

1 EXECUTIVE COMMITTEE MEETING

2 WEDNESDAY, APRIL 22, 1987

3 Committee on Finance

4 Washington, D.C.

5 The committee met, pursuant to notice, at 10:00 a.m. in  
6 Room SD-215, Dirksen Senate Office Building, the Honorable  
7 Lloyd Bentsen (chairman) presiding.

8 Present: Senators Bentsen, Matsunaga, Moynihan, Baucus,  
9 Bradley, Pryor, Rockefeller, Daschle, Packwood, Danforth,  
10 Chafee, Heinz, Wallop, Durenberger, and Armstrong.

11 Also present: Bill Wilkins, Staff Director; Jeff Lang,  
12 Chief, International Trade Counsel; Mike Mabile, Trade  
13 Counsel, Majority; Josh Bolten, Trade Counsel, Minority;  
14 and Karen Phillips, Economist, Minority.

15 Also present: Alan Woods, Deputy, U.S.T.R.; Alan Holmer,  
16 General Counsel, U.S.T.R.

17 (The prepared written statement of Senator Packwood  
18 follows:)

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SENATOR BOB PACKWOOD

OPENING STATEMENT FOR TRADE MARKUP

APRIL 22, 1987

I want to commend the Chairman for his able leadership on the trade issue and particularly for the excellent series of hearings we have had this year. While I am sure that many differences of opinion remain, I believe the hearings have gone a long way toward narrowing the differences among us. The Chairman has a very difficult task ahead. But I am confident that he can succeed, as Chairman Rostenkowski did in the Ways and Means Committee, in forging a real consensus.

I want to take a few moments to highlight three areas of S. 490 in which I expect to offer or support amendments:

I have reviewed the hearing testimony and spoken with many business leaders and groups. For almost all, their top priority in trade legislation is to give the President a strong mandate for the recently launched Uruguay Round of trade talks. And almost all of them therefore oppose placing preconditions on our grant to the President of fast-track negotiating authority. They believe that preconditioning the fast-track on congressional approval of a trade policy statement, as required by S. 490, would prevent other countries from negotiating seriously with the U.S. The Uruguay Round is too important to U.S. business to countenance that sort of delay.

This view, held by so many business groups, makes a great deal of sense to me. I share the Chairman's concern about the importance of consultation with the Congress in the course of these important trade negotiations. But I believe we can achieve the consultation we need without hampering the progress of the talks. I look forward to working with him and other Members to ensure that the proper consultation mechanisms are in place.

In short, we should follow the example of the House bill and provide the President un-preconditioned fast-track negotiating authority.

A second major area in which I believe we should follow the example of the House bill is Section 201, the statute which allows the President to grant an industry protection against fairly traded imports. S. 490 would significantly restrict the President's discretion to turn down import relief recommended by the International Trade Commission, in cases where a majority of the ITC finds serious injury to the petitioning industry. Where the ITC's finding is unanimous, S. 490 would completely remove the President's discretion to reject import relief. This means import relief regardless of the cost such protection might impose on consumers; regardless of the damage to U.S. industries that rely on the imports; regardless of the effect on U.S. foreign policy or debtor nations; regardless of the compensation that the U.S. would owe our trading partners under international rules; and regardless of the retaliation that would be suffered by U.S. export industries.

Who favors this kind of provision? A few U.S. industries that want to make it easier to protect themselves against fairly traded imports. Who is opposed? Not just the Administration. Opponents include consumer groups, U.S. businesses that import, and U.S. businesses that export.

Facilitating restrictions on fair trade is not, I believe, what most of our constituents have in mind when they press us to pursue a tough trade policy.

Unfair trade is another story. Whether to mandate retaliation against foreign unfair trading practices under Section 301 is the issue with which we have probably struggled the most during our hearings.

I share the serious concerns raised by the Administration and most of the witnesses before this Committee about truly mandatory retaliation. It is possible to construct many hypotheticals in which retaliation -- despite the existence of a foreign unfair practice -- would greatly disserve both the petitioning U.S. industry and the broader national interest.

But I have also found persuasive the arguments of the Chairman and others that, by tolerating unfair practices in some special cases, we encourage them in all cases. I agree that we would strengthen the President's hand in negotiating with our trading partners if he could say: The law gives me no choice; we must resolve this dispute over your unfair practice, or I will be obliged to retaliate.

The Chairman's bill judiciously limits such retaliation to cases involving trade agreement violations. I agree with that approach.

I would, however, add one important refinement: Where the trade agreement specifies a dispute-settlement procedure, retaliation should be mandatory only after the U.S. has won a dispute-settlement ruling (such as a GATT panel ruling) by which the other side has refused to abide. To require retaliation for a trade-agreement violation -- without first pursuing the agreed dispute-settlement procedures in that same agreement -- seems to me not only to undermine the U.S. position on trade-agreement enforcement, but also to invite justifiable counter-retaliation.

The European Community recently published a 26-page list of U.S. trade barriers. I don't happen to agree that all or even most of the practices they list are unfair, but they probably argue that most are. If EC law suddenly required them to retaliate on all those practices -- without necessarily waiting for proper international adjudication -- I expect we'd find ourselves in a massive trade war in no time.

Recognizing that the respondent in GATT cases has often been able to delay resolution of dispute-settlement indefinitely, I would add this further refinement: If the dispute-settlement mechanism has not produced a decision within 18 months (and the delay is not the responsibility of the petitioning U.S. side), then the U.S. is to consider the case as having been favorably resolved for the U.S.

The proposal thus places a great deal of pressure on the GATT to adjudicate disputes expeditiously and effectively. But that, after all, is where the pressure

belongs -- not in the realm of a diplomatic confrontation between allies.

The Section 301 position I have outlined is significantly tougher than what is in the House bill, which does not really mandate retaliation in 301 cases at all. This approach will also not be satisfactory to the Administration, which, understandably, is seeking to retain discretion in all 301 cases. But I believe this Committee wants to take a strong stand against violations of trade agreements. If we are to take such a stand -- and I expect to join in it -- we should do so only while observing the same trade agreements ourselves.

I believe this was the sponsors' intent behind the proposal in S. 490. I hope and expect that we will be able to work together on the refinement I am suggesting in the Section 301 area, just as I hope and expect that we can all reach agreement in most other areas. I am confident that, with the Chairman's able leadership, we can produce a bill that will be applauded by this entire Committee and the broad national and constituent interests we are here to serve.

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1           The Chairman. Will you please cease conversation? And  
2 will those that are standing, please find a seat?

3           Today marks an end and a beginning and a continuation of  
4 what we have been doing on trade in the Senate Finance  
5 Committee. It is the end of several months of hearings, the  
6 beginning of a markup, and the continuation of what I hope  
7 will be very successful, bipartisan bill passed by the Senate  
8 and put on the President's desk this year.

9           And looking at this schedule and what we have said we  
10 were trying to do, we have said from the beginning that we  
11 would not start markup until the House had their bill prepared  
12 to debate on the floor of the United States House of  
13 Representatives and was out of committee--out of the Ways  
14 and Means Committee. The other thing that we are running into  
15 is the concern about the budget and reconciliation.

16           They are planning to discuss the budget on the floor of  
17 the Senate this coming week--possibly the latter part of this  
18 week--and perhaps to send to us a reconciliation measure that  
19 could have a deadline with May 15th, and looking at having to  
20 raise billions of dollars in this committee.

21           So, what we want to do is use this time slot to try to  
22 work on the trade bill and to get it moved through this  
23 committee. What I anticipate will happen is that we will for  
24 the balance of this week--I doubt that we will have any  
25 markups this week, unless this goes faster than I anticipate

1 --but then next week we will go to markup and I assume the  
2 week thereafter. And I assume we will need two or three  
3 weeks for staff to prepare that report.

4 It is critically important we have a report where they  
5 have gone into the detail and done as good a job as they can  
6 in resolving differences and developing clarity which will  
7 carry through the rest of the process of the legislation on  
8 the floor of the Senate and finally going into conference.

9 But now we come to the hard part. The easy part has  
10 been the listening and asking questions. Now, the problem is  
11 making decisions. And what we are trying to do in this process  
12 of making decisions is to provide some of the answers to our  
13 country's trade problems.

14 None of us, I know, pretends to know all the answers to  
15 this concern. None of us is asking America to swallow some  
16 magic potion that is all of a sudden going to make that \$170  
17 billion trade deficit disappear.

18 It would not do for any of us to overstate the goals that  
19 we are trying to accomplish, but those who dismiss the impact  
20 of a carefully thought-out trade policy, brought about through  
21 legislation for our country, do a serious disservice and  
22 underestimate the impact.

23 Let me mention just one element of such a policy. If by  
24 our efforts we do no more than assure that trade achieves a  
25 position of prominence in this country and its high profile,

1 then we have achieved much. We all know instances in which  
2 diplomats have blocked some of the economic efforts we have  
3 made on trade because they are afraid of ruffling somebody's  
4 feathers. Our friends and allies have long been aware of the  
5 competitiveness of the marketplace, and I doubt that their  
6 feathers ruffle as easily as our diplomats think they do.

7 In fact, if we establish a carefully thought-out,  
8 predictable trade policy, I think we are going to ruffle the  
9 feathers of diplomats much less than we do under the present  
10 ad hoc type of response that we are seeing.

11 Sure, the Japanese were surprised and disappointed when  
12 we asked them to live up to a trade agreement. We just hadn't  
13 done that before. Of course, the Japanese are our friends and  
14 allies, but so is the car dealer; so is the furniture merchant  
15 who drives the hardest and the toughest bargain that he can  
16 drive.

17 I look forward to the day when the councils of power at  
18 the White House consider the effect of trade on any actions  
19 that they take. I look forward to the day when the Trade  
20 Representative sits at the right side of the President, and  
21 today, sometimes, he isn't even in the room. I have never  
22 understood why a President of the United States--this or other  
23 Presidents--take off for major economic summit meetings,  
24 whether they are in Bonn or Tokyo or wherever they may be,  
25 without taking the Trade Representative with them every time



1 they go.

2 I promise you the chief executives of other countries  
3 have their trade minister with them at those kinds of meetings.

4 And we can hope that when they convene at the summit  
5 meeting in Venice, and trade has to be one of the major  
6 considerations and a concern about the possibilities of a  
7 worldwide recession, that Ambassador Clayton Yeutter is going  
8 to be cruising those canals right along with the U.S.  
9 Delegation.

10 What we are aiming at today is to establish a predictable  
11 trade policy for this country and to help ensure that this  
12 policy and the officials who are its advocates have the kind  
13 of standing that our national interest demands.

14 I yield to the distinguished ranking member of the  
15 minority, Senator Packwood, for any comments he might have.

16 Senator Packwood. Mr. Chairman, thank you. I want to  
17 commend the chairman for his able leadership on this trade  
18 issue and particularly for the excellent series of hearings  
19 that we have had this year. While I am sure that many  
20 differences of opinion remain, I believe the hearings have  
21 gone a long way toward narrowing those differences.

22 The chairman has a difficult task ahead, but I am confident  
23 that he can succeed, as Chairman Rostenkowski succeeded in  
24 the Ways and Means Committee, in forging a real concensus that  
25 I think, in the Ways and Means Committee, is a pretty good

1 bill. I want to take a few moments to highlight three areas  
2 of S. 490, with which I expect to offer or support amendments.

3 I reviewed the testimony and have spoken with most of  
4 the business leaders and groups that are interested in this  
5 subject. For almost all, their top priority in trade  
6 legislation is to give the President a strong mandate for  
7 the recently launched Uruguay Round of Trade Talks. And almost  
8 all of them, therefore, oppose placing preconditions on our  
9 grant to the President of fast track negotiating authority.

10 They believe that preconditioning the fast track on  
11 Congressional approval of a trade statement, as required by  
12 S. 490, would prevent other countries from negotiating  
13 seriously with the U.S.

14 The Uruguay Round is too important to U.S. business to  
15 countenance that sort of delay. This view makes a great deal  
16 of sense to me. I share the chairman's concern about the  
17 importance of consultation with the Congress in the course  
18 of these important trade negotiations; but I believe we can  
19 achieve that consultation without hampering the progress of  
20 the talks.

21 I look forward to working with Chairman Bentsen and other  
22 members to ensure that those consultation mechanisms are in  
23 place. In short, I think we should follow the example of the  
24 House bill and provide the President with unpreconditioned  
25 fast track negotiating authority.

1           A second major area in which I believe we should follow  
2 the example of the House bill is Section 201, the statute  
3 which allows the President to grant an industry protection  
4 against fairly--and I emphasize fairly--traded imports.

5           S. 490 would significantly restrict the President's  
6 discretion to turn down import relief recommended by the  
7 International Trade Commission in cases where a majority of  
8 the International Trade Commission finds serious injury to  
9 the petitioning industry.

10           And where the International Trade Commission's finding is  
11 unanimous, S. 490 would completely remove the President's  
12 discretion to reject important relief. This means import  
13 relief, regardless of the cost of such protection might impose  
14 on consumers, regardless of the cost of damage to U.S.  
15 industries that rely on the imports, regardless of the effect  
16 on U.S. foreign policy or debtor nations, regardless of the  
17 compensation that the U.S. would owe our trading partners  
18 under international rules, and regardless of the retaliation  
19 that would be suffered by U.S. export industries.

20           Now, who favors this kind of provision? A few U.S.  
21 industries that want to make it easier to protect themselves  
22 against fairly--fairly--trade imports. Who is opposed? Not  
23 just the Administration; almost all consumer groups, most of  
24 the spokespersons for U.S. businesses that import, and U.S.  
25 businesses that export.

1 Facilitating restrictions on fair trade is not, I  
2 believe, what our constituents have in mind when they press  
3 upon us the adoption of a tough trade policy.

4 Unfair trade is another story. Whether to mandate  
5 retaliation against foreign unfair trading practices under  
6 Section 301 is the issue with which we have probably struggled  
7 the most in these hearings; and I share the serious concerns  
8 raised by the Administration and most of the witnesses before  
9 this committee about truly mandatory retaliation.

10 It is possible to construct many hypotheticals in which  
11 retaliation would greatly disservice both the petitioning U.S.  
12 industry and the broader national interest. But I have also  
13 found persuasive the arguments of the chairman and others that,  
14 by tolerating unfair trade practices in some special cases,  
15 we encourage them in all cases.

16 I agree that we would strengthen the President's hand in  
17 negotiating with our trading partners if he could say: The  
18 law gives me no choice; we must resolve this dispute over your  
19 unfair practice, or I will be obliged to retaliate.

20 The chairman's bill judiciously limits such retaliation  
21 to cases involving trade agreement violations, and I agree  
22 with that approach. I would add, however, an important  
23 refinement. Where the trade agreement specifies a dispute  
24 settlement procedure, retaliation should be mandatory only  
25 after the U.S. has won a trade dispute settlement ruling by

1 which the other side has refused to abide.

2 To require retaliation for a trade agreement violation  
3 without first pursuing the agreed dispute settlement procedures  
4 seems to me not only to undermine the U.S. position on trade  
5 agreement enforcement, but to invite justifiable counter  
6 retaliation. And Mr. Chairman, I would ask that the remainder  
7 of my statement be placed in the record.

8 The Chairman. Yes, of course. We will do that without  
9 objection. Senator Moynihan?

10 Senator Moynihan. Thank you, Mr. Chairman. In what I  
11 am sure will be a sequence of tributes, I want to thank you  
12 for first having held this remarkable series of truly  
13 informative hearings. You did not fill up our witness tables  
14 with citizens who, however imminent, were confined to five  
15 minutes in their opening statements and got one question  
16 answered before the noontime hour came.

17 We have learned a lot. You have brought us a good piece  
18 of legislation in S. 490. You have let us individually take  
19 sections of it that we might be able to learn better than we  
20 might do as a whole and speak more informatively on the floor  
21 when that time comes. I will be with Senator Chafee and  
22 speaking to the matter of what Senator Packwood mentioned on  
23 the Section 301, where indeed we do propose to strengthen the  
24 President's hand in those negotiations.

25 I would make three quick points. First, the most important

1 thing the world should know is that we are reauthorizing for  
2 10 years the President's power to negotiate the Uruguay Round  
3 of trade barrier reductions under the GATT. We are now  
4 closing down; we are opening up and carrying on.

5 At least two presidents will do this and maybe even three.  
6 It takes us almost to the end of the century.

7 The second point perhaps to make is that we have heard a  
8 great deal of testimony on both sides of this general case  
9 --and there are more than two sides--but we are aware as a  
10 committee, Mr. Chairman, I think that the United States is  
11 perhaps more sinned against than sinning, but we are not without  
12 fault.

13 Milton Friedman in the Wall Street Journal last week  
14 observed that Japanese pay something like three to four times  
15 the world price of meat--Japanese consumers--and American  
16 consumers pay three to four times the world price of sugar.  
17 So, we are not immune to that temptation.

18 Lastly, there is a section which we have added which  
19 particularly interests me and some other members on exchange  
20 rates. We have come to see exchange rates as an extraordinarily  
21 influential factor in trade balances, and we have observed,  
22 for example, nations which peg their currencies to the dollar  
23 can find themselves in an advantage which ought not to be  
24 there, if there were normal economic movements in the exchange  
25 rates.

1           And somehow attendant to that area is a moot aspect of  
2 trade policy which we do address, and I hope we are going to  
3 do well with that. And again, thank you.

4           The Chairman. Thank you very much, Senator. Senator  
5 Rockefeller, any comments you might have?

6           Senator Rockefeller. Thank you, Mr. Chairman. I am very  
7 glad that we are finally ready to do business on this bill,  
8 and I think your lead-up of hearings has been exceptional and  
9 fair and highly a learning process.

10           I have just returned from a week in Korea and in Taiwan  
11 and in Japan; and that reinforces, Mr. Chairman, my own  
12 conviction that we have to, as you have indicated, build  
13 predictability into our trade process. Korea is unstable in  
14 some ways, but certainly stable in its growth--12 percent  
15 last year. It has everything going its way. It may or may  
16 not be flexible.

17           Taiwan has a nine percent growth, 53 percent foreign  
18 reserve surplus. It says the money does not belong to the  
19 government; they are unsure what to do with it. They are an  
20 extraordinary success story. They may or may not be flexible.

21           The Japanese, I think, are quite prepared to dig in for  
22 the long term. Whoever it is that will succeed the Prime  
23 Minister, whether that be Mr. Abbe who is in town now, Mr.  
24 Takashta or Mr. Miazala or any others, will be in my judgment  
25 more hard-line than the present prime minister.

1 Ministers of those agencies in that country can talk about  
2 stimulating the economy, can put on paper policies to do so,  
3 but they are undermined by their own bureaucracies, which are  
4 there for the long term and do not change with government.

5 Japan has everything going its way, Mr. Chairman. It has  
6 no reason to give except as they understand that we mean  
7 business.

8 Your bill, in my judgment, means business, is serious,  
9 and is aimed at that most essential international token of  
10 trust; and that is predictability.

11 I think it is a good bill. It may or may not change in  
12 this committee or on the floor, but a bill of that strength  
13 must and will be enacted. And I thank the chairman.

14 The Chairman. Thank you. Of course, a bill with the  
15 magnitude and complexity of this one will have some changes.  
16 We understand that, and that is one of the reasons for this  
17 kind of debate to take place.

18 I was just thinking about some of the controversy over  
19 trips overseas that Congressmen make, and then I was thinking  
20 how valuable like that one is insofar as informing our  
21 membership.

22 Senator Moynihan. Mr. Chairman, might I add: particularly  
23 if you speak Japanese, as the Senator from West Virginia does.

24 The Chairman. That is true. Senator Armstrong, any  
25 comments?



1           Senator Armstrong. Thank you, Mr. Chairman. I will  
2 pass for the moment.

3           The Chairman. Senator Danforth?

4           Senator Danforth. Mr. Chairman, you have been working  
5 very hard on this since you assumed the chairmanship of this  
6 committee. You and I are partners of long standing on various  
7 matters, particularly trade legislation, I think going back  
8 to 1979 which was the first trade legislation, where we worked  
9 together. I look forward to that partnership continuing.

10           Clearly, the United States is running a \$170 or so trade  
11 deficit, and it has to change and it will. The question is:  
12 In what direction will they change? You and I believe in the  
13 principles of free trade. We do not want to see America  
14 retreat into a policy of protectionism. We hope to maintain  
15 that principle of free trade.

16           But it is clear that the days of one-way free trade are  
17 over. The United States of America is not going to be a  
18 doormat to the world. We are going to engage in international  
19 trade. We are willing to buy the products of other countries,  
20 but they must be willing to buy our products. That is not  
21 the situation today.

22           It is not the way business is conducted with the rest of  
23 the world at the present time. I believe that the bill that  
24 you and I and others have introduced goes a long way toward  
25 restoring a sense of balance and fairness in international

1 trade. This bill obviously is a part of a process which  
2 involves the House of Representatives. It involves not only  
3 the Senate Finance Committee but members of the Senate on the  
4 floor and the Administration.

5 My hope is that we can get together and put together  
6 legislation which will become law. I don't know what the  
7 position of the Administration is going to be. I do know  
8 this, that sooner or later the thrust of this bill is going  
9 to become law--sooner or later--either before or after the  
10 1988 elections.

11 So, I look forward to working with you today in the world  
12 of aluminum baseball bats. Play ball.

13 (Laughter)

14 The Chairman. Thank you, Senator Danforth; and I, too,  
15 have enjoyed the partnership in working on these problems.  
16 And we have got ourselves a bipartisan bill; members on both  
17 sides endorse it. I think that is the way to continue and  
18 I think that is the way I want it to be. And we have had a  
19 great deal of conferring with the Administration as we have  
20 gone along.

21 There are differences with the Administration, of course.  
22 We have had them with every Administration that has come along.  
23 Senator Wallop?

24 Senator Wallop. Thank you, Mr. Chairman. I want to  
25 express--and I don't know whether it has been or not--but at

1 least a modest skepticism about the route and course we are  
2 about to undertake. While it may not be our policy to have  
3 protectionism, it may be our achievement. It may run away  
4 from us, and I see many people who are willing to take a  
5 dose of moderation and turn into a dollop of extremism.

6 You hear it; you read it; and I just hope that as we  
7 undertake this--and I would caution us against locking into  
8 law the inability to change, and I see signs--dangerous signs  
9 --that may be contained within this bill. And I am not  
10 saying that there are no parts of this legislation that I  
11 agree with, because there are parts that I do agree with.

12 But I sometimes take a look at which you have described  
13 as a bill of size and complexity which surely it is, and it  
14 would not be the first time the Finance Committee or the  
15 House Ways and Means Committee or both Houses of Congress have  
16 achieved things that were beyond their intent. And I think  
17 the tax bill has achieved a few things beyond our intent.

18 In this instance, I am concerned frankly about where we  
19 may go; and we have only to look at the anxiety and hardship  
20 that we have created within our own country with the tariffs  
21 that the Administration has put in place to take care of the  
22 computer chip problem to see that there are a great many  
23 Americans who can be hurt while we seek to help some other  
24 Americans; and I hope that we keep those in mind, whose jobs  
25 and livelihood depend on either the free flow out of this

1 country of goods that they presently produce or the flow of  
2 goods into this country which they presently earn their  
3 livings from.

4 In the process, I think we best be careful. I listened  
5 to Senator Moynihan say that we know now the extremely  
6 important nature of exchange rates, and I don't quarrel with  
7 that; but I wonder whether you can put exchange rates into  
8 a trade bill and have an effective ability to function in  
9 world markets.

10 The Chairman. I appreciate the words of caution and  
11 prudence. They are always warranted, I am sure, on major  
12 legislation. Let me give you the sequence of arrival. It  
13 is Moynihan, Packwood, Rockefeller, Armstrong, Danforth,  
14 Wallop, Daschle, Baucus, and Heinz. Senator Daschle?

15 Senator Daschle. Thank you, Mr. Chairman. I want to  
16 join with all of those who have already commended the chair  
17 for the excellent set of hearings that we have had in  
18 preparation for the markup today. The staff in particular  
19 deserves commendation for providing us with the information  
20 necessary and preparation for those hearings and the quality  
21 of the witnesses that, in my opinion, were some of the best  
22 in my experience in either the House or now in the Senate that  
23 I have had the opportunity to learn from.

24 And so, I appreciate having had the opportunity that you  
25 gave us through those hearings. The word in this trade balance

1 problem that we face has been in the last few months  
2 "competitiveness"; and I suppose that will be a word with  
3 which we must contend as we deliberate in the next few days.

4 But I would hope that a far more significant word and  
5 uppermost in the minds of all of us is that word "balance"  
6 because I think that is really what we are all trying to  
7 accomplish here; it is balance. And Senator Wallop has  
8 addressed that from his perspective, and I think it needs to  
9 be addressed as we take up each of these issues.

10 Balance with regard to the way decisions are made in  
11 trade policy in the future between the Administration and  
12 certainly Congress. Balance with the way we implement Section  
13 201 and Section 301, but we haven't seen balance in the past.

14 We have seen a sort of haphazard approach to the  
15 utilization of those sections. It is important that from here  
16 on out we show continuity and show some balance. Balance with  
17 regard to our response to the barriers that we find abroad,  
18 especially as they relate to trade adjustment assistance and  
19 some of the concerns that we now have with regard to creating  
20 fairer trade.

21 Balance is going to be a critical word for me as we  
22 analyze amendments and as we try to create a policy that  
23 doesn't respond as much as it does prepare; and that is going  
24 to be critical.

25 I don't think we want trade policy that responds to the

1 problem we have right now, as important as that may be, but  
2 a policy that prepares us and creates a means by which we  
3 can better cope with trade policy in the future.

4 And I am hopeful that this will be a lot more prospective  
5 than retrospective as we address the needs that we have, not  
6 necessarily for 1987 but for the next decade and the year 2000.

7 So, I hope that balance and that prospective is evident  
8 as we progress; and I am very hopeful that, given the  
9 opportunities you have, we live up to the expectations that  
10 are upon us. Thank you, Mr. Chairman.

11 The Chairman. Thank you very much. Senator Baucus?

12 Senator Baucus. Thank you very much, Mr. Chairman. I  
13 truly want to congratulate you for these hearings and for  
14 this markup. I think the markup on this bill is going to be  
15 the most important matter that this committee is going to  
16 take up this year and perhaps even the rest of this decade.

17 I think it is an extremely important measure that we are  
18 now taking. I think, though, that when we consider this, it  
19 is important to consider it in context. Our deliberations  
20 here are watched by many. They are being watched by Americans.  
21 They are being watched by people in countries all over the  
22 world. And I think it is important that we set a very good  
23 example as we deliberate.

24 To Japan, for example, it is important to tell the Japanese  
25 particularly as Prime Minister Nakasone will soon be visiting

1 Washington--next week, in fact--that we are very good friends  
2 of Japan. We want to be good friends with Japan. We tell  
3 Japan, though, to work not against us but work with us because,  
4 if Japan does not, both the United States and Japan are going  
5 to pay adverse consequences.

6 I think it is also important to realize that much has  
7 changed in the last several years. Between the years 1980  
8 and 1985, for example, the yen fell against the dollar about  
9 30 percent. We all know that, since then, the yen has risen  
10 against the dollar by about 46 percent, in roughly the last  
11 18 months.

12 In 1977, too, Japan's global surplus was \$36 billion.  
13 Ours in that same year was about the same; it was \$30 billion.

14 Just last year, however, Japan's current count surplus  
15 rose to \$102 billion. For us, our current count deficit was  
16 about the same, \$106 billion; that is a deficit. Theirs was  
17 a surplus.

18 In 1979, the U.S. budget deficit was \$40 billion. Last  
19 year, however, it rose to over \$200 billion, the largest in  
20 the history of the world. American productivity rose by just  
21 point seven percentage points, the slowest growth rate among  
22 the developed world. Japan's rose by 3.8 percent, five times  
23 our growth rate.

24 Mitsui bought the EXXON building, the Rockefeller Center.  
25 The Gephardt amendment probably passed the House. Japan's

1 overriding concern is to maintain its export base, with little  
2 priority given to improving its people's standard of living.

3 Americans meanwhile give top priority to maintaining our  
4 standard of living artificially, through excessive Federal  
5 budget deficits and short-term consumption patterns.

6 So, what do we make of all this? I think it is time for  
7 America to begin to develop a coherent, comprehensive trade  
8 and competitiveness policy. Trade must be our primary thought,  
9 not an afterthought.

10 We passed a comprehensive Tax Reform Bill, but we passed  
11 over its effect on our international competitiveness.

12 Moreover, our approach is too reactive. We wait until  
13 Jujitsu announces its acquisition of Fairchild semiconductors  
14 to begin developing a foreign investment strategy.

15 In short, we need a trade policy that is both comprehensive  
16 and that is conscience. We need guiding principles. My  
17 guiding principle throughout this markup will be simply this.  
18 We should enact legislation that will help America under free  
19 and fair market conditions to produce goods and services that  
20 we can sell competitively in international markets while  
21 simultaneously maintaining or expanding the real incomes of  
22 Americans.

23 In short, I will just proposals we consider by whether  
24 they will strengthen America's long-term competitiveness.  
25 To me, competitiveness means recognizing that for America



1 the world has changed. The level of our trade has more than  
2 doubled in the last two decades. We can't build walls around  
3 our country either. We must compete.

4 But other countries also can't build walls. They must  
5 compete, too. There is no reason why Japan should sell in  
6 America if America cannot sell in Japan.

7 Thomas Jefferson, I think, recognized this need for  
8 change in words that are inscribed on the Jefferson Memorial,  
9 and I quote: "I am not the advocate for frequent changes in  
10 the laws and Constitution, but laws and institutions must go  
11 hand in hand with the progress of the human mind. As that  
12 becomes more developed, more enlightened, as new discoveries  
13 are made, new truths discovered and matters and opinions  
14 change, with the change of circumstances, institutions must  
15 advance also to keep the pace with the times."

16 Jefferson's words are timeless. We must change. We  
17 cannot rely on institutions and economic arrangements of  
18 the past to lead us into the future.

19 Mr. Chairman, I think that this bill that you have brought  
20 before us is a very significant, giant step in that direction.  
21 I thank you.

22 The Chairman. Thank you, Senator. Senator Heinz?

23 Senator Heinz. Mr. Chairman, in the interest of moving  
24 to the markup, I have no opening statement.

25 The Chairman. Thank you, Senator Heinz.

1 (Laughter)

2 The Chairman. There will be no applause in the audience.

3 (Laughter)

4 Senator Heinz. On second thought --

5 (Laughter)

6 The Chairman. No, we will proceed to the markup. Thank  
7 you very much. If you would proceed, please.

8 Mr. Lang. Good morning, Mr. Chairman. There will be  
9 two documents we will be working from. The first, which has  
10 an "A" on it, is a spreadsheet, and the second is a typed  
11 script document with a "B" on it. The first document compares  
12 current law, the House bill as reported by the Ways and Means  
13 Committee, S. 490 which is the Senate bill co-sponsored by  
14 a number of Senators; and Supplement B cross-references all  
15 of these matters to the Administration bill, S. 636.

16 We will refer to these as we go along. Several  
17 departments of the Administration, including the Office of  
18 the U.S. Trade Representative, have reviewed all of these  
19 documents and given us their comments. They are giving us a  
20 few more comments.

21 We are discovering a few things ourselves, and your staffs  
22 are finding a few things that need to be changed. It may be  
23 that we will need to put an errata sheet out this afternoon,  
24 but this is the document we will work from.

25 We put your names on each one. If you want us to keep

1 your copies here for you, we would be glad to do that.

2 The spreadsheet itself has a table of contents at the  
3 beginning. The table of contents pages are numbered at the  
4 top and the center, whereas the pages of the spreadsheet  
5 itself are numbered in the upper right-hand corner. The  
6 first 10 or 12 pages are just table of contents.

7 And I am going to begin with page 1 of the spreadsheet  
8 that is labeled at the top in the center, "Negotiating  
9 Authority."

10 By the way, I might say that representatives of various  
11 departments of the Government who are concerned with these  
12 matters are here this morning, including people from the USTR  
13 and the ITC and so on.

14 S. 490 has a relatively simple approach to the question  
15 of authority to negotiate. It does not distinguish between  
16 tariff and nontariff authorities; it simply authorizes the  
17 President to negotiate, both tariff and nontariff agreements  
18 for a period of 10 years, which begins January 3, 1980 or  
19 the date of enactment, if that is later.

20 The reason for choosing January 3 is, of course, that  
21 under current law some types of authority expire on that date.

22 In contrast, the other current law and the other bills  
23 under consideration are more complicated. They distinguish  
24 between nontariff authority and tariff authority. The only  
25 authority existing under current law is that to negotiate

1 nontariff barrier agreements. It is the authority that expires  
2 January 3, 1988.

3 Tariff negotiating authority expired in 1980 and has not  
4 been renewed since.

5 Under the House bill, authority to negotiate with regard  
6 to nontariff matters would be extended through January 3, 1991,  
7 and it could be extended for an additional two years if neither  
8 the Ways and Means nor Finance Committee disapproves the  
9 extension within 60 days after the President makes a  
10 submission proposing the extension.

11 Under the Administration bill, the nontariff barrier  
12 authority would be enacted as permanent authority. As to  
13 tariffs, as I said, under current law that authority expired  
14 in 1980. I am now on page 2 of the spreadsheet.

15 With regard to the House bill, it reestablishes the  
16 President's authority to negotiate tariff agreements and would  
17 extend it for the full five years through January 3, 1993.

18 There are some limitations on the authority to negotiate  
19 tariff agreements in the House bill. They are listed under  
20 the column "H.R. 3" on page 2. These kinds of limitations  
21 on Presidential authority have been traditional since the  
22 trade agreements program was first enacted in 1934.

23 S. 490 also contains a limitation of this type on the  
24 President's tariff cutting authority, even though his authority  
25 is unitary; that is, it is the same for both tariff and

1 nontariff matters.

2 In the Administration bill, this matter is reflected on  
3 page 1 of the supplement with the big "B" on the corner.

4 There in the middle of the page, it says "As to tariffs," and  
5 you can see that it reestablishes the President's authority  
6 with regard to tariff matters for a period of 10 years, rather  
7 than the five that is in the House bill and the 10 that is  
8 in the Senate bill.

9 The Chairman. By all means, interrupt as we go along  
10 if you have a question; that is the time to do it.

11 Senator Packwood. Just to make sure that I understand,  
12 and maybe some others on the committee, tariff versus nontariff.  
13 The President used to have the power to enter into tariff  
14 reductions or increases as the case may be by proclamation,  
15 without submitting it to Congress. Is the correct?

16 Mr. Lang. Yes, sir.

17 Senator Packwood. That ran out in 1980?

18 Mr. Lang. Yes, sir.

19 Senator Packwood. The House, in essence, reinstitutes  
20 that process, with a slight variation?

21 Mr. Lang. It does. The way we have set things up for  
22 discussion is first to describe the authority to negotiate  
23 and then the process by which the results of that negotiation  
24 are implemented. There is, some people believe, an important  
25 distinction between the two.

1           Senator Packwood. I just want to make sure what 490  
2 does, what the law was, what the House bill--we can't call it  
3 the House bill yet--what the Ways and Means Committee did.

4           But under the Ways and Means Committee bill, the President  
5 by proclamation could still make tariff changes. Under 490,  
6 the President could not; they would be submitted the same way  
7 as nontariff changes would be submitted?

8           Mr. Lang. Yes, sir.

9           Senator Packwood. Thank you.

10          The Chairman. Let me make the point again because some  
11 people may have missed that. We do have here, labeled as "B",  
12 the Administration's bill; and it is cross-indexed and  
13 available.

14          Mr. Lang. On page 3 of the spreadsheet is a description  
15 of what has come to be known as bilateral trade agreement  
16 negotiating authority. Under S. 490, bilateral trade agreement  
17 negotiating authority is extended for the 10-year period.

18          This authority was first established in 1984 to address  
19 the Israel Bilateral Trade Agreement, and it is now in use  
20 with regard to a bilateral trade agreement negotiation with  
21 Canada.

22          In order for this authority to go into effect under current  
23 law, it requires committee preapproval, which is a process in  
24 which the President sends up a notification that he has been  
25 asked by a foreign government to enter into such a negotiation;

1 and he believes it is in the national interest to do so. And  
2 if neither the Finance Committee nor the Ways and Means  
3 Committee disapproves that notification within 60 days after  
4 it arrives, the President has the authority to proceed to  
5 negotiate.

6 This bilateral authority covers both tariff and nontariff  
7 matters; that is, they are both subject to later Congressional  
8 approval by separate enactment. Current law always contained  
9 --at least since 1962--a provision that allowed the President  
10 to proceed on what is known as a conditional, most favored  
11 nation basis, that is, nations which did not sign the agreements  
12 he entered into at the GATT.

13 He could recommend to Congress and not receive the benefit  
14 of those agreements. In most cases, he has not done so; but  
15 in 1979, the President did recommend that the benefits of  
16 some nontariff agreements not be extended to countries that  
17 had not signed them.

18 Under H.R. 3 with regard to bilateral tariff negotiations,  
19 it extends the system under current law from January 3, 1988  
20 --the date on which it will expire under current law--to the  
21 full five years under the House bill, January 3, 1993, except  
22 for negotiations now under way with Canada. The authority  
23 would not be extended for that.

24 There are also some special limitations on bilateral  
25 agreements under the House bill reflected in the H.R. 3 column

1 on page 3; and with regard to the Administration bill, looking  
2 at the middle of page 1, there is no separate bilateral  
3 agreement authority. Current law would be extended on that  
4 matter, and also the Administration bill has a special note  
5 with regard to the pending Canadian discussions, which is that  
6 the extension of negotiating authority does not apply to an  
7 agreement that was in negotiation in January of 1987, meaning,  
8 of course, the Canada discussions.

9 Senator Moynihan. Mr. Lang, could I ask you: The  
10 Canadian negotiating authority expires when?

11 Mr. Lang. January 3, 1988, sir.

12 Senator Moynihan. Yes. So, there is a specific cutoff  
13 in the House and the Administration bills, but not in our bill?

14 Mr. Lang. In effect, under the Senate bill, you would  
15 also not-- The way it would work under the Senate bill is  
16 that if the President wished to continue the Canada negotiation  
17 beyond January 3, 1988 and if his authority to negotiate were  
18 extended, then he could continue with the Canada negotiations  
19 so long as he survived another committee preapproval process.

20 He would have to come back to the committee to --

21 Senator Moynihan. Which he barely did survive the first  
22 time around. Mr. Chairman, I think we should keep in mind  
23 that we have far more trade with Canada than we have with  
24 Japan or any other country in the world, and we might want to  
25 make sure we provide for that somewhere.



1           Senator Packwood. Now, I want to make sure what Senator  
2 Moynihan is saying. You are saying if we pass S. 490, that  
3 the President's negotiating authority with Canada runs out  
4 short of another preapproval?

5           Mr. Lang. Yes, sir. That is another way of saying it.

6           Senator Packwood. Then, if we get to August or September  
7 and the negotiations are dragging a bit, Canada is going to  
8 say: Now, wait a minute. How do we know what is going to  
9 happen? I sense that is what you are driving at.

10          Mr. Lang. Yes, exactly.

11          Senator Baucus. Mr, Chairman, if I might ask a question?  
12 Does this apply only to Canadian bilateral trade negotiations?

13          Mr. Lang. No. All these provisions on bilateral  
14 authority are stated generically. That is, the Administration  
15 provision does not extend authority with regard to Canada and  
16 is stated in terms of bilateral agreements that were under way  
17 on January 1, 1987; but in effect, they all only apply to the  
18 Canada agreement. Other bilateral authority would simply be  
19 extended for whatever period.

20          Senator Baucus. So, under 490, if the President's  
21 negotiations with Canada become stalled, would the  
22 Administration have to come back and ask for an extension?  
23 Is that correct?

24          Mr. Lang. Yes, sir. That is correct.

25          Senator Baucus. And would that request come to the

1 Finance and Ways and Means Committees?

2 Mr. Lang. Yes, sir.

3 Senator Baucus. Now, assuming 490 passes, if the  
4 Administration wants to begin free trade negotiations  
5 bilaterally with some other country, would that request  
6 come before the committees?

7 Mr. Lang. The same process. Yes, sir.

8 Senator Baucus. The same process? So, the committees  
9 would have to affirmatively disapprove within 60 days in order  
10 to prevent the negotiations from proceeding?

11 Mr. Lang. Yes, sir.

12 Senator Baucus. Thank you.

13 Mr. Lang. S. 490 contains one provision under what might  
14 be called "Special Negotiating Authorities." It is reflected  
15 in the right-hand column on page 4 of the spreadsheet. It is  
16 the authority for the President to undertake action to initiate  
17 bilateral negotiations with Hong Kong, Korea, Taiwan, and  
18 others that peg their currencies to the U.S. dollar for the  
19 purpose of assuring that those countries regularly and promptly  
20 adjust the rate of change to reflect underlying economic  
21 realities.

22 As you can see from the spreadsheet, both current law and  
23 the House bill have a number of other kinds of special  
24 authorizations. One that might be of interest in the House bill  
25 is that there is a list of a number of articles with which the

1 President is authorized to enter into an agreement with Canada.  
2 It is a specific list of specific articles.

3 The second part of this spreadsheet begins on page 5 as  
4 prerequisites to --

5 Senator Armstrong. Mr. Chairman, before we pass over  
6 page 4, may I just ask a question about the currency exchange  
7 rate?

8 The Chairman. Yes, of course.

9 Senator Armstrong. Both the Ways and Means Bill and S.  
10 490 provide for some form of negotiations. What do the sponsors  
11 really intend? What is the expectation that would come out  
12 of this?

13 Senator Moynihan. I believe I am the sponsor on this  
14 side. We have situations where, as in recent months, we have  
15 seen the decline in currency such as the mark and the yen in  
16 response to what we would think are economic realities; but  
17 no such decline--excepting one being negotiated with Korea--  
18 in countries which, by pegging their currencies to the dollar,  
19 can avoid those movements. And we think they do not reflect  
20 economic reality, and they are an artificial advantage and  
21 that the President ought to be able to negotiate and should  
22 learn about them. Certainly, he can negotiate whether we tell  
23 him to or not.

24 Senator Armstrong. In other words, with respect to Hong  
25 Kong and Korea, what we are really saying is that we think that

1 they are pricing their goods and services to us too low.

2 Senator Moynihan. That is right.

3 Senator Armstrong. And offering, in effect, to pay us  
4 too much for what we sell to them. Is this simply advisory  
5 language or an expression of intent?

6 Senator Moynihan. Of necessity, advisory, but it indicates  
7 our concern. Mr. Chairman?

8 The Chairman. Yes, I would add to that. If you look at  
9 the situation with Taiwan, they have an enormous surplus plus  
10 an enormous trade surplus; and then with no inflation, as they  
11 have not had, and then you look at what has happened to their  
12 currency as related to ours. And it not only hasn't moved  
13 along with the yen and trying to correct it, but has moved  
14 somewhat in the other direction.

15 So, what you are seeing today is that if we make that kind  
16 of headway with Japan, as we hope to with a change in currency  
17 valuations, you will see Taiwan and Korea waiting to come in  
18 and fill that void. And that is a concern to us.

19 But I think rightfully so, this is an advisory thing and  
20 not a mandatory thing that we are talking about.

21 Senator Baucus. Mr. Chairman, I might add onto this. I  
22 don't know what the exact figure is, but the figure I have  
23 heard is 40 percent of the value of trade between other  
24 countries and the United States is with currencies other than  
25 the yen and the Deutchmark, that is, the Korean wan and

1 the Taiwanese currency and the Canadian dollar, etcetera.

2 The fact is that I hope we can fashion a remedy that is  
3 not only advisory but also takes into consideration different  
4 countries' actions. For example, I think the Taiwanese currency  
5 has in fact risen about 14 to 15 percent in the last year to  
6 year and a half, whereas the Korean currency has not.

7 The Taiwan government has tried to make some adjustments  
8 but not enough. We have to address this because of 40 percent  
9 of the value of currency with the yen and with the Deutchmark.

10 Senator Armstrong. Mr. Chairman, the thing that is  
11 noteworthy about this portion of the bill, as contrasted with  
12 what we were discussing earlier, is that in the earlier  
13 provision we were talking about tariffs. We were talking in  
14 effect about tax on the movement of goods in international  
15 commerce. Here, we are simply expressing the belief that  
16 people who are selling to us ought to charge us more.

17 And when you reduce it to those terms, it really puts in  
18 perspective a dilemma. In international trade, many of us  
19 take the position that it is a hostile act for someone to  
20 sell to us at a low price, exactly the thing which--among  
21 domestic suppliers--we would say was good citizenship, was  
22 good business, was desirable for us in our every-day business  
23 life. Any of us would say it is good when a supplier wishes  
24 to sell to us at a low price, and we would encourage that  
25 kind of activity.

1 Here we are saying, as a matter of advice to the Secretary  
2 of the Treasury, that somehow he has got to enter into a deal  
3 to get Hong Kong and Taiwan and others to raise their prices,  
4 because that is really all we are talking about in this section,  
5 if I understand it correctly.

6 The Chairman. I would say that, in that situation, what  
7 you run into in South Korea and what you run into in Taiwan  
8 is where the central banks and all have a very substantial  
9 influence on what happens to that currency. They have pegged  
10 it to ours, and they have far more control than we have  
11 ourselves concerning our currency.

12 And the question then is: Have they then "rigged it," if  
13 you want to use that term, to give themselves a very substantial  
14 differential which works to their advantage? That is the  
15 concern.

16 Senator Armstrong. Mr. Chairman, we understand that. I  
17 don't want to argue it particularly. I just want to be sure  
18 that we are all thinking about the underlying issue. The  
19 underlying issue is really not how they manipulate their  
20 currency. It is the question of whether or not we think it  
21 is injurious to this country and our producers and our consumers  
22 to have people sell to us at a low price. And I am not  
23 prepared to say, just out of hand, without some proof, that  
24 that is the case because, while it is true that the competition  
25 from low-priced goods and services coming into this country may

1 make it difficult for some of our producers, it is greatly to  
2 the benefit of our consumers and in fact to the extent that  
3 the items we import are factors of subsequent production by  
4 our country, enhances the economic opportunities for our  
5 producers and workers in those industries.

6 And so, it is a very complicated equation, but the notion  
7 is getting started--and I think it is reflected in this section  
8 of the bill--that per se, if somebody sells to us at a price  
9 that is a little too low, that is somehow a hostile act. And  
10 I think that is at best unproven, and maybe illogical.

11 The Chairman. I think it goes beyond just that. Senator  
12 Bradley, would you like to comment?

13 Senator Bradley. Senator, I will try to analogize it  
14 a little bit and think of it in somewhat different terms.  
15 The lowest price sometimes means price controls. You could  
16 have the lowest price if you had price control; but if you  
17 allow the market to work, you assume that you are going to get  
18 great efficiency gains in the long run and you are going to  
19 get the lowest overall price.

20 If you analogize this to the international scene, and you  
21 say that the price mechanism is the exchange rate, you find  
22 some of these countries essentially having the same kind of  
23 impact as price controls. If you believe in the market and  
24 allowing the market to determine price, then you don't have  
25 price controls. And when you have attempted to manipulate

1 your exchange rate and keep it artificially low in terms of  
2 price in this country, then you are in a sense impeding the  
3 function of the market; and you are putting an artificial  
4 barrier to what would be the overall price of the goods in  
5 international trade --

6 Senator Wallop. Would you yield for a question on that?

7 Senator Bradley. Sure.

8 Senator Wallop. One of the problems I see is that is  
9 somewhat too simple an explanation of what is taking place  
10 and the tendency of Americans to mirror image. When you have  
11 a currency that is so miniscule on the world's currency markets,  
12 such as Taiwan currency, you can't let it fluctuate as you  
13 can the yen. I mean, it is subject to such a violent internal  
14 disruption economically that those people simply couldn't  
15 let it happen. I mean, there are not that many Taiwan currencies  
16 that one can allow that currency to float as you do things  
17 like the Japanese yen or the mark or indeed the Canadian  
18 dollar. These countries would have their internal economic  
19 problems subjected to the manipulations of currency speculators,  
20 and they would have no domestic economic control at all.

21 Senator Baucus. Mr. Chairman?

22 The Chairman. Yes, Senator Baucus?

23 Senator Baucus. Mr. Chairman, what I think we are getting  
24 at here is frankly not so much whether or not other countries  
25 goods, per se, are sold at a lower price in this country. I



1 think more fundamentally you have to begin to address the  
2 mercantilistic and export-driven economies and the economic  
3 policies of some of these countries.

4 I think it is true that some of these currencies are not  
5 as widely pegged as some others--certainly Korean and Taiwanese.  
6 However, some of these countries have very definite merc  
7 mercantilistic, export-driven economies that kind of beggar  
8 their neighbor in a certain sense. The fact is that these  
9 countries also have to begin to live in the world community.

10 They cannot be taking advantage of United States consumers  
11 or some other countries as much as they have in the past. It  
12 is a complicated question.

13 The underlying point is not whether their price is the  
14 lowest price. That is not the issue. It is that these  
15 countries are adopting too much mercantilistic and export  
16 driven economic policies that unfairly take advantage of other  
17 countries.

18 Senator Armstrong. Max, I am not trying to get the last  
19 word, but implicit in what you have said is exactly the point  
20 I was making, that somehow by selling to us at a low price,  
21 these countries are taking advantage of us--to use your words.

22 Senator Baucus. That is right.

23 Senator Armstrong. And that underlying proposition has  
24 not been, to my knowledge, very carefully examined; and I  
25 think I am skeptical that it is really the case that when

1 someone sells low to us, that somehow this is a hostile act or  
2 represents taking advantage of us. And that is a very  
3 different question than tariff barriers or nontariff barriers.

4 The currency issue is really a flat price question, and  
5 what we are saying here to the Secretary of the Treasury is:  
6 Get those currencies adjusted so this stuff doesn't come in  
7 here so cheap.

8 Senator Bradley. But you are also saying who determines  
9 price. Do you want price determined by the market, or do you  
10 want price determined by one of the actors in the market?

11 It seems to me that you would not want to argue for price  
12 controls through exchange rates.

13 Senator Armstrong. Touche.

14 The Chairman. Gentlemen, I think that has been a very  
15 productive exchange. I call to your attention that we are  
16 on page 4, and we have two procedural questions.

17 Senator Packwood. Actually, I think the exchange has  
18 been very worthwhile, and I hope we don't hesitate to do this  
19 because we might understand what we are doing, page by page, as  
20 we get there. Here are my two procedural questions.

21 It is my understanding we are going to continue to walk  
22 through until we finish it today or tomorrow or Friday, whenever  
23 we finish it; and then we will start the markup and go daily  
24 until we finish it?

25 The Chairman. That is correct.

1 Senator Packwood. 10:00 each morning all the way through?

2 The Chairman. We might start earlier if we find that the  
3 discussions get more lengthy. We might even move into the  
4 afternoon, with permission of the Senate.

5 Senator Armstrong. Is it your intention to do that  
6 starting Monday?

7 The Chairman. No, no, starting on Tuesday.

8 Senator Armstrong. Thank you.

9 Senator Packwood. Then, will you be going the following  
10 Monday?

11 The Chairman. Not necessarily.

12 Senator Packwood. All right.

13 The Chairman. At this point, we have not made that  
14 decision. There are no votes scheduled on the floor of the  
15 Senate on Mondays. A lot of the members have made commitments,  
16 and we well understand that. So, we will not do markups--at  
17 least at this point--on Mondays.

18 Senator Packwood. A second question. I see Mr. Woods  
19 and Mr. Holmer are here, who I hope are speaking for the  
20 Administration. Will one or both of you be here during the  
21 markups? So, if we want to know what the Administration's  
22 position is, you hopefully can speak for them.

23 The Chairman. Yes, that was understood, and we have asked  
24 them to be here; and we have had a great deal of communication  
25 with them up to this point.

1 Senator Chafee. Mr. Chairman, could I ask one quick  
2 question?

3 The Chairman. Yes.

4 Senator Chafee. As we go through this, the purpose is  
5 to familiarize ourselves with it; but if we have objections,  
6 is now the time to raise them, or just raise sort of warning  
7 flags of concerns? What is the procedure?

8 The Chairman. Senator, I would hope that during this  
9 week that we would not go to actual votes on amendments. If  
10 you want to red flag it and state your concern, as Senator  
11 Armstrong did, that is fine. And if you want to elaborate on  
12 your concern, we will take some of that and get an exchange  
13 for a better understanding.

14 Senator Chafee. Is it proper for me now to ask a question  
15 in connection with this page 4?

16 The Chairman. Oh, yes, go right ahead.

17 Senator Chafee. I am not trying to cut ahead of somebody.

18 The Chairman. No, go ahead.

19 Senator Chafee. I would like to ask Mr. Holmer about this  
20 word "shall." "The President shall take action." Has that  
21 been discussed heavily? I apologize that I just came in; I  
22 was at an acid rain hearing.

23 Senator Moynihan. We have made it clear that we have  
24 asked the President to address the subject. We cannot require  
25 him to do anything in this regard.

1 Senator Chafee. He shall take action to initiate  
2 bilateral -- All right, fine.

3 The Chairman. Senator, we don't talk about the degree of  
4 action; we don't put limitations on it. It is really an  
5 advisory thing.

6 Senator Heinz. Mr. Chairman, just one thing on that  
7 same point?

8 The Chairman. Yes.

9 Senator Heinz. This is a subject that is probably under  
10 the jurisdiction of the Banking Committee and of the  
11 subcommittee that you are now ranking on, the International  
12 Finance and Monetary Policy; and it is my hope that Chairman  
13 Sarbanes will in fact soon address this issue and that we  
14 will not have to do that committee's work for them.

15 The Chairman. Senator, that point was made to the  
16 proponents of the amendment, and they clearly understand that.

17 Will you proceed, Mr. Lang?

18 Senator Heinz. Thank you, Mr. Chairman.

19 Mr. Lang. Mr. Chairman, I am at the bottom of spreadsheet  
20 page 5. For Senators who arrived late, these numbers are in  
21 the upper right-hand corner of the spreadsheet.

22 The subject here is prerequisites for entering into trade  
23 agreements. There are three kinds of prerequisites that we  
24 have found in these various bills. First is the one of  
25 accomplishing stated objectives. Second is the requirement

1 for consultation with various groups, including Congress. And  
2 third are trade agreement implementation procedures; that is,  
3 how do you actually put that trade agreement into law in the  
4 United States?

5 With regard to the first on accomplishing stated  
6 objectives, S. 490 retains current law provisions that require  
7 the President to analyze each trade agreement he sends up and  
8 tell the Congress how it has accomplished objectives he set  
9 out for them; but in addition, it requires that a trade  
10 agreement may be entered into only if it meets at least one  
11 of the objectives that are set out in S. 490.

12 The House bill requires a presidential determination that  
13 an agreement achieves one of these negotiating objectives.  
14 The House has a long list of them, too, and a statement  
15 explaining what objectives it does or does not achieve; and  
16 the statement must also describe efforts to achieve  
17 international exchange rate equilibrium.

18 The Administration bill contains no requirement for  
19 accomplishing objectives beyond those in current law.

20 The House bill also links trade agreement authority to  
21 negotiating objectives in a slightly different formula from  
22 the Senate bill. It requires that the objectives--one or more  
23 of the objectives--must be accomplished by an agreement. Our  
24 understanding from the House staff is that this is essentially  
25 intended to accomplish the same purpose as the Senate bill.

1           One other provision that might be of interest here at the  
2 top of page 6 in the S. 490 column concerns State trading.  
3 This is a provision to the effect that if the United States  
4 intends to enter into a trade agreement with a country that  
5 has State trading enterprises and they account for a significant  
6 share of its exports or its industries that compete with  
7 imports, then the President may enter into a trade agreement  
8 with the country only if the agreement provides that those  
9 enterprises will adhere to the provisions of GATT Article 17,  
10 which essentially requires that State enterprises operate in  
11 accordance with commercial considerations.

12           The Senate bill also contains four prerequisites. They  
13 begin with the word "reciprocal" in the right-hand column at  
14 the bottom of page 6, that are unique to S. 490. They are in  
15 no other bill. These are general prerequisites of any  
16 agreement: first, that it be reciprocal; second, that the  
17 Administration be able to demonstrate that it is in some sense  
18 enforceable; and third, over on page 7, that it builds on  
19 existing agreements insofar as it is practicable; and finally,  
20 that it is the result of consultation with Congress.

21           The second kind of prerequisite required for trade  
22 agreements to go into effect in the United States is listed  
23 beginning at the middle of page 8, and that is consultation  
24 with Congress. S. 490 essentially retains current law with  
25 regard to these formal requirements for consultation. Under

1 current law, five members of the House and five members of the  
2 Senate are designated in each Congress to be accredited by  
3 the President as official advisors to international trade  
4 negotiations. And this provision would be amended by the  
5 House bill in that the five members would also be appointed,  
6 but there would be some specific requirements for consultations  
7 with them.

8 The Administration bill contains similar expansions on  
9 this consultation requirement, and this is listed on page 2  
10 of the Administration bill supplement, which is a separate  
11 document, for those of you who are trying to follow what we  
12 are doing. It is the document with the big "B" on the front.

13 These additional consultation requirements are listed  
14 under "B. Required consultation with Congress" on page 2  
15 of the Administration bill, including the role of advisors,  
16 the fact that additional advisors can be designated by USTR  
17 after consulting with the Chairmen and ranking members of  
18 the Ways and Means and Finance Committees and from other  
19 committees which appeared to have legislative concern about  
20 matters that are under discussion in these negotiations.

21 The USTR would also, under the Administration bill, be  
22 required to keep each advisor currently informed concerning  
23 trade matters with briefings of not fewer than four a year,  
24 and there would be a specific provision that the Chairmen  
25 of the Ways and Means and Finance Committees may designate



1 members in addition to the official advisors and staff who  
2 have access to the information.

3 That basically carries forward current practice. The  
4 Chairmen have traditionally designated other members of the  
5 committees who are not the official advisors as alternate  
6 advisors to these discussions and also designated staff members  
7 who, pursuant to a memorandum of understanding with the  
8 Administration, receive the negotiating information that the  
9 Administration makes available to the official advisors--the  
10 cable traffic and documents that are going to be proposed by  
11 the governments and so on.

12 The Chairman. We had that, didn't we, in the Tokyo Round?

13 Mr. Lang. Yes, sir.

14 The Chairman. And as I recall, we had the record of  
15 the Congress and the Senators and staff--we had no problems  
16 with any leaking of the information. We had a pretty good  
17 record on that.

18 Mr. Lang. I believe the information has never been leaked  
19 from any Finance Committee source.

20 On page 10 of the spreadsheet, you can see a discussion.  
21 For those of you who came in late, the spreadsheet numbers are  
22 in the upper right-hand corner of the pages--so as not to  
23 confuse them with the numbering of the table of contents.

24 S. 490 retains the requirement in current law to consult  
25 with the International Trade Commission. This is a rather

1 formal process that went on during the Tokyo Round and in  
2 previous trade negotiations.

3 The House bill and the Administration bill expand this  
4 ITC advice process a bit more.

5 The House will provides that the scope of ITC advise  
6 is expanded to include its judgment on the probable economic  
7 effect of nontariff as well as tariff matters in agreements  
8 and to cover the possible impact of changes in U.S. laws as a  
9 result of trade agreements on U.S. industries providing  
10 services that depend on intellectual property and on U.S.  
11 investment regulations.

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1 The ITC investigations would also be continued under the  
2 House bill for development of trade policy priorities for the  
3 Administration, based on their hearing process.

4 Senator Wallop. Mr. Lang, can I make this inquiry here?  
5 Is there some place within any of the three pieces of  
6 legislation, or is there contemplated, an idea by which these  
7 same people who are receiving reporting and consultation about  
8 the possible effects of tariffs and one thing and another? Is  
9 there any place where they are also receiving reaction from  
10 various parts of the Administration of what other legislation  
11 we may be passing might do to our trade policy, or our  
12 trading ability, or our competitiveness? Because as I look --  
13 and there are members of this committee, for example, that  
14 have had serious reservations about the Foreign Corrupt  
15 Practices Act and a number of other things.

16 Is there some way that we can have somebody also counsel  
17 us as to the kinds of problems we are creating for ourselves  
18 in other arenas?

19 Mr. Lang. The closest thing that comes to mind in any of  
20 these bills, Senator Wallop, is a provision requiring the  
21 Administration to describe the trade impact of actions it is  
22 proposing to take administratively. I am not aware that any  
23 of the bills contains a provision requiring Congress to state  
24 the trade impact of legislation.

25 Senator Wallop. I guess I am not making myself clear.

1 Congress, if it was about to do something, as it frequently  
2 does, like shoot itself in the foot, wouldn't be willing to  
3 publicly state that; but we are asking the Administration to  
4 counsel Congress on the effects of tariffs and other kinds of  
5 items that they have negotiated or are about to enter into or  
6 define as a consequence of other actions -- I am asking is  
7 there any way where we can get these same people whose jobs  
8 are trade and competitiveness to come and tell us the  
9 consequences of actions we may be taking?

10 Mr. Lang. Yes. The Committee has traditionally consulted  
11 with the International Trade Commission as an independent  
12 agency on the trade impact of actions it proposes to take.  
13 There is no formal requirement for the ITC to do that, but  
14 generally speaking the Committee sends every piece of  
15 legislation that is referred to it to the ITC for its  
16 comments. And those comments are regularly received in the  
17 Committee before the legislation is considered. That is true  
18 of all of the legislation you will be considering here, but it  
19 is not a legislative requirement.

20 I thought you were referring to something like the  
21 requirement that the Committee has to state the budget impact  
22 of its legislation in every reported --

23 Senator Wallop. No. There are things that we do, but  
24 inadvertently, things that are aimed domestically but  
25 inadvertently affect us in international competitiveness in

1 trade. If we could find a way to receive that reaction before  
2 acted, at least in some instances it would be helpful.

3 Senator Chafee. Mr. Chairman, may I ask a question here?

4 The Chairman. Yes, certainly.

5 Senator Chafee. Mr. Chairman, what are the ground rules  
6 for Mr. Woods and Mr. Holmer, the Administration  
7 representatives here? If they see something go by in this  
8 discussion that the Administration is quite opposed to or that  
9 disturbs the Administration, are they free to speak up, or do  
10 we have to call upon them?

11 The Chairman. Oh, no, I would not object to that. If they  
12 want to speak up, fine. I don't want any long speeches,  
13 though.

14 Senator Chafee. No, but if they want to flag something for  
15 us.

16 The Chairman. Tell us your concern, and if you oppose it  
17 tell us why. By all means that would be productive. We want  
18 to know it.

19 Senator Chafee. Thank you.

20 So, we can assume that the Administration's silence  
21 indicates assent?

22 Mr. Woods. Well, I think probably most appropriately, we  
23 would be inclined to hold any lengthy discussion of places  
24 where we have problems in the bill, until such a time that  
25 you all are considering changes to the legislation, unless you

1 would prefer that we do it somewhat differently.

2 Senator Chafee. Well, I personally would find it helpful  
3 if you would speak up as we went along so we could be brooding  
4 over these things.

5 The Chairman. I think what they can do is flag them for  
6 you, and of course we have got the Administration's bill here  
7 to show the differences in that regard. But rather than try to  
8 argue out the points during the walk-through, if they would  
9 state their concern and, as you say, you can be giving that  
10 further consideration.

11 Senator Chafee. Thank you.

12 Mr. Lang. Mr. Chairman, continuing in the middle of page  
13 10, there has been an elaborate process developed since the  
14 1974 Act for the private sector advice. S. 490 retains the  
15 entire private sector advisory system, except for a  
16 requirement that a predominate number of the members of any  
17 advisory committee established under this section may not  
18 belong to the same political party, the objective being to  
19 assure that the advisory committees are not partisan  
20 institutions.

21 The House bill and the Administration bill expand somewhat  
22 the role of the private sector advisors. Under the House bill,  
23 they are authorized to provide information and advice on the  
24 development and implementation of overall U.S. trade policy,  
25 rather than just the policy with respect to trade

1 negotiations.

2 There is a list at the bottom of page 10 in the H.R. 3  
3 column that shows you the kinds of things the Ways and Means  
4 Committee was interested in hearing from the advisory  
5 committee about.

6 Over on page 11 you can see that the private sector  
7 advisory committee would also be changed in the House bill.  
8 Its name would be changed somewhat. It would be appointed by  
9 the U.S. Trade Representative.

10 The membership listed there in the House column is  
11 essentially the membership under current law, the addition  
12 being the phrase "particularly those affected by trade." And  
13 there is a provision in the House bill as in the Senate bill  
14 -- different language, same objective -- "appointments must  
15 reflect a balance between the political parties," and also a  
16 requirement that the committee meet regularly. There is no  
17 requirement that the committees meet regularly, and early in  
18 this decade they did not meet regularly for some time.

19 The Administration bill -- I am now at the top of page 3  
20 in the supplemental document that has a "C" on the front; for  
21 those of you who arrived late, the Administration bill is  
22 reflected in this document -- contains three additional  
23 requirements: First, that there be public hearings before  
24 an interagency committee on any proposed nontariff agreement.  
25 Second, the Administration bill encourages the Administration

1 to seek private sector advice prior to the commencement of  
2 negotiations. That is a change in that current law. It would  
3 suggest that their advice would be received not later than the  
4 agreement being submitted to the Congress for consideration.  
5 And finally, some new committees are required, the same ones  
6 as in the House bill -- Services, Investment, Agriculture,  
7 Defense, Industry, and Labor.

8 Finally, the third prerequisite for entering into trade  
9 agreements is their entry into effect for the United States.  
10 These are called "implementation procedures" on the spreadsheet  
11 and the discussion of them begins at the bottom of S. 490.

12 S. 490 provides one procedure for trade agreements going  
13 into effect. I think the best way to understand this  
14 procedure would be to understand current law first, and then  
15 show the change that occurs under S. 490.

16 Under current law there are two ways a trade agreement  
17 would go into effect. With regard to multilateral tariff  
18 agreements only, until 1980 the President was authorized to  
19 simply proclaim changes in rates of duty as the result of  
20 reciprocal trade negotiations. No further intervention of  
21 Congress, once they had enacted the authority to proclaim the  
22 changes in rates of duty. That delegation goes all the way  
23 back to 1934, and from 1934 through 1980; with one break in the  
24 early Nixon Administration that authority was extended three  
25 years at a time more or less continuously throughout that



1 period. There were some breaks, but that authority extends  
2 back to that time.

3 Senator Packwood. Is that what we commonly call "the  
4 proclamation authority"?

5 Mr. Lang. Yes, sir.

6 Senator Packwood. And it relates to tariffs.

7 Mr. Lang. Yes, sir. It relates to multilateral tariffs.

8 Senator Packwood. Pardon me, multilateral. But tariffs  
9 only.

10 Mr. Lang. Yes, sir.

11 With regard to multilateral agreements on nontariff  
12 matters and the bilateral authority for both tariff and  
13 nontariff agreements, Congress is required to enact a statute  
14 to implement those agreements.

15 Prior to 1974, the only way the President could get that  
16 statute enacted was the way he got any other statute enacted:  
17 He sent a message up to Congress and proposed it be  
18 implemented. And sometimes it was, and sometimes it wasn't.

19 Following 1974 and under current law that will expire  
20 January 3, 1988, the President can employ a fast track to get  
21 nontariff barrier and bilateral tariff and nontariff  
22 agreements implemented. On the fast track what the President  
23 does it this: He notifies Congress not fewer than 90 days  
24 after he signs a trade agreement that he intends to enter into  
25 it. During that 90-day period a custom has developed of the

1 Congress examining the agreement closely and giving the  
2 President advice on how either the agreement should be  
3 changed or the bill to implement the agreement should be  
4 changed, or the administrative procedures to carry out that  
5 bill should be changed. The President has to send the Finance  
6 Committee and the Ways and Means Committee three -- the bill,  
7 the statement of administrative operations that the  
8 Administration proposes, and the trade agreement itself.

9 The Chairman. Let me ask about the practicalities and  
10 realities there. During that period of 90 days -- we have used  
11 this, what? About three times?

12 Mr. Lang. Yes, sir, three times.

13 The Chairman. On Israel, and we talked about it with  
14 Canada, and we used on the technical --

15 Mr. Lang. You used it for Israel, a technical agreement,  
16 and the Tokyo Round.

17 The Chairman. But during that 90 days, we have seen some  
18 changes by the Administration in the consultations with the  
19 Congress; so, what they finally sent up to us had taken often  
20 much of that into account.

21 Mr. Lang. Yes.

22 The Chairman. Okay.

23 Senator Packwood. Well, actually the process worked  
24 reasonably well, didn't it? They were reluctant to go ahead  
25 and submit something to us that we weren't going to like. So,

1 if it was a good STR, they would bend over backwards to try to  
2 figure out what our main complaints might be.

3 Mr. Lang. It was a very active process. Yes, sir.

4 Senator Packwood. Yes.

5 Senator Heinz. Mr. Chairman, let me inquire: What we've  
6 got is essentially a two-hoop procedure, which the  
7 Administration must go through in order to get fast-track  
8 authority. The first hoop is that we have to pass a trade  
9 bill which contains a second hoop, and that hoop is that the  
10 Administration must come to us with a trade policy statement,  
11 at which point one of two things can happen: We can either  
12 reject it because we don't like it, because it isn't  
13 satisfactory, because it is vague, it doesn't mean anything;  
14 and if we do that, at the same time we reject any fast-track  
15 authority.

16 The other alternative is that we can expect the trade  
17 policy statement, and, in accepting that, we trigger fast-track  
18 authority.

19 Do I understand the procedure correctly?

20 The Chairman. That is the way I understand it.

21 Mr. Lang. That is what S. 490 provides.

22 Senator Heinz. I have no objection to the notion of trying  
23 to get a trade policy out of any Administration. I can't  
24 remember when we last had one, and it would probably be a very  
25 desirable statement to get. On the other hand, I wouldn't want

1 to mislead myself into believing that we will get a  
2 satisfactory statement of trade policy and thereby create the  
3 horns of a dilemma, which is, to the extent one believes that  
4 there is an unsatisfactory trade policy statement because it  
5 is just too general, too vague and too unsatisfactory, but to  
6 the extent one wants to proceed with negotiating authority or  
7 doesn't want at that point to risk the manifest problems of  
8 simply rejecting fast-track authority out of hand, it seems  
9 to me that we put ourselves in a box. Basically we will in  
10 all likelihood be forced to accept the Administration's trade  
11 policy statement whether we like it or not.

12 That seems to me to be a box we shouldn't put ourselves  
13 in. Maybe there should be a third choice, where we can leave  
14 those two choices but have a third one.

15 Correct me if I am wrong, but we had a different  
16 procedure in S. 1860 last year, and I am wondering if staff  
17 could describe that procedure. To the best of my  
18 recollection, what it involved was taking a look later on in  
19 the process, at a point when the Administration had made a lot  
20 of negotiating progress, and we either said, "Yes, we like the  
21 progress you are making," or "We think it is very bad." If we  
22 liked the progress they were making, at that point we vested  
23 them with fast-track authority.

24 And maybe, if my recollection is correct, that should be  
25 the third choice, simply so we don't get ourselves in a

1 hopelessly constricting box.

2 The Chairman. Well, I think what we are seeking,  
3 obviously, is that we play out our roles and responsibilities  
4 under the Constitution, and that we have consultation, and that  
5 we have an effective and peaceful way to do it. I don't think  
6 you have to paint yourself into a box. I think that hopefully  
7 reason prevails on both sides.

8 But these are things that we have to study as we go along,  
9 and once again I think we are sharing the same objective,  
10 trying to find the best way to do it.

11 Senator Heinz. Could someone explain what we do if we get  
12 a one-page trade policy statement, or 50 pages that say the  
13 same thing as one page, which is not much?

14 The Chairman. Well, I think what happens is you are  
15 consulting as you prepare that statement, and any Administration  
16 would do that if they figured they were going up against a  
17 stone wall, and you try to find an accommodation on that  
18 statement before it is presented. Those are the practicalities.

19 Senator Packwood. Could I ask a further question, then?

20 The Chairman. Sure.

21 Senator Packwood. It seems to me Senator Heinz raises a  
22 valid question. I am curious as to what the Administration  
23 thinks on this. They may even submit us a good trade  
24 statement, but there are bound to be downsides in it for each  
25 and every member someplace, somehow, and we are close to an

1 election year, and we just choose to do nothing -- we don't  
2 want to take any votes on anything. Does that mean that you  
3 have got no fast-track authority and that your bargaining  
4 allies are going to say, "Mr. Woods and Mr. Holmer, what do  
5 you mean? You don't have any authority at all, for all  
6 practical purposes." Will that be the de facto outcome?

7 Mr. Woods. Senator, if I may address your question, as  
8 I understand the way this bill is written, the approval of the  
9 trade policy statement is on a fast track.

10 Mr. Lang. Right.

11 Mr. Woods. Now, if I may go one or two steps further, I  
12 would say, with regard to the provision here that the staff  
13 has described in the middle of page 11, we very much believe  
14 the President should have fair proclamation authority, as he  
15 has had from I believe 1934 until 1980 in multilateral  
16 negotiations, because that provides some certainty for our  
17 negotiating partners in such multilateral negotiations, that at  
18 the end of the day we will be able to deliver on those items  
19 which we have negotiated. It also has the advantage of not  
20 placing individual members of Congress in voting on items in  
21 which individual constituents have interest on the one hand,  
22 where its broader national interests might suggest a different  
23 response on the other. And we felt that the tariff  
24 negotiating authority has worked very well that way for a lot  
25 of years and should continue in that regard.

1           Also, one of our bases for dealing with the problems that  
2 Senator Heinz described as well as this one regarding tariff  
3 proclamation authority is, it is the very active consultation  
4 process which the Administration has proposed and which the  
5 House has adopted, which would have us talking to you in  
6 executive session about very specific trade negotiations as  
7 those negotiations are ongoing and require that we do so at  
8 least four times a year. So, we tried to deal with both the  
9 hoops problem that Senator Heinz described and the trade  
10 proclamation problem in that manner.

11           The Chairman. Well, let me respond to that in part.

12           What we have seen at times is that negotiation and that  
13 consultation has been very much related to the personality  
14 of the Trade Representative or the President, and we have  
15 seen both in this particular Administration. There were times  
16 when we thought we had very little consultation, and then we  
17 have seen that change to more frequent consultation.

18           But we are looking not just at this President or this  
19 Administration, we are looking at the next Administration, and  
20 no one has any idea who that one will be, other than that  
21 quorum of Senators who are thinking about running.

22           What we are trying to bring about, obviously, is some way  
23 to ensure that, regardless of personalities or who that  
24 Administration is, we are going to get that kind of  
25 consultation. That is what we are trying to achieve here, and

1 I think this kind of exchange is helpful in trying to resolve  
2 it.

3 Mr. Woods. Senator, if I may, that is the reason why we  
4 have suggested that those requirements for consultation be  
5 put into law and no longer be a matter of custom or tradition.

6 The Chairman. Well, Mr. Woods, "put into law" -- we also  
7 have to find some way to enforce that law. I have some  
8 concern on that score.

9 Mr. Lang. Mr. Chairman, I should say in response to  
10 Senator Packwood's comment, that since the S. 490 procedure  
11 for congressional approval of the statement of trade policy  
12 is itself on a fast track, there is no option to do nothing.

13 Senator Packwood. And if we do nothing, we approve.

14 Mr. Lang. That's right.

15 I was in the middle of describing how the fast track would  
16 work. I am not sure we need to talk any more about that,  
17 except to say that, once that 90-day period is over, the bill  
18 itself, the implementing bill which must provide that it  
19 approves the trade agreements and also implements them with  
20 changes in U.S. law, is on the fast track; that is, this  
21 Committee in effect has 90 more days in which to consider the  
22 matter, but it can't amend the bill, neither can the full  
23 Senate; the committee is dischargeable at a set period; the  
24 full Senate has limitations on debate of 20 hours; if there are  
25 no amendments on the Senate floor, it is an up-or-down vote.



1 So, in effect the bill can't be delayed once it starts, and  
2 it can't be amended. Only in the 90-day period before the  
3 bill is considered does the Committee have an opportunity to  
4 try to persuade the Administration to change the bill. And  
5 as Senator Bentsen pointed out, if the Administration is not  
6 persuaded to change the bill in some regard, the Senators have  
7 to decide whether to vote for or against it; they can't amend  
8 it.

9 The Chairman. Senator Baucus?

10 Senator Baucus. Thank you, Mr. Chairman.

11 May I ask, what you are saying is that a joint resolution  
12 has to pass the full Congress with a 90-days disapproval?

13 Mr. Lang. No, I'm sorry, I am referring to current law,  
14 the way the fast-track works under current law.

15 Senator Baucus. Oh, I'm sorry. I am talking about the  
16 bill, under 490.

17 Mr. Lang. Right. Now, under 490, as Senator Heinz  
18 pointed out, the question is: How does the Administration  
19 get access to the fast track? Under S. 490 the Administration  
20 can at any time during the 10-year period in which it is  
21 authorized to negotiate tariff and nontariff agreements submit  
22 a request for the fast track, accompanied by a statement of  
23 trade policy. The statement of trade policy is then, itself,  
24 on its own fast track, and if it is approved, the  
25 Administration gets the benefit of the fast track for approval.

1 of trade agreements for a period of five years beginning on  
2 the date of approval. If it is disapproved, they don't have  
3 the benefit and they can reapply for it at any time.

4 The five-year period was chosen so that it would be  
5 possible to have a renewal of the authority within the 10-year  
6 period for which authority to negotiate would be granted under  
7 S. 490.

8 By contrast, under the House bill --

9 Senator Matsunaga. Before you go to the House bill, the  
10 approval of the policy statement needs to be made by  
11 concurrent resolution?

12 Mr. Lang. Yes, sir, that is correct.

13 Senator Matsunaga. Who would be expected to introduce the  
14 concurrent resolution? Any member of the Senate?

15 Mr. Lang. No. As under current law with regard to the  
16 existing fast track for approval of trade agreements, this  
17 resolution would be introduced by request by the President  
18 Pro Tem of the Senate and I think it is the Speaker in the  
19 House. I would have to look. But who introduces the bill is  
20 provided for by statute, and the statute is treated in its own  
21 terms as a modification on the rules of the two Houses.

22 Senator Matsunaga. But then, under current law there is  
23 no requirement for pre-approval.

24 Mr. Lang. No, there is no requirement for pre-approval.

25 Senator Matsunaga. So, under S. 490 there is this

1 requirement for pre-approval by concurrent resolution.

2 Mr. Lang. Yes.

3 Senator Packwood. Pre-approval of a generic policy, not  
4 pre-approval of the agreement.

5 Senator Matsunaga. Of the policy statement.

6 Senator Packwood. Of the policy statement.

7 Senator Matsunaga. Which is submitted by the  
8 Administration.

9 Senator Packwood. But if we do nothing, we, ipso facto,  
10 approve of the fast track on the negotiating. If we choose not  
11 to act on it.

12 Senator Matsunaga. Well, that is my question.

13 Senator Packwood. Isn't that what you said?

14 Mr. Bolten. Senator Packwood, I think the answer to the  
15 question is that the resolution under the rules set out in the  
16 bill must come up. So, there is not the option to do nothing.

17 Senator Packwood. Okay.

18 Mr. Bolten. The Congress must vote, and that must be  
19 approved in order for the fast track to go forward.

20 Senator Baucus. So, Congress must vote, correct?

21 Mr. Lang. Yes.

22 Senator Baucus. It must vote the approval or disapproval?

23 Mr. Lang. Approval. It requires affirmative approval in  
24 order for the fast track to be put into effect.

25 Senator Matsunaga. So, within the 90 days if there is no

1 such approval, then there is no fast track?

2 Mr. Lang. Well, you will have an up or down vote, because  
3 there is a limitation on the debate and the requirement that  
4 the resolution come up as a modification of the rules --

5 Senator Baucus. This is different from the fast track with  
6 Canada, because under that resolution there had to be an  
7 affirmative vote of disapproval.

8 Mr. Lang. Yes, it is different from Canada. And there  
9 are two differences: Not only did it require disapproval for  
10 the agreement not to go forward, but it was only action by the  
11 Ways and Means and the Finance Committees, not by the full  
12 Senate.

13 Senator Baucus. I would assume the Administration would  
14 want an affirmative vote of disapproval rather than approval;  
15 wouldn't that be right?

16 Mr. Woods. We would like neither, in fact.

17 Senator Baucus. But if you had your choice? If you had  
18 to choose? If we had the preapproval of the policy statement  
19 procedure, I would assume the Administration would prefer --

20 Mr. Woods. That it would have to be disapproved.

21 Senator Baucus. Correct.

22 Senator Packwood. I want to make sure I understand. We  
23 are going down to Uruguay and we are going to try to  
24 negotiate, and this resolution, this policy, comes up, and  
25 for whatever reason Congress turns it down. You are stuck;

1 you haven't got any bargaining power.

2 Mr. Woods. That is correct.

3 Senator Packwood. Nobody is going to believe you. You  
4 are dealing with either parliamentary democracies or  
5 dictatorships. In any event you are dealing with countries  
6 who, if they sign an agreement, can probably deliver on it,  
7 because they are either the majority party in a free government  
8 or the dictatorship in a non-free government. You haven't got  
9 any power. It seems to me this is a very hobbling provision.

10 Senator Matsunaga. Not exactly so, because it is only on  
11 fast track. They can still continue on a slow track at a fast  
12 rate.

13 (Laughter)

14 The Chairman. Let me get to another point on that. I  
15 don't really agree on that, because I think that what you do  
16 if you go ahead and approve the fast track, and you approve the  
17 objectives of the Administration, is that you have very  
18 materially strengthened the hands of the negotiator, because  
19 these foreign countries then understand that what you have is  
20 a policy objective that is agreed on not just by the  
21 Administration but by the Congress that finally has to approve  
22 it.

23 If you look back to the time when Lyndon Johnson went out  
24 there, he didn't have that kind of backup and approval, and he  
25 came back with a trade agreement and the Congress turned him

1 down. People out there that we trade with understand that.  
2 They understand the power of the Congress under the  
3 Constitution.

4 Senator Packwood. But the Johnson turn-down was before  
5 we had the normal fast track that we have had since the  
6 mid-seventies. This resolution, this policy, comes up, and  
7 for whatever reason the Congress turns the policy down -- you  
8 have no believable negotiating.

9 The Chairman. Well, you still have negotiating. You can  
10 go back under the old rules, and you can come back here under  
11 the regular legislative procedures and try to get yourself  
12 an approval.

13 Senator Packwood. But then the people you are bargaining  
14 with, who are going to have to give up something and who are  
15 going to have some political downsides, are going to say yes.  
16 And then it is going to go back to the Congress, and the  
17 Congress is going to amend it, and we are going to get egg on  
18 our face and are not going to get the kind of agreement we  
19 bargained for.

20 Senator Daschle. I think we are talking, though, about a  
21 general policy statement; we are not arguing the nuts and bolts  
22 of a trade policy that may cause us to divide among partisan  
23 circles or even philosophical ones. This is a general policy  
24 statement whereby the Congress is showing its support rather  
25 than demonstrating its opposition to the President as he goes

1 into very tentative negotiations. I think that is the whole  
2 purpose. It is one of the parts of this bill that I feel the  
3 most excited about.

4 In the past, the Administration has done what we are trying  
5 to do here sort of in the back room; they are saying, "If you  
6 don't do it, Congress is going to get you." I mean, that is  
7 the impression I have always had from what I have heard. "If  
8 you don't do this, Congress is going to make us do it, and make  
9 you do it." What we are saying right up front is: "Look,  
10 we are going into these negotiations, and Congress is with us."  
11 And I think it shows on a bipartisan sort of a bicameral and  
12 certainly a basis within which the Congress can show a much  
13 more effective demonstration of support than we have in the  
14 past. That is the reason I think it is a very favorable part  
15 of the bill.

16 Senator Chafee. Mr. Chairman?

17 The Chairman. Yes, Senator Chafee.

18 Senator Chafee. Mr. Chairman, I have grave reservations  
19 about this policy statement. If you look on page 15 you will  
20 see that this isn't any broadbrushed treatment. I mean, it  
21 gets into all kinds of details. Furthermore, it says at the  
22 top there: "The contents of the statement as prescribed by  
23 the bill -- it must --" and then it goes through this long  
24 list. I can just see the Congress here, certainly in the  
25 Senate, being bogged down, battling over the contents of this

1 statement.

2 And I think, as we go into an era where trade becomes an  
3 ever more important part of our economy, that we shouldn't  
4 be putting hindrances, as I see this -- and I don't want to be  
5 harsh -- in the way of our negotiators.

6 If there is one statement that came through very clearly  
7 with the hearings that were conducted here, it is -- and I  
8 remember Ambassador Straus and others saying this -- that  
9 without the fast track procedure, forget doing any international  
10 trade agreements.

11 The Chairman. I can't really go along with that, when I  
12 look at the fact that the fast track has been used in highly  
13 unusual circumstances. It was used in the Israel situation,  
14 and it is now being used in the Canadian situation, and in a  
15 technical situation before. So, you still have the regular  
16 procedures of legislation that are made available.

17 This body gets involved in a lot of controversial  
18 legislation, in a work-out position, with competing interests.  
19 We saw that in the Tax Bill that Senator Packwood chaired. And  
20 it was not an easy resolution to those problems, but there was  
21 no fast track for the Tax Bill. We debated that one at  
22 length, and we had the lobbyists lined up in this hall and down  
23 in a room down below with special speakers so that they could  
24 be tuned in. The only thing they missed was whether somebody  
25 nodded their head Yes or No up here so that they could call



1 back to whatever their interest group was to try to deluge us  
2 with additional mail.

3 So, we can resolve those things. We can work them out.  
4 It is easier on a fast track, if we can bring it about. The  
5 fast track is under controversy in the Senate, and you have  
6 some Members who deeply resent the process.

7 So what we are trying to do is to assuage them some, to  
8 show that the Congress has been consulted with and that we have  
9 come up with something where we have a unified force going down  
10 there to negotiate with these other nations. And if we get  
11 that, then there is no question in my mind but what the  
12 negotiator's hand is substantially strengthened -- substantially  
13 strengthened.

14 But once again, let me emphasize that the fast track is  
15 an unusual process; that is not the normal procedure.

16 Senator Chafee. Well, Mr. Chairman, all I can go by is  
17 the experience of those who we respect as negotiators who  
18 testified before us. They were unequivocal on the subject,  
19 and they are the people that we all set a lot of store by.

20 Mr. Woods, what is your comment?

21 Mr. Woods. Well, if I may, I think that our negotiating  
22 partners remember the incident that Senator Bentsen raises  
23 with regard to the negotiations on trade in the Johnson  
24 Administration. And as a result, fast track has become a  
25 matter of credibility, providing credibility for our

1 negotiators in the multilateral form, and I think that is  
2 very important to remember. That is one of the realities we  
3 now deal with.

4 Second, the multilateral trade negotiation that we are  
5 talking about that would be covered by the period of this  
6 bill has begun; it was kicked off last year in the Punta del  
7 Este. We are not talking about multilateral negotiation that  
8 is going to start sometime in the future.

9 The Congress is going to pass this bill, or something like  
10 it, one presumes, and you have in this bill trade  
11 negotiating objectives, which the staff earlier went through.  
12 So, we are going to be passing a bill that has multilateral  
13 trade negotiating objectives in it, and then you are asking  
14 the Administration to come back and go through the process all  
15 over again with a very detailed trade negotiating policy  
16 statement that deals with all sorts of things, including making  
17 sure that we have evidence of commitments from other countries  
18 before we even pass the policy statement.

19 In addition, I guess I would say that the Administration had  
20 hoped to be able to make early progress in the Uruguay Round on  
21 a number of specific items including agriculture, and it seems  
22 to us that this will substantially slow that process down, by  
23 having to wait for this legislation to pass and then go through  
24 the problem of a concurrent resolution again passing both  
25 Houses of Congress before we can credibly proceed in the

1 negotiations.

2 The Chairman. Well, you were proceeding with your  
3 negotiations with Canada, and we didn't have the fast track  
4 legislation, and came within a hair's breadth of not getting  
5 it at all. And you were working on negotiations.

6 Mr. Woods. Actually, the negotiations didn't start in  
7 earnest or seriously at all until this Committee had acted.

8 Senator Moynihan. Mr. Chairman.

9 The Chairman. Yes, Senator Moynihan.

10 Senator Moynihan. If I can, can I just draw attention to  
11 the point that Senator Packwood and Senator Daschle made? It  
12 seems to me it is something we take so much for granted in our  
13 own arrangements, but we can't realize how unique they are, or  
14 rather that they are unique. We are the only country in the  
15 world that has a legislature, so far as I know. In every  
16 other country, a parliamentary government has the executive  
17 branch in the legislature, and the legislature might well not  
18 exist, and other countries don't have either. And there is a  
19 great difficulty that countries have; when they negotiate with  
20 the Executive, they think they have an agreement, only to learn  
21 that sometimes they don't.

22 The great initiative that Cordell Hull began in 1934, as  
23 Mr. Lang has said, was a device, an great invention, whereby  
24 the Executive could negotiate in a fairly high level of  
25 confidence that what was negotiated would come about. And at

1 some measure we have been trying to reassert a role of  
2 Congress which we gave up rather shamefacedly after Smoot-  
3 Hawley -- and I can understand that. But I would hope we  
4 would be very clear as to how much we are taking back, and I  
5 think I would want to hear what Mr. Woods, as it were, said.  
6 This list of particulars is a list of grievances, almost, and  
7 that worries me.

8 That is all I have to say, sir.

9 Senator Daschle. I would like to just clarify something,  
10 if I could.

11 The Chairman. All right.

12 Senator Daschle. Jeff, what did you say the timeframe is  
13 within which this must occur? It is 90 days, is it not?

14 Mr. Lang. Yes.

15 Senator Daschle. And, Mr. Woods, how long a period of time  
16 do you think the Uruguay Round is going to take?

17 Mr. Woods. The Uruguay Round is scheduled to take four  
18 years, starting last September.

19 Senator Daschle. That is what I thought. So, you are  
20 concerned that the 90 days within which we consider this fast  
21 track policy statement, a period within which this whole time  
22 is going to be deliberated, four years, that that 90 days is  
23 too long?

24 Mr. Woods. There are two points there, Senator. First of  
25 all, the 90 days won't start until after the legislation is

1 passed and signed and the trade policy statement is written,  
2 and then the approval process will start.

3 But secondly, we had hoped for early results, far sooner  
4 than four years in the Uruguay Round in specific areas -- in  
5 agriculture, for example, which I know you are quite interested  
6 in. And we believe that that negotiation has got to begin  
7 moving forward relatively quickly if we are to achieve those  
8 early results.

9 So we think the whole process will be slowed  
10 substantially by the uncertainty that our trading partners will  
11 have for much the same reason that Senator Moynihan referred  
12 to with regard to our trade negotiating authority in that  
13 period of uncertainty.

14 Senator Daschle. I guess it is all relative, but it seems  
15 to me that going in we would be armed with a much better and  
16 more comprehensive statement with regard to agriculture, for  
17 example. If you had members of agricultural communities on  
18 board and participating with you in that negotiating process,  
19 it could accelerate rather than negate progress in regard to  
20 coming to a final conclusion. But that is a matter of debate.

21 I think the real question here is that certainly one would  
22 have difficulty arguing that 90 days, over a period which may  
23 take four years, is not an unnecessarily deliberative period  
24 or a negative period in which to expect us to --

25 Senator Chafee. Well, Mr. Chairman, I don't think anybody

1 is arguing about the 90-day period; the problem is on this  
2 statement.

3 Of course, all we are doing this morning, Mr. Chairman, is  
4 just flagging these things. There are two things I would  
5 like to point out, Mr. Chairman. In your list of those  
6 fast-track procedures, you listed the one we had with Israel  
7 and then some technical one, and Canada; but, as I recall  
8 the 1979 Agreement -- am I correct? -- that Bob Straus brought  
9 back here, wasn't that on fast track?

10 Mr. Lang. Yes, sir.

11 Senator Chafee. And of course that was a very, very major  
12 --

13 Senator Moynihan. The Tokyo Round.

14 Senator Chafee. Yes. It was a tremendous piece of  
15 legislation. And that was on fast track.

16 Mr. Lang. Yes, sir.

17 Senator Chafee. Second, and Senator Moynihan I think quite  
18 rightly referred to the contents of the statement on page 15 as  
19 a place where a list of grievances -- and the Administration has  
20 to tell us about agricultural trade, import-sensitive  
21 industries, the expected impact on U.S. trade of economic  
22 developments in developing countries; we have to have prior  
23 commitments from Japan, Germany about increased imports of  
24 services and goods -- I don't see how we are ever going to  
25 achieve those things before we start the negotiations.

1 But I am here just to indicate my intense concern on this  
2 particular situation, Mr. Chairman.

3 The Chairman. Mr. Lang?

4 Mr. Lang. Unless there are further questions on the  
5 multilateral implementation procedures, I would go on to the  
6 bilateral implementation procedures. They can be found on  
7 page 19 of the spreadsheet.

8 Under S. 490, once the fast track became available,  
9 bilateral agreements would proceed as under current law --  
10 that is the way Senator Baucus described it. If the President  
11 wanted to institute a bilateral discussion with another  
12 country, he would send notification up to the Finance and  
13 Ways and Means Committees, and if that notification survived  
14 disapproval by either committee -- if the notification were  
15 disapproved by either committee, the fast track would not be  
16 available. If it survived that disapproval, the fast track  
17 would be available, and it would be available for the full  
18 period of time that the fast track would be available for all  
19 trade agreements; that is, five years from the time the Congress  
20 approved the statement of trade policy.

21 The next part of the spreadsheet sets out negotiating  
22 objectives. They begin on the middle of page 20 and continue  
23 for several pages.

24 The Chairman. Well then, let me say, Mr. Lang, it is  
25 12:00, and that would take some time. So, we will terminate

1 the hearings.

2 Senator Moynihan. Mr. Chairman, could I just ask what the  
3 Canadian provision is?

4 The Chairman. All right.

5 Mr. Lang. Yes. I had undertaken to particularly describe  
6 the Canada negotiations in each of the bills. At the top of  
7 page 20 of the spreadsheet, I have just described how under  
8 S. 490, if the statement of trade policy were approved, then  
9 the Canada negotiation would have to go through the disapproval  
10 process again. Under the House bill, it explicitly provides  
11 the President with five years of authority to proclaim tariff  
12 agreements on a limited list of articles with Canada.

13 The bilateral trade agreement authority generally under  
14 the House bill is extended for the five-year period, until  
15 January 3, 1993, except for Canada. So, Canada would not  
16 qualify for that.

17 Under the Administration's the same situation obtains; so,  
18 under the Administration bill and the House bill, if you don't  
19 finish by January 3, 1988, essentially you are in the same  
20 situation as under the Senate bill, you have to go through the  
21 pre-approval process all over again.

22 Senator Moynihan. Mr. Chairman, perhaps Mr. Woods and  
23 Mr. Holmer and Mr. Lang could give us their counsel as to  
24 whether they think this is conducive to a successful  
25 negotiation that the President and Mr. Maroney have begun. Do



1 have a view on it?

2 Mr. Woods. One of the reasons we excluded Canada from  
3 our legislation we submitted to the Congress is that we would  
4 like to hold both our and the Canadian Government's feet to  
5 the fire to move forward expeditiously in this negotiation.  
6 We felt that that was probably the best way to reflect that.

7 Senator Packwood. Do you mean in the hopes that you can  
8 finish by this October?

9 Mr. Woods. With some hope that we might be able to do  
10 that.

11 Senator Moynihan. Thank you.

12 Thank you, Mr. Chairman.

13 The Chairman. Thank you very much, gentlemen.

14 We stand in recess.

15 (Whereupon, at 12:01 p.m., the meeting was recessed, to  
16 resume at 10:00 a.m., Thursday, April 23, 1987.)

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## C E R T I F I C A T E

1  
2 This is to certify that the foregoing proceedings of an  
3 Executive Session of the Committee on Finance held on  
4 Wednesday, April 22, 1987, were transcribed as herein appears  
5 and that this is the original transcript thereof.

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10 WILLIAM J. MOFFITT  
Official Court Reporter

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13 My Commission expires April 14, 1989.  
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A G E N D A

UNITED STATES SENATE  
COMMITTEE ON FINANCE

Executive Session

Wednesday, April 22, 1987 -- 10:00 A.M.

Comparison of S. 490 with H.R. 3 and Current Law

Supplement to Comparison of Trade Bills  
Description of the Administration Bill (S. 636)

SUPPLEMENT TO COMPARISON OF TRADE BILLS  
DESCRIPTION OF THE ADMINISTRATION BILL (S. 636)

(Prepared by the Staff of the Senate Committee on Finance)

April 21, 1987

I. NEGOTIATING AUTHORITY

1. Authority to Negotiate.

a. General Trade Agreement Negotiating Authority.

- i. Multilateral Trade Agreement Negotiating Authority (page 1).--Maintains the distinction between multilateral tariff and non-tariff agreements.

As to non-tariff barriers to trade, makes existing non-tariff authority permanent.

As to tariffs, re-establishes President's authority to negotiate and enter into multilateral tariff agreement for 10 years from the date of enactment without limitations.

- ii. Bilateral Trade Agreement Negotiating Authority (page 3).--No separate authority. (Please note: As under current law, if the President determines it is necessary to assure reciprocity of concessions, the President may recommend agreements apply only to the parties to the agreement.)

(Special note with regard to pending Canada negotiations: The multilateral non-tariff and tariff authorities of the bill explicitly do not apply to any bilateral agreement that as of January 1, 1987, was under negotiation under authority of the 1974 Trade Act, i.e., the U.S.-Canada bilateral free trade agreement negotiations.)

- b. Special Trade Agreement Negotiating Authority (pages 4 and 5).--No special negotiating authorities. (Please note with respect to the Harmonized System: The Administration bill contains provisions necessary to implement the Harmonized System, but not authority to further negotiate the underlying international Convention.)

2. Prerequisites to Entering into Agreements.

a. Accomplishing Stated Objectives (page 5).--No provision.

b. Requires Consultation (page 8).--

i. Congress (pages 8 and 9).--Retains current law, except:

-- Role of advisers.--Adds that Congressional advisers may provide advice on the development of trade policy and priorities for the implementation thereof;

-- USTR accredits advisers.--Provides that the advisers are accredited by the USTR on behalf of the President;

-- Additional advisers, other Committees.-- Provides that in addition to the advisers designated above, the USTR may accredit additional advisers for specific policy matters or negotiations after consulting with the Chairmen and Ranking Minority Members of the Ways and Means and Finance Committees and any other Committee which the Ways and Means and Finance Chairmen say have jurisdiction over legislation likely to be affected by the negotiations in question;

-- Briefings.--USTR is required to keep each advisor "currently informed" concerning various trade matters with consultations held not less infrequently than four times per year and, when necessary, with the Ways and Means and Finance Committees in executive session;

-- Non-advisers and staff.--The Chairmen of Ways and Means and Finance Committees may designate Members in addition to the official advisers and staff who shall have access to information provided official advisers.

ii. International Trade Commission (ITC) (page 10).-- Retains current law and adds the following:

Non-tariff advice.--Authorizes the President to ask the ITC for non-tariff as well as tariff advice. Expands the "probably economic impact" advice of the ITC to include impact on the following additional sectors: Services and intellectual property.

iii. Private Sector Advisers (page 10).--Retains current law, and adds the following:

-- Hearing.--Requires public hearings before an inter-agency committee (which the President is free to designate) on any proposed non-tariff trade agreement.

-- Timing of advice.--Encourages the Administration to seek private sector advice "prior to the commencement of negotiations."

-- New committees required.--Specifically requires sectoral and functional advisory committees on services, investment, agriculture, defense, industry and labor.

c. Trade Agreement Implementation Procedures in Congress (page 11).--Extends current law.

3. Negotiating Objectives.

a. Overall Objectives (page 20).--

To obtain:

i. More open and equitable market access.

ii. The harmonization, reduction, or elimination of policies or measures which impede or distort trade or commerce, including distortions and impediments identified in the National Trade Estimates Report.

iii. To the maximum extent feasible, the harmonization, reduction or elimination of agricultural trade barriers and distortions shall be undertaken on an expedited basis in light of the weakness of existing international disciplines in agriculture relative to other products.

b. Sectoral Objectives (page 21).--

i. Agriculture.--To liberalize and expand trade in agricultural products, reduce barriers to markets, eliminate direct and indirect subsidies that distort trade, and reduce or eliminate other practices unreasonably distorting trade, including unjustified phytosanitary restrictions.

c. Objectives in Services, Investment, and High Technology Products (Section 104A) (page 22).--

- i. Services.--Retains current law. Adds provisions that negotiators will consult as they deem appropriate with State authorities on the services negotiations, particularly with respect to services activities under State regulating authority.
- ii. Investment.--Retains current law.
- iii. High Technology.--No provision.
- d. Access to Supplies (Section 108) (page 25).--No provision.
- e. Safeguards ("Escape Clause") (Section 107) (page 25).-- Same as H.R. 3.
- f. Reform of the General Agreement on Tariffs and Trade (GATT) (Section 121) (page 25).--

Uruguay Round.--To use the successful launching of the Uruguay Round as a means to produce multilateral agreements on effective and enforceable rules and disciplines that will enhance the purposes and objectives of this Act, in particular by improving access abroad for American exports of products and services; achieving fairer terms of competition; enhancing the role of GATT; strengthening provisions for international negotiation and dispute settlement; improving the institutional structure and role of GATT; and, insuring that all GATT members assume a full measure of responsibility for maintaining and promoting the open international trading system. The United States shall seek the objectives and purposes of this Act through the Uruguay Round, but the President is not precluded from seeking agreements outside the Uruguay Round, or GATT, if it appears that negotiations are delayed or the U.S. objectives can be obtained more effectively through bilateral or plurilateral agreements outside GATT.

Dispute Settlement.--Same as H.R. 3.

Unfair Trade Practices.--To improve GATT and non-tariff measure agreements to provide greater discipline on unfair trade practices, to further improve provisions applying to agricultural trade so as to be consistent with those on industrial products, and to otherwise seek greater discipline.

GATT Improvement.--To improve the operation of GATT and Multilateral Trade Negotiations Agreements and Arrangements, and expand participation, where appropriate. (NOTE: Also in H.R. 3.)

- g. Negotiating Objectives with No Counterpart in Current Law (page 27).--

Intellectual property.--Same as H.R. 3.

Worker Rights.--To promote respect for worker's rights and to secure a review of the relationship of worker rights to GATT with a view to ensuring that the benefits of the trading system are available to all workers.

## II. ESCAPE CLAUSE: SECTION 201 OF THE TRADE ACT OF 1974

### 1. Injury Investigations by ITC.

- a. Petitions for Import Relief (page 29).--Retains current law.
- b. Factors to be Considered with Respect to "Serious Injury" (page 29).--Retains current law.
- c. Factors to be Considered with Respect to Threat of Serious Injury (page 30).--Retains current law.
- d. Factors not Indicating Absence of Serious Injury, or Threat Thereof (page 30).--No provision.
- e. Causation Standard (page 31).--Retains current law, and requires ITC to consider the condition of the industry over the course of the relevant business cycle, and not aggregate the causes of declining demand associated with a recession or economic downturn into a single cause of serious injury.
- f. Definition of "Domestic Industry" (page 31).--No provision.
- g. Geographically Isolated Markets (page 32).--No provision.
- h. Deadline for ITC Injury Determination (page 32).--Retains current law.
- i. Moratorium on Investigations (page 32).--Retains current law.



- i. The likelihood that any import relief would lead to a domestic industry or segment thereof that would be competitive after such relief; and
    - ii. Any actions proposed by the industry or workers to improve the industry's international competitive position.
  - b. Relief Options (page 42).--Adds following options for relief:
    - i. Initiate multilateral negotiations with foreign governments to address or otherwise alleviate the serious injury; and
    - ii. Provide Federal regulatory relief based on an expedited review of any Federal regulatory requirement (defined as any regulatory requirement imposed by a U.S. statute or regulation).

Eliminates provision of adjustment assistance.
  - c. Maximum Relief (page 44).--Retains current law.
  - d. Duration of Relief (page 44).--Retains current law.
  - e. Congressional Role (page 44).--Retains current law.
  - f. Effective Date of Relief (page 45).--Retains current law.
6. Review of Industry Developments (page 45).--Retains current law.
  7. Modification of Relief (page 46).--Authorizes the President to reduce or terminate import relief if it is in the national economic interest or the continuation of import relief in its present form can no longer reasonably be expected to lead to a competitive domestic industry or it is no longer necessary to ensure a competitive industry.
  8. Evaluation of Relief After Expiration (page 46).--No provision.

### III. TRADE ADJUSTMENT ASSISTANCE

No provision (S. 636 would repeal trade adjustment assistance (TAA)).

5. Effective date -- Termination (page 51) -- No assistance or payments under TAA would be provided after September 30, 1987. Any worker covered by a certification of eligibility prior to September 30, 1987 would receive full TAA payments, if such payments had already begun prior to September 30.

### IV. SECTION 301 OF THE TRADE ACT OF 1974

1. Amendments to National Trade Estimate (NTE).
  - a. Additional Estimate (page 52).--No amendment to NTE.
  - b. Factors (page 52).--No provision.
  - c. Submission of Report (page 52).--No provision.
2. Mandatory Initiation (page 53).--No provision.
3. Determination Whether Foreign Act, Policy, or Practice is Actionable Under Section 301.
  - a. Transfer of Authority to USTR (page 54).--Retains current law.
  - b. Consultation (page 54).--Retains current law.
  - c. Presentation of Views (page 54).--Retains current law.
  - d. Time Limits (page 55).--Amends the time limit for USTR recommendation in an investigation involving a trade agreement (other than the subsidies agreement) to 30 days after dispute settlement procedure is concluded or two years after initiation of the investigation, whichever occurs first.

All time limits may be waived at the petitioner's request.
  - e. Obtaining Information (page 56).--No provision.
  - f. Consultations Delay (page 56).--No provision.
4. Remedial Action (page 57).

- a. Transfer of Authority to USTR (page 57).--Retains current law.
  - b. Mandatory/Discretionary Action (page 57).--Retains current law.
  - c. Time Limit on Action (page 59).--Retains current law.
  - d. Notice and Report Requirements (page 59).--Adds requirement that when the President determines to take action on his own motion a public hearing must be held, if requested, before taking action, or if expeditious action is required, after taking action.
  - e. GSP Withdrawal (page 60).--No provision.
  - f. Service Sector Access (page 60).--No provision.
  - g. Sectoral Scope of Action (page 60).--No provision.
  - h. Negotiated Settlements (page 60).--No provision.
  - i. Consideration of Agricultural Impact (page 60).--No provision.
5. Subsequent Action.
- a. Commercial Effects Report (page 61).--Same as H.R. 3.
  - b. Monitoring/Enforcement of Foreign Actions (page 61).--No provision.
  - c. Modification/Termination (page 62).--No provision.
6. Actionable Foreign Acts, Policies, or, Practices.
- a. U.S. Trade with Third Countries (page 63).--No provision.
  - b. Export Targeting (page 63).--No provision.
  - c. Worker Rights (page 65).--No provision.
  - d. Reciprocal Market Access (page 66).--Same as first provision under H.R. 3. Otherwise, no provision.
  - e. Mercantilist Practices (page 66).--No provision.
  - f. Foreign Countries with Excessive and Unwarranted Trade Surpluses (page 69).--No provision.

- g. Unfair Trade concessions Requirements (page 70).--No provision.
  - h. Threat (page 70).--No provision.
7. Miscellaneous.
- a. Foreign Instrumentalities and Territories (page 71).-- Retains current law.
  - b. Compensation Authority (page 71).--Would provide general authority (not just relating to section 301 actions), when any action has been taken to increase or impose any duty or other trade restriction and the affected country retaliates or threatens to retaliate under the terms of a trade agreement to which the United States is a party. Any compensation granted is to be reduced and terminated according to a schedule that is substantially equivalent to the effect and duration of the U.S. action giving rise to the compensation. Before entering into a compensation agreement, the President is to consider whether the foreign country has violated commitments benefiting the United States and the violation has not been offset by the U.S. action or the foreign country.

#### V. ANTIDUMPING AND COUNTERVAILING DUTY LAWS

1. Dumping by Non-Market Economy Countries.
- a. Standard (page 72).--Requires foreign market value to be determined based on the price at which comparable merchandise is sold at arm's length in the United States by the eligible market economy country with the lowest import price into the United States. If imports from that country are insufficient, either absolutely or relative to the imports under investigation, Commerce may include additional eligible market economy countries in its determination.
- If Commerce determines:
- i. Prices of the eligible market economy country with the lowest import price do not accurately reflect fair value, or its prices cannot be adequately ascertained or adjusted; or,
  - ii. There is no eligible market economy country;

then Commerce may determine foreign market value on the basis of either another eligible market economy country or the constructed value of comparable merchandise in any market economy country, as appropriate.

b. Terms Defined (page 72).--

"Eligible market economy country".--Same as S. 490 except for specifying that country must be exporting comparable merchandise to the United States and referring only to the level of imports (not whether the level is de minimis).

"Lowest import price".--The lowest of the average prices at which comparable merchandise from eligible market economy countries is sold to the United States over the period of investigation.

"Comparable merchandise".--Merchandise in the tariff schedule item number in which the imports under investigation are classified, unless a more narrow breakdown is available.

c. Suspension Agreements (page 73).--Same as S. 490 except there is no condition that such agreement will prevent price suppression or undercutting.

d. Collection of Information (page 74).--Provides that Customs and the ITC must give Commerce any public information they have that is relevant to the proceedings. Gives Commerce right of access to records of companies importing or distributing the merchandise under investigation, including discovery, deposition, and subpoena power.

2. Application of Countervailing Duty Law to Non-Market Economy Countries (page 74).--Codifies court decision.
3. Input Dumping (page 74).--No provision.
4. Downstream Product Monitoring (page 76).--No provision.
5. Sham Transactions (page 78).--Retains current law.
6. Fungible Products (page 79).--Retains current law.
7. Critical Circumstances (page 80).--Retains current law.
8. Definition of Domestic Industry (page 81).--Retains current law.
9. Standing (page 82).--Retains current law.

10. Countervailable Domestic Subsidies (page 82).--Retains current law.
11. Material Injury and Threat of Material Injury (page 83).--Retains current law.
12. Anticircumvention (page 86).--Same as H. R. 3.
13. Information provisions.
  - a. Access to Information (page 87).--Retains current law.
  - b. Certification of Submissions (page 88).--No provision.
15. Explanations of Deviation from Precedent (page 88).--No provision.
16. Correction of Errors (page 88).--No provision.
17. Drawback Treatment (page 88).--No provision.
18. Governmental Importations (page 88).--No provision.
19. Injury Test Regarding an Outstanding Countervailing Duty Order (page 89).--Same as H. R. 3.
20. Studies (page 89).--No provision.
21. Multiple Offenders (page 90).--No provision.
22. Civil Actions for Recovery of Dumping Damages (page 92).--No provision.
23. Dumping Compensation Awards (page 93).--No provision.
24. Foreign Tax Adjustment.

Current Law.--In determining dumping margins, Commerce adds to the U.S. price of the imports an amount equal to any indirect taxes which an exporting country refunds or forgives upon export to the United States but only to the extent that such taxes are added to or included in the price of comparable goods sold in the foreign country. In practice, Commerce deducted the entire amount of the indirect taxes paid from foreign market value. In April 1986, the Court of International Trade overturned this practice in Zenith v. United States and directed Commerce to measure how much tax is passed through on home market sales.

H.R. 3.--No provision.

S. 490.--No provision.

S. 636.--Requires foreign market value to be decreased by the full amount of any taxes imposed in the exporting country that are rebated or not collected because of exports to the United States.

## VI. INTELLECTUAL PROPERTY RIGHTS

1. Injury Test (page 94).--Same as H.R. 3.
2. Economic and Efficient Industry Test (page 94).--Same as H.R. 3.
3. U.S. Industry Requirement (page 94).--Would eliminate requirement of demonstrating that an industry exists in cases involving patents, process patents, copyrights, registered trademarks, and mask works. Would retain current law in all other cases.
4. Termination of Investigation by Consent Order or Settlement Agreement (page 94).--No provision.
5. Time Limits for Temporary Exclusion (page 95).-- If petition for temporary exclusion order is filed prior to the date the ITC publishes notice of the investigation, establishes deadline of 90 days after the date of publication of the notice (135 days in more complicate cases). If petition is filed after publication of the notice, deadline is 90 days after filing the petition (135 days in more complicated cases).
6. Cease and Desist Orders (page 95).-- Same as H.R. 3.
7. Presidential Review (page 95).--Retains current law.
8. Default Provisions (page 95).--Same as H.R. 3.
9. Abuse of Discovery (page 96).--No provision.
10. Modification or Rescission of Section 337 Orders (page 96).--Same as H.R. 3, except that it does not establish bases on which modification or recissions may be granted.
11. Seizure and Forfeiture (page 96).--No provision.
12. U.S. Government Importation (page 96).--Broadens exemption to include copyrights, registered trademarks, or mask works.
13. Confidential Information (page 96).--Same as H.R. 3.

VII. ACCESS TO TECHNOLOGY

No provision.

VIII. SAFEGUARDING NATIONAL SECURITY (SECTION 232)

No provision.

IX. FORMULATION OF TRADE POLICY

No provision.

X. MISCELLANEOUS TRADE LAW PROVISIONS

No provision.

XI. TELECOMMUNICATIONS

No provision.

XII. INTELLECTUAL PROPERTY PIRACY AND MARKET ACCESS

No provision.

XIII. MARKET DISRUPTION BY IMPORTS FROM NME'S  
(SECTION 406 OF THE TRADE ACT OF 1974)

Retains current law.



Remarks By  
Senator Lloyd Bentsen  
Before The  
Senate Finance Committee  
Wednesday April 22, 1987

Today marks an end, a beginning and a continuation for the Senate Finance Committee.

It is the end of several months of hearings, the beginning of a markup and the continuation of what I hope will be a successful, bipartisan effort to pass trade legislation and send it to the President's desk this year.

This is the hard part. Up to now we've only had to listen and ask questions. Today we begin the process of making decisions, with a goal of providing answers to our country's trade problems.

None of us, I think, pretends to have all the answers to those problems. None of us is asking America to swallow a magic potion that will restore our competitive edge and cause our \$170 billion trade deficit to wither away.

It wouldn't do for us to overstate what we expect to accomplish through this process of enacting trade legislation.

But those who dismiss the impact a carefully thought out, predictable trade policy can have on our trade problems make a far more serious mistake.

Let me mention briefly just one element of such a policy.

If by our efforts we do no more than assure trade a place of prominence on the national policy agenda we will have accomplished a lot.

We all know of instances in which the diplomats have blocked an effective trade action out of concern it would ruffle the feathers of our friends and allies.

Our friends and allies, of course, have long been aware of the intensity of competition in world markets. I doubt their feathers ruffle as easily as they have had our diplomats believe.

In fact, if we succeed in establishing a carefully thought out, predictable trade policy it will ruffle a lot fewer feathers than does our current, ad hoc approach to trade.

Of course the Japanese were surprised and upset when we insisted they live up to the semiconductor agreement. We hadn't done that before. Of course the Japanese are our friends and allies. The car salesman or the furniture dealer may be our friend and neighbor, but that doesn't prevent him from driving the best bargain he can.

I look forward to the day when the the councils of power at the White House consider the effect on trade of any action they contemplate. I look forward to the day when our Trade Representative is seated at the right hand of the President. As things now stand he frequently isn't even in the room.

I have never understood why a President of the United States would go off to an economic summit conference in Bonn or Tokyo and leave his Trade Representative behind in Washington. You can rest assured that all other world leaders have brought their Trade Ministers along.

We can hope, when they convene the Venice summit in June -- with trade and the possibility of a global recession at the top of the agenda -- that Ambassador Yeutter will be cruising the canals with the U.S. delegation.

That is what we are aiming for as we begin this process today: to establish a predictable trade policy for this country and to help insure that this policy -- and the officials who are its advocates -- have the standing that our national interest demands.