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1 EXECUTIVE COMMITTEE MEETING

2 WEDNESDAY, MAY 18, 1988

3 U.S. Senate

4 Committee on Finance

5 Washington, D.C.

6 The meeting was convened, pursuant to recess, at
7 9:35 a.m. in Room SD-215, Dirksen Senate Office Building,
8 the Honorable Lloyd Bentsen (chairman) presiding.

9 Present: Senators Bentsen, Moynihan, Baucus, Bradley,
10 Mitchell, Riegle, Rockefeller, Daschle, Packwood, Danforth,
11 Chafee, Heinz, Wallop, and Durenberger.

12 Also present: Ambassador Alan Holmer, Deputy United
13 States Trade Representative; Ms. Judy Bello, Deputy General
14 Counsel, USTR.

15 Also present: Messrs. Jim Gould, Staff Director and
16 Chief Counsel; Ed Mihalski, Staff Director, Minority;
17 Jeff Lang, Trade Chief Counsel, Josh Bolten, Chief Trade
18 Counsel Minority; and Ms. Marcia Miller, Professional Staff
19 Member.

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1 The Chairman. Please be seated and cease conversation,
2 and we will get underway here.

3 We have now had a chance to have a fast review of the
4 Statement of Administrative Action, and I would like to make
5 a comment about it, Mr. Ambassador.

6 Under the law, that statement is supposed to be a
7 statement of any administrative action that has to be taken
8 for the implementation of this Agreement.

9 But as we scan this statement, it appears to be more of
10 an explanation of the legislation that you are proposing; it
11 doesn't really get into the implementation by regulation to
12 the extent that I would like to see that.

13 Now, I realize that some of those statements represent
14 things that you have worked out with members under the FTA,
15 and I don't have any reservations about those; but in the main,
16 our intent with respect to the meaning of the provisions of
17 the implementing bill, that will be expressed in our
18 Committee Report, and I submit that we will be giving that
19 to the Senate sometime this summer.

20 But there is very little in that statement as to how the
21 provisions of the FTA are to be implemented by administrative
22 action, and that is my concern.

23 So I would appreciate your viewing the document with
24 that in mind, and perhaps discussing it further as we get
25 into the conference with the House.

1 Ambassador Holmer. I would be happy to do that,
2 Mr. Chairman.

3 The Chairman. I want to bring one specific part to
4 your attention. Under paragraphs 2 and 3 of the annex to
5 Chapter 16, it appears the two governments have to exchange
6 letters prior to the introduction of legislation, to
7 implement this agreement by either party, setting out certain
8 investment policies. My understanding is that those letters
9 have not been exchanged at this point.

10 But these policies are of great importance, particularly
11 to oil and gas investors looking to such investments in
12 Canada. In particular, they want to know if these letters
13 exist, and whether they will govern the implementation of
14 the investment annex.

15 Do the letters exist at this point?

16 Ambassador Holmer. My understanding, Mr. Chairman, is
17 that those letters have very recently been signed. Whether
18 they have been exchanged or not yet, I am not sure.

19 I know I have a packet on that question that came over
20 from the Treasury Department late yesterday. Let me review
21 that and get back to you or your staff later today on that
22 question.

23 The Chairman. Please do, because I would like to be
24 brought up as quickly as we could on that particular issue
25 before we get into the conference.

1 Now let me make one more point about the process.

2 I hope that we are going to be able to finish our work
3 on the Canadian Free Trade Agreement today. The House Ways
4 and Means Committee finished their work yesterday, and the
5 Chairman of the committee over there has been talking to me
6 about when we will be able to go to conference.

7 I met with the Chairmen of the other Senate committees
8 yesterday, and they assured me they are going to make the
9 Administration's deadline as well.

10 Now, that is an absolutely incredible amount of work
11 being done in a very short period of time. Frankly, I am
12 not sure we can finish this work next week. But even so,
13 we are compacting almost a year's work into a month.

14 I must say that it turns me off a bit when I see the
15 President go into a press briefing room at the White House
16 and complain about a protectionist Congress, as he did
17 yesterday. I think he forgets the speed at which this
18 committee and the rest of the committees and the committee
19 in the House have moved, and who have been concerned about
20 moving on this Canadian matter. It is a misrepresentation
21 of this committee and of the Congress to say that they are
22 protectionist. We are just as interested in opening up
23 markets as the President is.

24 The big Trade Bill says that, and so does our action
25 with respect to Canada.

1 Are there further comments by members?

2 Senator Moynihan. Mr. Chairman, may I just state what
3 I think would be the view of this whole committee, that you
4 have been extraordinary in what you've done in these two
5 matters. The President's remarks was difficult to
6 understand, and in the certain circumstances unwelcome. I
7 would like to let you know that I think that, and I am sure
8 that others do as well.

9 The Chairman. Thank you, Senator.

10 Are there further comments?

11 Senator Chafee. Mr. Chairman?

12 The Chairman. Yes.

13 Senator Chafee. I think you have done a wonderful job
14 as Chairman of this Committee. I just want to say that there
15 is good news on the horizon, as you saw yesterday with the
16 trade figures. I think that has come about because the
17 Congress and the President have resisted protectionism.

18 I think one of the primary reasons that we are doing so
19 well with our exports is because we have resisted those
20 protectionist efforts that have been abroad throughout the
21 nation, in some degrees, and in some degrees in Congress
22 when different votes have come up.

23 So I think we have a lot to be excited about as we look
24 to the future in trade matters.

25 The Chairman. Thank you.

1 Are there further comments?

2 (No response)

3 The Chairman. Mr. Lang, if you would proceed.

4 Mr. Lang. Mr. Chairman, first a minor technical matter.

5 You are now on page 88 of the spreadsheet, discussing the
6 Binational Panel which reviews administrative determinations
7 in the two countries in the matters of dumping and subsidies,
8 known as countervailing duties in the United States.

9 Before resuming the discussion of that matter, may I
10 just say that on Monday and on Friday evening after the
11 spreadsheet was prepared, the Commerce Department staff
12 described to a meeting of legislative assistants various
13 changes to their proposed implementation of this chapter 19.

14 We have summarized those changes on a piece of paper
15 that I think is being handed out now, called "Changes to
16 Draft Implementing Proposal on Chapter 19." I realize these
17 are technical, but we were concerned that the spreadsheet
18 did not reflect them, even though we believe the staffs are
19 all aware of them. And we would recommend that at the end
20 of your proceedings today, or when you finish Chapter 19, you
21 approve our putting in the Senate recommendations these
22 technical changes, which we believe the staffs were aware
23 of and had no reservations about.

24 The Chairman. But we will be addressing Chapter 19
25 later in the morning, is that right?

1 Mr. Lang. You are in the middle of it right now,
2 discussing this question of whether the President is
3 authorized to put into effect the decisions of the Binational
4 Panel.

5 I realize it is a technical matter, but at some time
6 today --

7 The Chairman. Well, why don't we dispose of it now?

8 Senator Moynihan. It is a little more than technical,
9 isn't it?

10 Mr. Lang. I know of no one who has reservations about
11 these problems, but it seemed to us appropriate to make
12 explicit what the changes were as compared to the spreadsheet.

13 The Chairman. Well, we have it distributed. Are there
14 any comments? Does the Administration have any comments on
15 it?

16 Ambassador Holmer. No comments, Senator.

17 The Chairman. And you see no objection to them,
18 Mr. Lang?

19 Mr. Lang. I know of none.

20 Senator Chafee. Well, I don't understand it. When we
21 left here last Monday we were disputing whether we would
22 direct that the President is required, or whether the
23 President is authorized.

24 The Chairman. That is correct, Senator Chafee.

25 Senator Chafee. Now, what does all this do?

1 The Chairman. These are things proposed, as I
2 understand it, by the Commerce Department that are in the
3 nature of technical amendments, to which the Administration
4 obviously has no objections to, since they came from them.

5 As our staff has looked at it, they have no objections.
6 If you would like to further review them, we can move on
7 to something else.

8 Senator Chafee. Well, I don't want to belabor it, but
9 what do they do? How does it end up? Does it end up with
10 the President being "required," or does it end up --

11 The Chairman. This does not get to that issue,
12 Senator.

13 Senator Chafee. All right.

14 The Chairman. We will get to that issue.

15 Is there objection to them?

16 (No response)

17 The Chairman. If not, they will be inserted.

18 Mr. Lang. Thank you, sir.

19 The Chairman. Now let us get back to the other point
20 of Presidential authority. And let me state on that one,
21 my concern is that what the Administration is proposing
22 would give the President such broad authority to implement
23 the Binational Panel decisions on anti-dumping and
24 countervailing duty determinations that those laws would
25 become more politicized.

1 What we have done in the past is say the President
2 could not intervene, that the decisions being made had to
3 be carried out by the Commerce Department and the ITC, and
4 insulates the antidumping and countervailing duty cases
5 from too much political influence. And that is what I
6 would like to see continued.

7 Now, we have been told that these Binational Panels
8 replace the courts and act just like courts do. That means
9 the Commerce and ITC should have to conform to those
10 decisions in the same way they conform to a court's decision.

11 On the other hand, the Administration assures us that
12 they believe that this Binational Panel is constitutional.
13 But then they say, if they have a constitutional challenge,
14 they want to put broad authority in the implementing bill
15 that could threaten the insulation of the antidumping and
16 countervailing duty, threaten that insulation from political
17 interference, and that is what I want to avoid.

18 So I would strongly urge that we proceed under the
19 proposal that I made at the end of the last session. When
20 it comes to the question of constitutional authority, our
21 staff seems to think we don't have a problem there, as I
22 understood Mrs. Bello at that time. She was quoting the
23 Justice Department, and I do believe I remember her saying
24 that they reached out there a bit and were being extremely
25 conservative in trying to preclude any kind of a

1 constitutional challenge.

2 Do you want to comment on that, Ms. Bello?

3 Ms. Bello. Yes, Mr. Chairman, I would appreciate that
4 brief opportunity.

5 I would like to implore the members of the committee
6 to appreciate the gravity of this question.

7 To put in terms that I think we can all understand and
8 appreciate, basically we are talking about the same issue
9 under which the Gramm-Rudman Law was struck down in response
10 to a constitutional challenge, that many in the Congress
11 no doubt thought, initially, was frivolous.

12 Gramm-Rudman was struck down by the highest court of
13 the land because officers not appointed by the President,
14 in accordance with the Appointments Clause of Article 2,
15 were taking actions that were binding upon the President.

16 So, Mr. Chairman, while we are urging you that, even
17 if you do not agree with us, to take a conservative approach,
18 I don't want to understate the gravity of this issue or the
19 real and present risks that the system that we are
20 establishing will be subject to a constitutional challenge
21 which has an unacceptably high risk of succeeding in the
22 courts.

23 We very much appreciate and share entirely the
24 Chairman's concerns that this not be a back door to
25 politicizing Title 7. That is not our intention, and I

1 don't believe we would have any problem whatsoever with the
2 Statement of Managers or the Committee Report indicating
3 that the formulation, the broad authorizing formulation,
4 adopted, adopted in an implementing bill was done to be in
5 conformity with the Constitution, but that the committee
6 entirely, fully expects that this will not be used by the
7 Administration as a means of politicizing Title 7
8 determinations.

9 The Chairman. I must say I am not satisfied with that.
10 And I do want to insulate it. And I want to carry out the
11 intent of what we see under present law, when you get to
12 countervailing and you get to dumping.

13 I understand that the Administration would like to
14 include a provision for a fast track on it, where you have
15 a constitutional challenge to the Binational Panel provisions
16 of the FTA. And it seems to me that is protection enough,
17 and that that ought to take care of the Administration's
18 concerns about the constitutionality of the panels, if they
19 believe what they say about the basic issue.

20 Now, I am willing to recommend to the Judiciary
21 Committee that it include such a fast-track provision in
22 its recommendations to the Administration on reviewing
23 constitutional issues. But I really want to see the
24 Canadian Bill make clear that Commerce and the ITC must
25 implement a panel decision in the same way they do a court

1 decision.

2 Senator Baucus. Mr. Chairman?

3 The Chairman. Yes.

4 Senator Baucus. Mr. Chairman, I very much agree with
5 you.

6 Ms. Bello, I understand your position, that you rely
7 basically upon the Gramm-Rudman. The problem we had is
8 that Congress did not set up a system where the President
9 himself determines whether or not to trigger Gramm-Rudman
10 under the appointments clause, but that is a different matter.

11 As I understand what we are doing here, the Congress
12 would be directing the relevant agencies to be implementing
13 a decision which is much more in the nature of a judicial
14 decision than an executive -- administrative decision.

15 It seems to me that the Binational Panel in effect would
16 be making a judicial decision much more than making a
17 legislative decision, and therefore it is distinguishable
18 from the Gramm-Rudman problem.

19 Ms. Bello. I don't disagree with you, Senator Baucus,
20 but of course judges in Article 3 courts are appointed by
21 the President. The 25 Canadian panelists on the roster are
22 obviously not appointed by the President; they are appointed
23 by the Government of Canada.

24 So the problem as we see it, under the appointments
25 clause, is that the panels which will have Canadian as well

1 as U.S. representation will be taking action, which under
2 the Chairman's formulation would then be binding upon both
3 the Commerce Departments and the ITC.

4 Senator Packwood. Is your fear the constitutional
5 infirmity, or the substance -- assuming it was constitutional.

6 Ms. Bello. Our fear, Senator Packwood, is the
7 constitutionality. We share entirely the Chairman's
8 concerns; I understand them completely, that this not be
9 in any way intended or operate to be a back door to have
10 political issues intervene into Title 7 decisions.

11 We have formulated this in terms of authority rather
12 than a requirement, only to avoid this constitutional
13 infirmity. It is the sole intent of the broad language
14 that we have offered to the committee.

15 Senator Packwood. Then why not just do an either/or
16 with the severability clause, and adopt the Chairman's
17 position; but, if it is struck down, then you have your
18 fall-back position?

19 Ms. Bello. Senator, that is a very constructive
20 suggestion, which we welcome. I must say that I believe
21 the Administration would still have some concern, even in the
22 either/or scenario, that one of those, in the view of the
23 Administration, is vulnerable to a successful constitutional
24 challenge. But your suggestion would at least provide a
25 fall-back in that regard.

1 Senator Packwood. If your only concern is the
2 constitutional infirmity; then, if the Chairman's provision
3 is put in and is found to be constitutional, you are
4 satisfied also, because you don't object to the substance of
5 this provision. If it is found to be unconstitutional, you
6 have got your fall-back position. So you are protected in
7 either event, it seems to me.

8 Ms. Bello. Senator Packwood, I can't speak for the
9 Justice Departments.

10 Senator Moynihan. Few can.

11 (Laughter)

12 Ms. Bello. Mr. Chairman, I would just like to point out
13 -- we work very hard at USTR, and we are the President's
14 trade experts. I haven't spent full time on constitutional
15 law since my first year of law school.

16 The people in the Government who spend full time
17 working on constitutional issues, debates, and analyses are
18 the Department of Justice officials, and in particular the
19 Office of Legal Counsel. They have a genuine concern under
20 Gramm-Rudman, the Bowsher v. Synar Case, and a preceding
21 case, Buckley v. Valeo, that the language that the Chairman
22 is proposing, with all due respect, while it accomplishes our
23 policy goal of not inviting or permitting any political
24 interference in Title 7 cases, nonetheless is subject to a
25 successful constitutional challenge, about which we all should

1 be concerned.

2 The Chairman. Let me further state, as I did a moment
3 ago, that we have here a situation where the Administration
4 is asking for a fast track on a constitutional challenge,
5 and I am quite willing to have that put in and to recommend
6 that to the Judiciary Committee.

7 Senator, did you have a comment?

8 Senator Moynihan. Mr. Chairman, I would like to say
9 first that I think you are being very reasonable and very
10 orderly about this.

11 Just to ask a question of Ms. Bello:

12 You used the term "politicized" and "politicizing." How
13 do you mean that? Would you help me in that regard?

14 Ms. Bello. Senator Moynihan, Ambassador Holmer and I
15 both used to work at the Commerce Department, in Import
16 Administration, administering these laws. And one of the
17 arguments we made with great success to businessmen, producers
18 of products throughout our country, was that one of the
19 great virtues of the countervailing duty law is that there
20 is no political discretion, that decisions are made based
21 upon the criteria that the Congress has legislated, and if
22 the Commerce Department finds subsidies, and if where
23 required the ITC finds injury, then the duties are
24 automatically imposed. There is no question about the
25 political inconvenience that that may cause in the foreign

1 relations between the United States and the relevant
2 trading partner. There is no what I refer to as "political
3 discretion."

4 Obviously, there is discretion in any statute; but in
5 my opinion, under the CVD Law, the reason that businessmen
6 have voted with their petitions and reflected their
7 confidence in these laws is that they very much like to know
8 that, if they prove their case, they will get offsetting
9 duties regardless of the political relationships and foreign
10 relationships.

11 Senator Moynihan. May I just suggest that you find a
12 better word than "political"? What you mean is there ought
13 to be rules in place, and there is adjudicatory predictability.
14 And that there will be uniform decisions made according to
15 uniform rules and procedures.

16 The term "politicize" is a different term. What you
17 mean is executive discretion will not enter the process, as
18 it does in other areas.

19 Ms. Bello. I cheerfully stand corrected, Senator.

20 Senator Moynihan. Thank you.

21 Senator Chafee. Mr. Chairman?

22 The Chairman. Yes. Senator Chafee.

23 Senator Chafee. Mr. Chairman, as I see the dilemma, it
24 is this: You would like to have language in there that the
25 President is "required" to do so and so.

1 The Chairman. I have the language that the ITC in this
2 and the Department of Commerce is required to carry it out
3 as thought it was a court action. They say it is like a
4 court action.

5 Senator Chafee. And they are concerned that that would
6 be unconstitutional.

7 Ms. Bello. Senator Chafee, we would like for the
8 President to be given the authority, as opposed to the
9 requirement.

10 Senator Chafee. I've got that.

11 Ms. Bello. Yes, sir.

12 Senator Chafee. Okay. Now, I agree with the Chairman
13 that we want it definite, like this. But we've got this
14 quandary that you pose.

15 As I understand it, your constitutional experts say they
16 think, 90-10, that this is constitutional; but they can't
17 swear under all circumstances that it will be sustained, and
18 they point to the Buckley v. Valeo and the Gramm-Rudman
19 case, where it has been overturned under the appointment
20 power.

21 Ms. Bello. Senator Chafee. I think the Justice
22 Department's view is that the odds are 90-10 that the
23 Chairman's formulation would be struck down on
24 constitutional grounds.

25 Senator Chafee. They give it 90-10 that it be struck

1 down?

2 Ms. Bello. It is inappropriate for me to put odds in
3 there, but they have a strong concern.

4 Senator. Now, what is the matter with proceedings along
5 the line as suggested by Senator Packwood, that you put in
6 the requirement language, and then you have a provision, in
7 the event that this is struck down, then the language shall
8 be "the President is authorized"?

9 Now, the only reason I don't like the fast-track
10 procedure -- sure, they go ahead and review it, and then it
11 is overturned, but where are we? What is this committee going
12 to do? Are we going to come back and put in the proper
13 language? Who knows? Why not put it in now, so it is there
14 as a fall-back position? I don't see any argument against
15 that.

16 The Chairman. Senator, I am ready to move on this, and
17 I think that Senator Packwood has offered a good compromise,
18 and we would go ahead with my amendment, but we would have
19 the fall-back position in the event of a constitutional
20 challenge. I think that is appropriate.

21 Senator Moynihan. Mr. Chairman, I think that is a very
22 good one.

23 The Chairman. Can I get a motion to that effect?

24 Senator Moynihan. I so move.

25 The Chairman. All right.

1 All in favor of the motion make it known by saying Aye.

2 (Chorus of Ayes)

3 The Chairman. Opposed?

4 (No response)

5 The Chairman. Okay, let us move on.

6 Mr. Lang. Thank you.

7 Mr. Chairman, with respect to Chapter 19 in general,
8 on a number of issues, Senator Baucus has been working with
9 the Administration, Senator Danforth, and others, to work
10 out a number of problems with respect to the implementation
11 of Chapter 19.

12 Our understanding, I think, is that those matters have
13 all now been agreed upon, and I believe a piece of paper is
14 being handed out. The title is "Baucus/Danforth Subsidy
15 Proposal."

16 Senator Baucus. Mr. Chairman?

17 The Chairman. Senator Baucus.

18 Senator Baucus. Mr. Chairman, many of us have been
19 very concerned about this Agreement, insofar as it does not
20 address Canadian subsidies. I think many of us are intrigued
21 with the Agreement, and we appreciate the tariff reductions,
22 we appreciate the beneficial provisions in the Agreement; but
23 we are very concerned about the degree to which this
24 Agreement does not address Canadian subsidies.

25 I, therefore -- and others -- have expressed those

1 reservations, and I also have said many times that, unless
2 this Agreement is remedied, I will oppose it, because the
3 Agreement does not address those subsidies.

4 I must say the Administration has gone a long way in
5 working with me, Senator Danforth, and others to try to
6 find some solution to the problem, and I think we have come
7 up with one.

8 Essentially the proposal is that the Administration will
9 follow through and agree with an interim solution,
10 whereunder an American industry that thinks it will be
11 damaged by Canadian subsidies is able to petition the
12 relevant agencies -- the USTR or the Department of Commerce.
13 And if at that time the Departments will carefully monitor
14 this potentially adversely-affected industry, and the
15 degree to which Canada does subsidize the corresponding
16 industry on the Canadian side.

17 In addition, the proposal would provide that the USTR
18 and the Commerce self-initiate relevant action in the event
19 the agency, let's say Commerce under the Countervailing Duty
20 Law, or the USTR under Section 301, in the event those
21 agencies find that in fact the Canadian industry is being
22 subsidized in Canada to the adverse effect of the American
23 industry on the American side.

24 The point to make here is that this proposal creates
25 no new trade remedies -- no new trade remedies, and the

1 provision in no way violates the Free Trade Agreement, will
2 not force renegotiations in the Trade Agreement. Instead,
3 it relies only upon existing tools and existing trade
4 remedies. ~~It is important to underline:~~ No new trade
5 remedies; this provision relies only upon existing trade
6 remedies.

7 I commend the Administration for meeting us half-way on
8 this. It is my understanding that the Administration does
9 agree with the provision, and I move the adoption of the
10 amendment.

11 The Chairman. Are there further questions?

12 Ambassador Holmer. If I could, very briefly,
13 Mr. Chairman?

14 The Chairman. Yes. Mr. Ambassador.

15 Ambassador Holmer. We appreciate the work fo Senator
16 Baucus and Senator Danforth and others on this. We think
17 it is a constructive addition.

18 I would note two things, if I could. The first,
19 Senator Baucus, in the retying pf this there is one
20 parenthetical phrase that was dropped off that we feel needs
21 to be added. My understanding is that you staff agrees that
22 that was dropped off.

23 Senator Baucus. That's right. That has been worked out.

24 Ambassador Holmer. And we also would like to have in
25 there, in addition to the language of the amendment, that

1 would make clear that any determination by USTR as to whether
2 or not an industry meets the criteria under this provision
3 does not in any way prejudice or affect any proceedings,
4 determination, or action by the Department of Commerce, or
5 the International Trade Commission under the Countervailing
6 Duty Law, or any other trade remedy. We would hope that
7 that as well could be added to that provision.

8 The Chairman. Mr. Lang, do you have any further comments
9 on it?

10 Mr. Lang. No, Mr. Chairman. As far as we know there
11 are no other objections to this.

12 Ambassador Holmer. What I had indicated, Mr. Chairman,
13 was that there was a one-sentence addition that we wanted
14 to have added to this amendment. It has been cleared with
15 the staff of Senator Baucus and the staff of Senator Danforth.
16 It just clarifies the fact that there is nothing here that
17 intends to prejudge a future countervailing duty proceeding.
18 Am I understanding that that is acceptable to all parties?

19 Senator Baucus. I think that is a good provision.

20 The Chairman. All right.

21 The motion has been made. All in favor of the motion --
22 Senator Danforth. Mr. Chairman?

23 The Chairman. Yes.

24 Senator Danforth. I want to incorporate by reference the
25 comments made by Senator Baucus. We have won the point, and

1 I will not add any more arguments of my own, for fear of
2 doing damage. But I think this is excellent.

3 Senator Baucus. Mr. Chairman, I again commend the
4 Administration. They have come a long way here, and I think
5 that should be noted.

6 In addition, Mr. Chairman, I intend to support this
7 Agreement because of the changes the Administration has made.
8 I think at this point it is a good agreement, and I would
9 urge the committee and the Congress to eventually ratify
10 the implementing language.

11 The Chairman. Thank you, Senator.

12 The motion has been made. All in favor of the motion
13 make it known by saying Aye.

14 (Chorus of Ayes)

15 The Chairman. Opposed?

16 (No response)

17 The Chairman. The Ayes have it.

18 Mr. Lang?

19 Mr. Lang. Mr. Chairman, Senator Rockefeller has been
20 working with Senator Moynihan and the Administration and
21 others to get agreement on language that would require the
22 Administration to prepare a report within two years after
23 the Agreement enters into effect, on assistance and benefits
24 provided to electric utilities in Canada by Federal and
25 Provincial Governments and in the United States by the

1 Federal Government and the State governments.

2 As far as I am aware, no one has any reservations about
3 the provision. I see no reason why the committee could not
4 adopt it.

5 The Chairman. Is there objection?

6 Senator Packwood. I don't think I object, but just out
7 of curiosity, as I read this, would this also apply, then,
8 to the Tennessee Valley Authority and the subsidies that
9 we give to electricians in this country?

10 Mr. Lang. It reads to apply to both the United States
11 and Canada, both Federal and Provincial or State Government
12 assistance or benefits.

13 Senator Moynihan. Mr. Chairman?

14 The Chairman. Yes.

15 Senator Moynihan. I would like to thank Senator
16 Rockefeller for his diligence in this matter and for his
17 alertness.

18 I would move the adoption of the measure, if it is
19 possible.

20 The Chairman. The motion has been made. All in favor
21 of the motion for the insertion of this into the statement
22 make it known by saying Aye.

23 (Chorus of Ayes)

24 The Chairman. Opposed?

25 (No response)

1 The Chairman. Motion carried.

2 Senator Rockefeller. Mr. Chairman?

3 The Chairman. Yes, Senator Rockefeller.

4 Senator Rockefeller. If I might, I want to thank
5 Senator Moynihan for his very strong help on this, as well
6 as the Administration, with whom we worked, as well as
7 Senator Mitchell.

8 The Chairman. Mr. Lang?

9 Mr. Lang. Mr. Chairman, the only other amendments we
10 are aware of may be ones that Senator Heinz might want to
11 bring up.

12 There were two issues we were aware of. One was the
13 GATT consistency of the working-group product; that is, the
14 product of the binational group that is going to negotiate
15 about subsidies in the future.

16 Senator Heinz. We have been working with the
17 Administration to address the issue of the fast track, and
18 under what circumstances it would be appropriate for the
19 product of the anti-dumping/countervailing duty working
20 group to submit it and have it considered on fast track.

21 I think what the Administration has and what I have are
22 very close. We have kind of a technical problem, which is
23 I don't have my most-refined language quite ready.

24 But the basic idea of what we are working with is that
25 the fast track would be permitted for proposals which will

1 increase discipline over subsidies and will not reduce
2 discipline over dumping, which are not inconsistent with the
3 anti-dumping and subsidies code, and which will not detract
4 from our multilateral efforts of the Uruguay Round or
5 subsequently in increasing discipline.

6 Those are the principles, and we are really only engaged
7 in I think some drafting issues at this point.

8 It might be most expeditious if we could pass that
9 over for about five or ten minutes.

10 The Chairman. All right; if we still have some questions
11 that can be resolved in that period of time, let's do it.
12 I have no knowledge of that particular one.

13 Mr. Lang. If Senator Heinz has no other amendments in
14 Chapter 19, I am not aware of any other.

15 Senator Heinz. I do have a point of clarification on a
16 different issue.

17 Mr. Lang. Yes?

18 Senator Heinz. That is, what happens to the binational
19 panels at the end of the five or seven years? Do they go
20 out of existence, or are they sunset? What happens to them?

21 The Chairman. That is part of 19, is it?

22 Mr. Lang. Yes.

23 Under the draft language that is reflected in the
24 right-hand column of the spreadsheet, nothing would indicate
25 that the panels go out of existence at the end of the five to

1 seven year period during which the two governments are to
2 negotiate about the subsidies issue.

3 However, under the Agreement, there is the following
4 language in Article 1906, which is entitled "Duration."
5 There are I think three sentences.

6 The first is: "The provisions of this chapter shall be
7 in effect for five years" -- "chapter" meaning Chapter 19 --
8 "pending the development of a substitute system of rules in
9 both countries for anti-dumping and countervailing duties
10 as applied to their bilateral trade."

11 The next sentence: "If no such system of rules is
12 agreed upon and implemented at the end of five years, the
13 provisions of this chapter shall be extended for a further
14 two years."

15 The last sentence: "Failure to agree to implement a
16 new regime at the end of the two-year extension shall allow
17 either party to terminate the Agreement on six months'
18 notice."

19 I am not sure, frankly, how to interpret that. It would
20 appear, under the first sentence, that the panels are in
21 existence for five to seven years. But then under the last
22 sentence, it appears that the remedy for either country in
23 the event the discussions are unsuccessful is not the
24 disestablishment of the panels but the termination of the
25 entire Agreement.

1 So, the Administration draft takes the position that it
2 is the determination of the entire Agreement, which is the
3 remedy if these negotiations are unsuccessful.

4 Senator Heinz. That is an option that would be
5 available to either party? The termination of the Agreement?

6 Mr. Lang. Yes, sir.

7 Senator Heinz. Can the Agreement be terminated in any
8 other way?

9 Mr. Lang. Yes, there are termination provisions at the
10 end of the Agreement. Current law in the United States
11 provides that when the President negotiates trade
12 agreements, they have to have a termination provision in
13 them. And Article 2106 of the Agreement, which is one of
14 the final provisions, the general provision, provides that
15 the agreement can be terminated on six months' notice of
16 either party.

17 That isn't related to the subsidies issue at all.

18 Senator Heinz. Yet, what is in 2106 is identical in
19 terms of termination under 1906.

20 Mr. Lang. Yes, that's true.

21 Senator Heinz. It seems to me ridiculous -- maybe that
22 is too strong a word -- that if failure to reach agreement on
23 anti-dumping and countervailing duty laws triggers an option
24 of six-months' termination of the Agreement, which is
25 available in any event under 2106, that it is a rather

1 meaningless provision, at least to me. Maybe someone else
2 sees some meaning in it.

3 And my interpretation would tend towards that the
4 panels have a life of five or seven years and not more.

5 But if there is ambiguity about it, why shouldn't we --
6 and I am really asking the question -- why shouldn't we be
7 clear that the panels sunset at either five or seven years.
8 Is there a problem with that?

9 Senator Baucus. Mr. Chairman?

10 The Chairman. Yes. Senator Baucus.

11 Senator Baucus. Mr. Chairman, I understand that there
12 is one provision which the staff suggest we include anyway
13 that pertains to the entire Agreement -- namely, that after
14 seven years the President will terminate the Agreement unless
15 he decides otherwise, and in that case he will submit his
16 reasons for not terminating to the Congress.

17 As I understand it, that is a suggestion that we have
18 to appropriate in here anyway, which would take care of the
19 binational panel.

20 Mr. Lang. No. I think that is the basic issue that
21 Senator Heinz is raising: Should you put such a provision
22 in the bill?

23 I think there is disagreement. Certainly the
24 Administration does not agree with that provision. And among
25 the various assistants to Senators, I think there is

1 probably disagreement on that question.

2 Ambassador Holmer. If I could, though, Mr. Chairman,
3 there was language, Senator Baucus, that was originally
4 included in the language that you had provided to us a week
5 or 10 days ago.

6 We have worked on that language carefully with your
7 staff, and we have reformatted it in a way that frankly
8 places a more positive spin on this issue, and it is language
9 that we would be happy to accept on behalf of the
10 Administration.

11 I guess in response to Senator Heinz, we believe that
12 just saying that the binational dispute settlement process
13 will terminate at the end of five years or seven years would
14 be inconsistent with the Agreement and what the intent was
15 of the negotiators at the time.

16 Senator Heinz. What is the intention?

17 Ambassador Holmer. That if, despite all the pressure
18 that the working group will now be under as a result of the
19 Baucus-Danforth Amendment, which I think does put a lot of
20 pressure in ensuring that the working group will come up
21 with positive results -- if, despite that, there is no
22 resolution of those issues, the Agreement may be terminated
23 by giving six-months notice to the Canadians.

24 The Chairman. Senator Baucus?

25 Senator Baucus. I suggest we follow up to the

1 suggestion of Ambassador Holmer. That sounds like a pretty
2 good way to solve this, to me.

3 The Chairman. Senator Heinz, do you have further
4 comments on this?

5 Senator Heinz. Mr. Chairman, if the Administration wants
6 to keep the panels available after five or seven years, I
7 won't get into that hairsplitting on it; but I think what we
8 ought to do is sunset the fast track for the product of those
9 panels after five or seven years.

10 The Chairman. Mr. Lang?

11 Mr. Lang. There, Mr. Chairman, the only issue I am
12 aware of after you finish Chapter 19 is what kind of fast
13 track you provide for legislation with respect to amendments
14 to the agreement.

15 The issue Senator Heinz has just raised relates to that
16 question, because presumably the results of the working
17 group's efforts would constitute an amendment to the
18 Agreement.

19 So, if you don't want to put in any provision sunseting
20 the panel, you might want to go on to the question of
21 amendments to the Agreement and discuss it generally -- not
22 just in the context of this specific subsidies issue, but
23 deal with all follow-up negotiating activities that are going
24 to follow on.

25 In other words, the state of play is, I think Senator

1 Heinz is saying that as to the binational panel, that
2 substitutes for courts in appeals from administrative
3 determinations under the dumping and countervailing duty
4 laws, the language of the agreement seems to him, as I
5 understand it, ambiguous, and it would justify simply
6 sunseting the appeals to those binational panels at the
7 end of seven years, but he isn't going to press that issue.
8 He would, however, like to discuss a time limit on amendments
9 to the Agreement being on the legislative fast track.

10 What I am suggesting is, there is a larger issue there
11 about amendments in general to the Agreement, and maybe the
12 thing to do, if you are finished with Chapter 19, is to
13 pass on to the Amendments issue and discuss it generally.

14 The Chairman. All right.

15 Are there further things on Chapter 19?

16 (No response)

17 The Chairman. If not, let's go on.

18 Senator Heinz. Mr. Chairman, I am advised that our
19 piece of paper on the establishment of standards for the
20 submission of the product of the binational panel on dumping
21 and countervailing duties is now ready.

22 The Chairman. All right, fine. Let's have the report
23 on it.

24 Senator Heinz. Alan, do you have a copy?

25 Ambassador Holmer. Yes.

1 The Chairman. Are you prepared at this time on that
2 point, Mr. Ambassador?

3 Ambassador Holmer. Yes.

4 The language that has been worked on with respect to
5 the submission of the working group, Senator Heinz, is
6 acceptable to the Administration, and we appreciate your
7 work and that of your staff to work that out acceptably.

8 The Chairman. Mr. Lang, do you have any comments on it?

9 Mr. Lang. I don't have the piece of paper.

10 The Chairman. Well, let's let the committee staff see
11 that.

12 (Pause)

13 Mr. Lang. I assume the paper has been distributed to
14 the Senators. It is called "Negotiating Authority."

15 Essentially, it requires three things, Mr. Chairman. The
16 first is, it sets up some negotiating objectives for these
17 discussions. Second, it requires the President to make
18 certain determinations with respect to these negotiations and
19 report about them to the Congress concerning these matters.
20 I am not aware of any objection.

21 The Chairman. Mr. Lang, you obviously have not had a
22 chance to look at this. Let us put this aside again until
23 staff has had a chance to look at it, and let's move on to
24 the next question.

25 Mr. Lang. Chapter 20 contains no provisions that you

1 have not already addressed that require implementation, and
2 I am not aware of any changes to Chapter 20 that any member
3 wants to offer.

4 So I would recommend you go on to Chapter 21.

5 The Chairman. Before we do that, I would like to defer
6 to Senator Moynihan, who had a comment he wanted to make.

7 Mr. Lang. Yes, I think -- in 20.

8 Senator Moynihan. If I could have Ambassador Holmer's
9 and Mr. Lang's attention, this is a matter that arises under
10 Chapter 15. It was called to my attention by an article in
11 the Wall Street Journal, which simply notes that Chapter
12 15, of course, involves -- how do we call it exactly? --
13 "temporary entry by business persons." There is an annex
14 which describes who these "business persons" are and what
15 they are.

16 It gets down and says, when we come to journalists, it
17 says "Journalists: Baccalaureate and three years experience."

18 The Chairman. Did they name the colleges?

19 (Laughter)

20 Senator Moynihan. Yes. And up in Canada, some very
21 sensible-sounding people to my mind have said, "Hey, what's
22 this? We don't want governments describing who's a
23 journalist."

24 And Mr. Peter Mansbridge, who is anchorman of the
25 Canadian Broadcasting Corporation's National News -- who

1 frequently comes to the United States with Mr. Mulroney. But
2 the question is can he in the future, because he hasn't got
3 a B.A.?

4 You know, you can be a university teacher but don't have
5 to be a B.A.; but a journalist has to have a B.A. You says
6 know, it says, "teachers, college, university, seminary" and
7 it doesn't describe what you have to have in the way of
8 certification.

9 I wonder if I could just ask Ambassador Holmer -- because
10 this is something serious; this gets down to the government
11 deciding who is a "journalist" and what are his creditations.
12 And on both sides of the border people are uneasy about it.

13 Do we need that?

14 Senator Chafee. What page are you on, Pat?

15 Senator Baucus. It is page 57.

16 Ambassador Holmer. Well, I first learned about this
17 issue from the Wall Street Journal, as well, Senator Moynihan.

18 My understanding is that current law under the
19 Immigration and Nationality Act requires -- this is current
20 law --

21 Senator Moynihan. Right.

22 Ambassador Holmer. --- requires a B.A. Degree plus three
23 years of experience. The Free Trade Agreement does not
24 change that rule; it just clarifies that. And it only
25 applies to situations where Canadian journalists are hired by

1 U.S. newspapers to work in the United States.

2 Senator Moynihan. But current law involves getting a
3 work permit.

4 The Chairman. Could I say, Senator Moynihan, that this
5 is really the jurisdiction of the Judiciary Committee, and
6 I think we ought to make a recommendation to them that it
7 comes within their jurisdiction.

8 Senator Moynihan. Well, Mr. Chairman, yes. Exactly.
9 I just wanted to see that it was raised, and you are quite
10 right.

11 Could we recommend that they look at that, and do they
12 think this is wise or necessary?

13 The Chairman. Good. We will do that.

14 Senator Moynihan. Thank you.

15 Mr. Lang. Mr. Chairman?

16 The Chairman. Yes.

17 Mr. Lang. I am informed that the Judiciary Committee
18 staff are in the room; but we will make sure to get the
19 message to them as well.

20 Senator Moynihan. Could I just say, for example, that
21 one of the most distinguished television journalists in this
22 country today, Mr. Peter Jennings, is a Canadian, and he
23 doesn't even have a high school degree. And we would be the
24 less without him, would we not?

25 (Laughter)

1 The Chairman. That must have been one great grade
2 school he went to.

3 (Laughter)

4 Mr. Lang. Mr. Chairman, with respect to the paper that
5 Senator Heinz distributed earlier, we have had an opportunity
6 to review it, and we are aware of no objections. We see no
7 reason for you not to adopt it.

8 The Chairman. All right, if there is no objection.

9 Mr. Lang. Senator Riegle points out to me that he has
10 a matter he wanted to raise with respect to Chapter 20, which
11 I had previously misstated that there were no suggestions.

12 The Chairman. All right.

13 Senator?

14 Senator Reigle. Thank you, Mr. Chairman.

15 You may recall that in weeks past we have tried to find
16 an approach to deal with a problem that affects the zinc
17 alloy industry in this country. It is a small industry but
18 a strategic one and is central to our ability to maintain
19 high technology manufacturing in the United States.

20 We use zinc alloy in die casting in the automobile
21 industry and in the computer industry, and hardware and
22 electrical generators -- a whole series of vital components
23 that go into military equipment in this country.

24 The reason I am offering it now is we have been looking
25 for a way to try to deal with the problem of keeping this

1 industry from disappearing that would fit and dovetail with
2 the basic lay-in fabric of the Agreement. And we have only
3 in the last couple of days come up with an approach that
4 we think appropriately does that.

5 So, the amendment would be to Article 2003, and that
6 Article provides for special consideration for the necessary
7 protection of essential security interests during time of
8 war or other emergencies in international relations.

9 That section is set out, I think, for the reason of
10 dealing with the kind of special problem we have in this
11 area:

12 Tariff eliminations under the Free Trade Agreement
13 which are likely to wipe out strategic U.S. production items
14 through increased Canadian imports I think should be very
15 carefully reviewed at a time of war or national emergency,
16 and that is only when this would apply.

17 Now, this amendment that I am offering would clarify
18 action to be taken by the President pursuant to this
19 Article of the Free Trade Agreement in instances only where
20 the current duty on a product -- the current duty on a
21 product -- is above 15 percent, or say 15 percent or higher,
22 and where there have been no imports for five years preceding
23 the Trade Agreement.

24 Now, as I understand it, there are only two product types
25 that fall into this area. Titanium is one, and zinc alloy is

1 the other.

2 The President would be required to maintain domestic
3 import levels under this amendment of such goods as of the
4 date of any war or national emergency, until he finds that
5 increased imports of such goods will not diminish U.S.
6 production or undermine the defense industrial base aspect
7 here in our country.

8 This Agreement does not violate the Free Trade
9 Agreement. ~~There~~

10 There are presently 26 remaining zinc alloyers in the
11 United States. I have several in my State, so does the
12 State of New York, Pennsylvania, Kansas, Colorado. Half of
13 them are represented -- just the way the numbers work, -- by
14 members of this committee.

15 But I think the importance of this is to provide a
16 means by which in extraordinary circumstances we can assure
17 that these kinds of industries will not disappear as domestic
18 industries.

19 Presently, we import most of our zinc from Canada. We
20 wouldn't have to just get it there, But then the alloying
21 process takes place in this country in the product areas that
22 I cite.

23 So I would very much hope that we could insert this,
24 because I think it works with the fabric of the Trade
25 Agreement itself, and it clearly is an exceptions procedure

1 that would only apply in extreme situations, and then in a
2 very narrow way, but to things that have already been
3 identified as critical industries, and that is why the
4 current tariffs are in place.

5 I would just finally say that zinc alloy has been
6 considered an import-sensitive material with defense
7 requirement applications which were excepted from tariff
8 negotiations in the Tokyo Round. So this does not really
9 break new ground; this is an area that has been identified
10 before and has been treated before, and I would like to
11 suggest that we try to handle it in this fashion in this
12 piece of legislation.

13 Senator Moynihan. Mr. Chairman, I would hope that
14 Senator Reigle's proposal might be accepted.

15 The Chairman. Mr. Ambassador, would you comment on it?

16 Ambassador Holmer. Let me make sure I've got it
17 straight. As I understand it, we currently have an 18 percent
18 tariff on zinc alloy that is coming into the United States.
19 There is no zinc alloy that is coming in right now from
20 Canada, or at least not of any significant amounts.

21 But the concern is, as that tariff comes down, the
22 imports from Canada of zinc alloy might increase and harm
23 your constituents.

24 Senator Riegle. Well, it is them and many others. In
25 other words, I think we are talking about one of these

1 strategic industries.

2 The reason the tariff is in place now is in effect to
3 keep that industry viable in this country. What I am saying
4 is that in times of national emergencies or time of war,
5 which obviously multiply the strategic importance of that
6 industry, that we give the President the power to act in
7 that case so that we don't see that industry just sort of
8 zeroed out.

9 Ambassador Holmer. Okay.

10 We do have concerns about it, Mr. Chairman and
11 Senator Riegle, and therefore would oppose it.

12 As you know, we already do have a national security
13 exception built into the Agreement, and Section 232 of our
14 current Trade Laws to implement it. We have a national
15 security exception currently for government procurement.
16 And overall, with respect to any industry that would be
17 adversely impacted as those tariffs come down, you have got
18 a bilateral tariff snap-back that would be applicable, you
19 have got a Section 201 Global Import Relief that could be
20 applicable.

21 If you have an exception for Canada but there has been
22 a surge with respect to Canada, you have a procedure to be
23 able to address that surge.

24 We now have in the statute and in the Statement of
25 Administrative Action the language in the Baucus-Danforth

1 Amendment which we believe will address the problems of
2 Canadian subsidies, including any that might be available for
3 the zinc alloy industry. And as a result, we just think it
4 is unnecessary.

5 I would add a final caution that we would have: It
6 refers to "in any time of war or other declared national
7 emergency." As I understand it, we are presently in a
8 state of national emergency with respect to Panama and with
9 respect to Lybia, and I don't know who else. I don't know
10 when those situations are going to change, but it would seem
11 to me that this language would certainly apply to the
12 present circumstances and for a duration that is
13 indeterminate.

14 Therefore, Mr. Chairman, we would oppose this amendment.

15 The Chairman. Mr. Lang, do you have any comments on
16 this?

17 Mr. Lang. Mr. Chairman, a "state of national emergency"
18 is a term of art referring, I think, to the International
19 Economic Powers Act. That is why the national emergencies that
20 that Mr. Holmer mentioned are in effect.

21 So, assuming you are now in a state of national
22 emergency and will be at the time the Agreement enters into
23 force on January 1, 1989, the effect of Senator Riegle's
24 provision would be that the President would maintain in effect
25 provisions that would keep import levels at current levels,

1 unless he made this determination in the last few lines of
2 the proposal: "Finds and submits such findings to the
3 Committee on Finance and the Committee on Ways and Means
4 that increased importation of such goods will not diminish
5 United States production of such goods, or undermine the
6 defense industrial base."

7 So, he couldn't allow the imports to increase unless
8 he made that determination. I think that is the practical
9 effect of the amendment, as long as the state of national
10 emergency remains in force.

11 The Chairman. Are there further comments?

12 Senator Packwood?

13 Senator Packwood. Then it seems to me what you are
14 saying is that it will be a permanent protection, not so
15 much from an industrial, defense standpoint; it is just that
16 if we have this emergency in effect, this protection will
17 remain in effect.

18 Mr. Lang. I meant to say there are two reasons that
19 would not necessarily be true: First, the state of
20 emergency might be lifted by the President; and second, the
21 last few lines of the page which I have just read would
22 allow the President to implement the duty reductions as long
23 as he made the finding in those lines -- that is, that "the
24 increased importation of such goods will not diminish
25 United States production of such goods, or undermine the

1 defense industrial base of the United States."

2 Senator Bradley. Mr. Chairman?

3 The Chairman. Senator Bradley.

4 Senator Bradley. If there is any country with whom the
5 national security exception is less relevant, I don't know
6 which country it is.

7 Since 1940 we have had a joint board planning defense;
8 since 1985, pursuant to the Summit Agreement, there is an
9 effort to reduce barriers in the defense sector -- all of the
10 other things that we share in terms of defense; NORAD being
11 maybe the most obvious.

12 I am a little concerned about the amendment. If the
13 President thought that there was a national security problem,
14 he could, under the terms of the Agreement, seek to have the
15 tariff schedule not decline.

16 Now, it seems that that is sufficient, from my
17 perspective, anyway. I don't know. At the same time I
18 recognize Senator Riegle's situation. But I really have some
19 trouble with it.

20 The Chairman. Senator Riegle?

21 Senator Riegle. Mr. Chairman, I don't view it just as
22 "my situation." It certainly impacts firms in my State, but
23 it is a national problem, and we are talking about companies
24 across the country. There are only 26 left.

25 But I think there is another point here, if I may

1 respond to Senator Bradley, and that is, it is very easy
2 to talk about doing away with industries, as if somehow by
3 magic, when we need them, they will reappear.

4 It isn't just the question here of losing the domestic
5 industry in the first instance to Canada, which I think will
6 have a very powerful incentive to move into the zinc alloy
7 business and displace over I think a relatively short period
8 of time and probably do away with these American companies.

9 There is no guarantee that Canada keeps it into the
10 future. I mean, there is no guarantee that it stays in a
11 continental way connected to the United States. That
12 industry over a period of years could end up being somewhere
13 else. I would like to have it here in the United States; I
14 think there is a value to it.

15 Now, if we are prepared to sort of accept the concept
16 that the manufacturing base really isn't all that important,
17 or we can let it sort of be moved around and shipped to
18 other places, I think the issue starts to move in that
19 direction.

20 There is a reason why we have a tariff schedule today.
21 There is a reason why we made the exception in the Tokyo
22 Round. And that is because this is seen as a strategic,
23 small but vital industry.

24 All this says is that in the time -- the President has
25 plenty of waiver room here -- but in the time of a bona

1 fide national emergency, to be able to see to it that this
2 industry doesn't just disappear -- maybe to Canada, maybe
3 to somewhere else -- I think is sound.

4 You know, we are an adaptive country in terms of trying
5 to find ways to respond to problems like this. This is not
6 one that has come out of the blue; this is one that we have
7 seen before and have responded to before. I think it is a
8 reasonable way to respond to it now.

9 The Chairman. Are there any other comments?

10 Senator Wallop. Mr. Chairman?

11 The Chairman. Senator Wallop.

12 Senator Wallop. Just an observation. One, I think there
13 is an assumption here on the part of Senator Riegle that it
14 necessarily will move to Canada. It hasn't now. There is
15 very little in the way of imports now. There is no reason
16 to suppose the U.S. industry cannot compete with any
17 Canadian industry that it already is superior to.

18 And second, the problem that bothers me the most is
19 that this is initiated on the basis of an emergency that is
20 totally unrelated to zinc alloys and the products therein.

21 I mean, what possible relationship does the national
22 emergency with Panama or Libya have to do with these
23 products?

24 The effect of the amendment is so open-ended as to
25 virtually assure a permanent circumstance in which the

1 President has to assure us that this industry is not going
2 away. It is just too broad for this Senator.

3 The Chairman. Senator, my concern is, I can understand
4 it if it was a true national emergency or time of war; I
5 would be very much in accord. But I read this, that the
6 President must find that "increased importation of such
7 goods will not diminish U.S. production of such goods," this
8 part of it, it seems to me that is a permanent duty that is
9 left there.

10 Senator Riegle. Well, I am open to any suggestion that
11 narrows it sufficiently to answer that concern. I am not
12 looking for a blanket protection. I am looking for something
13 here that assures us that this industry can survive, because
14 I think it has one of these rare sort of strategic
15 relationships to our ability to produce in this country and
16 in the manufacturing sector, across the board, in the types
17 of products that I mentioned.

18 So I would be happy to clarify, if this would satisfy
19 that concern, that we are talking about wartime or true
20 emergency situations, and that we make it clear that the
21 President has sufficient latitude.

22 Perhaps what we should do is just strike the words:
23 "diminish United States production of such goods," so that
24 we establish clearly what we are talking about.

25 What I don't want to see happen here is this industry

1 disappear. There is a reason why there is a tariff in
2 place now. My understanding is that it is 19 percent. And
3 the reason it is there is that that is what has been found
4 necessary to in effect maintain the viability of this
5 industry. And as it comes down from 19 to zero, as it will
6 presumably over a period of time --

7 Senator Baucus. Will the Senator yield?

8 Senator Riegle. Yes.

9 Senator Baucus. I am just curious, Senator, why an 18 percent
10 19 percent tariff is necessary to protect the domestic
11 industry. If the reason is because the Canadian industry is
12 subsidized, my question then is whether the amendment that
13 we just adopted dealing with subsidies addresses that, or
14 why not, or whether the other provisions that Ambassador
15 Holmer mentioned don't address the problem.

16 Senator Riegle. Well, I don't know whether there might
17 or might not be a problem in that area. I am more concerned
18 about a different but related problem, and that is, if you
19 have got an industry offshore or outside the boundaries of
20 the United States that is in a position to move in and
21 capture a new market -- in other words, the zinc alloy
22 market in this country, -- there are a lot of ways to do it.
23 One is with just penetration pricing, just to come in,
24 undersell for a period of time, put a domestic industry out
25 of business, and once they are gone then jack the prices up

1 again. We have seen this happen any number of times. I mean,
2 the free enterprise system is a good, tough hardball game.

3 So, even absent government subsidies, which may or may
4 not be somehow involved here -- I can't speak to whether that
5 might be the problem -- I think what we would be facing here
6 is that there would be a very powerful economic incentive
7 for the zinc alloying industry to grow pretty dramatically
8 in Canada and come in here in a very tough way, I think
9 probably with penetration pricing, put the domestic industry
10 out of business, and at some point in the future -- I think
11 we need it now, but when we might need it in an extreme
12 case of national need -- we would want an industry that we
13 no longer had.

14 And there is no guarantee, as I say, that even if you
15 transfer in effect over time this industry from here to
16 Canada, it stays in Canada. Somebody else may get into this
17 business at some point and displace them, and we would find
18 that it is offshore.

19 I am starting from the proposition that it is working
20 pretty well today, that we have something that I think is
21 worth keeping. And I want to make sure that, at least in
22 extreme cases, we are in a position to act to keep it.

23 So I would be prepared to make those modifications
24 that I have suggested, that I think respond to what I heard
25 the Chairman say, because I am not looking for a permanent

1 lifeline here; what I am looking for is something that
2 really enables us to respond in the kinds of situations that
3 I spoke about.

4 The Chairman. Do you have any suggestions, Mr. Lang?

5 Mr. Lang. I think what you do is, first, at the bottom
6 of the page, you would strike, in the third line, after the
7 words "will not," you would strike the words "diminish
8 United States production of such goods," so that the escape
9 clause for the President was just that "increased
10 importation would not undermine the defense industrial base
11 of the United States."

12 Senator Riegle. That's right. I would suggest that
13 change, because I think that answers some of the objection
14 that I have heard around the table.

15 Mr. Lang. I am not sure that I understood that you
16 intended any other change. But the way you might accomplish
17 the "national emergency" problem would be to explain the use
18 of the term in accompanying report language, or something like
19 that.

20 Senator Bradley. What if you just said "in wartime"?

21 Senator Riegle. I don't think that is sufficient. I
22 am prepared to go further than what is here, in terms of
23 tightening it up, but we seem to be awfully reluctant to
24 declare war. I mean, I don't want to go to war --

25 (Laughter)

1 Senator Bradley. Do you mean not to protect the zinc
2 alloy industry?

3 (Laughter)

4 Senator Riegle. I think sometimes we get caught in
5 wars -- trade wars, other kinds of wars that are going on --
6 but we don't declare them, and sometimes we don't even
7 recognize them until a lot of damage has been done.

8 I think the nature of the Declaration of War is something
9 we haven't done in a long time in this country, even though
10 we fought several wars since the last time we declared one.

11 So that, by itself, I don't think is sufficient. I
12 think "bona fide" or "continuing national emergency" that
13 meets a reasonable test that the President would agree with
14 is the way to do that, so that we have got the kind of
15 coverage that we are looking for here.

16 The Chairman. Well, do you propose your amendment after
17 deletion of those lines, that "increased importation of
18 such goods will not diminish U.S. production of such goods"?

19 Senator Riegle. Yes. I would strike the lines -- Jeff,
20 didn't we say starting with the word "diminish"?

21 Mr. Lang. Yes, sir. My understanding was you would
22 strike the words on the third to the last line, and after
23 the words "will not" you would strike "diminish United States
24 production of such goods or".

25 Senator Riegle. Okay, those words would come out. And

1 I would further, then, modify it to say that we would in
2 the report language work to find that tightening down.

3 The Chairman. I really would like to tighten it down
4 some more, and I think in the report language I perhaps
5 would do that, plus do this.

6 Senator Wallop. Mr. Chairman, could I make the
7 observation that report language is sometimes wholly
8 overlooked by everybody, especially the Congress?

9 It seems to me that if you wanted to do that, you would
10 declare a national emergency, the nature of which required
11 this industry. That would take us out of Panama and out
12 of Libya, and out of a whole lot of other national
13 emergencies.

14 The Chairman. Well, don't we get to that if we have
15 knocked out the production and we say, "and the President's
16 finding that it would undermine the defense industrial base
17 of the United States"?

18 Senator Wallop. Well, you do, Mr. Chairman, except for
19 the fact that there is always a declaration of some kind of
20 an emergency around, which would require a new assertion by
21 the President every time we have a set-to with Noriega.

22 The Chairman. Mr. Ambassador, do you want to further
23 comment, with that deletion?

24 Ambassador Holmer. You know, this has been a very
25 cooperative process, particularly with respect to autos and

1 Senator Riegle, and we would like to try to work something
2 out.

3 The Chairman. That is what I am trying to do.

4 Ambassador Holmer. I know you are. I hope that perhaps
5 Senator Riegle might be satisfied with some kind of written
6 commitment on behalf of the Administration that we intend
7 to monitor zinc alloy imports very carefully, that we will
8 consult with Senator Riegle and members of the committee
9 about any increase that might be occurring with respect to
10 those imports, and that we will not hesitate to use the
11 provisions of this agreement if the circumstances warrant
12 that action. I would be happy to have written communication
13 with Senator Riegle that would make that commitment on
14 behalf of the Administration.

15 Senator Riegle. I appreciate that, and I think that is
16 very helpful. And I appreciate the spirit in which you
17 express that.

18 The only problem is that we are doing this for all
19 future Administrations and not just this one. So, I would
20 like, Mr. Chairman, if I can -- and I appreciate that, and
21 I would like to do that, too, because I would like us to
22 be going in the same direction, and I don't want to try to
23 box any Administration in an unreasonable way here.

24 I am wondering, Mr. Chairman, if we could -- I am not
25 hung up on the idea of report language, but if we could work

1 out at the staff level a specific definition that meets this
2 "war, bona fide national emergency" issue in such a way that
3 it would satisfy the committee, so it isn't just a throwaway
4 in a committee report, but that it ties it down.

5 The Chairman. And put that in the report language?

6 Senator Riegle. Well, put it in the report language,
7 but make it very clear so that Senator Wallop and others are
8 satisfied on that question.

9 The Chairman. Is that all right? Try that.

10 All right. Thank you. We will do that.

11 Let's move on.

12 Mr. Lang. We will assume, then, that the Riegle
13 Amendment is approved with the change? Is that right?

14 The Chairman. No, I didn't understand that. Was that
15 what you were asking?

16 Senator Riegle. Well, I was hoping we could do that,
17 with the changes that we have talked about.

18 The Chairman. Well, that wasn't my understanding. But
19 I am quite willing to put it to a vote, if that is what you
20 are asking for. Otherwise, it was to be tightened up in
21 the report language, to try to accomplish the objective
22 that he was discussing and that Senator Wallop was
23 discussing.

24 I leave it to the Senator.

25 Senator Riegle. Mr. Chairman, I guess my thought would

1 be that I really would want to feel that we had a consensus,
2 absent a vote. You know, I am willing to go to a vote, but
3 I think the whole process here has been to try to work these
4 things out. So I would like to try to do that in this area
5 if we can.

6 I would prefer to go with the amendment with these
7 modifications if that were acceptable. If that is not, then
8 then --

9 The Chairman. I don't think you have a consensus on
10 that one, Senator, but we can go to a vote if you want to.
11 I do think you have a consensus on the report language.

12 Senator Riegle. Can I review that, then, in terms of
13 what that understanding would be? I wonder if Mr. Lang

14 Mr. Lang, do you feel you are able to restate that, or
15 Mr. Holmer, do you want to restate it after what has just
16 been said?

17 The Chairman. Either one of you, I don't care. Go
18 ahead.

19 Mr. Lang. Mr. Chairman, my understanding is that the
20 Administration would make a written commitment -- I guess it
21 would be in the Statement of Administrative Action, or it
22 might be by an exchange of letters -- that the Administration
23 would consult closely with the committee and the members of
24 the committee as to the effect of the agreement on the
25 industry, that it would use its authorities under current

1 law, which would essentially be Section 232 or Section 201.

2 ~~Ambassador Holmer~~ Or the bilateral tariff snap-back.

3 Mr. Lang. Or the bilateral tariff snap-back in respect
4 of this product, and then it would monitor the imports
5 closely to make sure there was no threat to national
6 security. And then they would carefully define what
7 "national security" meant. Is that right?

8 ~~Ambassador Holmer~~. Yes. ~~On~~The only addition I would
9 make to that would be just to indicate the monitoring, the
10 careful consultation with the committee, and the fact that
11 we would not hesitate to use the provisions that are
12 available under the Free Trade Agreement and under domestic
13 law, if it was concluded that the circumstances warranted
14 that action.

15 Senator Riegle. If I can pursue just one step further,
16 and I don't want to delay this unduly, but we have come a
17 long way here and I just want to nail it down, is that the
18 same thing as saying that if we see a pattern developing
19 where this industry begins to disappear as a United States
20 industry, that you are speaking for the Administration in
21 saying that it is their clear statement of intention to
22 prevent that from happening? That we would not stand by and
23 watch this industry basically go down to zero?

24 Senator Bradley. Do you mean from any country?

25 Senator Riegle. From any country. But I am starting

1 here.

2 But the point is, you know, we are not dealing with
3 every country; we are only dealing with one country right
4 here. But the point is, in the spirit of what I understand
5 you to say, I take that to mean that if we see a pattern
6 developing, where this industry is basically being pushed to
7 extinction, you would act on it. But you seem reluctant to
8 say that.

9 Senator Baucus. Mr. Chairman?

10 The Chairman. Senator Baucus.

11 Senator Baucus. Mr. Chairman, I understand what the
12 Senator is trying to do, but as I understand that formulation,
13 that in fact goes beyond 201. I mean, that is giving a
14 special privilege to one industry, regardless of what happens,
15 that that industry will never be allowed to go out of
16 existence or significantly deteriorate, regardless of what
17 happens. That goes even beyond Section 201, it seems to me.
18 Frankly, I don't think that would be proper.

19 Senator Moynihan. Senator Baucus, I wonder if we
20 couldn't agree that this commitment in writing is a very
21 special achievement you have here, and it is obviously a
22 good faith achievement, and we don't want to press it beyond
23 protections that all industries have under this Agreement.

24 Senator Riegle. Well, I think, under those
25 circumstances, with the understanding that we will give it

1 that kind of very careful monitoring and attention, and will
2 work on it, that I would be prepared to agree with that. I
3 would prefer to go forward with the amendment, but I want to

4 Senator Moynihan. Is there further comment? Is the
5 proposal as made by the Administration accepted by Senator
6 Riegle, is that acceptable to the committee?

7 (No response)

8 Senator Moynihan. Without objection.

9 Senator Riegle. I thank the committee.

10 Senator Moynihan. I thank the Senator from Michigan.

11 Are there further matters before the committee at this
12 point? Mr. Lang?

13 Senator Mitchell. Mr. Chairman, could I merely ask a
14 question here regarding procedure?

15 Senator Moynihan. Senator Mitchell.

16 Senator Mitchell. Now, just to make certain I
17 understand, we are about to vote on the committee's
18 recommendation on implementing legislation.

19 Mr. Lang. Yes, sir.

20 Senator Mitchell. The House Ways and Means Committee
21 will take comparable action, is that correct?

22 Mr. Lang. Yes, sir.

23 Senator Mitchell. And then the two committees will meet
24 in conference to work out a joint recommendation to the
25 President on implementing legislation?

1 Mr. Lang. Yes, sir.

2 Senator Mitchell. Following that, the President will
3 then propose for enactment the implementing legislation, and
4 in making his proposal he has agreed to accept or reject
5 the recommendations of the committees, is that correct?

6 Mr. Lang. Secretary Baker and Ambassador Yeutter, on
7 behalf of the Administration, sent the committee a letter
8 on February 17 in which, among other things, they agree that
9 the implementing bill would incorporate the results of the
10 consultative process that you have just described, as long
11 as it was not inconsistent with the Agreement or its
12 objectives.

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14 (Continued on the next page)

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1 Mr. Lang. I don't have the exact language in front of
2 me, but that was the basic idea of it.

3 Senator Mitchell. And it will be in the President's
4 sole discretion to determine whether or not a recommendation
5 is or is not inconsistent with the agreement and its
6 objectives?

7 Mr. Lang. Yes. There is no review you have of that,
8 I guess, except to vote against the bill.

9 Senator Mitchell. And when the President makes the
10 proposal, it would then not be subject to an amendment?

11 Mr. Lang. It would not subject to amendment. Yes, sir,
12 that is correct.

13 Ambassador Holmer. If I could, Senator Mitchell, the
14 reason why we have been fighting for our position so hard,
15 both here and at the staff level, is because we do not
16 intend that this is going to be a meaningless exercise.

17 As Mr. Lang said, Secretary Baker and Ambassador Yeutter
18 said they agreed to be bound by the decisions. My hope is
19 --and I can't make a guarantee--that whatever it is that
20 Finance and Ways and Means and the other committees work out,
21 whatever you send to the President, I would hope that the
22 legislation that could come back will be identical to that,
23 without a single comma changed.

24 Now, whether we can accommodate all of our mutual concerns
25 in such a way that that can be done, I don't know yet; but

1 that is certainly the spirit in which we are approaching this
2 process.

3 Senator Mitchell. Mr. Chairman, I merely wanted to
4 ask these questions because I intend to vote for this
5 implementing legislation; but so that there is no
6 misunderstanding, I intend it to be just that, a vote for
7 this implementing legislation at this stage in the process.

8 We don't know what the House committee is going to do.
9 We don't know what the joint recommendation will be. And
10 we still don't know what the President's action will be.

11 I would not want my vote construed as a vote for the
12 agreement or for anything beyond that which is presently
13 before us.

14 I have several concerns about the implementing
15 legislation, as I have expressed during the course of this
16 markup, and I merely wanted to make that clear.

17 This is a very unusual procedure under which we are
18 operating, and I think it is possible--indeed likely--that
19 the vote, if and when one is taken, will be widely
20 misconstrued as a vote for the free trade agreement.

21 And speaking only for myself, I just want to make clear
22 that that is not my intention. I haven't made a final
23 decision on the agreement.

24 I want to see how this is resolved and specifically how
25 the concerns I have raised are reflected in the final proposed

1 legislation by the President.

2 The Chairman. Thank you. Senator Daschle?

3 Senator Daschle. Mr. Chairman, I was going to make
4 the same remarks, so I will not make them. But only for
5 the record, I would make the same indication.

6 I would like to ask, however, with regard to procedure
7 a question. Will there be a time when this committee will
8 have an opportunity to take a look at the entire proposal
9 that will be agreed upon by the Ways and Means Committee
10 and all the other committees, prior to the time that it goes
11 to the White House?

12 The Chairman. Senator, what we will do is we will
13 have a conference with the House; and we will have that, I
14 assume, next week. The House has finished theirs.

15 That is direct with the Administration. It is quite
16 different from the normal procedure. And then it is up to
17 the Administration to come back with their implementing
18 legislation.

19 So, there will not be a further review.

20 Senator Daschle. I don't anticipate that there would be
21 a major conflict, say, between this committee and the Ways
22 and Means Committee or another committee; but there may be.
23 And if there is a conflict and it is resolved in conference,
24 it would be helpful, I think--if for no other reason than
25 just to be briefed as to what the resolution of that conflict

1 was--for us to have that opportunity.

2 The Chairman. Senator, what we will do is closely confer
3 with your staff and the staffs of all members concerning that,
4 and we will be delighted to have your input on it.

5 But this is a most unusual procedure, as Senator
6 Mitchell was commenting earlier. It is somewhat different
7 that this procedure has been used in times past because
8 usually we have had more consulting before the agreement
9 was signed.

10 This time, it has worked the other way.

11 I must state for the benefit of Ambassador Holmer that
12 since then, though, there has been a great deal of
13 consultation, as evidenced by some of the comments around
14 here, and have been able to work out a number of differences;
15 and that has been helpful.

16 I have advised the members of the other committees--the
17 other chairmen--that we are trying to abide by this June 1
18 date. The agreement with the leadership and the Administration
19 was that, if the Administration would defer the submission of
20 their proposed piece of implementing legislation, we would
21 then give them a vote in the Congress before the end of this
22 session, hoping before August 1; but that is going to be
23 extremely difficult to do, but certainly by the end of this
24 session.

25 And of course, we expect to live up to that kind of a

1 commitment. And I must say also that it is the obligation, as
2 I interpret it, for the Administration to work out their
3 differences with the appropriate committees.

4 I am not interested as chairman of this committee in
5 trying to shepherd all of that. That is your obligation;
6 it is your piece of legislation.

7 If we get conflicts amongst the committees, insofar as
8 jurisdiction, then I will try to help resolve the
9 differences in that regard.

10 Senator Wallop. Mr. Chairman?

11 The Chairman. Yes?

12 Senator Wallop. If I might just add a sort of breadth
13 to what Senator Mitchell's inquiry directed itself to; and
14 that was that it is not just this product as the product.
15 And a vote here is a vote for or against the product that
16 this committee has been working on and concerning itself with.

17 Other committees, such as the Energy Committee, will
18 have another statement there. So, a vote on this--a vote
19 just on this--I would do just as it relates to the matters
20 of concern to this committee.

21 The Chairman. We will finally put it all together and
22 give it to the Administration. And the other committees,
23 their input comes to us, to this Finance Committee; and we
24 will give them the package as we have seen it from the
25 committees at that time.

1 Are there further things to be brought up here now?

2 Mr. Lang. Mr. Chairman, I am not aware of any other
3 member's amendments. The only item I am aware of that you
4 might want to discuss is how you would handle amendments
5 to the agreement in the future.

6 The problem is, let's say --

7 The Chairman. You are talking about whether or not it
8 is fast track in the future; is that what you are talking
9 about?

10 Mr. Lang. Yes, that would be the basic question.

11 The Chairman. What has the House done on that?

12 They have not been quite as public as we have, have
13 they?

14 (Laughter)

15 Ambassador Holmer. That is true. The House has granted
16 the Administration fast track authority for two and a half
17 years. We were frankly a little disappointed by that.

18 What has happened in prior agreements is that we have
19 received fast track authority for an unlimited time period.

20 The Chairman. That is pretty nice that the House did
21 that. That has some appeal; that means you would come back.

22 (Laughter)

23 Ambassador Holmer. The only concern we have is that
24 there are some issues, like Government procurement, where
25 we expect negotiations with the Canadians may not get into

1 full swing until after we are done with the Uruguay Round
2 because some of these issues can be best addressed in the
3 Uruguay Round.

4 We would, therefore, like to have fast track authority
5 for a time period that would extend beyond that; and we would
6 hope the committee would give us the same fast track
7 authority that we have received for prior bilateral free
8 trade agreements, like the Israel agreement, where--as I
9 understand it--the fast track authority was for an unlimited
10 duration.

11 The Chairman. How does that appeal to the members of the
12 committee? Apparently, the House has put a two and a half
13 year limitation on the fast track; and you get a chance to
14 see how the future Administration will perform under the
15 fast track. What do you think about that?

16 Senator Packwood. I am not adverse to giving them a
17 much longer period of time than that on fast track. I think
18 the process has worked out well over the years, and I would
19 like to have them have a longer period of time than two and
20 a half years--any Administration.

21 Senator Moynihan. Mr. Chairman, doesn't five years sound
22 like a good, round figure?

23 The Chairman. I don't mind the pressure on them. Yes,
24 Senator Danforth?

25 Senator Danforth. A year is also a good, round figure.

1 (Laughter)

2 Senator Danforth. I have to say that I am not--and I
3 guess everybody could guess--very enthusiastic about this
4 whole deal. I would hope that it can be improved by future
5 negotiations.

6 I would think that if it was just an open-ended fast
7 track agreement or a long-term one, there would really be no
8 pressure with the Administration, no further role for us to
9 play.

10 My hope would be that two and a half years would be about
11 as long as we would go.

12 The Chairman. We are talking about this Administration,
13 you understand; we are talking about the next one.

14 Ambassador Holmer. Mr. Chairman?

15 The Chairman. Yes?

16 Ambassador Holmer. If I could make a compromise
17 suggestion between the one year of Senator Danforth and the
18 infinity of Senator Packwood?

19 The Chairman. Two and a half?

20 Ambassador Holmer. The suggestion would be: You would
21 have a working group on subsidies and other issues that has
22 a term of five to seven years. My suggestion would be that
23 you give us access to the fast track, but say it will expire
24 at the end of that five-year period, that Senator Moynihan
25 has suggested, thus keeping pressure on the subsidies working

1 group, with all the pressure that Senator Baucus and Senator
2 Danforth have placed on that enterprise, with a two-year
3 extension if the President were to come forward--whoever the
4 President is at that time--and to say we were so close to
5 an agreement he thought it merited that there be a two-year
6 extension.

7 The Chairman. Mr. Lang, what do you think of that?

8 Mr. Lang. Mr. Chairman, under the big trade bill, you
9 have provided both multilateral and bilateral fast track
10 authority through, I think, 1992 and then extendable to 1994.

11 So, if you had the big bill in effect, and if you put
12 the House provision of two and a half years into effect and
13 that provision sunsetted--you didn't renew it--you could
14 still bring bilateral agreements amending this agreement
15 with Canada back to the Congress under the big fast track.

16 If you don't have the big bill, this will be the only
17 Canada amendment authority you would have. So, I think a
18 lot of your decision depends on whether you--or maybe it
19 doesn't; it may differ from member to member--on whether
20 that big bill is there.

21 The Chairman. For the moment, let's assume it is not
22 there. All right?

23 Mr. Lang. All right. You are in a different situation
24 then than you were with respect to either Israel or the Tokyo
25 Round because then that is your only fast track authority with

1 respect to Canada.

2 So, if you make it permanent with respect to Canada,
3 future Administrations wouldn't essentially need any general
4 negotiating authority.

5 They would not have any multilateral negotiating
6 authority, but they wouldn't need any authority with respect
7 to Canada.

8 Senator Bradley. This is fast track authority for the
9 consideration of amendments to the free trade area agreement.
10 Right?

11 Mr. Lang. Yes.

12 The Chairman. That is correct.

13 Mr. Lang. If you used the formulation you used in
14 1979, it would also apply to legislation that implements
15 decisions of dispute settlement panels. So, if you had a
16 controversy about the meaning of the agreement that resulted
17 in an international decision that the United States had to
18 change its domestic law, the authority--if you used the
19 same formulation as that of 1979--would apply to that as well.

20 It is important to remember that those authorities were
21 enacted in a context in which an Administration had general
22 fast track authority. You are now not in that context.

23 Senator Bradley. But we are not in that context perhaps
24 temporarily because, even if the bill doesn't make it into
25 law this year, it is unlikely that there will no grant of

1 authority to negotiate permanently.

2 And you say that under a trade bill that deals with
3 multilateral and the general trade bill, that Canada would
4 come under that; so this is an exposure realistically of
5 about a year.

6 The Chairman. Oh, I would hope that is right, Senator;
7 but I am not so sure that is right as far as what happens
8 to this big trade bill.

9 Senator Packwood. Mr. Chairman?

10 The Chairman. Yes, Senator Packwood?

11 Senator Packwood. Ten years from now, when we look
12 back upon this agreement and we will think why didn't we
13 do it 50 years ago, I would hate to do anything to
14 jeopardize further negotiations, further fast track, further
15 acceptance of what I hope will be expansions of this.

16 I think Alan's suggestion of five and two is a step
17 down from infinity, but this is such a unique agreement that
18 I think we ought to go with what the Administration is
19 suggesting.

20 The Chairman. Are there other comments? Senator
21 Danforth, do you have any further comments?

22 Senator Danforth. Mr. Chairman, I just think that is
23 too long. I think that we could lose a lot of Congressional
24 input. That far from putting pressure on improving on this
25 agreement, that would tend to take the heat off of the

1 Administration. I really think that to go beyond two and a
2 half years is a mistake.

3 The Chairman. I frankly agree with you. I think that
4 two and a half is a check point. It brings them back, and
5 we can see how they have behaved in the meantime--whomsoever
6 that Administration is.

7 Senator Chafee. Mr. Chairman, I think the suggestion
8 that it takes the Congress out of loop completely--I have
9 trouble understanding that.

10 I mean, here we are on a fast track procedure right now,
11 and we have been hip-deep into this thing from the very
12 beginning.

13 I don't think any Administration, whoever it might be,
14 is just going to totally disregard the views of this
15 committee and the other committees and delegate us to some
16 back row seat in this affair. They haven't in the past, and
17 I don't think they will in the future.

18 So, I would go for the longer period, as suggested by
19 the Ambassador.

20 The Chairman. Senator Danforth?

21 Senator Danforth. Mr. Chairman, I have to say I don't
22 think we have been hip-deep in anything. I think we have been
23 sort of on the slide here. This is an agreement that has been
24 negotiated; it has very serious problems in it.

25 A lot of us feel that it is not a very good agreement for

1 the United States; but because of the close relationship we
2 have with Canada, we are more or less compelled to go along
3 with it.

4 I don't think that it is inappropriate for us to feel
5 that we should try to maintain some sort of hook in the
6 future. I think we would lose that if we went beyond two
7 and a half years.

8 Senator Bradley. Mr. Chairman?

9 The Chairman. Senator Bradley?

10 Senator Bradley. At a minimum, what we are saying here
11 --aren't we?--is that if this expansion is granted for two
12 and a half years--fast track authority is granted for two
13 and a half years--but before the end of that, a trade bill
14 is passed similar in the fast track granting authority to
15 the one we did just a few months ago, that the trade bill
16 is the dominant factor. Is that correct?

17 The Chairman. Yes, that is correct.

18 Mr. Lang. Yes.

19 Senator Bradley. So, the real question is: In two and a
20 half years, do we think we are going to have a trade bill
21 that grants that kind of authority? If we do, then there is
22 no reason to go to five years.

23 The Chairman. Yes.

24 Senator Bradley. If you don't think that you are going
25 to get a trade bill in two and a half years, then you need to

1 expand it to five years.

2 The Chairman. I think we are going to get it, Senator,
3 but I sure don't know.

4 Can we have a motion on that?

5 Senator Moynihan. Mr. Chairman?

6 The Chairman. Yes?

7 Senator Moynihan. I would propose the Ambassador's
8 measure of five years, with a two-year extension.

9 Senator Danforth. Mr. Chairman, is a substitute in
10 order?

11 The Chairman. Yes, a substitute is always in order.

12 Senator Danforth. Two and a half.

13 The Chairman. We have a motion made and a substitute.

14 The first vote will be on the two and a half.

15 All in favor of that make it known by saying "Aye."

16 (Chorus of ayes)

17 The Chairman. Opposed?

18 (Chorus of noes)

19 The Chairman. Let's have a show of hands. Ayes?

20 (Show of hands)

21 The Chairman. Just a moment.

22 Senator Packwood. Senators Dole, Durenberger, and
23 Armstrong are "No."

24 The Chairman. And I have Senator Boren by proxy.

25 Senator Packwood. And Senator Heinz is "Aye."

1 The Chairman. Do you have the count?

2 Mr. Lang. Yes, sir. I count 10.

3 The Chairman. Ten ayes?

4 Mr. Lang. Ten ayes.

5 The Chairman. Plus Senators Boren and Heinz. All
6 right? In opposition?

7 (Show of hands)

8 The Chairman. The motion carries.

9 Mr. Lang. The motion carries.

10 The Chairman. Are there further amendments?

11 (No response)

12 The Chairman. If not, may we have a motion?

13 Senator Moynihan. Mr. Chairman, as a neighbor of the
14 Canadian provinces of Quebec and Ontario, I would consider
15 it a great personal privilege if I might move the approval
16 of this historic agreement.

17 The Chairman. If the Senator would wait for just a
18 moment, let me state that this takes me back to a very cold
19 February over a year ago when the negotiations were stalled;
20 and I am thinking once again about the President's statement
21 yesterday, that is grinding on me a bit, about this being a
22 protectionist Congress.

23 When some of us got on an airplane to fly to Canada to
24 try to see if we couldn't get this thing moving again, and I
25 think we were a contributing force in getting that agreement

1 moving and the implementat it. And we have gone through
2 this in absolutely record time, and the House has done
3 likewise.

4 I am most appreciative of the cooperative attitude of
5 the members of this committee and the time that they have
6 devoted to it, and the incredible number of hours put in by
7 the staff.

8 And Mr. Ambassador, the Administration got off to a real
9 slow start in consultation with us and is subject, I think,
10 to very valid criticism; but I think that you have also turned
11 that around, and we appreciate it very much, the work that
12 has been done with you.

13 Senator Mitchell. Mr. Chairman, I just want to make clear
14 that we are not voting on the agreement.

15 The Chairman. No.

16 Senator Mitchell. We are voting on the Finance
17 Committee's recommendations on the implementing legislation.

18 The Chairman. That is correct.

19 Senator Mitchell. And that alone.

20 The Chairman. That is true.

21 Senator Mitchell. All right.

22 The Chairman. That is right.

23 Senator Moynihan. Even so, I propose that we do.

24 (Laughter)

25 The Chairman. All right. Insofar as that is within our

1 jurisdiction, that has been determined, and the motion has
2 been made. All in favor make it known by saying "Aye."

3 (Chorus of ayes)

4 The Chairman. Opposed?

5 (No response)

6 The Chairman. The ayes have it. Thank you very much.

7 Senator Packwood. Well done, Mr. Chairman.

8 Senator Chafee. Mr. Chairman, I would just like to
9 thank the staff for all the good work they have done and
10 particularly Ambassador Holmer and Ms. Bello. They have
11 been very, very knowledgeable and helpful throughout all
12 of this.

13 Ambassador Holmer. If I could, Senator Chafee and Mr.
14 Chairman, we do very much appreciate the expeditious action
15 that you have taken on this and the cooperative spirit of
16 all the members. Thank you.

17 The Chairman. Thank you very much. We stand adjourned.

18 (Whereupon, at 11:17 a.m., the meeting was adjourned.)
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C E R T I F I C A T E

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2 This is to certify that the foregoing proceedings of a
3 meeting of the Executive Committee of the Committee on
4 Finance, held on May 18, 1988, were held as appears herein
5 and that this is the original transcript thereof.

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WILLIAM J. MOFFITT
Official Court Reporter

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15 My Commission expires April 14, 1989.