Bill W.

EXECUTIVE SESSION

WEDNESDAY, JUNE 11, 1986

U.S. Senate

Committee on Finance

Washington, D.C.

The committee met in executive session, pursuant to notice, at 9:35 a.m., in room SD-215, Dirksen Senate Office Building, the Honorable Bob Packwood (chairman) presiding.

Present: Senators Packwood, Danforth, Grassley, Long, Moynihan, and Baucus.

Also present: Bill Wilkins, Minority Chief Counsel; Len Santos, Trade Counsel, Majority; Jeff Lang, Professional Staff Member; and Susan Taylor, Administrative Director.

(The materials for the executive session, and the prepared written statement of Senator Mitchell follows:)

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510

MEMO:

FROM: SENATE FINANCE COMMITTEE STAFF

TO: MEMBERS, COMMITTEE ON FINANCE

SUBJECT: MATERIALS FOR WEDNESDAY, JUNE 11 MARKUP

On Wednesday, September 11, 1986, the Committee on Finance will meet in Executive Session to consider several matters now pending before it. Attached is an agenda listing those items.

The meeting will begin at 9:30 a.m. and will be held in Room SD-215 of the Dirksen Senate Office Building.

Below, for your convenience, is a description of the materials prepared for you in connection with each of the items on the agenda:

1. Nomination of Dorcas R. Hardy to be Commissioner of Social Security -- Cover memo and biographical materials.

2. Markup of S. 1822, a bill to amend and extend the manufacturing clause of the copyright laws -- Members memo and copy of S. 1822 as reported by Judiciary Committee.

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510

June 9, 1986 Corrected

MEMO

TO: MEMBERS, FINANCE COMMITTEE

FROM: FINANCE COMMITTEE TRADE STAFF (LEN SANTOS, 4-5472)

SUBJECT: JUNE 10, 1986 HEARING ON S. 1822, A BILL TO EXTEND THE MANUFACTURING CLAUSE

The Finance Committee will conduct a hearing on June 10, 1986 at 9:30 a.m. on S. 1822, a bill reported by the Judiciary Committee to amend and extend the manufacturing clause of the copyright laws. By unanimous consent, the bill has been referred to the Finance Committee through June 11, 1986, at which time the Committee is automatically dischared from further consideration of the bill. The hearing will be held in SD-215 of the Dirksen Senate Office Building. A witness list is attached.

I. Current Law

The Copyright Act of 1976, 17 USC section 601, requires, with certain exceptions, that copies of works (1) preponderantly of nondramatic literary material, (2) in the English language, (3) by U.S. citizens or domiciliaries, and (4) of copyrightable material, be manufactured in the United States or Canada in order to obtain U.S. copyright protection. This provision, known as the manufacturing clause, does not cover dramatic,

musical, multilingual or pictorial works. Other exceptions to the manufacturing clause permit importation of 2,000 copies of a given work, of works imported for government use and of works in braille. In short, books in English by U.S. authors must be manufactured in the U.S. or Canada in order to enjoy the full remedies provided by U.S. copyright law in an action for infringement of the rights of reproduction or distribution.

The manufacturing clause expires on June 30, 1986.

II. History of the Manufacturing Clause

Until 1891 the American copyright law did not permit U.S. copyright to be obtained by foreigners, and thus foreign works could be freely pirated in the United States. With the increased popularity of the novel beginning in the 18th century, more and more English novels by authors such as Scott, Bulwer, and Dickens were reprinted by United States printers without permission or payment to the author. Beginning in the 1830's, British authors began importuning Congress to stop this pirating and to provide U.S. copyright protection to foreigners. In 1837 Senator Henry Clay presented to the Senate the British Author Petition requesting that they be granted U.S. copyright protection. The petition was signed by 56 of the best-

known English writers, including Edward Bulwer-Lytton, Thomas Carlyle, Benjamin Disraeli, Maria Edgeworth, Harriet Martineau, Robert Southey, and Thomas Moore. Clay also presented a petition at this time by American authors, which pointed out that they found it hard to get paid for their work in competition with the well-known writers of England whose writings were published without royalty cost by United States printers and publishers. Opposition to granting copyright to foreign authors by United States printers and printing trade unions was intense and carried the day until 1891. During this period, of course, the U.S. copyright law was not a trade barrier since foreign works could be imported freely subject only to the tariff -- import duties constituted the sole trade barrier.

With the passage of the Platt-Simmonds Act in 1891, a compromise was reached in three areas. This law gave United States printers, publishers, and labor unions a different form of protection from the competition of foreign editions, it gave foreign authors the opportunity to secure U.S. copyright, and it provided United States authors some protection against the competition of cheaper foreign editions with their own works. The compromise device was the "manufacturing clause"" in the 1891 act, which permitted foreign authors in countries granting reciprocal privileges to

secure U.S. copyright, but only if their books were printed from type set in the United States. After a U.S. copyright was thus obtained for a foreign book, the law made it illegal for foreign editions of that book to be imported.

The manufacturing clause remained in the U.S. copyright law essentially unchanged until 1954, except for two minor liberalizations: One in 1909 exempted books in foreign languages (but also included periodicals and required that plate making for and binding of books be done in the United States). The second, in 1949, permitted an ad interim U.S. copyright for 5 years to be obtained before manufacture in the United States was required and allowed the importation of up to 1,500 copies of the foreign edition. Then, in 1954 a major change was made with the adherence of the United States to the Universal Copyright Convention (UCC), which required the United States to eliminate the manufacturing clause for works of authors from other countries adhering to the convention. The manufacturing clause was thus limited in its application to United States authors, who would lose their U.S. copyright (other than on an ad interim basis) if they first published abroad. The printing trade unions vigorously opposed United States accession to the Universal Copyright Convention, as did the book manufacturers

until almost the very end of the legislative process; however, Congress was persuaded that adherence to the UCC was in the overall United States interest and that fears of severe economic injury to printers and their employees were unfounded. By then the United States had a large surplus of book exports over imports.

In a major revision of U.S. copyright laws enacted by Congress in 1976, Congress authorized the repeal of the manufacturing clause effective July 1, 1982. This represented a compromise between the House Judiciary Committee's preference for the expiration of the manufacturing clause and the Senate Judiciary's desire for its extension. As a result of this compromise, Senators McClelland and Scott requested the Register of Copyright to assess the economic impact of eliminating the manufacturing clause, and the Register concluded in July of 1981 that the clause should be allowed to expire in 1982.

The rationale for this conclusion was that there was no reason to continue a century of discrimination against copyright holders of works of art, musical compositions, dramatic works, sound recordings and motion pictures who were not protected under the manufacturing clause, that there was little likelihood of harm to the American industry from termination of the manufacturing clause, and that much of the output of the

U.S. printing industry was not, in any event, constrained by the clause. The Register concluded that if harm to the industry should result from the expirations of the manufacturing clause, mechanisms (presumably trade relief laws) were available to protect those interests without restricting the freedom of choice of American copyright holders.

In the midst of the 1982 recession and apparently in response to rising unemployment, Congress enacted H.R. 6198, which extended the manufacturing clause through July 1, 1986. On July 8, 1982, President Reagan vetoed H.R. 6198 as no longer necessary to protect an efficient industry and as inconsistent with U.S. international obligations. Despite the President's objections, Congress voted to override the President's veto on July 13, 1982, by a Senate vote of 84-9 and a House vote of 324-82.

The 1976 extension of the manufacturing clause exempted printed material imported from Canada. This exemption was based on the Agreement of Toronto (see attachment 1) between the U.S. and Canadian printing and publishing industries, by which the U.S. industry promised to urge Congress to exempt Canada from the manufacturing clause in exchange for the Canadian industry urging its government to accept the Florence Agreement, providing for the duty-free flow of

educational, scientific, and cultural materials. Both sides pledged that in striking this balance successfully they would work to eliminate remaining barriers to trade in printed materials.

III. GATT Ruling against the Manufacturing Clause

The General Agreement on Tariffs and Trade (GATT) generally prohibits quantitative restrictions on imports. The United States notified the GATT, in 1954, that the manufacturing clause was inconsistent "existing legislation," excepted from U.S. GATT obligations by the Protocol of Provisional Application. In effect, the U.S. notified the GATT that the manufacturing clause was "grandfathered." During the Tokyo Round of the Multilateral Trade Negotiations (1973 to 1979), the European Communities (EC) asked that the clause be included in the non-tariff trade barrier negotiations. U.S. representatives indicated that the clause had been narrowed considerably over the years and, under the 1976 amendment of the U.S. copyright law, would expire in July 1982. Based on the U.S. statement, the EC dropped the request.

When the clause was extended in 1982, the EC asked to have a GATT panel review the extension. The United States told the panel that the manufacturing clause was "grandfathered" and, therefore, our GATT obligations did

not apply. We pointed to the 1954 notification as evidence of the clause's "grandfathered" status. The GATT panel rejected the U.S. position.

In May 1984, the GATT Council adopted the panel's report. It concluded that the 1982 extension of the manufacturing clause was new legislation, unprotected by the exception for "existing legislation" provided in paragraph 1(b) of the GATT Protocol of Provisional Application. In other words, the extension did not have "grandfathered" status. The Council recommended to the United States that it bring its practice into conformity with GATT within a reasonable time.

Under Article XXIII, paragraph 2 of GATT, the Contracting Parties can authorize a signatory to withdraw concessions it has given to another signatory if the Contracting Parties "consider that the circumstances are serious enough to justify such action." In response to proposals in Congress to extend the manufacturing clause in spite of the GATT finding, the EC in March, 1986 did ask the GATT for authority to suspend the application of concessions towards the U.S. equivalent to the economic damage caused to the EC in the event GATT-inconsistent legislation were enacted. The EC estimates its trade lost as a consequence of the manufacturing clause at between $300-$500 million.

Initial targets for EC retaliation against U.S. exports are paper, machinery for the paper and printing industry, tobacco, machinery for the tobacco industry, machinery for the textile industry, and chemicals (See attachment 2). During the May 1986 GATT Council meeting, the EC stated its intention to retaliate "within weeks" of the extension of the manufacturing clause beyond June 30, 1986.

IV. S. 1822

On May 19, 1986, the Judiciary Committee reported S. 1822.

S. 1822:

1. Extends the manufacturing clause permanently.

2. Removes the Canadian exemption after January 1, 1989, subject to the conditions in paragraph 3.

3. Effective July 1, 1988, provides for waivers allowing imports from countries which:

- the USTR certifies have no material tariff or non-tariff barriers to U.S.-printed products, and which adequately protect U.S. intellectual property rights, and

- the Secretary of Labor certifies have extended internationally-recognized worker rights (this

requirement may be waived by the President if determined to be in the national economic interest).

V. The Printing Industry and Employment

Shipments in the printing and publishing industries were valued at $100 billion in 1984.

Commercial printing and newspapers are the dominant sectors within the printing and publishing industries, in terms of value of shipments.

With total employment of 1.4 million persons in 1984, the printing and publishing industries are one of the ten largest employers in the manufacturing sector, accounting for over 7 percent of manufacturing employment. Commercial printing accounted for 34.1 percent of employment in this sector, while book printing accounted for 1.9 percent of employment.

The employment effects of eliminating the manufacturing clause have been estimated in various studies. Materials covered by the clause account for a small portion of the output of the printing industry.

A 1986 Department of Labor study estimates that elimination of the Clause could affect between 900 to 23,000 job opportunities (job opportunities lost do not necessarily translate into the loss of existing jobs) in

the printing and publishing industries. This represents less than two percent of nearly 1.4 million workers now employed in these industries.

Previous studies on the termination of the Clause have provided a range of employment opportunity loss estimates:

- U.S. International Trade Commission (1983): 732 to 3,526 job opportunities:
- Congressional Research Service (1981): 5,000 to 9,000 job opportunities;
- E. Wayne Nordberg for the printers (1977): 21,000 job opportunities;
- E. Wayne Nordberg for the printers (1981): 14,000 job opportunities;
- Edward V. Donahue for the printing unions (1979): 40,000 job opportunities;
- Department of Labor (1981): 77,600 to 172,200 job opportunities.

Attachment 3 contains tables on employment and production in the printing industry by state.

(TED-0291)

99TH CONGRESS
2D SESSION

S. 1822

[Report No. 99-303]

To amend the Copyright Act in section 601 of title 17, United States Code, to provide for the manufacturing and public distribution of certain copyrighted material.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 1 (legislative day, OCTOBER 28), 1985

Mr. THURMOND (for himself, Mr. LEAHY, Mr. LAXALT, Mr. HATCH, Mr. GRASSLEY, Mr. SPECTER, Mr. MCCONNELL, Mr. SIMON, Mr. SASSER, Mr. DIXON, Mr. DANFORTH, Mr. QUAYLE, Mr. HEINZ, Mr. MURKOWSKI, Mr. DECONCINI, Mr. PROXMIRE, Mr. GLENN, Mr. MATTINGLY, and Mr. METZENBAUM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 19, 1986

Reported by Mr. THURMOND, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

MAY 21 (legislative day, MAY 19), 1986

Ordered, referred to the Committee on Finance for a period not to extend beyond June 11, 1986, provided, that any amendments reported by the Committee on Finance relating to the subject matter of the bill, as reported, shall be in order and that the bill be available for consideration on June 12, 1986

A BILL

To amend the Copyright Act in section 601 of title 17, United States Code, to provide for the manufacturing and public distribution of certain copyrighted material.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Manufacture and Public Distribution of Certain Copyrighted Material Act".~~

~~SEC. 2. (a) The heading for section 601 is amended by striking out "copies" and inserting in lieu thereof "printed material".~~

~~(b) Section 601(a) of title 17, United States Code, is amended by—~~

~~(1) striking out "Prior" through "except" and inserting in lieu thereof "Except";~~

~~(2) striking out "copies" through "literary" and inserting in lieu thereof "printed";~~

~~(3) striking out "or Canada." and inserting in lieu thereof "or unless—"; and~~

~~(4) adding at the end thereof the following:~~

~~"(1) the United States Trade Representative has certified to the Congress that the country of export currently is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in copyrights; and~~

~~"(2) either—~~

~~"(A) the United States Trade Representative has certified that the country of export currently imposes no material nontariff barriers and, to the~~

extent inconsistent with tariff bindings entered into by the country of export with the United States, imposes no tariff barriers to trade in printed material; or

"(B) the country of export has in force a free trade agreement with the United States governing trade in printed material entered into pursuant to section 401 of the Trade and Tariff Act of 1984.

"(3) any certification made pursuant to this subsection shall be withdrawn if any of the matters certified to cease to exist.".

(c) Section 601(b) of title 17, United States Code, is amended by striking out paragraphs (6) and (7) and inserting in lieu thereof the following:

"(6) where importation is sought for works described in, and in accordance with the requirements of, Article II, paragraph 1, of the Agreement on the Importation of Educational, Scientific and Cultural Materials (the Florence Agreement) or Article IV, paragraph 5, of the Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials (the Nairobi Protocol).".

(d) Section 601(c) of title 17, United States Code, is amended by striking out "or Canada" each place it appears.

(e) Section 601(d) of title 17, United States Code, is amended to read as follows:

"(d) In the event that any work is imported in violation of this section, in addition to other remedies available, an infringer shall have a complete defense in any civil action or criminal proceeding for infringement of the exclusive right to reproduce and distribute copies of the work if the infringer proves—

"(1) that copies of the work were imported in violation of this section;

"(2) that the infringing copies were manufactured in the United States; and

"(3) that the infringement was commenced before the effective date of registration for an authorized edition of the work.".

(f) Section 601(c) of title 17, United States Code, is amended by striking out "or Canada".

(g) The item relating to section 601 in the table of sections for chapter 6 of title 17, United States Code, is amended to read as follows:

"601. Manufacture, importation and public distribution of certain printed material.".

SEC. 3. This Act and the amendments made by this Act shall be effective on the date of enactment, and the provisions of section 601(a), as amended by this Act shall apply to imports on or after the date of enactment.

That this Act may be cited as the "Manufacture and Public Distribution of Certain Copyrighted Material Act".

SEC. 2. Section 601(a) of title 17, United States Code, is amended by—

(1) striking out "Prior" through "except" and inserting in lieu thereof "Except";

(2) striking out "or Canada." and inserting in lieu thereof "or unless the portions consisting of such material have been—

"(1) manufactured in Canada prior to January 1, 1989; or

"(2) manufactured in a certified country on or after July 1, 1988. For the purpose of this section, a 'certified country' means a country, territory, possession, or other jurisdiction which—

"(A) the United States Trade Representative has certified to the Congress—

"(i) as providing adequate and effective means under its laws for United States nationals to secure, exercise, and enforce exclusive rights under copyright; and

"(ii) either—

"(I) as imposing no material non-tariff barriers to trade in printed material; as imposing no tariff barriers to

trade in printed material that is materially inconsistent with tariff bindings, if any, entered into by such jurisdiction with the United St s; and as being an adherent to the Agreement on the Importation of Educational, Scientific and Cultural Material of 1950 (the Florence Agreement) or, with respect to printed books, newspapers and periodicals, and catalogues of books and publications identified in items (i), (ii), and (viii) of Annex A to such Agreement, as imposing no tariff barrier materially inconsistent with the provisions of Article I of such Agreement if such jurisdiction is not an adherent to such Agreement; or

"(II) as having in force a free trade agreement with the United States governing trade in printed material; and as being an adherent to the Agreement on the Importation of Educational, Scientific and Cultural Material of 1950 (the Florence Agreement) or, with respect to printed books, newspapers and

periodicals, and catalogues of books and publications identified in items (i), (ii), and (viii) of Annex A to such Agreement, as imposing no tariff barrier materially inconsistent with the provisions of Article I of such Agreement if such jurisdiction is not an adherent to such Agreement and regardless of whether such tariff is permitted under the pertinent trade agreement; and

"(B) the Secretary of Labor has certified to the Congress as taking or having taken steps to afford internationally recognized worker rights, as referred to in section 502(a)(4) of the Trade Act of 1974 (19 U.S.C. 2462(a)(4)) to its workers, except that such certification by the Secretary of Labor may be waived if the President determines that such waiver is in the national economic interest of the United States.".

SEC. 3. Section 601 is amended by adding at the end thereof the following:

"(f)(1) The certification referred to in subsection (a) shall be commenced upon the initiative of the United States Trade Representative or upon petition to the United States Trade Representative by any jurisdiction or interested party.

Such proceedings may be commenced on or after January 1, 1987, and final certification may be published at any time thereafter pursuant to the terms of this section: Provided, That no certification shall permit the importation, under clause (2) of subsection (a), of materials subject to this section manufactured prior to July 1, 1988.

"(2) Any certification made pursuant to subsection (a) shall be withdrawn by notification to the Congress given by the United States Trade Representative if the United States Trade Representative shall find that the criteria of subsection (a)(2)(A) are no longer met, or by the Secretary of Labor if such Secretary finds that the criteria of subsection (a)(2)(B) are no longer met: Provided, however, That no such withdrawal, no expiration, termination, or other cancellation of any trade agreement referred to in subsection (a)(2)(A) and no other provision of this section shall prevent the importation or distribution of any copies manufactured prior to the effective date of such withdrawal or cancellation, or the importation or distribution of any copies manufactured following such effective date in a country referred to in subsection (a) pursuant to any contract, agreement, or understanding entered into, or reasonable expectation relied upon, prior to such effective date and imported during a period of 24 months following such date. The terms of the foregoing proviso shall apply equally to the importation and distribution on

or after January 1, 1989 of copies manufactured in Canada, in the event that on such date Canada is not a certified country.

"(3) Any proposed certification, or notification of withdrawal made pursuant to this section shall be published promptly in the Federal Register by the United States Trade Representative and opportunity for public comment shall be afforded to interested parties. For purposes of this section, interested parties shall not necessarily be limited to parties with a material interest in the certification or notification of withdrawal of a jurisdiction. No certification or notification of withdrawal shall become final until at least 30 days following publication of such notice in the Federal Register.

SEC. 4. (a) Section 601(b)(6) of title 17, United States Code, is amended by striking out "or Canada" and inserting in lieu thereof "or, during the applicable period, Canada or a certified country".

(b) Section 601(c) of title 17, United States Code, is amended by striking out "or Canada" each place it appears, and inserting in lieu thereof "or, during the applicable period, Canada or a certified country".

(c) Section 601(d)(2) of title 17, United States Code, is amended by striking out "or Canada".

(d) Section 601(d)(3) of title 17, United States Code, is amended by striking out "or Canada" and inserting in lieu thereof ", Canada or a certified country".

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The Chairman. The committee will come to order, please.

We have first on the agenda the nomination of Dorcas Hardy to be Commissioner of Social Security. And I have checked with a number of members of the committee. There have been some questions involving social security and disability, and I know Senator Moynihan has posed some questions, and I believe he would like to make a statement before I move further.

Senator Moynihan. Thank you, Mr. Chairman.

As you know, sir, last week the Supreme Court ruled in the matter of Bowen versus the City of New York, a class action suit on behalf of persons who have been denied disability benefits in the course of a very large administrative action that commenced in the previous Administration and took particular hold in the early years of this one.

The feeling was that a very large number of persons whose cases were reviewed pursuant to an act of Congress were nonetheless taken off the roles without a serious consideration who were said to be employable who were not.

I offer you a proposition. In a very careful survey, it was found that 40 percent of the persons in New York City who were classified as "homeless" and were living outdoors and in places like that had, in fact, been discharged from the disability benefit system of social security, as employable.

And the next thing you know they were living on grates, or whatever.

This decision came between the time after Miss Hardy was heard by this committee and before this morning's meeting. We were able to get to her a series of questions about compliance with the Supreme Court's decision. We have received an answer which they were only able to prepare overnight. They did not have more than 24 hours. The City of New York had been very helpful in doing this. We don't find the answers quite what we would hope them to be. In one case, we find that we would hope it very much to be different. We are not sure that they are ready to go through all the details and see what the Supreme Court intended them to do.

And what I would like to suggest, Mr. Chairman, or I would like to put the proposition, that while I will certainly vote to report this nomination, I would like it held on the calendar until we can give Miss Hardy an opportunity to really absorb the implication of the Court's decision and answer these questions.

And I don't mean to obstruct it, but this is something not every day does the Supreme Court deal with the administration of the Social Security Administration.

The Chairman. I think that is a fair request. I know the Administration is anxious to have Miss Hardy confirmed. And my hunch is they will get responses to your questions

rather completely and rather rapidly in the hopes of moving the nomination, but I would be willing to ask the Majority Leader simply to hold it on the calendar until you get the answers.

Senator Moynihan. I thank the chairman very much.

The Chairman. Is there objection to reporting Miss Hardy's nomination?

Senator Baucus. Mr. Chairman, Senator Mitchell wants to be recorded as voting in favor of Miss Hardy.

The Chairman. Voting to what?

Senator Baucus. In favor of her.

The Chairman. In favor?

Senator Baucus. Yes.

The Chairman. Senator Armstrong wants to be recorded as voting in favor.

Is there any objection to reporting her? And, if not, we will simply report it unanimously unless some member indicates they want to be recorded as no.

Senator Baucus. Mr. Chairman, Senator Mitchell also has a statement he would like to submit for the record.

The Chairman. Without objection.

Now I wonder if we might move on to the manufacturing clause.

On the manufacturing clause, I think most of the members are aware of what it is. Roughly, for 95 years, we have had a

provision that protects the printing industry in this country against the import of American authors printed abroad. We had a hearing on it yesterday. I thought, by and large, it was a reasonably fair hearing, covering the spectrum of the views. And I think there is no question that we would be in violation of GATT if we continue with what we are doing. There are many people that are, in essence, inclined to say to GATT, well to heck with it. We don't care anyway.

But I don't know of many people that would say we would not be in violation of GATT. I have some misgivings just to thumb our nose at the international trading system, and indeed I think ask for retaliation to some of our basic industries in terms of their exports where we are making some little money now on some of these that would be disproportionate to any value that would be gained by continuing the manufacturing clause as it is. By that is my personal opinion. I will open it up for discussion for the members.

Senator Baucus. Mr. Chairman.

The Chairman. Senator Baucus.

Senator Baucus. Mr. Chairman, I agree with you, and I have an amendment, two parts. One provision would allow the manufacturing clause to expire July 1, 1986, and the second part would direct the USTR to undertake studies of tariff and non-tariff barriers that affect the printed material, the

publishing industry in the United States and potential unfair practices of Taiwan and other countries.

The Chairman. Comments on the amendment?

Senator Danforth. Mr. Chairman.

The Chairman. Senator Danforth.

Senator Danforth. Mr. Chairman, let me just describe my view on this subject.

I think that the bill that was reported out of the Judiciary Committee is not a good bill; that it is clearly in violation of GATT, and that it is truly protectionist legislation.

My only question about how to handle this subject is related not to how to main constant continuing protection of the U.S. market, but rather how can we redraft certain grievances that we have both against the Far East and their regular violation of U.S. copyrights, and also with respect to Canada, and particularly its protectionism which violates an agreement that we entered into with Canada in 1976, and which problem was magnified last Friday when Canada, in response to the Shaits 201 case, imposed further restrictions on U.S. printed material.

So, therefore, my question was: Well, given the fact that we have problems with copyrights in the Far East, and problems with protectionism in Canada, is this the time to basically open up as far as the U.S. market is concerned on

printed material?

And I raised these questions yesterday with Ambassador Yeutter. He, in turn, is in the process of writing me a letter, which I would like to have placed in the record, Mr. Chairman, when I get it. I have seen a draft of it.

The Chairman. Without objection.

(The letter follows:)

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

June 11, 1986

The Honorable John C. Danforth
United States Senate
Washington, D.C. 20510

Dear Jack:

This is a follow-up to the Senate Finance Committee hearing yesterday on the "manufacturing clause," and to our discussions later in the day on that subject. I deeply appreciate your personal interest (and that of other Members of the Finance Committee as well) in the intellectual property issue, which is rapidly becoming one of our highest negotiating priorities. I know that all of you have been skeptical about the merits of this legislation, but have hoped that it might provide some leverage for me on the negotiating scene.

Notwithstanding those good intentions I want you to know that extension of the manufacturing clause will not be helpful and, in fact, will assuredly be harmful. It cuts the rug out from under my efforts to: (1) convince the LDCs to abandon in a timely way import restrictions based on infant industry arguments; (2) persuade our GATT trading partners that intellectual property should be one of the priority negotiating objectives of a new GATT round; and (3) credibly appeal to the major violators of copyright protection (primarily nations of the Pacific Rim) to correct their errant ways. It also puts us in the position of flagrantly ignoring a GATT finding against us at the very time that we are attempting to make the GATT dispute settlement mechanism more credible. In light of all these concerns, I hope the Congress will permit this legislation the demise it deserves.

At the same time I want you also to know that I am committed to correcting the damaging trade practices of other nations which spawned much of the support for this legislation. The offending nations should consider themselves on notice that expiration of the manufacturing clause will in no way diminish our zeal in dealing with copyright and other intellectual property issues of concern to us. As you know, we already have intellectual property negotiations underway with about 30 nations and we will continue to pursue those bilateral negotiations with vigor. In addition, we will insist on the development of multilateral appraches to this trying problem in the forthcoming round of GATT negotiations.

Finally, since you have expressed particular concern with respect to the inadequacy of market access and intellectual property protection in Canada, I assure you that these will be among our foremost negotiating objectives. We are prepared to respond to your concerns through normal bilateral contacts as well as in the forthcoming comprehensive negotiations that are about to begin between our two countries, whichever offers the most expeditious and decisive solution to these problems.

You have asked what we might do if our U.S.-Canada bilateral efforts are not successful. My answer is that we will pursue whatever additional actions might be necessary to resolve the issue, culminating in a further discussion of legislative alternatives if that be required.

Many thanks for your diligent pursuit of reciprocal justice on this and other issues.

Sincerely,

Clayton Yeutter

CY:sm

Senator Danforth. He feels very strongly that if we were to agree with the Judiciary Committee, this would not only not further his cause with respect to the Far East and Canada but that it would damage his cause. And he has urged us--he did so yesterday, and will do with a letter to me--urged us not to agree with the Judiciary Committee and not to pass this legislation.

I think that the question before us, therefore, is less one of trade policy because I think that in this case the Administration agrees with us in recognizing the problem in Canada and the problem in the Far East. I think the question is rather one of tactics.

And it seems to me that our role on the Finance Committee should be one of pressing the Administration, pushing the Administration, strengthening the hand of the Administration. But where the Administration agrees with us as to what result they want to accomplish, then if they say this is going to hurt rather than help, I don't think that we should fuddle up their tactics. And, therefore, I agree with Senator Baucus that his substitute would help us.

The Chairman. Further comments on the Baucus amendment?

(No response)

The Chairman. Is there objection to adopting the Baucus amendment?

Senator Baucs. Mr. Chairman, Senators Matsunaga, Pryor and Bradley want to be recorded in favor.

The Chairman. Senator Roth and --

Mr. Santos. Durenberger, sir.

The Chairman. Roth and Durenberger.

Without objection, the amendment is adopted.

Now, are there other amendments to the bill?

(No response)

The Chairman. We have an interesting situation here. We do not have a quorum to report the bill out. And I am not sure I have seen this situation before, Russell, so let me ask your advice.

(laughter)

The Chairman. We are discharged of this bill whether or not we report it out. We are perfectly at liberty to adopt amendments, the six members. And that means that we have now adopted the amendment. If we do nothing, this bill goes out with the amendment whether we want it out or not.

Do I interpret the rules, Russell, correctly?

Senator Long. I think that is right, Mr. Chairman. I think it is discharged at this point I would say.

The Chairman. That is correct.

Senator Baucus. It is discharged --

The Chairman. With the amendment.

Senator Baucus. With the amendment.

The Chairman. Yes. Come as you are party.

Is there further business to come before the committee?

(No response).

The Chairman. If not, we are adjourned. And we are discharged of the bill.

(Whereupon, at 9:48 a.m., the Executive Session was concluded.)

C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Session before the U.S. Senate Committee on Finance, held on Wednesday, June 11, 1986, were transcribed as herein appears and that this is the original transcript thereof.

William J. Moffitt

WILLIAM J. MOFFITT
Official Court Reporter

My Commission expires 14, 1989.

AMENDMENT TO S.1822 PROPOSED BY SENATOR BAUCUS, JUNE 11, 1986

019920.186 S.L.C.

Strike out all after the enacting clause and insert in lieu thereof the following:

Section 1. (a) Section 601 of title 17, United States Code, is repealed.

(b)(1) The table of contents for chapter 6 of title 17, United States Code, is amended by striking out the item relating to section 601.

(2) Section 409 of title 17, United States Code, is amended--

(A) by adding ''and'' at the end of paragraph (9),

(B) by striking out paragraph (10), and

(C) by redesignating paragraph (11) as paragraph (10).

(3) Subsection (b) of section 602 of title 17, United States Code, is amended by striking out ''unless the provisions of section 601 are applicable''.

(4) Subsection (a) of section 708 of title 17, United States Code, is amended by striking out paragraph (7) and redesignating paragraphs (8), (9), (10), and (11) as paragraphs (7), (8), (9), and (10), respectively.

(5) Subsection (e) of section 704 of title 17, United States Code, is amended by striking out ''section 708(a)(11)'' and inserting in lieu thereof ''section 708(a)(10)''.

(c) The repeal and the amendments made by this section

shall take effect on July 1, 1986.

Sec. 2. Section 181 of the Trade Act of 1974 (19 U.S.C. 2241) is amended by adding at the end thereof the following new subsection:

''(d) Special Report on Barriers to Printed Materials.--

''(1) In general.--The United States Trade Representative shall conduct a separate study which identifies and analyzes all acts, policies, and practices of--

''(A) Canada,

''(B) the European Communities,

''(C) Japan,

''(D) Taiwan,

''(E) the Republic of Korea,

''(F) Singapore, and

''(G) any other foreign country designated by the United States Trade Representative,

that constitute barriers to, or distortions of, trade in printed materials.

''(2) Report.--By no later than February 1, 1987, the United States Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the study conducted under paragraph (1). Such report shall contain a separate list for each foreign country of

all acts, policies, and practices described in paragraph (1).''.

Amend the title so as to read: ''An Act to repeal section 601 of title 17, United States Code, and to require the United States Trade Representative to submit a report on trade barriers against exports of printed materials.''.

BAUCUS-ROTH AMENDMENT ON THE MANUFACTURING CLAUSE

The amendment has two parts.

1) The manufacturing clause would be allowed to expire on July 1, 1986, as provided under current law.

2) The USTR would be directed to conduct a study of tariff and non-tariff barriers to trade in printed material practiced by Canada, the EEC, Japan, Taiwan, South Korea, Singapore and any other country designated by the USTR.