so that he has gained a vote here, so that I will
23 vote for it.

24 Mr. DeArment: Senator Bentsen votes aye.

25 The Chairman: Did Senator Bensten vote?

1 Mr. DeArment: I have him and Senator Bradley recorded as
2 aye, but Senator Symms I do not have recorded.

3 [Pause.]

4 The Chairman: What is the score?

5 Mr. DeArment: Five to five.

6 Senator Heinz: Mr. Chairman, I have done my best to get
7 Senator Symms to see the light, but he wants to vote in favor
8 of Senator Danforth.

9 [Pause.]

10 The Chairman: Would anybody else present like to vote?

11 Senator Symms: No.

12 Mr. DeArment: I do not have Senator Symms recorded.

13 Senator Symms: No.

14 The Chairman: I think on this vote it is fairly close.

15 On this the yeas are five, the nays are six. I would guess
16 that absentees would be permitted to be recorded.

17 Senator Heinz: Unless we report the bill.

18 The Chairman: We do not have a bill. We have a
19 Committee amendment.

20 Mr. DeArment: Mr. Chairman, maybe we could specify that
21 we leave it open until the end of this markup session, say
22 until noon. That would facilitate the staff's work.

23 The Chairman: Very well. Let us move on to the second
24 matter. Would you quickly restate that, Senator Danforth?

25 Senator Danforth: This is to strike the provision

1 relating to COCOM.

2 The Chairman: Now, wait a minute. There is a problem.
3 All we have done is not adopt the substitute. We have not
4 stricken the rest of it.

5 Senator Danforth: Oh, I am sorry. Are we back on
6 foreign policy?

7 Mr. DeArment: Yes.

8 Senator Danforth: Well, then, the pending amendment is
9 to strike Section 6, which relates to the foreign policy use
10 of import sanctions.

11 Senator Bradley: Mr. Chairman, how can we vote on that
12 until we know the outcome of the previous vote?

13 The Chairman: Well, let us go on to the second section.

14 [General laughter.]

15 Senator Heinz: Mr. Chairman, would it be in order to ask
16 unanimous consent of the Committee that whichever side
17 prevails -- well, I am not sure I want to do that. Let us
18 wait and see. You are right, Mr. Chairman.

19 The Chairman: Maybe we can resolve this.

20 Mr. DeArment: We will attempt to get the votes from
21 absent members right now, while we are voting on the next
22 matter.

23 The Chairman: Good. While we are voting on the second
24 matter, and a discussion of the coffee agreement.

25 Senator Heinz: Why do we not go on to the second issue?

1 The Chairman: Can you comment on the second one?

2 Senator Danforth: Well, Mr. Chairman, I think we have
3 pretty well discussed it.

4 The Chairman: This would strike the so-called national
5 security section?

6 Senator Bradley: Mr. Chairman, could I ask just a couple
7 of questions? I do not wish to belabor the point, though.

8 The Chairman: That is fine.

9 Senator Bradley: The amendment is, whoever violates the
10 regulation. This implies that it would be companies as well
11 as countries. Is that the idea? Or would it be only
12 companies?

13 Mr. Olmer: If we are talking about the foreign policy
14 section --

15 Senator Bradley: No.

16 Mr. Olmer: The national security section applies to
17 companies.

18 Senator Bradley: Only to companies?

19 Mr. Olmer: Only to companies.

20 Senator Bradley: Okay. Is it true that the COCCM list
21 is in many cases included in the law of the country involved,
22 so that if a company of a country sells a product that is on
23 that list, it violates the law of that country?

24 Mr. Olmer: That is true.

25 Senator Bradley: Is that true across the board?

1 Mr. Clmer: It is not true across the board, but it is
2 true in many instances. The content of national law,
3 however, varies greatly in terms of the penalties which could
4 be imposed by that country, in terms of the enforcement
5 mechanisms which are available to it, and so forth.

6 Senator Bradley: Do you know countries in which it is
7 true?

8 Mr. Clmer: I could name a couple, but I am afraid it
9 would be so incomplete, and I am not absolutely certain, so I
10 would prefer not to, Senator.

11 Senator Bradley: All right.

12 The Chairman: Okay. The vote is on striking Section 8,
13 is it?

14 Mr. DeArment: Section 9 of the bill, 9.

15 Senator Danforth: Again, to reiterate, Lionel, would you
16 please go through what is at issue? The issue is not all
17 import sanctions against foreign companies. The issue is
18 only import sanctions used against foreign companies which
19 are not violating U.S. law? That is, under this amendment we
20 could still apply import sanctions to foreign companies
21 violating U.S. law or national security regulations, but we
22 could not apply import restrictions to foreign companies that
23 do not violate U.S. law or regulations, but simply violate
24 the laws of another country?

25 Mr. Clmer: That is correct, Senator. The Administration

1 wants an import control authority available to it in the
2 national security area. We believe that we can affect over
3 90 percent, 99 percent of the cases we would want to reach in
4 the bill that was submitted by the Administration, and that
5 Senator Danforth's amendment would return the provision to
6 the position that the Administration espouses. We do not
7 believe we have the authority to assert jurisdiction over a
8 French company producing a French product based totally on
9 French technology when that French company transfers to a
10 proscribed destination, but we do have U.S. laws which are
11 embodied in COCOM. We have a regulation which requires
12 foreign companies to acquire from the U.S. government
13 permission to re-export, so in almost every conceivable case
14 we would be able to reach out and sanction a violation of our
15 regulations.

16 Senator Bradley: Are all the goods on the COCOM list
17 included in our law?

18 Mr. Clmer: Yes, sir.

19 Senator Bradley: No exceptions?

20 Mr. Clmer: In other words, no country that I am aware of
21 maintains any unilateral list. The United States does, of
22 course. But everything that we control for national security
23 purposes is also controlled by COCOM member states.

24 Senator Bradley: Is everything we control for national
25 security purposes on the COCOM list?

1 Mr. Olmer: Yes, and then some. In other words, we have
2 a list which exceeds what is within COCCM.

3 Senator Bradley: So also the reverse of that includes
4 everything that is on COCCOM?

5 Mr. Olmer: Yes.

6 Senator Danforth: Mr. Chairman, one word of
7 clarification. Mr. Santos, I misstated the nature of the
8 amendment. The amendment is not to strike a whole section.

9 Mr. Santos: No, just that portion of Section 9 which
10 authorizes the imposition of import controls for violations
11 of multilateral national security controls, such as COCOM.

12 Senator Chafee: Well, Mr. Secretary, I think one of the
13 key points you made here, and for those who were not present
14 to hear it, I wish you would repeat it, is how COCCM is a
15 very, very fragile organization, and if pushed too far, these
16 countries would get cut of it. It is not, as I understand,
17 based on some kind of treaty or even signatories. It is a
18 loose amalgamation of countries, some 12 or 13 countries. Is
19 that what you said?

20 Mr. Olmer: A total of 15 countries.

21 Senator Chafee: Fifteen countries who have joined
22 together in this effort. I think the point you made earlier,
23 that if we go ahead with this suggested provision unmodified,
24 in other words, if the Danforth amendment is rejected, COCOM
25 itself might just fall apart. I would hope that would be

1 made clear to those who are striving for the security import
2 limitations.

3 The Chairman: I wonder if we might vote on this.

4 Senator Heinz: Mr. Chairman, may I comment?

5 The Chairman: Sure.

6 Senator Heinz: I would speak in opposition to the
7 Danforth amendment. Briefly, I think it is fair to say that
8 what the Danforth amendment would do is prevent the United
9 States taking any action against, for example, a French
10 company selling a French product which is based on French
11 technology which was on the COCOM list, and which in the case
12 where we made a like product would be preventing our own
13 exporters from selling it, and indeed the example that I used
14 earlier with respect to the five-axis machine tools that the
15 Japanese are licensing to communist countries, they are not
16 supposed to have those.

17 They are on the COCOM list. They are being sold in the
18 United States by Soviet bloc allies. We cannot sell them
19 except to COCOM allies.

20 There is also the case, several cases involving the
21 French where French companies, irrespective of what we have
22 done, have gone ahead and sold very high tech equipment to
23 the Bulgarians and the Soviets simply because they needed the
24 money. I would hope, Mr. Chairman, that we would not dismiss
25 this question lightly. I would hope we would not support the

1 Danforth amendment.

2 May I make one last point? There is a question that
3 Senator Chafee as well has raised here, which is, is this
4 going to strengthen or weaken CCCOM? We all have a vested
5 interest in seeing COCOM succeed as an organization. It is
6 no secret that COCOM's ability to get its member nations to
7 enforce its technology list is not everything we would like
8 it to be, and that puts it diplomatically.

9 The question that is a matter of judgment therefore is,
10 will the bill which provides for the import authority, the
11 import denial of authority for national security purposes,
12 will it send a message to our allies that the United States
13 is serious about enforcing CCCOM and really believes it
14 should not just be a paper tiger, that when something is on
15 the list, the list means something not just to the United
16 States, but to all countries.

17 Is that what the Banking Committee bill sends as a
18 message? It is what I think it sends as a message. Or,
19 alternatively, does it somehow make COCOM a less effective
20 organization? Does it make it more difficult to get
21 cooperation? That is a question on which reasonable people
22 can disagree. But I think the answer is the former and not
23 the latter.

24 Senator Chafee: Well, Mr. Chairman, I think that what is
25 taking place here today is a bull in the china shop. We all

1 have a deep stake in exports, particularly our agricultural
2 states. As the Secretary has pointed out, 99 plus percent of
3 the cases that we are concerned with are covered by the
4 Danforth amendment.

5 Mr. Chairman, I just think we make a great mistake to
6 press this any further than the Danforth amendment. I think
7 we are going to get into a whole host of problems dealing
8 with retaliation from other countries who are deeply
9 disturbed by our taking these efforts in areas that are
10 strictly under their control.

11 I think the threat to the agricultural areas as well as
12 all our exports is serious.

13 Senator Grassley: Mr. Chairman?

14 The Chairman: Mr. Grassley.

15 Senator Grassley: I would like to comment at this point
16 because of the emphasis upon agriculture. I think we all
17 recognize that agriculture is being hurt because of
18 protectionist efforts of other nations. I think the
19 discussion here this morning brings out what must be the
20 policy of the United States if we are going to get the
21 attention of other nations who think that they can protect
22 and that we are going to sit back and take it.

23 I think we are in a period of time in international trade
24 where we have to make a determination of who has the deepest
25 pocket, and I think until it is realized that the United

1 States has the deepest pocket. We are not going to get the
2 attention of other nations. I think that it is somewhat of a
3 gamble, I will admit, but we have to play some
4 brinksmanship. We have to bring this issue to the brink in
5 order to get the discussion.

6 Whether you go back to the meeting in Geneva last
7 November, when there was an unwillingness even to discuss
8 these issues, or whether you go to the most recent efforts of
9 our sitting down both at the staff level and at the
10 ambassadorial level to discuss with the Japanese certain
11 changes in some of their policies, there is nothing more than
12 an effort of the people to politely listen to our point of
13 view, to smile, to listen, and to walk away doing nothing.

14 This is a crucial issue, and it seems to me that the
15 sooner we bring this issue out into the open, and let our
16 friends around the world, and I do maintain that they are our
17 friends, know where we stand, that we are never really going
18 to get any decisions made. It seems to me now is the time to
19 be decisive as far as where we stand, so that a real decision
20 will be brought about in the end. Otherwise, the United
21 States is going to be known as nothing less than a paper
22 tiger in the international negotiations.

23 The Chairman: Mr. Olmer?

24 Mr. Olmer: Mr. Chairman, I would just like to say that I
25 applaud the remarks of Senator Chafee, and on behalf of the

1 Administration would express complete agreement with them.
2 One way of looking at the Heinz-Garn bill in this respect is
3 that we would be telling, we would have the authority to tell
4 the French government that we do not think it punished a
5 company within its territory adequately, and so we are going
6 to do the job for them.

7 I do not think that is the way to negotiate an
8 improvement in this multilateral system. You have to
9 remember that COCOM was formed more than 25 years ago, when
10 the United States did have unique possession of technology
11 and products, and the Europeans were dependent on a
12 relationship with us.

13 That is much less the case today. We do not have unique
14 possession of high technology. We do not have manufacturing
15 capabilities that exclude corporations in every one of the
16 COCOM member states. The only way we are ever going to
17 achieve a truly effective restraint on the diversion of
18 technology to our adversaries is through gaining agreement in
19 an international forum, and the way to do that is by
20 negotiation.

21 The Chairman: Okay. Let us vote on the amendment by
22 Senator Danforth to strike this section. Again, we would
23 like to resolve it, because this is important to all of the
24 Senators, and I think we would like to act on the bill this
25 week. I think it is going to be very difficult. What is the

1 count now on the first amendment?

2 Mr. DeArment: Mr. Chairman, I show seven to five in
3 favor of the Heinz substitute at this moment.

4 The Chairman: The Clerk will call the roll.

5 Senator Danforth: Are we voting on the second Danforth
6 amendment?

7 Mr. DeArment: Yes.

8 Mr. Packwood.

9 [No response.]

10 Mr. DeArment: Mr. Roth.

11 Senator Danforth: Aye.

12 Mr. DeArment: Mr. Danforth.

13 Senator Danforth: Aye.

14 Mr. DeArment: Mr. Chafee.

15 Senator Chafee: Aye.

16 Mr. DeArment: Mr. Heinz.

17 Senator Heinz: No.

18 Mr. DeArment: Mr. Wallop.

19 Senator Wallop: Aye.

20 Mr. DeArment: Mr. Durenberger.

21 [No response.]

22 Mr. DeArment: Mr. Armstrong.

23 [No response.]

24 Mr. DeArment: Mr. Symms.

25 Senator Symms: No.

1 Mr. DeArment: Mr. Grassley.
2 Senator Grassley: No.
3 Mr. DeArment: Mr. Long.
4 Senator Long: No.
5 Mr. DeArment: Mr. Bentsen.
6 Senator Long: Aye by proxy.
7 Mr. DeArment: Mr. Matsunaga.
8 [No response.]
9 Mr. DeArment: Mr. Moynihan.
10 [No response.]
11 Mr. DeArment: Mr. Baucus.
12 [No response.]
13 Mr. DeArment: Mr. Boren.
14 [No response.]
15 Mr. DeArment: Mr. Bradley.
16 Senator Bradley: Aye.
17 Mr. DeArment: Mr. Mitchell.
18 [No response.]
19 Mr. DeArment: Mr. Pryor.
20 [No response.]
21 Mr. DeArment: Mr. Chairman.
22 The Chairman: Aye.
23 Senator Long: I have a proxy from Senator Matsunaga. He
24 wishes to be voted aye for Senator Danforth.
25 Senator Chafee: On which one, Senator Long?

1 Senator Long: On both of them he wants to be voted with
2 Danforth.

3 The Chairman: On this amendment, the yeas are nine, the
4 nays are four. Do you have Mr. Matsunaga on the other
5 amendment? Apparently he wants to be voted for both.

6 Senator Long: No, no. On the second one.

7 Mr. DeArment: I have him recorded, Mr. Chairman, by
8 proxy.

9 Senator Heinz: Excuse me, Rod. Who do you have?

10 Mr. DeArment: Senator Matsunaga.

11 Senator Long: On just the second one. Not the first
12 one, but the second one.

13 Mr. DeArment: On the one we just took.

14 The Chairman: And the count on the first one is what,
15 seven to five?

16 Mr. DeArment: The count on the Heinz substitute is seven
17 to five at the moment, Mr. Chairman.

18 The Chairman: Well, let us try to conclude the checks at
19 least by the time we are finished. We may have to
20 reconsider. It seems to me one way to handle it might be to
21 take the Danforth action on the second amendment and the
22 Heinz action on the first amendment, if that would be
23 agreeable.

24 [Pause.]

25 The Chairman: Why do we not take up the international

1 coffee agreement next?

2 Senator Bradley: Mr. Chairman, before we go to that,
3 could we clarify one point -- we may have done it last week
4 -- on the issue of Customs. I thought the Committee was in
5 agreement that since the authority for enforcement is going
6 to be switched from Commerce to Customs, we want to make sure
7 that we add another \$5 million as a Committee amendment to S.
8 1295, the Customs authorization. That was agreed to in the
9 Committee last week, and I wanted to just clarify that.

10 Mr. DeArment: Senator Bradley, the Committee -- the
11 Chairman stated at the end of this discussion that the
12 addition of an additional \$5 million for Customs authority
13 consistent with the change of jurisdiction that this Act
14 encompasses would be acceptable unless there were some
15 violent objections from the Administration.

16 Senator Bradley: It would be a Committee amendment?

17 Mr. DeArment: We would propose to make that Committee
18 amendment unless there were some disagreement at this point.

19 Senator Bradley: I have heard none.

20 Mr. DeArment: This is the Committee amendment to the
21 Customs authorization bill that has already been reported out
22 of the Committee to recognize the change.

23 Senator Bradley: Yes, to add another \$5 million as a
24 Committee amendment.

25 The Chairman: Okay. Mr. Clmer, I guess you probably

1 could be excused, unless you want to vote.

2 Mr. Clmer: Well, I think I would like to, particularly
3 on that last provision. I have some non-violent objections
4 to it.

5 The Chairman: Well, we appreciate your being here, and
6 Mr. Hurwitz present also. Let us move to the coffee
7 agreement. I think Senator Heinz has, if not an amendment,
8 at least a concern there.

9 [Pause.]

10 The Chairman: When does the agreement expire?

11 Mr. Kassinger: The current agreement expires September
12 30.

13 The Chairman: Has the House acted?

14 Mr. DeArment: The House plans to take this matter up on
15 the suspension calendar today.

16 The Chairman: So if we could get Senate approval, we
17 could just hold the House bill and act on that?

18 Mr. DeArment: That is correct, Mr. Chairman.

19 The Chairman: Is there no objection from the Committee?

20 Mr. DeArment: So far, Senator, there is none.

21 Mr. Kassinger: There is a slight difference between the
22 two bills.

23 The Chairman: Would you explain the difference?

24 Mr. Kassinger: Simply the length of time. The House
25 bill would extend the authority for two years. The extended

1 bill would extend the authority for the life of the
2 agreement, which is six years.

3 The Chairman: Is that the only difference between the
4 two bills?

5 Mr. Kassinger: That is correct.

6 The Chairman: Senator Heinz, did you have something you
7 wished to bring up?

8 Senator Heinz: Thank you, Mr. Chairman. I appreciate
9 that.

10 We have a continuing problem, as you may know, with
11 Canadian broadcasting. I think all of the members of the
12 Committee are familiar with the problem of the denial to any
13 broadcaster in Canada of a tax deduction for buying
14 advertising time on an American station that broadcasts into
15 Canada. This clearly under Canadian law is the law. It is
16 bill C.58. Obviously, it is a very bad bill. The
17 Administration has requested prompt enactment of a bill to
18 mirror C.58.

19 What I would propose to do, unless we find a better
20 mechanism, is to attach it to this bill. Now, perhaps the
21 Chairman does not want to attach it to this bill, and would
22 like to make other arrangements on it.

23 Senator Bradley: What are we attaching?

24 Senator Heinz: We are not attaching anything right now.

25 The Chairman: We are just suggesting that he has a

1 matter that he would like to mark up.

2 Senator Heinz: The Administration has suggested that we
3 enact a mirror image bill in the hopes of getting the
4 Canadians to drop their law, C.58, which is a violation of,
5 among other things, the GATT. I assume the Administration
6 wants us to pass this bill, or at least take it through the
7 legislative process so that it becomes a credible threat to
8 the Canadians.

9 Senator Bradley: Who has supported this in the
10 Administration?

11 Mr. Kassinger: The U.S. Trade Representatives both in
12 the Carter and the Reagan Administrations have supported it.

13 The Chairman: I think what Senator Heinz is suggesting
14 is, when we get into this area, he wants to at least raise
15 that and try to mark it up.

16 Senator Heinz: This may not be the right vehicle on
17 which to do it, Mr. Chairman, but we are probably going to
18 have another opportunity. I would hope we could consider it
19 when we take up those minor tariff bills.

20 Senator Bradley: Well, if it is a violation of the GATT,
21 is the best way to pursue this bilaterally? Is it a
22 violation of GATT? May I ask the staff that?

23 Mr. Kassinger: Senator Bradley, I think the United
24 States position has been that it is not a violation of the
25 GATT, because it is a problem of services, which is not

1 generally covered.

2 Senator Heinz: I stand corrected. If we had a services
3 code, it would be.

4 The Chairman: But the point is, we will take it up and
5 we will consider it. I am not saying what the disposition
6 will be, however.

7 Senator Heinz: Senator Bradley, in answer to your
8 question, apparently this has been under negotiation for two
9 years without any success bilaterally.

10 Senator Wallcp: It has been an issue before us since way
11 in the Carter Administration.

12 Senator Bradley: So, this is a suggestion, that we pass
13 a denial of tax exemption -- I mean tax deduction for U.S.
14 advertisers who advertise on Canadian TV.

15 Senator Heinz: Mr. Kassinger, is that an accurate
16 interpretation?

17 Mr. Kassinger: That is correct.

18 Senator Bradley: Do you have any idea how much
19 advertising on Canadian TV there is by U.S. advertisers?

20 Mr. Lang: It is any broadcasting, Senator.

21 Senator Bradley: Does this include cable television?

22 Mr. Lang: No, only broadcasting, not over cable. It is
23 broadcasting in the air. Presumably there is less U.S.
24 advertising on Canadian stations because of the inability to
25 deduct that. But there is no real way to know how much harm

1 has been done.

2 Mr. Kassinger: The U.S. broadcasters estimate they lost
3 several hundred thousand dollars in advertising as a result
4 of the lessened amount of Canadian advertising on their
5 stations because of the Canadian bill.

6 Senator Chafee: Would you speak a little louder, please?

7 Mr. Kassinger: I am sorry, Senator. The U.S. border
8 broadcasters are interested in this bill, and estimated two
9 years ago that they lost several hundred thousand dollars as
10 a result of lessened advertising over their stations by
11 Canadian broadcasters. But as I understand it, your
12 proposal, Senator Heinz, is, you wanted to take it up with
13 miscellaneous tariff bills?

14 Senator Heinz: Excuse me?

15 Mr. Kassinger: I think you mentioned you wanted to take
16 this up in connection with hearings on miscellaneous tariff
17 bills.

18 Senator Heinz: Well, I think it would be helpful if we
19 could reach agreement to take it up when we take up the
20 tariff bills. My understanding is, the Administration would
21 like a show of as much bipartisan unity as it can get on
22 this.

23 The Chairman: There are a number of tariff bills, so we
24 will consider it. As I understand it, the only difference
25 between the House and Senate coffee agreement is, our bill is

1 six years, theirs is two years.

2 Mr. Kassinger: That is correct.

3 The Chairman: The House will take it up tomorrow?

4 Mr. Kassinger: Today.

5 The Chairman: I know of no objection with regard to the
6 coffee agreement. Do you, Senator Long?

7 Senator Long: Mr. Chairman, one of my constituents has
8 written pointing out that in the present situation of
9 surplus, some coffee agreement members are selling coffee
10 below prices pegged in the agreement, which is a plain
11 violation of the agreement.

12 I have discussed this matter with Ambassador Brock, and I
13 would like to ask unanimous consent to place this letter in
14 the record at this point.

15 The Chairman: Without objection.

16 [The material referred to follows.]

17 [COMMITTEE INSERT]

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1 Senator Long: I will work with Ambassador Brock to see
2 that the agreement is strictly enforced, and with that
3 understanding we will vote to extend the agreement.

4 The Chairman: Without objection, then, we will do that.
5 Let us move on, then, to the noncontroversial area of public
6 property leasing.

7 Senator Durenberger: Mr. Chairman, may I make one
8 comment?

9 The Chairman: Yes.

10 Senator Durenberger: This is by way of a compliment to
11 Senator Heinz and the members of the Banking Committee for
12 the language that is included in the Act on sanctity of
13 contract. I think they did an extremely good job of
14 strengthening the existing sanctity language, and I hope that
15 the language gets endorsed strongly on the floor of the
16 Senate, and that we hold the Senate position when we go to
17 conference with the House, because it is excellent sanctity
18 language.

19 The Chairman: Could we get one more update on the score
20 on Amendment Number 1 and Amendment Number 2? We need to
21 recess this hearing in about 15 minutes.

22 Mr. DeArment: The current vote on the Heinz substitute
23 is still seven to five, and the vote on the Danforth motion
24 to strike a portion of Section 9 is ten to four.

25 The Chairman: I do not know of any other fair way to do

1 it, except when we leave here, whatever the votes are, that
2 is it.

3 Mr. DeArment: I do not have Senator Durenberger.

4 Senator Durenberger: I believe I voted no on both.

5 Mr. DeArment: Okay.

6 The Chairman: Is Durenberger now recorded?

7 Mr. DeArment: Yes, sir. I have Senator Durenberger as
8 no on both votes.

9 The Chairman: So that makes it, what, ten to five and
10 seven to six?

11 Mr. DeArment: That is correct.

12 [Pause.]

13 The Chairman: Dave, do you want to give us a rundown of
14 the public property leasing area? It first might be helpful
15 to our members to know the status of deliberations on the
16 House side. Are they yet in the markup of this section?

17 Mr. Brockway: Well, Mr. Chairman, on the House side,
18 they marked the public property leasing legislation about a
19 month ago, and it has been in the process of drafting, both
20 the bill and the Committee report. Current claims are that
21 they will hold that, and will file that together with
22 whatever other tax legislation they might consider in the
23 next couple of weeks.

24 The Chairman: Has that been addressed by the full
25 Committee then?

1 Mr. Brockway: It has been approved and already reported
2 by the full Committee. They have completed their action on
3 it. They just have not filed the bill and the Committee
4 report.

5 The Chairman: Under that House proposal, do you have the
6 revenue estimates over a period of three years?

7 Mr. Brockway: Yes, the House proposal over three years
8 would pick up over \$3.4 billion.

9 The Chairman: It just would lose \$3.4 billion, I guess?

10 Mr. Brockway: Well, if you did not legislate --

11 The Chairman: If we do not legislate, it is about a
12 billion dollar a year problem or more.

13 Mr. Brockway: Or more, yes. What happened was, this
14 came up in the context -- well, I guess it first came to
15 attention in connection with the lease of some Navy ships.
16 The Navy was going to acquire 13 ships, support ships for
17 their rapid deployment force at roughly \$2.3 billion. After
18 approving to go forward, they examined the transaction and
19 came to the conclusion that the Navy itself could save money
20 if rather than purchase it they used it under a service
21 contract where they would get it and private parties would be
22 able to get a depreciation and investment credit, so they
23 would pass some of that benefit on to the Navy.

24 But when you add up what it costs the Navy to buy the
25 ships plus what the Treasury lost, rather than saving the

1 government money in the aggregate it would lose the
2 government about 13 or 14 percent. When that was gone
3 through, it became clear that it was not simply limited to
4 the Navy's 13 ships.

5 There were other Department of Defense properties, but
6 also state governments, local governments, colleges such as
7 Bennington College, the sale leaseback of the dormitories.
8 There were a whole series of situations where tax-exempt
9 entities would be taking property either under a lease or
10 service agreement, so that private investors could get the
11 tax benefits.

12 Originally, in 1962, when the investment credit was
13 adopted, there was provision saying that not only would not
14 tax exempts get the investment credit, but if a tax exempt
15 used it under a lease, then the lessor would not get it
16 either, because otherwise you would get into a situation
17 where all of the tax exempt entities would simply lease their
18 properties to get the investment credit.

19 When Congress adopted the accelerated depreciation range
20 system of depreciation in 1971, and then ACRS in 1981, where
21 you also passed incentives, investment incentives in the form
22 of speeding up of depreciation, there was no similar
23 limitation in that case, so what you found because of that,
24 also because of high interest rates, also which increased the
25 tax benefits on investments in capital property, also because

1 of certain service contract arrangements which were
2 transacted and structured as service contracts rather than
3 leases, you will find a great increase in the amount of
4 property held by non-taxable entities that is done in the
5 form of leasing, and that is what accounts for the revenue
6 here.

7 What the theory of the bill is is that there should be a
8 zero tax in effect on property used by tax-exempt entities.
9 There would neither be any tax on the investment, but there
10 also would not be any tax subsidy in it. There would simply
11 be no tax to the federal government, so that they would be
12 neutral as to whether they would buy it or use it, because
13 you do not have limitations. What we are seeing here is that
14 all of the public entities would just move it off their books
15 onto private investors, and the Treasury would pick up the
16 revenue.

17 What the bill does, S. 1564 --

18 The Chairman: When is the effective date of that bill?

19 Mr. Brockway: Well, the effective date as introduced is
20 May 23rd, which is the date the companion bill was introduced
21 in the House, either property placed into service there, or
22 if you had a binding contract as of that date, although there
23 are a number of transitional issues that have arisen that
24 have a certain effect on revenue.

25 What the bill would do for property covered by the bill

1 is, if we are talking about equipment, personal property, it
2 would say, rather than running it off through ACRS for five
3 years or three years, it would have to be depreciated on a
4 straight line basis over the longer of either its ADR class
5 life, its economic life, or 125 percent of the lease term, if
6 that is longer, so that there would be no tax benefit
7 provided through the depreciation system. Basically, it
8 would get economic depreciation.

9 There would be a carve-out so it would not apply in the
10 case of short-term leases, and also short-life property,
11 property with an ADR life of less than six years. That might
12 be a computer or something like that. For real property, the
13 bill would say that real property would be depreciated either
14 on a straight line basis, either over 40 years or, if longer,
15 125 percent of the lease term, and that would only apply to
16 certain situations that would have to either be a tax exempt
17 financing for the building.

18 A governmental entity or a tax-exempt entity would have
19 to have a lease of at least ten years. There would have to
20 be a fixed price purchase option at the end of the
21 transaction, or there would have to be a sale-leaseback
22 transaction such as the Bennington College situation, where
23 they already own the dormitory, and all they do is have a
24 sale and leaseback so that no new building is created. There
25 are just additional tax benefits created.

1 In addition, in the present law where property is used by
2 a tax-exempt organization, the investment credit is denied,
3 but there have been a number of cases increasingly -- the
4 Navy deal was one of them -- where rather than structuring it
5 as a lease, they structured it as if services were being
6 provided. That transaction was structured so that the
7 private owners were providing transportation services to the
8 rapid deployment force rather than leasing the ship. In that
9 way, they were attempting to get around the restriction on
10 the use of the investment credit.

11 The bill would basically restate present law and issue a
12 number of factors, but would try to deal with these cases
13 where a very liberal view of what a service agreement was was
14 put forward. In addition, the bill would cover the rehab
15 credit where the property would be subject to a stretchout of
16 depreciation. It would also lose the rehab credit.

17 There are certain amendments that staff would suggest
18 when you get to it in this area.

19 The other final major element of the bill is the
20 definition of what a tax-exempt entity is. Under present
21 law, it is governmental bodies, federal government, state and
22 local governments, and also charities. It does not include
23 foreign governments, and it does not include foreign
24 businesses. What this bill would say to a foreign government
25 or foreign business as long as they are not subject to U.S.

1 tax is, they would be subject to the same limitations as any
2 tax-exempt on the notion that since they are not paying any
3 tax, since they could not get the investment credit or ACRS
4 if they held the property directly, they should not get it if
5 they get it through in the form of a lease.

6 Then, the final element of the bill is, it would apply to
7 property placed in service after May 23rd of this year, with
8 the exception that if there is a binding contract rule for
9 binding contracts in effect on May 23rd.

10 The Chairman: Is that the date, the same date in the
11 House bill?

12 Mr. Brockway: That is the same date in the House bill,
13 although, as I say, there are a number of transitional rules
14 that they agreed to in the markup.

15 The Chairman: Andre, you have been working on this, too,
16 on the Senate side. I wonder if you might just explain for
17 those of us who are here an example -- I know Dave did it
18 generally -- of just how this might operate and why we feel
19 it is necessary to address this particular area.

20 Mr. LeDuc: Senator, one example that has received a
21 great deal of public attention and that demonstrates the
22 issue raised by this bill is a transaction which has not yet
23 to our knowledge gone forward, but has been planned, which is
24 the sale leaseback of the Bennington College campus.
25 Bennington College is a private institution. It is

1 tax-exempt under the Internal Revenue Code. Contributions to
2 it, of course, are deductible under the charitable
3 contribution rules.

4 Its advisors came up with a plan to raise revenue by
5 selling the campus to a syndicate of wealthy investors who
6 would then lease the property back.

7 The Chairman: They do not pay taxes to start with, do
8 they?

9 Mr. LeDuc: They do not. The reason for the transaction
10 was the depreciation deductions on the dormitories and other
11 campus buildings provides substantial tax shelter to the
12 investors. It was, and I think the Bennington advisors were
13 pretty straightforward about this, a tax-motivated
14 transaction. This bill would deal with that problem by
15 stretching out the depreciation that would be available to
16 the Bennington investors to a period of 125 percent of the
17 underlying lease term.

18 As a result, there would no longer be any tax shelter
19 available to the investors, and there would no longer be any
20 tax reason to enter into one of these transactions, and
21 Bennington College would continue to own its buildings.

22 The Chairman: Okay. That is one example that has been
23 called to our attention. I guess there are probably hundreds
24 of others. There is something in Columbus, Ohio. There is a
25 stadium in California. I think the co-ops have a problem.

1 They want to move back and forth from being taxpayers to
2 being non-taxpayers.

3 Mr. Erockway: In city halls, I think, for example, they
4 have taken a number of them. I think in Atlanta and Corpus
5 Christi, where the city sells the city hall to a private
6 investor, has a rehab, then leases it back to the city, so
7 the private investor gets the rehab credit and also the
8 accelerated depreciation. There are a number of transactions
9 like that.

10 The Chairman: Well, I guess the next question is, we
11 want to start reviewing. Have you been reviewing? I do not
12 know how many letters I have received saying there is
13 justification for some transition rule in this case or that
14 case. I tried to funnel all of those back to the Committee
15 staff. Have you had an opportunity with the Joint Committee
16 and the Committee staff to review all of the requests we have
17 had for exceptions, exemptions, whatever?

18 Mr. LeDuc: Mr. Chairman, we are in the process of two
19 tasks. One is, there have been some cases in which there
20 appear to be some unintended impacts under the bill as
21 introduced, and we are reviewing substantive amendments that
22 have been suggested, and some of the members have called to
23 our attention. We are also examining some transition
24 amendments, and the process is not yet complete.

25 The Chairman: Well, there was a difference between the

1 Senate bill and the House bill. I think we had a somewhat
2 different legislative approach in the Senate.

3 Mr. DeArment: The revenue is considerably higher in the
4 Senate bill than in the current House bill. Is that not
5 correct, Dave?

6 Mr. Brockway: The bill as introduced is \$5.3 billion
7 compared to the \$3.4 billion of the House bill. There are a
8 number of situations where some of the specific rules are
9 different. For example, in the Senate bill, there is an
10 exception for short life property. There is a somewhat
11 different rule for real estate, relatively minor differences,
12 though, between the two bills. And then, as Andre pointed
13 out, there are a number of different substantive provisions
14 where we would recommend some changes. Well, some are not
15 necessarily so significant, but there are a number of
16 substantive areas that members have brought to our
17 attention.

18 The Chairman: Well, I think what we can do is, we cannot
19 meet this afternoon because of the important meeting on
20 Lebanon, which I think most Senators will want to attend,
21 between 2:00 and 3:00 o'clock, plus the debate on the Senate
22 floor, plus the policy luncheons of both parties. So it is
23 my hope that we can meet tomorrow morning and start in on
24 this particular section in earnest.

25 We are trying to work in tandem with the House

1 Committee. I have looked over their schedule for this week
2 and the next week. So I hope we might be able -- well, I am
3 not certain just what the tax package may finally resemble,
4 but I am certain there will be one.

5 They are also working on insurance on the House side.

6 Correct?

7 Mr. Erockway: Yes, there is a markup this morning in the
8 Select Revenue Subcommittee.

9 The Chairman: Has that all been worked out between the
10 stocks and the mutuals?

11 Mr. Erockway: No, unfortunately not.

12 [General laughter.]

13 Mr. Brockway: Perhaps it is by this hour of the
14 morning.

15 The Chairman: I had a distinct impression there was a
16 rather sharp split there. Is that correct?

17 Mr. Erockway: In proposals that they were discussing, I
18 gather that the stock companies were more favorably disposed
19 toward them than the mutual companies.

20 The Chairman: Well, our interest is saying that we keep
21 the commitment the industry made to us last year as far as
22 revenue is concerned, and as far as I know, there is no
23 disagreement there. We came about \$1 billion short. Was it
24 not that, Andre?

25 Mr. Erockway: We are not exactly sure what the numbers

1 are, but it looks like it is in that range. Yes, they are
2 paying about \$1 billion less than they indicated they would.

3 The Chairman: It would seem to me hopefully -- well, I
4 do not intend to introduce, though maybe other members do,
5 the Stark-Moore bill over here, but it is my hope that those
6 who are apparently negotiating for the different people, for
7 the stocks and mutuals, that they will all help us resolve
8 this problem without getting into a big battle on the
9 Committee.

10 Well, that is another matter.

11 Is there anything else? What I have done is, I have also
12 sent to Senator Baker a memorandum today indicating action
13 that must be concluded yet this week, which includes the
14 federal supplemental compensation extension, the
15 international coffee agreement, revenue sharing,
16 authorization bill for International Trade Commission,
17 Customs Service. Then, tomorrow morning, am I correct, Rod,
18 we have trade adjustment assistance? Will there be somebody
19 here from the Administration to speak on that?

20 Mr. DeArment: Yes, Mr. Chairman. We have that on the
21 agenda.

22 The Chairman: I do not have tomorrow's agenda. What
23 else do you have on it?

24 Mr. DeArment: Everything that we have not concluded
25 today.

1 [General laughter.]

2 Mr. DeArment: The items on today's agenda that we have
3 not finished are the spending cuts and public property
4 leasing.

5 The Chairman: Well, it is my hope that the spending cuts
6 we have at least reviewed, at least as a starting point. So
7 I guess it will take some time on trade adjustment tomorrow.
8 Then we will go back to public property leasing.

9 Senator Danforth: Mr. Chairman, Senator Wallop, Senator
10 Boren, and I had hoped to bring up the CPI minus 3 issue and
11 perhaps get a vote on it today. Could you tell us when you
12 think would be an appropriate time to bring that up?

13 The Chairman: Well, as I understand it, there was an
14 effort under way -- maybe it has succeeded -- where there
15 might be some changes in the language that might permit near
16 unanimous agreement. Has that been accomplished?

17 Senator Danforth: Not yet. I think what we would like
18 to do is to have Senators Boren, Wallop, and me present at
19 some definite time when we can bring it up and vote on it.

20 The Chairman: Well, let us see. We are meeting tomorrow
21 and Thursday, can we?

22 Mr. DeArment: Yes, Mr. Chairman, we can meet both days.

23 The Chairman: I think we agreed last week that we might
24 vote on it Tuesday, but Senator Armstrong had another
25 Committee conflict, and could not be here, so maybe we could

1 aim for Thursday.

2 Senator Danforth: Thursday?

3 The Chairman: Is that all right with you, Senator Boren?

4 Senator Boren: That would be fine with me.

5 The Chairman: Okay. Let us have the final score. As I
6 said, when we adjourned, whatever the votes were, we would
7 report the Committee amendment reflecting the votes.

8 Mr. DeArment: Mr. Chairman, the final score on the Heinz
9 substitute is nine to nine. That would seem to me to require
10 a vote. That would mean the Heinz substitute would fail.

11 The Chairman: That is on the first one?

12 Mr. DeArment: That is on the first one. On the second,
13 Danforth amendment, which was the only one we voted on up to
14 this point, the vote is eleven to six, so that would carry.

15 Senator Danforth: But, Mr. Chairman, if the Heinz
16 substitute fails, what is left? Then the question occurs on
17 what?

18 Mr. DeArment: Then the question occurs on the Danforth
19 amendment.

20 The Chairman: I think under those circumstances I would
21 like to get this out of the Committee and onto the floor.

22 Senator Danforth: Mr. Chairman, it would not be the same
23 vote, I do not think, on the underlying proposition.

24 The Chairman: Oh, I see. You might get a different
25 mix. Are we prepared to vote on your motion to strike?

1 Senator Danforth: Yes.

2 Senator Chafee: So now we are voting on the language as
3 it currently exists, and that would include all of the GATT
4 countries, all the countries?

5 Mr. DeArment: The first Danforth amendment is the one
6 that is described in the materials, which would be simply to
7 strike the import controls in their entirety.

8 Senator Heinz: Mr. Chairman, just so that no one is
9 under any illusions, the Banking Committee is probably going
10 to modify the amendment anyway. So it is really the same
11 vote.

12 The Chairman: Okay. Let us vote on it.

13 Mr. DeArment: Mr. Packwood.

14 Senator Danforth: He votes aye.

15 Mr. DeArment: Mr. Roth.

16 Senator Danforth: He votes aye.

17 Mr. DeArment: Mr. Danforth.

18 Senator Danforth: Aye.

19 Mr. DeArment: Mr. Chafee.

20 Senator Chafee: Aye.

21 Mr. DeArment: Mr. Heinz.

22 Senator Heinz: No.

23 Mr. DeArment: Mr. Wallop.

24 [No response.]

25 Mr. DeArment: Mr. Durenberger.

1 Senator Durenberger: Aye.
2 Mr. DeArment: Mr. Armstrong.
3 [No response.]
4 Mr. DeArment: Mr. Symms.
5 [No response.]
6 Mr. DeArment: Mr. Grassley.
7 [No response.]
8 Mr. DeArment: Mr. Long.
9 Senator Long: No.
10 Mr. DeArment: Mr. Bentsen.
11 [No response.]
12 Senator Long: I think Bentsen is going to vote aye on
13 that, and Matsunaga votes aye.
14 Senator Grassley: Would you put me down for no?
15 Grassley votes no.
16 Mr. DeArment: Mr. Moynihan.
17 Senator Long: Moynihan, aye.
18 Mr. DeArment: Mr. Baucus.
19 [No response.]
20 Mr. DeArment: Mr. Boren.
21 Senator Boren: Aye.
22 Mr. DeArment: Mr. Bradley.
23 Senator Long: Bradley, aye.
24 Mr. DeArment: Mr. Mitchell.
25 Senator Heinz: No by proxy.

1 Mr. DeArment: Mr. Pryor.

2 [No response.]

3 Mr. DeArment: Mr. Chairman.

4 The Chairman: Aye.

5 [Pause.]

6 The Chairman: On this vote, the yeas are eleven, the
7 nays are four. The amendment is agreed to. So, the
8 Committee amendment will reflect the Danforth amendment
9 then. Is that correct?

10 Mr. DeArment: That is correct, Mr. Chairman.

11 The Chairman: What time do we meet tomorrow?

12 Mr. DeArment: At 10:30.

13 The Chairman: Okay. We will stand adjourned until that
14 time.

15 [Whereupon, at 11:55 a.m., the Committee was adjourned,
16 to reconvene at 10:30 a.m. of the following day.]

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MEMORANDUM

TO: Senator Long

DATE: September 27, 1983

FROM: Jeff Lang

RE: Finance Committee Approval of the International
Coffee Agreement

The Administration is seeking a favorable report from the Finance Committee of a bill to implement the International Coffee Agreement (ICA). Extension of the agreement was a treaty approved by the Senate in July of this year. Two Louisiana constituents have written to you supporting the implementing legislation. They are Andrew W. Moreau, Vice President of ACLI Coffee Company, a division of ACLI International, Inc., and Boatner Reily, III, President of the William B. Reily Company, Inc. of New Orleans. Their rationale is that the agreement has stabilized coffee prices. However, Allen Bories of the International Coffee Corporation in New Orleans has objected to the agreement primarily on the ground that coffee is being sold below the prices pegged in the agreement by some producers in violation of the agreement. You brought Mr. Bories' concerns to the attention of Ambassador Brock in a letter dated May 27, 1983, and he responded on June 15, 1983 with the following statement:

"Measures have recently been taken to strengthen the control system which monitors the flow of coffee from members to nonmembers. This system is continually being reviewed and improved to increase its effectiveness. If the problem of nonmember sales persists, we expect ICA members to adopt even stronger measures when they next meet in plenary session in September 1983. The United States remains committed to finding an equitable solution to this problem."

If you decide not to oppose reporting favorably the ICA from the Finance Committee, you might, nevertheless, want to take account of Mr. Bories' concerns by putting a copy of Ambassador Brock's letter to you dated June 15, in the record and making the attached statement.

STATEMENT OF THE HONORABLE RUSSELL B. LONG CONCERNING
THE INTERNATIONAL COFFEE AGREEMENT

Mr. Chairman, I do not at this point oppose reporting favorably the bill to implement the new International Coffee Agreement (ICA), S. 1847. In general, the evidence before the Committee suggests that it is successful in contributing to stability in coffee prices. Several Louisiana constituents have written to advise me that the agreement has resulted in stability. However, one of my constituents has pointed out that in the present situation of surplus, some coffee agreement members are selling coffee below the prices pegged in the agreement, which is a plain violation of the agreement, I have brought this problem to the attention of Ambassador Brock who assured me in a letter dated June 15, 1983 that the United States will try to find an equitable solution to this problem. I would ask that Ambassador Brock's letter be placed in the record of this meeting. I intend to follow closely the operation of the agreement to see what steps are taken to assure that it operates fairly and in accordance with its terms.

POSSIBLE FINANCE COMMITTEE AMENDMENTS TO S. 979,
THE EXPORT ADMINISTRATION ACT AMENDMENTS OF 1983

Background

On August 4, 1983, the Subcommittee on International Trade held a hearing on certain provisions of S. 979, a bill to amend and reauthorize the Export Administration Act (EAA) of 1979. Unless extended the Act will expire on September 30, 1983. The Banking Committee bill has not been referred to this Committee, but Senators Dole and Long objected to Senate consideration of the bill until the Finance Committee had an opportunity to review three provisions in the bill falling within its jurisdiction.

The Export Administration Act of 1979 confers authority on the President (acting principally through his Secretary of Commerce) to regulate exports from the United States. The Act permits the regulation of exports based on three separate rationales: to protect U.S. national security, to further U.S. foreign policy, and to protect the United States economy from excessive drain of scarce materials. The sections of the Act which are the principal focus of S. 979, and the sections which are the most controversial, are the sections authorizing the President to regulate exports for national security reasons and for foreign policy reasons.

In general, S. 979 places significant new constraints on the President's use of his authority to impose foreign policy export controls. Two of the most significant constraints are the contract sanctity and prior Congressional notification requirements. S. 979 precludes the President from interfering with exports made pursuant to contracts entered into prior to the imposition of foreign policy export controls. Similarly, the President is required under S. 979 to report to Congress on the rationale for foreign policy export controls prior to their imposition, rather than permitting the President to report to Congress after issuing his authority, as is true under present law.

Another change in the President's authority to use foreign policy export controls provided for in S. 979 is the addition of power to control imports from a country which is the subject of foreign policy export controls. The addition of this new authority is based, at least in part, on the desire to place at the President's disposal the power to inflict on exporters of the target country some of the economic costs which, under present law, must be borne entirely by U.S. exporters. This additional authority would permit the President to avoid the anomalous situation of denying U.S. exports a market because of foreign

policy considerations while the country which is the target of controls can enjoy undiminished access to the U.S. market.

Amendment 1

The first proposed amendment would delete that portion of section 6 of S. 979 which authorizes the President to impose import controls against a country with respect to which he has exercised his power to impose foreign policy export controls.

This amendment would eliminate import controls as an instrument of foreign policy export controls on the grounds that the linkage under the EAA represents a significant additional threat to U.S. exports. Foreign policy export controls have mushroomed in recent years as the term foreign policy has been given new content and scope. The expanded definition includes promoting human rights, nuclear non-proliferation and regional stability, discouraging support for international terrorism, sending signs of displeasure with particular countries and denying crime control instruments to repressive regimes. S. 979 would, for the first time, authorize the President to use import controls against a country subject to one of these foreign policy export controls. The amendment before this Committee would delete this new import authority.

Although foreign policy export controls are associated with attempts to punish the Soviet Union for its transgressions in Poland and Afghanistan, a very large number of countries have been the target of foreign policy export controls. The following is a listing of the more recent foreign policy export controls, and the countries which were the target in each case.

<u>Foreign policy export control</u>	<u>Target Country</u>
1. Prohibition on export without a validated license of crime control and detection equipment, and related technical data.	The entire world except NATO countries Japan, Australia and New Zealand
2. Embargo on exports of arms, ammunition, related maintenance materials, aircraft and helicopters.	South Africa and Namibia

- | | |
|--|---|
| 3. Embargo on exports of all commodities or technical data to or for military or police entities. | South Africa and Namibia |
| 4. Prohibition on export without a validated license of numerous nuclear devices and related technical data useful in developing nuclear explosive capabilities. | The entire world |
| 5. A ban on export without a validated license of off highway wheel tractors above a certain tonnage capacity. | Libya |
| 6. A prohibition on export without a validated license of aircraft and helicopters above a certain value, and of vehicles designed for military purposes. | Libya, Iraq Syria, and Southern Yemen |
| 7. Total embargoes | North Korea, Vietnam, Cambodia and Cuba |
| 8. A ban on export without a validated license of oil and gas exploration and production equipment and related technical data, a ban on grain exports (no longer effective) a ban on phosphate exports; on any export transaction associated with the 1980 Olympics; and a ban on exports without a validated license of oil and gas transmission and refining equipment and related technical data (no longer effective). | Soviet Union |

Accordingly, the use of import control authority as a corollary of foreign policy export controls could, theoretically affect imports from much of the world. Although S. 979 provides

that the President's use of foreign policy export controls must be preceded by certain findings regarding their effectiveness, cost and impact, and cannot interfere with existing export contracts, no similar constraints apply to the President's use of import controls, once he has invoked his power to impose foreign policy export controls. It is ironic that totally unfettered import authority is to be added to a statute in which Congress has repeatedly emphasized procedural constraints on Presidential export authority.

The proposed amendment would delete this import control authority based on the following propositions:

1. Congress has never before seen fit to delegate totally unfettered import control authority to the President, and has not done so in the area of export controls.
2. The availability of this import control authority is likely to attract entire new constituencies interested in the use of export controls as a means of obtaining sweeping import control authority, thus increasing the likelihood that foreign policy export controls will be imposed.
3. Use of import controls as a corollary to foreign policy export controls is not justifiable under the GATT, and in any event, is likely to invite retaliation against other U.S. exports by the target country. Thus this new import authority could prove doubly damaging to U.S. exports.

Amendment 2

A second proposed amendment would delete that portion of section 9 of S. 979 which authorizes the President to deny U.S. entry to imports from "whoever" violates a regulation issued pursuant to a multilateral agreement to control exports for national security purposes, to which the United States is a party.

In addition to and as a corollary to its own national security import controls, the United States participates in COCOM, the Coordinating Countries of NATO allies (plus Japan, minus Iceland) in an effort to obtain a unified allied approach to the exportation of militarily useful goods and technology to communist countries. The record of COCOM enforcement of these controls is uneven. Because S. 979 makes it easier to export items controlled for national security reasons to other COCOM countries, S. 979 also seeks to obtain stricter enforcement of COCOM controls by U.S. allies to avoid undermining the effectiveness of U.S. national security export controls. Both the power to ban imports from those violating U.S. national

security export controls and the power to ban imports from those violating COCOM controls are seen as a means of obtaining greater COCOM discipline. The proposed amendment is directed at that portion of S. 979 which would permit the President to impose import controls against whoever violates national security controls imposed by COCOM (as opposed to U.S. national security controls under U.S. law). It might be noted that the language of S. 979 may permit the denial of import privileges to countries as well as companies, since the term "whoever" could include both. Thus, under S. 979, import privileges could be denied a non-U.S. firm (or a country) based on the exportation from a NATO ally of goods which contain non U.S.-origin goods or technology. Even though such an export was not within the reach of U.S. law and thus would not constitute a violation of U.S. law, the firm or country could be denied U.S. import privileges based on the U.S. interpretation of the applicable COCOM regulations.

Although the proposed amendment would delete the President's authority to deny import privileges to firms or countries that violate multilateral national security regulations, the amendment would leave unchanged the President's authority in S. 979 to deny import privileges to those violating U.S. national security export controls.

The proposed amendment is based on the following propositions:

1. Using import control authority against a firm or a country which did not violate U.S. law invites retaliation against U.S. exports.
2. The import control authority is poorly suited as a provision intended to bolster COCOM enforcement by the U.S. allies, since its coercive nature is counterproductive to the voluntary nature of COCOM.
3. Punishing foreign entities for actions which are outside the reach of U.S. law is likely to exacerbate existing European complaints about the extraterritorial reach of U.S. law and possibly result in resistance to cooperative enforcement of COCOM.

ITEM

Foreign Policy export controls; Presidential authority to control imports from a country with respect to which he has imposed foreign policy controls.

PRESENT LAW

Section 6 of the EAA authorizes the President to curtail or prohibit the exportation of goods or technology from the U.S. or agency person subject to U.S jurisdiction to further significantly the foreign policy of the U.S. or fulfill its international obligations; there is no authority to control imports pursuant to the use of export controls; controls expire on this anniversary unless extended by the President; President required to consider effectiveness of controls; consult with Congress where possible before imposing controls and immediately submit report to Congress.

SENATE BILL (S. 979)

President is given authority to impose import controls against a country which is the target of export controls for foreign policy reasons. President is prohibited from interfering with exports under contracts entered into before the date the controls are imposed; controls expire after 6 months unless extended by the President; President required to make certain findings before controls are imposed and to transmit a report to Congress on such findings before imposing controls.

PROPOSED AMENDMENT

Would delete President's import control authority.

ITEM

Enforcement authority; authority to bar imports from whoever violates a regulation issued pursuant to a multi-lateral agreement to control exports for national security purposes.

PRESENT LAW

Pursuant to section 11 of the EAA, knowing violations of the Act carry a potential fine of five times the value of the export or \$50,000, whichever is greater, and a maximum five years in prison; willful violations carry fines of five times the value of the export up to \$1,000,000; or, in the case of individual, up to \$250,000 or 10 years in prison; civil penalties include the revocation of export privileges and a \$10,000 penalty per violation; there is no authority to use import controls against violators.

SENATE BILL (S. 979)

President is given authority to impose import controls against whoever violates either a national security export control imposed by the U.S. or any regulation issued pursuant to a multi-lateral agreement to control exports for national security purposes; goods or technology which the subject of a national security export control violation are subject to forfeiture.

PROPOSED AMENDMENT

Would delete President's authority to control imports based on violations of COCOM regulations; would leave unchanged President's authority to control imports based on violation of U.S. law or regulations.

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United States Senate

COMMITTEE ON FINANCE
 WASHINGTON, D.C. 20510

ROBERT E. LIGHTNIZER, CHIEF COUNSEL
 MICHAEL STERN, MINORITY STAFF DIRECTOR

September 20, 1983

TO: MEMBERS, COMMITTEE ON FINANCE

FROM: FINANCE COMMITTEE TRADE STAFF

SUBJECT: MARKUP OF S. 1847, LEGISLATION TO AUTHORIZE THE PRESIDENT TO CARRY OUT AND TO ENFORCE THE 1983 INTERNATIONAL COFFEE AGREEMENT

Attached are materials for the markup of S. 1847, a bill to reauthorize the President to carry out and to enforce U.S. obligations under the International Coffee Agreement (ICA).

The current ICA, which came into force in 1976, expires on September 30th. The Congress authorized the President to carry out and to enforce its obligations, like its predecessors, in the International Coffee Agreement Act of 1980. That authority also expires on September 30. Pursuant to that law, the President implemented Customs procedures to ensure that coffee not covered by the ICA did not enter the United States, and to regulate coffee trade in other ways to implement U.S. obligations under the agreement.

S. 1847 would amend the International Coffee Agreement Act of 1980 to continue its authority with respect to the 1983 Agreement. The authority would continue for the life of the Agreement, 6 years.

The International Coffee Agreement

The 1983 ICA is the fifth in a series of such agreements dating from 1963. It would replace the 1976 agreement, which expires September 30, 1983. The Congress last year extended the President's authority to carry out U.S. obligations under this agreement until September 30th.

Like its predecessors, the 1983 ICA is designed to stabilize coffee prices within an agreed range (\$1.15-\$1.50 per pound). Export quotas, buttressed by stocking requirements, are established among the coffee producing nations in order to maintain prices within this range. Quotas are reduced, expanded, or suspended for this purpose. Consuming countries agree to regulate imports to support the quota system, and they participate in the negotiations determining the aggregate annual quota and its distribution among types of coffee.

Operation of the agreement is conducted through the International Coffee Organization, headquartered in London. The ICA covers nearly 95 percent of coffee traded world-wide, and is adhered to by nearly all exporting and importing countries. Votes in the organization are distributed on a weighted basis among producing and consuming members; the United States is entitled to 30 percent of the consumers' votes.

The Administration supports continued participation in the ICA because it believes the agreement contributes to stability in coffee trade without significantly restraining market forces that normally determine price and supply. The stability is important because coffee exports account for over 50 percent of total export earnings of 7 countries, and between 20 and the 50 percent for 9 others. A predictable coffee market assures some measure of economic--and in many cases, political--stability in these countries. On the other side, the major U.S. importers support the agreement as a way of ensuring stable supplies. The National Coffee Association and the consumer advisers to the ICA negotiating team support the agreement.

S. 1847

S. 1847 would renew the President's authority to carry out and to enforce U.S. obligations under the 1983 ICA for its 6-year life. Current authority relating to the 1976 agreement expires on September 30, 1983.

By this renewed authority, the President could continue to regulate coffee imports to prohibit the entry of non-quota coffee, to require any coffee exported from the United States to be documented properly, and to take other regulating actions necessary or appropriate to implement U.S. obligations under the

agreement. The law further requires the President to take action in response to market manipulation by members of the International Coffee Organization, if he determines the existence of such conduct. Finally the authority, if renewed, would require the President to submit an annual report on the operation of the 1983 ICA.

COFFEE EXPORTS AS A PERCENT OF TOTAL EXPORTS, 1981

<u>Country</u>	<u>Coffee Exports as a Percent of Total Exports</u>
Brazil	6.5
Burundi	87.5
Cameroon	21.7 *
Central African Republic	27.4 *
Colombia	50.0
Costa Rica	23.4
Dominican Republic	6.4
Ecuador	4.2
El Salvador	57.3
Ethiopia	50.7
Guatemala	22.6
Haiti	19.5
Honduras	24.6 *
India	3.2 (E)
Indonesia	1.3 (E)
Ivory Coast	31.1 **
Kenya	20.6
Madagascar	53.2 *
Mexico	2.9 *
Nicaragua	36.8 *
Papua New Guinea	13.0
Paraguay	0.4
Peru	3.3
Philippines	0.9 (E)
Rwanda	52.8 *
Sierra Leone	16.8 *
Tanzania	23.4 *
Togo	7.9 *
Uganda	98.7 *
Zaire	14.8

(E) Estimate

* 1980

** 1979

Source: IMF, International Financial Statistics, 1982

10/15/82

e. International Coffee Agreement Act of 1980

Public Law 96-599 [H.R. 3637], 94 Stat. 3491, approved December 24, 1980

AN ACT To carry out the obligations of the United States under the International Coffee Agreement 1976, signed at New York on February 27, 1976, and entered into force for the United States on October 1, 1976, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. This Act may be cited as the "International Coffee Agreement Act of 1980".

IMPORTATION OF COFFEE UNDER INTERNATIONAL COFFEE AGREEMENT
1976; PRESIDENTIAL POWERS AND DUTIES

Sec. 2. On and after the entry into force of the International Coffee Agreement 1976, and for such period prior to October 1, 1982 as the agreement remains in effect, the President is authorized, in order to carry out and enforce the provisions of that agreement—

(1) to regulate the entry of coffee for consumption, or withdrawal of coffee from warehouse for consumption, or any other form of entry or withdrawal of coffee such as for transportation or exportation, including whenever quotas are in effect pursuant to the agreement, (A) the limitation of entry, or withdrawal from warehouse, of coffee imported from countries which are not members of the International Coffee Organization, and (B) the prohibition of entry of any shipment from any member of the International Coffee Organization of coffee which is not accompanied either by a valid certificate of origin, a valid certificate of reexport, a valid certificate of reshipment, or a valid certificate of transit, issued by a qualified agency in such form as required under the agreement;

(2) to require that every export or reexport of coffee from the United States shall be accompanied by a valid certificate of origin or a valid certificate of reexport, issued by a qualified agency of the United States designated by him, in such form as required under the agreement;

(3) to require the keeping of such records, statistics, and other information, and the rendering of such reports, relating to the importation, distribution, prices, and consumption of coffee as he may from time to time prescribe; and

(4) to take such other action, and issue and enforce such rules and regulations, as he may consider necessary or appropriate in order to implement the obligations of the United States under the agreement.

DEFINITION OF COFFEE

Sec. 3. As used in this Act, the term "coffee" means coffee as defined in article 3 of the International Coffee Agreement 1976.

DELEGATION OF PRESIDENTIAL POWERS AND DUTIES; PROTECTION OF INTERESTS OF UNITED STATES CONSUMERS; REMEDIAL ACTION

Sec. 4. The President may exercise any powers and duties conferred on him by sections 2 through 5 of this Act through such agency or officer as he shall direct. The powers and duties conferred by sections 2 through 5 of this Act shall be exercised in the manner the President considers appropriate to protect the interest of United States consumers. In the event the President determines that there has been an unwarranted increase in the price of coffee due in whole or in part to the International Coffee Agreement, or to market manipulation by two or more members of the International Coffee Organization, the President shall request the International Coffee Council or the Executive Board to increase supplies of coffee available to world markets by suspending coffee export quotas and to take any other appropriate action. At the same time he shall report his determination to the Congress. In the event the International Coffee Council has failed to take corrective action to remedy the situation within a reasonable time after such request the President shall submit to the Congress such recommendations as he may consider appropriate to correct the situation. In the event that members of the International Coffee Organization involved in market manipulation which has resulted in price increases have failed to remedy the situation within a reasonable time after a request for remedy, the exercise of the authority set forth in section 2 of this Act shall be suspended until the President determines that effective market manipulation activities have ceased.

REPORT TO THE CONGRESS

Sec. 5. The President shall submit to the Congress an annual report on the International Coffee Agreement 1976. Such report shall contain full information on the operation of such agreement, including full information with respect to the general level of prices of coffee and matters pertaining to the transportation of coffee from exporting countries to the United States. The report shall also include a summary of the actions the United States and the International Coffee Organization have taken to protect the interest of United States consumers.