RICHARD
5/10/88

EXECUTIVE COMMITTEE MEETING

TUESDAY, MAY 10, 1988

ORIGINAL

U.S. Senate

Committee on Finance

Washington, D.C.

The meeting was commenced, pursuant to notice, at 10:12 a.m. in Room SD-215, Dirksen Senate Office Building, the Honorable Lloyd Bentsen (chairman) presiding.

Present: Senators Bentsen, Moynihan, Baucus, Mitchell, Daschle, Packwood, Danforth, Chafee, Wallop, Durenberger, and Armstrong.

Also present: Ambassador Alan Holmer, Deputy United States Trade Representative; Ms. Judy Bello, Deputy General Counsel, USTR; Ms. M. Jean Anderson, Chief Counsel, International Trade, Department of Commerce.

Also present: Messrs. Jim Gould, Staff Director and Chief Counsel; Ed Mihalski, Staff Director, Minority; Jeff Lang, Trade Chief Counsel; Mike Mabile, Trade Counsel; and Josh Bolten, Chief Trade Counsel, Minority.

(The press release announcing the meeting and the statement of Senator Chafee follow:)

STATEMENT BY

SENATOR JOHN H. CHAFEE

IN

THE SENATE FINANCE COMMITTEE

NON-MARKUP ON THE IMPLEMENTATION OF

THE CANADA FREE-TRADE AGREEMENT

MAY 10, 1988

MR. CHAIRMAN, THANK-YOU FOR THIS OPPORTUNITY TO PRESENT [redacted] OUR IDEAS FOR THE IMPLEMENTING LEGISLATION FOR A HISTORIC FREE-TRADE AGREEMENT BETWEEN THE TWO COUNTRIES THAT ENJOY THE LARGEST TRADING RELATIONSHIP IN THE WORLD.

WHAT A MAGNIFICENT SIGNAL IT WILL SEND TO THE WORLD WHEN THIS AGREEMENT IS RATIFIED, AS I AM CONFIDENT IT WILL BE. THE AGREEMENT RUNS IN TOTAL CONTRAST TO THE PROTECTIONIST FEVER PREVALENT THROUGHOUT THE WORLD. HOWEVER, THE FOUNDATION OF ANY FREE TRADE AGREEMENT MUST BE FAIR TRADE.

WE HAVE HELD SEVERAL HEARINGS TO REVIEW THIS AGREEMENT AND DISCUSS BOTH THE POSITIVE AND NEGATIVE ASPECTS OF THIS AGREEMENT. IT IS NOW THE RESPONSIBILITY OF THIS COMMITTEE [redacted] TO DEVELOP THE PROPER IMPLEMENTING LEGISLATION FOR THIS IMPORTANT AGREEMENT. THIS IMPLEMENTING LEGISLATION MUST MAKE SURE THAT THE UNITED STATES AND CANADA WILL OPEN THEIR TRADE TO EACH OTHER EVENLY AND EQUALLY.

THE FREE TRADE AGREEMENT MUST PROVIDE FOR FAIR TRADE IN ALL AREAS OF AMERICAN COMMERCE. NO ONE SECTOR OF AMERICAN COMMERCE

SHOULD BE SACRIFICED TO MAKE GAINS IN OTHER AREAS OF COMMERCE. THE AGREEMENT MUST LEVEL THE TRADING FIELD FOR EVERYONE INVOLVED ON BOTH THE AMERICAN AND CANADIAN SIDES OF THE BORDER.

I WANT TO SALUTE PRIME MINISTER MULRONEY FOR HIS COURAGE IN PUSHING FOR PASSAGE OF THIS AGREEMENT IN THE CANADIAN PARLIAMENT. THERE HAS BEEN A LOT OF VOCAL CANADIAN OPPOSITION TO THIS AGREEMENT -- AS ALSO THERE HAS BEEN SOME VIGOROUS CANADIAN SUPPORT.

WHILE CANADA IS OUR BIGGEST EXPORT MARKET AND THE LARGEST FOREIGN MARKET FOR OUR GOODS, IT NEVERTHELESS MAINTAINS VERY HIGH TARIFFS IN SECTORS OF SPECIAL INTEREST TO AMERICAN EXPORTERS. CANADA ALSO MAINTAINS A COMPLEX ARRAY OF FEDERAL AND PROVINCIAL NON-TARIFF TRADE BARRIERS, OF LONG SERIOUS CONCERN TO OUR EXPORTERS.

THIS AGREEMENT SEEKS TO REMOVE TRADE BARRIERS ACROSS A BROAD RANGE OF GOODS AND SERVICES, AND IF RATIFIED, WOULD INCREASE THE FLOW OF GOODS BETWEEN THE U.S. AND A COUNTRY THAT IS THE CENTERPIECE OF OUR FOREIGN TRADE.

MY HOME STATE OF RHODE OF ISLAND IS A SUBSTANTIAL TRADING PARTNER WITH CANADA, WITH $593 MILLION IN BILATERAL TRADE IN 1986. IN 1986, RHODE ISLAND RECEIVED IMPORTS TOTALING $465 MILLION FROM CANADA, OR 78 PERCENT OF OUR TOTAL BILATERAL TRADE. RHODE ISLAND EXPORTED $128 MILLION IN PRODUCTS TO CANADA, THUS WE EXPERIENCED A TRADE DEFICIT OF $377 MILLION IN 1986.

MOST OF THIS DEFICIT WAS FROM SHIPMENTS OF FABRICATED MATERIALS, PARTICULARLY PRECIOUS METALS, FROM CANADA TO RHODE

ISLAND. PRECIOUS METALS ACCOUNTED FOR APPROXIMATELY 65 PERCENT ($302 MILLION) OF RHODE ISLAND'S TOTAL IMPORTS FROM CANADA. THESE IMPORTS ARE EXTREMELY IMPORTANT TO THE JEWELRY AND SILVERWARE INDUSTRY IN RHODE ISLAND AND THEREFORE ARE USED FOR MANUFACTURING AND NOT DIRECT CONSUMPTION.

MANY OF THE PRODUCTS EXPORTED FROM RHODE ISLAND TO CANADA ARE SUBJECT TO TARIFFS THAT WILL BE ELIMINATED BY THIS AGREEMENT. THEREFORE, THIS AGREEMENT SHOULD INCREASE THE AMOUNT OF EXPORTS FLOWING FROM RHODE ISLAND TO CANADA AND REDUCE OUR TRADE DEFICIT.

I BELIEVE THAT THIS FREE-TRADE AGREEMENT WILL BE VERY IMPORTANT TO [redacted] RHODE ISLAND, NEW ENGLAND AND ALL OF THE UNITED STATES IN THE COMING MONTHS. THIS AGREEMENT WILL PROVIDE MANY BENEFITS TO RHODE ISLAND AS WELL AS ALL OF THE NEW ENGLAND STATES. THESE BENEFITS INCLUDE OPENING MARKETS FOR OUR MANUFACTURERS, HIGH TECH COMPANIES, AND SERVICE INDUSTRIES, WHILE PROMISING SECURE, TARIFF-FREE ENERGY SUPPLIES.

MY SUPPORT FOR THIS AGREEMENT IS NOT WITHOUT CONCERN FOR SOME PARTS OF THE AGREEMENT, IN PARTICULAR, TWO AREAS THAT ARE VERY IMPORTANT TO [redacted] RHODE ISLAND.

MY FIRST MAJOR CONCERN IS WITH RESPECT TO THE FISHING PROVISIONS IN THIS FREE TRADE AGREEMENT. THESE CONCERNS CENTER AROUND THE FAILURE OF THE AGREEMENT TO ADDRESS THE ISSUE OF GOVERNMENT SUBSIDIES PROVIDED TO THE CANADIAN FISHING INDUSTRY. UNFORTUNATELY THIS ISSUE WAS NOT RAISED DURING NEGOTIATIONS ON THE

FREE TRADE AGREEMENT, WHICH HAS RESULTED IN SOME DISSATISFACTION ON THE PART OF CERTAIN SECTORS OF THE U.S. FISHING INDUSTRY.

HOWEVER, I BELIEVE THE FREE TRADE AGREEMENT CAN BE SIGNIFICANTLY IMPROVED BY ADDRESSING SOME OF THESE ISSUES IN THE IMPLEMENTING LEGISLATION. SPECIFICALLY I AM HOPEFUL THAT LANGUAGE CAN BE INCLUDED TO REQUIRE THE U.S. TO CHALLENGE A CANADIAN REQUIREMENT THAT ALL FISH CAUGHT IN CANADIAN WATERS BE LANDED IN CANADA. MANY NEW ENGLAND FISHERMEN DEPEND ON RECEIVING CANADIAN FISH "OVER-THE-SIDE" WHILE AT SEA. GIVEN THE PERISHABLE NATURE OF FISH, IT IS IMPORTANT THAT THIS TRANSACTION BE ACCOMPLISHED AT SEA. NEW ENGLAND FISH PROCESSORS WHO DEPEND ON CANADIAN SUPPLIES OF RAW FISH COULD BE HARMED IF ALL FISH ARE REQUIRED TO FIRST BE LANDED, AND THEN SHIPPED TO THE UNITED STATES.

ALSO, CONSIDERATION OF THE FREE TRADE AGREEMENT PROVIDES US WITH AN OPPORTUNITY TO DEAL WITH THE IMPORTATION OF LOBSTERS FROM CANADA WHICH DO NOT MEET THE MINIMUM SIZE REQUIREMENTS OF THE U.S. FISHERIES MANAGEMENT PLAN FOR NORTH AMERICA. AT PRESENT, LOBSTERMEN IN RHODE ISLAND ARE PROHIBITED FROM TAKING SMALL LOBSTERS IN THE REPRODUCTIVE STAGE. HOWEVER, CANADA CAN EXPORT THESE LOBSTERS TO RHODE ISLAND, PROVIDING AN INCENTIVE FOR THE RHODE ISLAND LOBSTERMEN TO CATCH SMALL LOBSTERS AND LABEL THEM CANADIAN. ADDRESSING THIS ISSUE WILL HELP PRESERVE THIS IMPORTANT RESOURCE.

MY SECOND MAJOR CONCERN IS WITH THE LACK OF PROTECTION IN THE AGREEMENT FOR THE FUEL OIL INDUSTRY IN NEW ENGLAND. THESE FUEL OIL

DEALERS ARE CONCERNED THAT CERTAIN AREAS OF THE TRADE AGREEMENT DO NOT COMPLETELY LEVEL THE TRADING FIELD BETWEEN THE U.S. AND CANADA IN THOSE INDUSTRIES. THE AGREEMENT DOES NOT FULLY ADDRESS HOW NEGOTIATIONS WOULD BE HANDLED BETWEEN THE U.S. AND CANADA IN THE EVENT, HOWEVER UNLIKELY, THAT THE U.S. IMPOSES AN OIL IMPORT FEE ON ALL FOREIGN OIL.

UNDER THIS AGREEMENT, ANY OIL IMPORT FEE COULD NOT BE APPLIED TO OIL IMPORTED FROM CANADA. THIS WOULD GIVE THE CANADIAN OIL INDUSTRY, AND, IN PARTICULAR FOR NEW ENGLAND, THE CANADIAN FUEL OIL DEALERS A MAJOR PRICE ADVANTAGE. I AM WORRIED THAT THE CANADIAN FUEL OIL DEALERS WOULD BE ABLE TO SELL FUEL OIL IN NEW ENGLAND FOR LESS THAN OUR DEALERS COULD PURCHASE IT AT WHOLESALE. THIS WOULD ALLOW THE CANADIAN FUEL OIL DEALERS TO PUT THE NEW ENGLAND FUEL OIL DEALERS OUT OF BUSINESS.

THE MARGIN FOR WHOLESALE SUPPLIERS OF FUEL OIL IN THE U.S. IS BETWEEN ONE-HALF AND ONE CENT PER GALLON. IF AN OIL IMPORT FEE WERE IMPOSE, THE CANADIAN SUPPLIERS COULD GAIN A 5 CENT OR MORE PER GALLON ADVANTAGE, DEPENDING ON THE SIZE OF THE IMPORT FEE.

THE CANADIAN FUEL OIL DEALERS ARE MOSTLY LARGE CONGLOMERATES COMPARED TO THE SMALL INDEPENDENTLY OWNED AND OPERATED FUEL OIL DEALERS IN NEW ENGLAND. ONE OF THE LARGEST DEALERS IN EASTERN CANADA HAS ALREADY BEGUN BUYING SOME OF THE SMALL DEALERS IN NEW ENGLAND. IF THE CANADIAN DEALERS ARE ALLOWED TO HAVE A PRICE ADVANTAGE IN THE UNFORTUNATE SITUATION THAT THE U.S. IMPOSES AN OIL

IMPORT FEE ON FOREIGN OIL, WE WOULD LOSE MANY OF THESE SMALL NEW ENGLAND FUEL OIL DEALERS TO THE PRICE ADVANTAGE.

THE AGREEMENT CURRENTLY PROVIDES FOR CONSULTATION BETWEEN THE U.S. AND CANADA, IF EITHER PARTY IMPOSES AN OIL IMPORT FEE. HOWEVER, MY HOPE IS THAT WE CAN INCLUDE SOME LANGUAGE IN THE IMPLEMENTING LEGISLATION THAT WILL REQUIRE THESE NEGOTIATIONS TO BE PERFORMED IN AN EXPEDITIOUS MANNER. THESE NEGOTIATIONS SHOULD FOCUS [redacted] ON ELIMINATING THE PRICE ADVANTAGE THAT WOULD BE GIVEN TO THE CANADIAN OIL INDUSTRY UNDER AN OIL IMPORT FEE. ALLOWING ONLY A SHORT TIME FRAME FOR THE NEGOTIATIONS AND THE IMPLEMENTATION OF SOME MECHANISM FOR BALANCING [redacted] THE IMPORT FEE, WILL ALLOW OUR NEW ENGLAND DEALERS TO SURVIVE A SHORT [redacted] PRICE DISADVANTAGE.

RESOLVING THESE ISSUES WILL IMPROVE THE FREE TRADE AGREEMENT, AND STRENGTHEN ITS CHANCES FOR FINAL APPROVAL BY BOTH COUNTRIES.

IN CONCLUSION, I BELIEVE THAT THIS FREE TRADE AGREEMENT WILL EXPAND THE MARKETS FOR BOTH CANADIAN AND U.S. EXPORTS, HOWEVER, AT THE SAME TIME, I WANT TO MAKE SURE THAT THE CANADIAN COMPETITORS OF IMPORTANT INDUSTRIES IN RHODE ISLAND, SUCH AS COMMERCIAL FISHING AND HOME FUEL OIL, ARE NOT GIVEN AN UNFAIR ADVANTAGE. IT IS IMPERATIVE THAT WE DEVELOP THE REQUIRED IMPLEMENTING LEGISLATION FOR THIS FREE TRADE AGREEMENT, WHILE KEEPING IN MIND THE AREAS OF CONCERN TO OUR U.S. INDUSTRIES.

AGAIN, MR. CHAIRMAN, THANK-YOU FOR THIS OPPORTUNITY TO EXAMINE THIS HISTORIC AGREEMENT AND TO DEVELOP THE IMPLEMENTING LANGUAGE NECESSARY TO PUT THIS AGREEMENT INTO OPERATION.

The Chairman. If you will please take your seats and cease conversation? We are now beginning the non-markup of the Canadian Free Trade Agreement.

We have had five hearings on the agreement itself; and on April 18, the Administration submitted answers to written questions propounded by the members of this committee.

So, I think we are as ready to begin this process as as we can be; but before I ask the staff to walk through the agreement, I want to discuss the process that we are about to begin because the fast track itself is often confusing.

I want to be sure in the beginning that we all have the same basic understanding of what it entails.

In effect, what we are doing is formulating recommendations to the Administration on the content of a bill that they will submit to implement the Canadian Free Trade Agreement.

Remember, this agreement is not a treaty; it is an executive agreement and, as such, it is not self-executing and does not in itself have the dignity of law as do treaties.

To become effective, Congress has to pass a bill to implement the agreement. That bill, which the Administration has agreed to hold off--not submitting it until June 1 of this year--will be on a so-called fast track, which means that

once it is submitted, it is not subject to amendment nor to filibustering.

Now, Dan Rostenkowski and I and the leadership of the Senate and of the House have agreed that there is going to be a vote on the bill this year; and I have asked the staff to give to each member a copy of the letter that Jim Baker and Clayton Yeutter sent us on February 17 on this subject, and that has the Administration's commitment on this matter.

Now, this is not the way that fast track usually works. The way it is supposed to work is that we are supposed to have meetings to make those recommendations before the President signs the trade agreement; that is the way we have done it in the past.

That way, if we find that that agreement is unaccepable, the President can go back and renegotiate it; and then we are really a part of the process.

In this case, that agreement has already been signed. Therefore, in this case, the President could have submitted an implementing bill of his own design without further consultations last January; and we would have had to act on it this year.

I must say, under those conditions, I don't think it would have gone any place, either.

But under the exchange of letters, the Administration gave us a chance to make recommendations for the legislation,

in return for a guarantee of a vote on the bill this year.

Of course, if we find we don't like the agreement itself, this procedure gives us no choice but to vote against the implementing bill. Now, that is not the way it is supposed to work, but that is the only way it can work at this stage.

I might add that that new trade bill would prevent this kind of thing from happening in the future, by changing the dates on the fast track, so it doesn't run out of time when the Congress is out of session.

One of the reasons I want to get that trade bill enacted is to correct this type of error in the future. I recognize the limitations of this substitute fast track process, but I recommend that we give it our best shot.

Frankly, I think there is a lot more at stake here than just the Canadian Free Trade Agreement, as important as it is.

If the Administration refuses to put the reasonable recommendations of the Congress in the bill that they submit to Congress, the real danger is not that Congress will refuse to enact their bill. The real danger is poisoning the wealth of the Uruguay Round.

Now, future Congresses are going to study our actions, and we don't want them to conclude that fast track does not adequately protect Congress' constitutional prerogatives in trade. I think the key Administration people understand

this point.

And you can see from the February 17 letter, the Administration is committed, at least to some degree, to take our suggestions; and I take them at their word.

So, I suggest this process should be undertaken with the assumption--until proven otherwise--that the bill we create here will be the bill the Administration sends us after June 1.

Now, let's get to jurisdiction. This agreement brings up questions of changing many domestic laws, some of which are not within the jurisdiction of this committee.

And as recently as five minutes ago, I was advised of one of the other committees doing some changes in that regard.

I intend to discuss this matter with the other committee chairmen--and committee chairman in the plural sense--involved to try to avoid the jurisdictional problems; but I would prefer not to act here on matters not within our jurisdiction. Let's leave that to the other committees.

We get into a question of secrecy on these committee hearings. This agreement is quite lengthy; in some places, it is very technical. And our ability to make changes in the antidumping and countervailing duty laws--trade laws our citizens use 10 times as much as any other trade law--is limited by this agreement.

We are subjected to entirely new dispute settlement mechanisms in this agreement, and these are very important matters, especially since the major trade bill has not been signed into law.

Now, we will have the benefit of the Administration's advice with respect to these matters, and I want those comments, Mr. Ambassador; but I am concerned that since the bill is unamendable, we may inadvertently include a provision in our recommendations without realizing its full implications.

That is the reason for these open hearings and meetings. Often the public can prevent such problems by commenting on these matters. I don't want any surprises on this one.

Therefore, I would like to keep our meetings open as much as we can insofar as national security will allow us to do it. If necessary, we can adjourn back here to the Executive Meeting Room as we did during our markup of the trade bill last year, to discuss things in private that affect the national security.

Now, we get into a problem of offsetting revenues on this bedause this is not a revenue-neutral piece of legislation. The Canadian Free Trade Agreement is a revenue loser.

It may, therefore, be subject to a budget point of order on the floor. I have asked the President what legislation he proposes to raise the revenue that is necessary

for this. I would like that job shared, but so far he has not responded.

I would not propose to take up the issue of revenue gainers unless he wants us to; but I, for one, cannot commit myself to a fast track bill with tax increases in it that this committee has not had an opportunity to review.

Finally, this agreement will not take effect until January 1, 1989; and therefore, President Reagan will not actually administer U.S. implementation of this agreement, except for a very short period of time next January.

What we are really doing here is legislating for the next president. Therefore, we should be reluctant to accept mere assurances from this Administration on how they would administer the current law.

It is not that I don't trust the current Administration; but neither the President nor I even know who that next President is going to be, let alone what the next President intends to do to implement this agreement.

So, rather than such assurances, I urge the Administration to prepare for us--and do it now--a draft statement of administrative action. Now, that is required by the current law, and that will have an impact, I hope, on the next Administration.

Failing that, I would suggest we try as best we can to implement the agreement, the proposals to amend positive law.

In this connection, I understand the Administration's staff has proposed to provide Congress with those portions of the statement of administrative action, only where Congress has a problem with the implementation of the agreement.

Now, all that strategy may help some Senators. Others would be denied a view of provisions of the statement that they might object to during this consulting period.

Unlike legislation which we draft all the time, Congress is not equipped to draft the statement, but we can tell when it is not consistent with our trade policy. I really think it would be best if the Administration would give us the full statement and give it to us this week.

In any event, I encourage members to tell the rest of the committee when they believe a provision in the statement would be helpful to them. If there is something you need on it, let's know it now during this process; and let's try to get it out of the Administration.

Now, as far as the schedule goes, I propose today that we have the staff summarize the agreement for us and the more controversial aspects of its implementation.

Now, tomorrow we are not going to meet because the Administration has a meeting on the House side; isn't that right, Mr. Ambassador?

Ambassador Holmer. Yes, sir.

The Chairman. And you want to be able to concentrate

your people, I suppose, in the one area to discuss that.

So, tomorrow we will not meet in order to allow the Administration to attend a markup on the House side, which is scheduled to run all day. In the meantime, I would suggest that the Administration's staff, the committee staff, and the legislative assistants discuss the agreement with an eye toward recommending noncontroversial implementation provisions to us.

Then, we can begin filling in the areas of dispute, and we have given some thought to those; we can start on those next Thursday. We will try to go to conference with our House counterparts the week of May 23; and that is a pretty ambitious schedule for this committee with all the other things we have to do.

Now, with that, are there other questions? Yes?

Senator Packwood. May I ask a question?

The Chairman. Yes, of course.

Senator Packwood. Having been burned and scarred a bit by this multicommittee process we went through with the trade bill, does the Administration deal with each of these other committees on the subjects of their jurisdiction and with us on ours; and we have no connection with the other committees?

The Chairman. What I am trying to do, Senator Packwood, is I am trying to get the leadership to let us, in effect,

centralize it in this committee, but the other committees would take care of their part--and ask them please not to spill into other jurisdictions, if they will--send it to us; and we will try to put it in the recommendations to the Administration.

Now, that is what I am trying to get done, to try to get some coordination out of this.

Senator Chafee. Mr. Chairman, you mentioned the loss of revenue and this possibly being subject to a point of order.

The Chairman. Yes.

Senator Chafee. I must say that I was surprised at that. First, is there some estimate of how much revenue is lost by this, say over a three-year period; or are you doing it in a one-year period?

The Chairman. Mr. Lang?

Mr. Lang. The 60-vote point of order would arise with respect to fiscal year 1989 if the budget conference report were accepted before the Senate voted on the implementing bill. So, the one-year cost of the bill would be the most important thing.

From Administration estimates, we believe that the cost of the revenue losses in the first year would be about $140 million, maybe a little less--$130 or $140 million.

The Chairman. Mr. Ambassador, would you care to comment

on that, on the estimate?

Ambassador Holmer. Yes. We have asked OMB to look into this question to make sure that we address the concern that you raised in your letter to the President.

Preliminarily, they have advised that they believe a point of order would not be warranted because the revenue totals in the President's budget, which are identical to the totals in the budget resolution, they say already take into account the effects of the agreement.

I want to have a chance to pursue that further with them, and I am sure that the President or Director Miller will be back to you in writing on that.

The Chairman. I have been given contrary advice on that, but I want very much to get the answer from the President.

Senator Chafee. I must say, Mr. Chairman, that is rather a bombshell, to think that the fast track procedure can be held up by a point of order, which requires a 60-vote margin. I am surprised at that.

The Chairman. Are there further comments?

Senator Baucus. Mr. Chairman?

The Chairman. Yes, Senator Baucus?

Senator Baucus. Mr. Chairman, at the appropriate time, I am going to be urging the Administration in drafting implementing language to include a provision addressing

subsidies. I think it is important that we, as much as possible--that is, the Congress and the President--agree on implementing language so that we can show to Canada and to the world that we Americans can govern.

And I think we can reach closure much more likely, the more we can agree on a provision that forces Canada to address its subsidy protectionism. This agreement goes a long way in reducing tariff barriers; it does not go at all toward reducing Canadian subsidies, which are much larger than American subsidies.

I would hope that the Administration would accept that amendment. I hope it will be in the nature of a noncontroversial suggestion to the Administration; and if so, I think the Administration will find that there will be much, much more support in the Congress for fast track approval of the language.

I would hope that when I do suggest that language, at that time the Administration would indicate its willingness to work with us and also eventually agree with it.

The Chairman. Yes, Mr. Ambassador?

Ambassador Holmer. Mr. Chairman, if I could, we want to have a chance to work with Senator Baucus on that and with all of you on other issues. I would just like to emphasize a couple of things.

The first is: We meant every word that was included in

that February 17 letter; and we intend to live up to the spirit of that letter, and we hope that we can come as close as possible to simulating the normal legislative exercise as we go through this.

And we want to try to address concerns with respect to wheat, or fish and potatoes, or subsidies, or plywood, or lead, or uranium, or corn --

(Laughter)

Ambassador Holmer. I think I have probably hit them all.

Senator Durenberger. You did it. You did it.

(Laughter)

Ambassador Holmer. And we will be working as much as we can, Mr. Chairman--nights and weekends--to try to do it in a cooperative way.

Second, the Statement of Administration Action, you asked if you could have it this week. My staff implores me to give them the weekend to be able to complete that; but if I could commit to you on Monday on a confidential basis, we will be able to get that Statement of Administrative Action to you.

And last, we look forward very much to working with your staff to try to work out the noncontroversial items and get those to the committee just as soon as possible.

The Chairman. Monday will be fine, Mr. Ambassador.

I am not sure about confidentiality, but we will talk about that, too.

Ambassador Holmer. All right. Thank you.

The Chairman. Any further comments?

(No response)

The Chairman. If not, Mr. Lang?

Mr. Lang. Mr. Chairman, the document I will be working from is dated May 10, 1988. It is a thick document called "The United States/Canada Free Trade Area Agreement Implementing Legislation."

The Chairman. This one here, Mr. Lang?

Mr. Lang. Yes, sir. The left column of the document summarizes the provisions of the agreement, and the right column of the document summarizes current law and practice.

As far as possible, we have prepared the document in coordination with the staff of the Ways and Means Committee so that, as they proceed, we will be acting on comparable provisions.

For example, on the first page under current law and practice, we have set out not only what is required for a free trade agreement to enter into force--or any trade agreement--that is, the Administration at this stage has to submit an implementing bill, a Statement of Administrative Action, and attached materials, and then have the implementing bill enacted into law.

We have also set out for you at the bottom of page 1, the kinds of implementation provisions that you have used in the past for similar trade agreements.

So, that is the way the spreadsheet works.

The first important provision to take up, I think, unless there is discussion about the approval language, is on page 4 of the spreadsheet, called "Extent of Obligations."

The agreement provides that the parties ensure that necessary measures be taken to give effect to the provisions, including their observance by State and local governments.

The 1979 Act referred to here, of course, is the law that implemented the agreements in the Tokyo Round. IFTA refers to the Israel Free Trade Area Agreement, which was also on the fast track.

Both of them provide that, in the event of a conflict between a U.S. statute and a provision of a trade agreement approved by Congress, U.S. law--that is the statute--prevails. And both acts provide for necessary regulations to be put into effect with a time limit.

The next provision I want to point out to members is on page 5, "The Rules of Origin." These are important because the benefits of the trade agreement with Canada apply only to goods that are in the vernacular "made in Canada." If something simply passed through Canada, it is not eligible for the benefit, and similarly in reverse.

The significance of the Rules of Origin issue here is that the agreement involves a change in the standard U.S. rule of origin, which is called "substantial transformation," a test that has been administered by the courts for many years.

This rule of origin depends on enactment of the harmonized system; that is the system under which tariff classifications all over the world would be standardized so that a product would be described the same in every country's tariff schedule.

Essentially, the way this rule of origin works is that the two countries have agreed on when a product changes form substantially enough to create origin. So, essentially, the way the rule works is: If you change from one chapter heading to another in a harmonized system, you have created origin in the country where that change occurred.

Now, the reason I bring the subject up is that the harmonized system is not in force for the United States; it would be put into effect in U.S. law by the trade bill, which has passed Congress but hasn't been signed yet.

If the trade bill doesn't become law, probably what you will have to do is create some way of using current law in the United States to create origin here and allow the harmonized system of origin to go into effect in the future.

If the trade bill becomes law, assuming that you agree with the basic principles of what the Administration has agreed to here, you can just put it into effect under the trade bill.

So, I bring it up not only because origin itself is an important matter, but because how you implement it is going to be a difficult question.

Senator Wallop. Mr. Lang, could I ask a question?

Mr. Lang. Yes, sir.

Senator Wallop. Under the harmonized system, is that something that GATT has generally agreed to--I mean, that the GATT nations have generally agreed to?

Mr. Lang. The GATT nations have agreed to it. It was actually negotiated at something called the Customs Cooperation Council; and most countries put it into effect on January 1, 1988; probably all the major trading partners have already put it into effect.

But because it was on the trade bill, because the trade bill was not acted on last fall in the budget crisis, it is on the trade bill now. And under the trade bill, it would go into effect on January 1, 1989, which is the date on which this Canada agreement would go into effect.

Senator Wallop. Thank you.

Mr. Lang. Yes, sir. The next matter I would point out, although it is probably not a difficult implementation matter,

is on page 8, the "Tariff Elimination Provisions."

The important thing to notice about the tariff elimination provisions is that they do not all go into effect immediately. Items 1, 2, and 3 in the left column show you that some rates of duty are eliminated immediately, some in five equal cuts of 20 percent a year, and some--that is the most import-sensitive products--in 10 equal cuts over a 10-year period.

So, in implementing this provision, you may not want to simply enact the tariff cuts, and the Administration may want to speak to this subject. You may want to give the President some kind of authority to proclaim the cuts because they don't all go into effect immediately.

So, that is another implementation problem.

On page 9, I just want to point out Article 403 relating to Customs user fees. The Customs user fees now apply to goods imported from Canada.

Senator Chafee. May I ask a question on that last one, Mr. Chairman?

The Chairman. Senator Chafee?

Senator Chafee. Mr. Lang, I don't understand what you were saying on giving the President authority. What we are reading here in the left-hand column, as I understand it, is the agreement. Is that correct?

Mr. Lang. Yes, sir.

Senator Chafee. All right.

Mr. Lang. A summary of the agreement.

Senator Chafee. All right. So, if this is the agreement, or a summary thereof, and it says (a), (1), (2), (3), and goods described in Annex, Category B and so forth, and come down to 20 percent for five years, then how can you say to us that we can change that?

Mr. Lang. Oh, I am not suggesting you can change that. I am saying the question is whether you want to put those into positive statutory law right away, since they are a commitment of the United States, or whether you want to do as you have in the past and allow the President to proclaim those changes as they kick in?

You could enact a law that just does what is in the left-hand column here, with no proclaiming authority to the President; but as you can see in the second paragraph on the right-hand column, when you were faced with a similar situation in the Israel Free Trade Area Agreement, instead of putting the provisions into positive law, you authorized the President to proclaim the changes as they came about.

And I am assuming the Administration would --

Senator Chafee. I don't want to belabor this; it just seems to me is what we are doing is--and this is going to come up time and time again, I suppose--we are kind of tiptoeing through what we can change and what is "writ in

stone" as a result of the agreement itself.

Mr. Lang. I am not suggesting that you would want to change the schedule of duty reductions in any way. It is a question of whether you do it yourself or you allow the President to make the changes.

I can certainly understand the position that you just want to do it yourself in positive law and get it done.

Senator Chafee. Thank you.

Mr. Lang. Yes, sir.

Senator Wallop. The principal problem with that is later inflexibility, is it not? I mean, every time there is something that takes place between the two countries, you have to go back and do it statutorily?

Mr. Lang. Right. So, I pointed out the one about the Customs user fees. That begins to phase out in 1990, over a five-year period.

I should just mention the drawback in foreign trade zone provisions. Essentially, both countries agree to end these programs with respect to each other's imports in order to avoid investment decisions. Drawback is a system under which the United States refunds duties to someone who exports a product previously imported.

If you didn't eliminate the drawback, the argument is you might cause people to invest in one country or another in a way they wouldn't otherwise naturally do.

The implementation of it is pretty much a technical matter.

On page 12 is something that will require some legislation, and it relates to the rule of origin issue. Here the parties have committed themselves to require an elaborate system of assuring the origin of products by submitting written statements certifying where the product originated and under what theory the origin is in the country for which it is claimed.

This will require amending a number of Customs laws so that the service can not only demand this record-keeping requirement, but penalize people who fail to meet the requirement and, if necessary, punish them.

There is a provision on page 13 in Annex 407.5 about eliminating U.S. embargoes. This will apply to the lottery ticket embargo that now exists in the United States. It is not a major item, I don't think.

On page 18 is a provision in the agriculture section that might be of interest to some Senators. The second paragraph in Article 701 describes the provisions prohibiting either party from introducing or maintaining an export subsidy on its agricultural exports to the other party.

I don't think the Administration anticipates any change in U.S. law with respect to the provisions.

Senator Wallop. Could I ask what that does to affect in

any way the export subsidies that currently take place with the Soviet Union?

Ambassador Holmer. There is no change, Senator.

Senator Wallop. That is a shame.

Mr. Lang. On page 21, is a provision concerning meat that would appear to affect the Meat Import Act of 1979. Article 704 prohibits either party from introducing quotas on meat imports from the other party, and the Meat Import Act does set up a countercyclical formula that restricts the importation of certain meats into the United States.

The Chairman. You are speaking of the current law, are you not?

Mr. Lang. Yes, sir. I assume the Administration believes some change in the current law would be required there.

Ms. Bello. Yes, that is correct, Mr. Lang. The current law does specify two figures which cover global imports. Current law, the Meat Import Act of 1979, establishes an aggregate import level which trips the quotas in the first place and then goes on to establish a minimum quota level if the quotas are tripped.

In both instances, we would have to revise those downward to exclude the amount of meat imports from Canada over that base period that was used for calculating those figures in the first place in the 1979 Act.

Senator Wallop. Could I ask a question on that? I was a partner with Senator Bentsen on that a long time ago.

The Chairman. Yes.

Senator Wallop. What happens under the rules of origin if, say, Canada were to import large quantities of live Australian beef and then, having butchered them, would they or would they not be subject to the countercyclical formula?

Ms. Bello. That would be a question of the rule of origin. The issue under Chapter 3 for tariff purposes would be whether or not they were sufficiently transformed to become effectively a Canadian product. For purposes of this chapter, since we are talking about a quota, the issue is: Would this count under the normal GATT rules effectively as bilateral trade in goods?

The Chairman. Alan, as I recall, what we did was when prices were high here and we were in short supply here, we allowed an increase of imports of beef; and when prices were low here and we had an oversupply, we closed down or slowed down the imports.

Now that is the way it worked. Would this be changed by the Canadian agreement or not?

Ambassador Holmer. No. Our understanding is it would not be changed.

Senator Wallop. It is my understanding that that is what

you just were saying, that it would be changed. What is it that you did say?

Ms. Bello. The only change that is required is that, because in normal circumstances we will be exempting Canadian meat imports from the application of this law, we will adjust downward the figures that would be required to trip the quotas.

Otherwise, it would be unfair to U.S. meat producers because you would still have this very high aggregate import level that would take into account Canadian goods.

The Chairman. I see.

Senator Wallop. I am sorry. I appreciate that. Thank you.

Senator Baucus. May I ask: What is that amount?

Ms. Bello. The amount in the 1979 Act is $1,204,600,000. Our proposition is that the amount from Canada that was taken into account in 1979 was $57 million; and therefore, we propose that the number be changed to $1,147,600,000.

Senator Baucus. 1979 is the representative year?

Ms. Bello. 1979 was the year of the Act. The numbers in the 1979 Act were formulated over a base period; I am not sure precisely what it was. It was something like 1974 to 1977 or 1978.

Senator Wallop. That was five years.

Senator Baucus. I am wondering, too, because I guess I

didn't hear the answer to Senator Wallop's question, that is, what about live Australian cattle shipped to Canada, then fed, butchered, packaged, in Canada and shipped to the United States?

Ms. Bello. The FTA doesn't change anything in that regard, point one. Point two is that, even under the FTA, if we find that we need to include Canadian imports to prevent frustration of our otherwise global measures, then we have retained the authority to do that in our unilateral judgment.

Senator Baucus. So, as I understand it, you say the FTA does not address that situation? That was point number one?

Ms. Bello. Point number one is the FTA does not change that situation. Under current law, if we have import quotas on one type of meat product and then they are further processed into another type of meat import product, you have that same question under current law as to whether or not those further processed products are subject to import quotas under the Meat Import Act of 1979.

There is no new issue under the FTA in that regard.

Senator Baucus. I see. So, transshipment or displacement are issues that are already covered under current law. Is that correct?

Ms. Bello. Yes, sir; and the FTA makes no change in

that regard. However, those issues would be disposed of under current law, and that is the way they likewise would be treated under the Free Trade Agreement.

Senator Baucus. Has this really been tested? Is there a case where a country has been exempt from the Meat Import Act in the past, which would tend to test that issue, or because so many countries are already covered under the Meat Import Act, that issue has not been sufficiently tested?

Ms. Bello. Most of our experience under the Meat Import Act has been through the negotiation of agreements with other countries, rather than the imposition of quotas. We did briefly apply quotas for a time, and then based upon revised numbers, the aggregate import level was no longer an issue.

Senator Baucus. That is not the issue I was addressing; that is another matter. I was not asking whether the quota was ever triggered. I know it was only triggered in one quarter in 1979.

Ms. Bello. Yes. I did want to say no country has been exempted under the Meat Import Act.

Senator Baucus. That is correct. So, this question really has not been tested.

Ms. Bello. That is correct, Senator.

Senator Baucus. Does the industry have any problems

with this?

Ms. Bello. We have consulted with them, and they have no objection to this provision. The important thing here to stress is that there is the safeguard provision in the article of the agreement itself, that if we find that there is frustration through Canadian imports or of the global actions that we otherwise taken under the 1979 Act, then we can include Canadian imports as well.

Senator Baucus. All right. Thank you.

Senator Daschle. Mr. Chairman?

The Chairman. Yes, Senator Daschle?

Senator Daschle. I have a question I would like to ask of Jeff, going back to page 18. I thought we would probably be dealing with it later, and it doesn't appear that that is the case.

It relates to the paragraph near the bottom, where it says: "The agreement prohibits either party from introducing" --my concern here is the next phrase--"or maintaining any export subsidy on any part of the agricultural export of the other country."

From the hearings we had, the impression I had is that this agreement does not address grain which comes through the Thunder Bay ports; and if that is the case, in the case of small grains, that is about 65 percent of the current shipment of grains from Canada to the United States.

Those crops are not covered by this agreement, which seems to be in conflict with the statement that is listed here in the spreadsheet.

Mr. Lang. If you look at the top of page 19, you will see the transport rate exclusion at the top of the page. Maybe the Administration can explain the relationship between the two provisions.

We have essentially just paraphrased what is in the agreement.

Senator Daschle. All right.

Ambassador Holmer. The issue here, Senator Daschle, was the grain that received the subsidy under the Western Grain Transportation Act, is an export subsidy.

Senator Daschle. Right.

Ambassador Holmer. And the Canadians are going to get rid of that under the agreement. The subsidies that are provided going to the east through Thunder Bay are domestic subsidies, and it was agreed between us and the Canadians that we were not going to address our domestic subsidies or their domestic subsidies in the agricultural arena as a part of the negotiations.

So, that is why Thunder Bay is not covered by that provision.

Senator Daschle. It is a very significant factor, obviously, when you consider the volume here. The volume in

the case of wheat, for example, is about 65 percent of all Canadian grain goes through Thunder Bay. So, as a result, we have only eliminated the subsidy on about 35 percent of the grain under the agreement at this point.

But I do appreciate the clarification.

Mr. Lang. Mr. Chairman, on page 23 is a provision that Senators from sugar States will be interested in. It prohibits the United States from introducing an import restriction on Canadian goods containing 10 percent or less sugar by dry weight.

There was concern in the past about what are called "sugar blends" being imported from Canada. Sugar imports are controlled by Section 22 of the Agricultural Adjustment Act, which the Agriculture Committee is going to be looking at; but it does affect the tariff schedule's headnotes, or may affect the tariff schedule's headnotes, on this subject; and sugar Senators may be interested in the provision.

On page 29, I just want to point out the energy provisions, that is, the heart of the energy provisions, which are actually in Annex 902.5.

Near the bottom of the page, you can see the three specific changes, going over onto page 30, in the laws involved. The 161(V) of the Atomic Energy Act is a statute presumably within the jurisdiction of the Energy Committee.

The Canadian requirement is number two, and the provision

on allowing 50,000 barrels of Alaskan North Slope crude to be exported to Canada through a lower 48 port is actually an amendment to the Export Control Laws.

So, I am not sure any of that will affect actions the committee wanted to take, but I know there is a lot of interest in energy.

Senator Wallop. On the energy issues?

Mr. Lang. Yes, sir?

Senator Wallop. It is my understanding--actually, it has been my experience that the Administration has, with regard to uranium, been working with Senator Domenici and others, trying to figure out means by which to at least soften the immediate effects of this. And I just wanted to express my appreciation for that, and I look forward to some products from those efforts.

Ambassador Holmer. Yes, Senator Wallop. Obviously, we can't do anything in the implementing legislation that would be inconsistent with the agreement; but to the extent that it is possible to take actions that would address some of the conderns that you and other Senators have, we would like to try to do that during this process.

Senator Wallop. Thank you.

Mr. Lang. I might also point out that on page 32, there are two provisions that are also going to be important to the energy sector.

First, Article 906 allows existing or future incentives for oil and gas exploration, development and related activities to maintain the reserve base for these energy resources.

So, those kinds of provisions are explicitly permitted by the agreement; and in Article 907, there are some limitations on the situation in which either party can limit imports from the other for reasons of national security.

We probably should have reflected--and we will in a future edition of the spreadsheet--current law on national security in the right-hand column. I just wanted to bring it to members' attention that Section 232 of the Trade Expansion Act authorizes the President after an investigation to take action he deems is appropriate to adjust imports that threaten to impair the national security.

And that provision has been used with respect to oil imports in the past. The trade bill retains that standard in current law, but it does place time limits on the Commerce Department investigation that leads to the presidential determination and on the period of time for the President making the determination.

So, there is a relationship to current law in these national security measures.

On page 33 are the provisions on trade and automotive goods. The United States, of course, already has an agreement with Canada on trade in automotive goods, and this agreement continues those provisions in effect.

I might say, in supplementation of what is in the right-hand column here, that the auto pact with Canada actually consists of an agreement between the United States and Canada and some undertakings between the government in Canada and the companies involved.

In any event, the provisions continuing on to page 34 and 35 relate to the auto agreement. One that may be of special interest to the committee is Article 1004, The Select Panel. This article provides for the establishment of a panel to assess the state of the North American industry and proposed measures for improving the situation in auto trade.

Some members have told us that they are interested in legislating specifically on things like the composition of the panel and when it has to report and so on.

Senator Wallop. Mr. Lang, would anything prevent us from doing that at some future time, if we did not at this time?

Mr. Lang. Certainly nothing constitutionally would. As far as the agreement goes, I don't see any reason.

Article 1005 may be an important provision. It provides

that the FTA rules of origin--this chapter change business that I described earlier in the meeting--applies to all imports of Canadian automotive products.

The auto pact rule of origin is a 50 percent of invoice price rule of origin.

Now, on page 36 begin some of the most important trade provisions relating to what is called the "escape clause," or Section 201.

The first thing to keep in mind is --

Senator Chafee. Mr. Lang, could I ask you one question?

Mr. Lang. Yes, sir.

Senator Chafee. On the auto business, what is the situation when Canada imports a foreign car--say a Yugo--and then exports it to the U.S.? What are the requirements there?

Mr. Lang. Under current law--and the Administration may want to correct me--it is not a Canadian origin vehicle unless 50 percent of the invoice price value was added in Canada. So, it would not get duty-free treatment in the United States.

Senator Chafee. That would continue to be the law?

Mr. Lang. Yes.

Ms. Bello. In fact, the law will be stricter in this regard because the new 50 percent rule of origin is based only on the cost of materials and direct processing. It

excludes profits and administrative expenses. So, it is a tougher rule of origin.

Senator Chafee. Thank you very much.

Mr. Lang. Now, the first point to make with regard to the escape clause, I think, is that you have essentially the same problem here you have with respect to the harmonized system.

The trade bill has not gone into effect; and so, it may be a little more complicated than it would be because the harmonized system is out there as an international agreement, and you can take account of it even if the United States hasn't yet adhered to it.

But the escape clause changes that are in the trade bill are not inconsistent with any international agreements, but they are not out there in an international sense.

So, you have to decide whether you are legislating to amend the trade law or to amend current law.

Now, there are two types of things that this provision does--sort of two tracks. First, if the imports from Canada are themselves a cause of serious injury in the United States, you have a provision that allows the United States to slow down or stop the rate at which it is making duty reductions with respect to imports from Canada; or it can even raise the rates of duty back to the levels where they are now, called the "most favored nation rate," or MFN rate.

But under that bilateral track, you can't raise them above that level.

Also, the causation standard is a little softer on this, what I call, "bilateral track" than it is for international trade. On this track the standard is that the imports contribute importantly to serious injury in the United States.

That is the kind of standard you use, for example, with respect to deciding whether a worker is entitled to trade adjustment assistance. It is a relatively weaker causal link between the imports and the serious injury.

Now, there is also a second track, and that is represented by the problem in which the United States is taking regular 201 action, which under the GATT must be on a global basis. What do you do about Canada, given the fact that we have a free trade area agreement with Canada?

These provisions, which are reflected on page 37 and Article 1102, say that if imports are substantial and are contributing importantly to the serious injury thereof--the serious injury to the domestic industry--then the United States is to exclude Canada from the action unless that would undermine the effectiveness of the global action.

So, you have two kinds of amendments to consider with respect to Section 201 here--the global and the bilateral.

There is a Government procurement provision on page 40,

which lowers the thresholds for application of our "Buy America" provisions.

This is a matter that was handled by the Governmental Affairs Committee when the Government Procurement Code was adopted in 1979, and we would assume that the committee might not get into the matter; but in any event, it is an important provision and I wanted to bring it to members' attention.

The Chairman. Let me be sure I understand that. Would you go through that one again?

Mr. Lang. Yes. Under the Government Procurement Code, the United States agreed not to apply its existing "Buy America" preferences to goods from other countries that signed the Government Procurement Code, with two limitations.

The first limitation was a dollar threshold. Below the dollar threshold, we could continue to have a preference.

The second limitation was that, in signing the agreement, all of the countries involved submitted lists of agencies, departments, ministries, and other governmental activities that would be subject to the requirement. If it wasn't on the list, you could continue to have a "buy national" preference.

So, the real negotiation in the Government Procurement Code was what was on the list and what was not on the list.

What this agreement does, as you can see at the top of

page 40 in the first paragraph under Article 1301, is to eliminate the "Buy American," "Buy Canadian" restrictions on entities covered by the Code between the Code minimum threshold, which has been floating up with inflation--it is now $171,000--down to an agreement threshold of $25,000.

So, that is the change.

I should just point out, beginning on page 41, the services provisions of the bill. I don't know that you would want to get into these provisions--a wide range of services is covered--except for transportation services.

Future measures are covered; and on page 43, you can see some of the sectoral annexes. See Annex 1404 near the top of the page, clarifying the application of the agreement to certain sectors that got involved in the negotiations and asked to be reflected.

Article 1405 is an interesting provision. It says: "The parties shall endeavor to extend the obligations of the chapter by negotiating and implementing modification and elimination of measures and future sectoral annexes."

Like so much of this agreement, I think you will find this recurring. You can see it automobiles. You will find 16 or 17 places in which the agreement anticipates a future negotiation of some kind. It applies in the area of subsidies, for example.

The implementation question for the committee will be:

Do you want to give the Administration some guidance in those areas? Or do you just want to give them some kind of general negotiating authority?

In the trade bill, for example, you have some fairly explicit negotiating objectives set out; and while the negotiating objectives in this context would not be strictly required in order to carry out the agreement from the United States' point of view, if there are objectives that the committee would like the Administration to take account of and if it wants to narrow the authority so that it is used only for explicit purposes, I think you are going to have to go beyond mere implementation in order to accomplish that result.

Since finance is a Taxation Committee, at the top of page 44, I might just point out Article 1407. I don't understand that it requires any implementation.

The next provisions, Mr. Chairman, that I think it would be helpful to discuss are the institutional provisions, which begin on page 50. These provisions are important because they relate to the way in which disputes in general would be resolved under the agreement.

You might just look at the top of page 51. You see how the commission is composed. It is the principal representative of each party, meaning each country, "shall be the cabinet officer or minister primarily responsible for international

trade or their designees."

You probably will need to specify who you want to serve in that position.

And then, beginning with Article 1803, you can see the process of disputes resolution, notification and consultation, and so on. There are some provisions in this agreement that are tighter than the way disputes resolutions operate in the multilateral framework at the GATT in Geneva.

For example in Article 1806, there is an arbitration provision. If the commission hasn't resolved the dispute within 30 days after taking it up, then this agreement seems to require that it defer the dispute if it includes an escape clause action to binding arbitration. And if it involves something else, it is free to refer the matter to binding arbitration.

And then, there is a procedure for forming panels in Article 1807, and these also have time limits on them; and it is also prescribed in the agreement that the panelists be drawn from a roster, which is also a tighter provision than you have under international law.

And on to page 54, you can see some fairly tight time limits and procedures for handling disputes resolutions.

I bring the question up again because it will relate to policy already adopted by Congress in the trade bill. You have some Section 301 provisions with regard to the

powers and authority of the President and the USTR in resolving international disputes that involve a trade agreement.

But if you assume current law stays in place, and that is what you are amending when you are doing the Canada provisions, then you have to decide whether you want to put the trade bill provisions or some other provisions into the law since you may or may not have the trade provisions in effect with respect to the Canada agreement.

So, I think that is going to be a policy decision that you are going to have to consider when you get into markup of this.

On page 56 begins a description of the binational panel process for resolving disputes in antidumping and countervailing duty cases. This has a lot of notoriety and I expect most members are familiar with it.

Generally, the idea is that, where the United States Government takes administrative action under the antidumping and countervailing duty laws that involves an importation from Canada, those matters which are now reviewable in the Court of International Trade in New York and are then appealable to the Court of Appeals for the Federal circuit here in Washington would no longer be reviewable in the Federal courts.

Actually, that isn't quite accurate. If they are not

reviewable in the Federal courts, if a person entitled to seek appeal doesn't timely seek the appeal before the binational panel, the period of time is 30 days.

So, as I understand the agreement, if a person aggrieved of Federal action in an antidumping or countervailing duty case fails to petition for relief before the binational panel within 30 days after it acts, that ends the jurisdiction of the panel; and that person is then free to go to the Federal courts.

I believe that is the way it works.

Ms. Anderson. The way it works is that, if someone wishes to go to a court, they are to give notice to all other parties to the proceeding 10 days before the end of the 30-day period for asking for panel review.

At that point, everyone involved in the proceeding would know that a party wished to go to court; and if they didn't care about that, the case would proceed to go to judicial review under current law.

If, on the other hand, the party to the proceeding wished the review to be in the binational panel, they could so state at that time; and the review would thereafter be in the panel rather than in the U.S. or Canadian courts.

Mr. Lang. All right.

Senator Chafee. The aggrieved party can make up his or her mind right in the beginning that they are going to go

to the Federal court and give that notice 20 days after they are into these proceedings. Is that correct?

Ms. Anderson. That is right.

Mr. Lang. I think it is 20 days after final Federal action, whatever the appealable Federal action is. It is not 20 days after the beginning of the administrative proceedings. Isn't that right?

Ms. Anderson. That is right.

Senator Baucus. Under what circumstances might one prefer to go to court rather than the panel?

Ms. Anderson. It is hard to speculate on how these cases might work out in the future, but it is certainly conceivable to me that a case which might arise which is particularly controversial on either side of the border; and the opposing parties simply don't care if it proceeds in court rather than the panel.

But we will have to wait and see how that works out.

Senator Chafee. The virtue of the panel must be greater speed; isn't that right?

Ms. Anderson. Yes, that is right. The way the panel procedures are set up, normally a panel decision would result within 315 days of the initiation of the panel process, which is considerably faster than the usual court decision.

Senator Baucus. Is it true, as a practical matter as

well, that if either party requests that it go to a panel, it does?

Ms. Anderson. Yes.

Senator Baucus. That is, neither one can control the other's decision to go to the court rather than the panel?

Ms. Anderson. That is absolutely right.

Mr. Lang. Now, because of this provision, we have discussed with the Administration ideas which they will want you to consider, in effect, preventing virtually any case that goes to a binational panel except one raising constitutional issues from getting back to the Federal court system, which is their obligation under the agreement.

And the provisions for the panels are set forth in the agreement. One implementation question will be whether the committee wants to specify anything about who is eligible to be on panels, how long they can serve.

You will have to do some things, like paying expenses and that sort of thing.

On page 58 are reflected some provisions about the freedom of Congress to deal with future changes in antidumping or countervailing duty laws. It is the last paragraph that begins at the bottom of the page, and you can see that each party reserves its rights to change or modify dumping or countervailing duty laws. "AD" means antidumping, and "CVD" is countervailing duty. This is

subject to the provisions on page 59.

The Chairman. Let me ask you a question here. Why does it provide that a majority of the panelists must be lawyers?

Mr. Lang. I had nothing to do with it, Mr. Chairman.

(Laughter)

Mr. Lang. That is a question for the Administration.

The Chairman. Mr. Ambassador, why?

Ambassador Holmer. I would like to introduce Jean Anderson, who was not introduced before. She is the Chief Counsel of the International Trade Administration of the Commerce Department and is the one who had responsibility for negotiating this part of the agreement.

The Chairman. And she is a lawyer.

(Laughter)

The Chairman. All right. Let's see if you can explain this.

Ms. Anderson. I understand that this may not be credible, but I wasn't looking out for my own profession. We did have many consultations with private industry between October, when the elements of the agreement first were announced, and the completion of the negotiation on these provisions for a binational panel process.

The response we got from the private sector industries who have used our antidumping and countervailing duty laws,

or who think they may wish to, was virtually universally a concern that panelists should be lawyers because the panel, under the agreement, is charged with the limited task of replacing, in effect, what the Court of International Trade does in reviewing the administrative record of the Commerce Department or the International Trade Commission and deciding--based solely on that administrative record--whether in a U.S. case U.S. law was properly applied.

The panel has to apply the same standard of review that the Court of International Trade would have applied and so on. And, as I think you all know, these are fairly esoteric laws, our antidumping and countervailing duty laws.

For people who haven't been in the business of dealing with them for quite a few years, they are really quite strange animals.

The Chairman. They have been written by lawyers.

(Laughter)

Ms. Anderson. The idea was it would be helpful to have people on the panel, both who were familiar with those laws and familiar with the general legal principles that the panel would also be required to apply in replacing judicial review in the courts.

The Chairman. If you say so, all right.

(Laughter)

Mr. Lang. Mr. Chairman, on these provisions on retention of domestic dumping and countervailing duty laws, I don't know that there is anything you need to do to implement them; but they would affect the committee's freedom to legislate in that area in the future.

At the top of page 59, you can see four conditions listed on legislating in this area. The first one is that any amendment "shall apply to goods from the other party only if that application is specified in the enactment."

So, apparently in the future, if you were to change the antidumping or countervailing duty laws, they would be interpreted not to apply to Canada--and I am not sure how this provision would be implemented in statutory law--unless you went ahead and said that that is the way they are to be applied.

There have been provisions in American law like that, creating kind of presumptions about how future enactments will be interpreted.

Item 4 is also interesting. It says that an amendment to the law is okay under the agreement.

If it is not consistent with the GATT, the dumping Code, the subsidies agreement; or this language down at the bottom, which I actually want to read from the agreement itself.

"Future enactment in the dumping and countervailing duty laws is acceptable as long as it is consistent with

the object and purpose of this agreement and this chapter," and then it says, "which is to establish fair and predictable conditions for the progressive liberalization of trade between the two countries while maintaining effective disciplines on unfair trade practices, such object and purpose to be obtained from the provisions of this agreement's preamble and objectives in the practice of parties."

I wasn't there when this was negotiated, but I would guess that that is very carefully drafted language.

And on page 60, in Article 1903, there is a procedure for reviewing statutory amendments so that a party can request in writing that another party's amendments to the dumping/countervailing duty laws are subject to review for the reasons given here.

And on page 60 is a detailed system for remedying provisions that are not consistent with the agreement. There is a time period placed on action to change an amendment to American law that isn't found satisfactory under this procedure.

On page 63, at the bottom of the page is an important provision concerning the jurisdiction of the panels that will relate to what you do here.

It says the "panel shall apply the same standard of review and the same general legal principles as a court of the importing party otherwise would apply to a review of

determination of the competent authority."

The question here is not only one of how to implement but also one of jurisdiction. There are a pair of rules dealing with the appeal of dumping and countervailing duty actions to the courts.

In the Customs laws of the United States are specified what is an appealable order, how many days you have, and so on. In the judicial code is specified the jurisdiction of the courts involved to hear these matters, and other matters that would be appropriate for the judicial code.

The dumping provisions were basically enacted in the Trade Agreements Act of 1979. The court provisions were basically enacted in the Customs Courts Act, which was enacted the next year, in 1980.

So, what you are going to have to do here, I think, is work very closely with the Judiciary Committee so that you don't create a different jurisdiction for the courts or fail to create one that you are creating for the rights of appeal from Customs courts action.

It may be a technical problem, but the jurisdictional problem that Senator Packwood spoke about earlier is particularly acute here, where the two provisions have to work together, or else you will open one door and find the other door closed; and the system won't work.

Senator Baucus. Jeff?

Mr. Lang. Yes, sir?

Senator Baucus. Is there any significant difference in the standard of review between the Canadian standard and the American standard that we should be aware of?

Mr. Lang. I don't know what the Canadian standard is.

Ms. Anderson. They are really quite similar. They are not identical in language, but they are very similar in effect. Our standard for most of the determinations that would be reviewable in the panel is whether the agency's decision is unsupported by substantial evidence or otherwise not in accordance with law.

I don't have in my head the precise language of the Canadian standard, but it is very close to that.

Senator Baucus. Thank you.

Senator Danforth. Mr. Chairman?

The Chairman. Senator Danforth?

Senator Danforth. The Canadians are said to have a more systematic system of subsidies than we have in the United States; and this system of creating panels has been viewed by most people as a major concession to the Canadians.

Are we stuck with this? Is there any wiggle room that we have in passing enabling legislation, Jeff?

I think a lot of people feel that we have been really "had" by this, that the Canadian subsidies are going to be

in place, and unfortunately, the countervailing duty laws are going to be much less available to the Americans.

Mr. Lang. You may want to hear the Administration's comments, but there may be several things you would want to consider.

First, this is by its terms a temporary system, anticipating future negotiations to actually address the underlying issue of subsidies; and as I mentioned earlier with respect to autos or some other future negotiations, you may want to be specific about what you want to happen in that negotiation--what the objectives are, what kinds of time scales you want, and that sort of thing.

You may even want to put a sunset on these provisions, but I don't --

Senator Danforth. Can we do that?

Mr. Lang. I believe it would be possible. Let me see if I can find the five-year provisions here.

Senator Baucus. While he is waiting, will the Senator yield? I have drafted an amendment which does just that. It tries to accomplish those objectives.

Mr. Lang. I am sorry. It is reflected on page 69 of the spreadsheet, where it says: "The provisions of this chapter in effect for five years pending the development of a substitute system of dumping and countervailing duty laws in both countries. If no system is agreed to and implemented

at the end of five years, the provisions are extended for two years. Failure to implement a regime at the end of the two-year extension allows either party to terminate the agreement on six-month notice."

Ambassador Holmer. Mr. Chairman, if I could, I would just like to assure Senator Danforth that we do not believe that we were had in the negotiations based on this provision. As you know, the Canadians wanted to have either an exemption from our dumping and countervailing duty laws or to have those rewritten. We said, "No way."

We agreed that there would be a binational dispute panel that would apply U.S. law as written by you, as amended by you, as interpreted by the Commerce Department; and believe me, the United States is not the only one that has dumping or countervailing duty cases.

Over the last eight years, we have had 30 cases against Canadian exports. During that same period, the Canadians have had 43 cases against U.S. exports.

Senator Danforth. That means that they are more aggressive in pursuing their own interests that we are.

Ambassador Holmer. I would submit that we are plenty aggressive in enforcing our laws, and there is no prohibition on anybody filing a dumping or countervailing duty case.

But on the Canadian side, as I understand it, and Ms. Anderson can correct me, there is currently no court review

of dumping or subsidy decisions made in Canada; and those decisions will now be subject to review as a result of this process, a process that will work more quickly than occurs under current law in U.S. courts.

And we think that does have some very considerable benefits for U.S. interests.

Senator Danforth. I would be very interested to hear from Senator Baucus and any ideas he has on trying to take up the prospects for real success in getting rid of these.

Ambassador Holmer. And we very much want to pursue that as well, and try to work something out.

The Chairman. Senator Daschle?

Senator Daschle. I have to share Senator Danforth's view on this; and I would ask Senator Baucus whether or not it is his understanding that the recommendations that I have read, which I think are quite good, would fit under the parameters that we have with regard to flexibility. Do you know at this point?

Have you been given an official ruling of whether or not the recommendations that you are making are within our bounds to make?

Senator Baucus. It is my understanding that they are. I have not heard directly from the Administration on our suggestions, but I understand they are within the bounds.

Senator Daschle. I realize that this isn't a day to talk about amendments, but it is very relevant.

Senator Baucus. In fact, it is very clear that the suggestions we are making are within the agreement, that is, would not in any sense force renegotiation of the agreement.

The Chairman. I share the concern over this one. I think it was a very major concession. I am interested in Ambassador Holmer's reply to it; but I want to probe it some more, frankly, to satisfy myself.

Senator Danforth. Mr. Chairman?

The Chairman. Yes?

Senator Danforth. Can I just raise one other point that I think Jeff skipped over when he was making his presentation?

The Chairman. Senator Danforth?

Senator Danforth. It has to do with investments. Here, too, we have a bad situation. While there has been some progress with the Canadians on investments, still the Canadians maintain great freedom to impose restrictions on U.S. investments. We don't do that to them.

Just as an example, as I understand it, Americans cannot buy Canadian newspapers. In my State alone, something like a dozen Missouri newspapers have been bought by Canadians, as of a couple of months ago.

That really would seem to me to be outrageous if the

Canadians screen or prohibit U.S. investments, and we don't do anything in response to that--in fact, ratify it, grandfather it by this agreement.

Is there anything in the drafting of this that we could do, or are we just stuck in this situation?

Ambassador Holmer. Theoretically, you could pass legislation to prohibit those Canadian companies from investing in your Missouri newspapers. We deem that to be bad public policy, and we would strenuously oppose it; but that is certainly possible.

Senator Danforth. That is not our policy. I mean, our policy is open investments.

The President said he would veto the big trade bill if it contains -- , but what we are doing here is grandfathering or approving an arrangement whereby the Canadians can keep out Americans; and maybe there should be something targeted to that in response.

Ambassador Holmer. This is one area where we want to accomplish much more. We believe that we made very significant improvements with respect to the Canadian investment regime, and they are precluded from going back to their restrictive policies of the 1970s.

You are right; it is not absolutely everything we wanted to achieve, but certainly, if Congress were to turn down this agreement, we would have a lot less than is currently

the case.

I would also note that, thanks to the excellent negotiating by Mr. Rowe from our General Counsel's office, what we have in the agreement is a permission for the United States Government to be able to retaliate against Canadian cultural practices without it being a violation of the free trade agreement.

Senator Danforth. We have "a permission"?

Ambassador Holmer. Yes, and without resort to any dispute settlement.

Senator Danforth. How do we do that? I mean, let's say that they have bought 12 newspapers, and we can't buy any newspapers there. How do we retaliate?

Ambassador Holmer. Presumably, it would be possible for a U.S. industry that believes it is adversely impacted by Canadian cultural practices to be able to bring a case under Section 301 that would come to the Office of the U.S. Trade Representative; and we have the option under this agreement and under current law to retaliate to protect U.S. interests.

Senator Danforth. Therefore, the cultural restrictions that the Canadians have are actionable?

Ambassador Holmer. Yes, Senator, we believe that we have protected that in the agreement.

The Chairman. I have the same situation that Senator

Danforth has insofar as Canadian newspapers having owned a major Texas newspaper, but that same newspaper very strongly resisting any investment in Canada by American investors.

Give me just a couple of highlights of what gains you think you made in moderating the Canadian investment laws.

Ambassador Holmer. Thank you for that opportunity. We believe that we are one heck of a lot better off, first with respect to new greenfield investments in Canada; there is no screening at all.

The Chairman. New what?

Ambassador Holmer. New greenfield investments, where it is an investment, say, of establishing a new plant in Canada; there are no restrictions.

If you are talking about direct takeovers, currently the threshold for Investment Canada review, currently it is $5 million in assets.

Secretary Baker was successful in having that increased to $150 million in constant Canadian dollars. What that means is that, while currently there are 7,600 firms in Canada that are subject to this review, that number is reduced to 600 firms, a 92 percent reduction in terms of the number of firms in Canada that would be subject to review by Investment Canada.

And with respect to indirect takeovers, after a phase-in

period, there would also be no screening.

The Chairman. Let me ask you this. When you say "subject to review," does that mean that those that are not subject to review, that you have the freedom of investment?

Ambassador Holmer. Yes.

The Chairman. I want to buy a newspaper; I want to buy a weekly newspaper in Canada. I can buy it for $10 million. Can I buy it?

Ambassador Holmer. My understanding is that you cannot, that there is a special exception with respect to cultural industries; and newspapers would be included within that definition.

Senator Daschle. What are we talking about then, if we are not talking about newspapers and publications?

Ambassador Holmer. Basically everything else outside of their --

Senator Daschle. I thought we were just addressing cultural issues.

Ambassador Holmer. Maybe the chairman was; I guess my answer was not.

The Chairman. No, I wanted beyond cultural. I am just a little concerned how cultural they get.

Senator Daschle. So, in other words, your answer to the chairman is that you still can't buy a newspaper in

Canada?

Ambassador Holmer. That is correct.

Senator Packwood. But we do have some kind of retaliation?

Ambassador Holmer. That is right, and what the situation is is that now you can't buy a newspaper in Canada. After this agreement is implemented, you can't buy a newspaper in Canada. That has not changed.

We do think there are significant investment improvements that are obtained as a result of this agreement that will go into effect and will protect U.S. interests at a later stage.

Senator Packwood. Can I ask a step further, Alan? Under current law, we can't buy a newspaper. Under current law, do we have any retaliation capability? Or is this something the FTA gives us?

Ambassador Holmer. Under current law, we would have theoretically the authority to retaliate under Section 301, although the Canadians presumably would be able to argue that that retaliation was inconsistent with our GATT rights or other obligations that we have.

What this agreement provides for the first time is the right for the United States to be able to retaliate to the extent the Canadian cultural practices basically injure U.S. interests.

Senator Danforth. Mr. Chairman?

The Chairman. Yes?

Senator Danforth. Could we then put within this implementing legislation a requirement that we pursue a 301 case against them?

Ambassador Holmer. I guess I thought we had probably used up the quota for 1988 with respect to mandatory actions under Section 301.

(Laughter)

Senator Danforth. Not yet.

(Laughter)

Senator Danforth. It would seem to me, though, Alan, that there really should be some effort here for this really ridiculous situation.

Ambassador Holmer. What I would like to do, Senator, is have a chance to look at whatever proposals you or others might have in this area and see if there is a way for us to work out language that might be acceptable to you and to the Administration in this area.

Senator Packwood. I assume there is nothing in this agreement that changes the current law, which prohibits Canadians from buying U.S. broadcast properties?

Ambassador Holmer. That is correct, Senator.

There are a number of other restrictions that we have with respect to Canadian investment in the United States:

broadcasting, domestic shipping, domestic aviation, nuclear power.

Senator Chafee. Mr. Holmer, what about the situation where currently advertising on a U.S. television station is a nondeductible expense for a Canadian corporation? Is that still continued, or what happens to that under this agreement?

Ambassador Holmer. My understanding is that continues and was one of the items that we were not successful in fixing in the negotiations.

I would also note that we already retaliated on that, I believe, in 19-- I would not call it retaliating; we adopted mirror action on the United States side in the 1984 Trade Act.

The Chairman. All right.

Senator Chafee. It is not very helpful. Nobody wants to advertise, particularly on their stations.

The Chairman. All right. Mr. Lang?

Mr. Lang. Mr. Chairman, the last provision I want to bring to the committee's attention is on page 77 of the spreadsheet. The agreement provision is not remarkable; it is the current law provision that I wanted to point out.

Under the Trade Agreements Act, the President has to fast track a bill to implement any requirement or amendment of a Tokyo Round trade agreement.

So, if an international disputes resolution panel in GATT rules against the United States--as for example they have in the Superfund case--well, that is a GATT case--but if it is a trade agreement case, that can be fast tracked, but the President doesn't have authority to proclaim a change in U.S. law.

Now, the reason I point the provision out is that this may be one area in which you would want to deal with this problem of the followon negotiations--the subsidies that Senator Danforth raised, the auto pact, whatever it is.

This may be a provision of current law that you would want to expand on in respect of this agreement because you have got so much followon negotiation to come after.

The Chairman. Is that it?

Mr. Lang. Yes, sir.

The Chairman. All right. Let me say that we will not be meeting tomorrow. We will be meeting on Thursday; and I would suggest in the meantime that the committee staff and the legislative staff of the members and the Administration meet to try to get through some of the noncontroversial things that we can do.

And then on Thursday, we will start filling in some of the tougher ones, some of the more controversial.

Senator Chafee. Mr. Chairman, I have a statement I would like to submit for the record.

The Chairman. Yes, of course. Without objection, that will be done.

Are there any further comments?

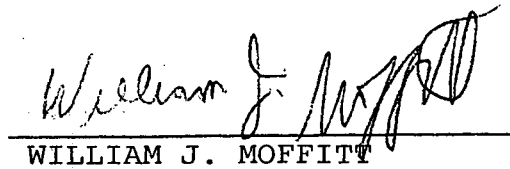
(No response)

The Chairman. If not, we will stand adjourned.

(Whereupon, at 11:43 a.m., the meeting was recessed, to be reconvened on Thursday, May 12, 1988, at 10:00 a.m.)

C E R T I F I C A T E

This is to certify that the foregoing proceedings of a meeting of the Executive Committee of the Committee on Finance, held on May 10, 1988, were held as appears herein and that this is the original transcript thereof.



WILLIAM J. MOFFITT
Official Court Reporter

My Commission expires April 14, 1988.