

1 EXECUTIVE COMMITTEE MEETING

2 THURSDAY, SEPTEMBER 18, 1986

3 U.S. Senate

4 Committee on Finance

5 Washington, D.C.

ORIGINAL

6 The committee met, pursuant to notice, at 11:30 a.m. in
7 Room SD-215, Dirksen Senate Office Building, the Honorable
8 Bob Packwood (chairman) presiding.

9 Present: Senators Packwood, Dole, Roth, Danforth,
10 Chafee, Heinz, Wallop, Durenberger, Armstrong, Symms,
11 Grassley, Long, Bentsen, Moynihan, Baucus, Bradley, Mitchell,
12 and Pryor.

13 Also present: Alan Holmer, Deputy United States Trade
14 Representative.

15 Also present: Josh Bolten, Len Santos, Trade Counsel,
16 Majority; Jeff Lang, trade Counsel, Minority, Susan Taylor,
17 Administrative Director.

18 Also present: Bill Diefenderfer, Chief of Staff.

19 (The prepared written statements of Senators Dole, Symms
20 and Bentsen follow:)

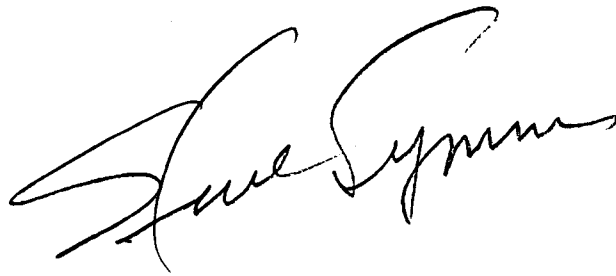
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OPENING STATEMENT FOR SEN. SYMMS ON TRADE BILL

MR. CHAIRMAN,

I LOOK FORWARD TO CONSIDERING WHAT CONGRESS CAN DO TO HELP SOLVE THE OBVIOUS COMPETITIVE PROBLEM OF THE UNITED STATES IN WORLD TRADE.

EACH MONTH WE READ ABOUT EVEN GREATER TRADE DEFICITS. THE PRESS SAYS THAT THE TRADE DEFICIT IS A DRAG ON THE U.S. ECONOMY, BUT THE TRADE DEFICIT IS A SYMPTOM. A SYMPTOM ONLY INDICATES A MORE BASIC PROBLEM. ALL SHOULD AGREE THAT OUR GOAL MUST BE TO IMPROVE AMERICAN COMPETITIVENESS. THE TRADE DEFICIT IS A SYMPTOM, MR. CHAIRMAN, COMPETITIVENESS IS THE PROBLEM.

A SENATE DEMOCRATIC WORKING GROUP ON ECONOMIC COMPETITIVENESS RECENTLY RELEASED THE RESULTS OF THEIR INVESTIGATION INTO THE PROBLEMS THE U.S. FACES IN WORLD MARKETS. MY DEMOCRATIC COLLEAGUES SHOULD BE CONGRATULTED FOR ADDRESSING COMPETITIVENESS, THE VERY HEART OF THE TRADE ISSUE. WE MUST FIND WAYS OF BECOMING MORE PRODUCTIVE, OF USING TECHNOLOGY BETTER, AND OF IMPROVING OUR EDUCATION.

HOWEVER, PROPOSALS FOR SOLVING THESE PROBLEMS ARE THE SAME SOLUTIONS PROPOSED FOR THE LAST FIFTY YEARS: ADD TO THE SIZE OF GOVERNMENT AND THROW MORE MONEY AT THE PROBLEM. MR. CHAIRMAN, THAT IS JUST NOT GOING TO WORK. WE CAN THROW ALL THE MONEY WE WANT AT THE SITUATION, WE CAN CREATE ALL THE GOVERNMENT STUDIES AND PROGRAMS WE LIKE, BUT IN THE END, INDIVIDUALS DECIDE IF THEY ARE GOING TO PRODUCE MORE TODAY THAN THEY DID YESTERDAY. GOVERNMENT CAN NEITHER FORCE NOR PERSUADE INDIVIDUALS TO BE MORE COMPETITIVE.

THE PROPER QUESTION, MR. CHAIRMAN, IS WHAT CAN CONGRESS DO TO HELP THE AMERICAN PEOPLE BECOME MORE COMPETITIVE. THE BEST HELP WE CAN PROVIDE IS TO 1) GET OUT OF THE WAY AND 2) REDUCE THE FEDERAL BUDGET DEFICIT. ~~WE MOVED A LONG WAY TOWARDS THIS GOAL BY PRESSING AHEAD WITH TAX REFORM LEGISLATION. WHILE IT'S NOT PERFECT, THE TAX REFORM BILL GETS GOVERNMENT OUT OF THE BUSINESS OF TRYING TO INFLUENCE INDIVIDUAL CHOICE IN ECONOMIC MATTERS. WE CAN GO A STEP~~

need to
FURTHER BY ELIMINATING UNNECESSARY GOVERNMENT REGULATIONS, *and,*
reduce the tax burden on Business

THE BIGGEST CONTRIBUTION WE CAN GIVE TO IMPROVING COMPETITIVENESS, HOWEVER, HAS YET TO BE SERIOUSLY ADDRESSED: REDUCING THE FEDERAL BUDGET DEFICIT.

A RECENT REPORT FOR THE CONGRESSIONAL RESEARCH SERVICE BY CRAIG ELWELL LOOKED INTO THE TRADE DEFICIT. IT IS ENTITLED THE U.S. TRADE DEFICIT: CAUSES, CONSEQUENCES AND CURES. THE VERY FIRST

SENTENCE OF THE ABSTRACT, ON THE VERY FIRST PAGE INSIDE THE FRONT COVER READS "THE HUGE U.S. TRADE DEFICIT IS PRIMARILY THE RESULT OF THE U.S. BUDGET DEFICIT." THE U.S. BUDGET DEFICIT FORCES AMERICAN BUSINESS TO COMPETE WITH THE GOVERNMENT FOR INVESTMENT INCOME, CAUSES HIGHER REAL INTEREST RATES THAN OUR TRADING PARTNERS FACE AND DRIVES UP THE VALUE OF THE DOLLAR. WE ALL WOULD PROBABLY ADMIT THIS IN OUR HEART OF HEARTS, BUT IT'S NICE TO NEGLECT THE REAL ISSUE AND FOCUS ON UNFAIR FOREIGN TRADE PRACTICES (AND, GRANTED THEY ARE VERY REAL) AND THE NEED TO UPDATE U.S. TRADE LAW (AGAIN, GRANTED AN UPDATE IS OVERDUE).

MR. CHAIRMAN, IT WOULD ALMOST BE FUNNY IF IT WEREN'T SO TRAGIC. CONSTANTLY WE COME BACK TO THE BUDGET DEFICIT, AND YET CONGRESS LOOKS THE OTHER WAY. THE PEOPLE OUT IN THE HEARTLAND UNDERSTAND THE SERIOUSNESS OF THE ISSUE, BUT WE CONSTANTLY NEGLECT IT. IF WE REALLY WANT TO HELP SOLVE THE TRADE DEFICIT, LET'S DO SOMETHING ON THE BUDGET. LET'S DO THE ONE THING THAT WE CAN DO TO GET OUT OF THE WAY OF THE AMERICAN ECONOMY. LET'S REMOVE THE BIGGEST IMPEDIMENT TO OUR COMPETITIVENESS.

THE ONLY WAY TO ADDRESS THE PROBLEM IS FOR CONGRESS TO TAKE DECISIVE ACTION DURING THE BUDGET PROCESS. HOWEVER, I ASK ONE SMALL FAVOR OF ALL MY COLLEAGUES HERE TODAY. IF AN AMENDMENT IS OFFERED, BE AWARE OF THE BUDGET COSTS. DON'T MAKE THE PROBLEM WORSE IN TRYING TO TREAT THE SYMPTOM.

1 The Chairman. I think we will move on to trade. What I
2 hope to do is to find out whether or not we have a serious
3 objection to our at least reporting out Mr. Laun and the
4 Highway bill, or whether the objection was to our meeting and
5 attempting to vote something out on trade. If not,
6 Mr. Leader, what I would like to do later in the day is try
7 to get a UC for us to meet off the floor for the highway
8 bill in Louey Long because I don't think there is any
9 objection.

10 But in the meantime, I would at least like to start
11 discussing trade because it was very clear that we are not
12 going to send out a trade bill today in any event, and we are
13 going to need two or three days of markup.

14 Let me indicate to the committee what I would like to do,
15 if possible. And I am serious about this and miracles can
16 happen.

17 I would like to get a trade bill this year. I would like
18 to get a trade bill out of this committee if we can. And
19 there is even going to be friction within this committee and
20 I am well aware of that. And in order to get a trade bill
21 into law this year, we have got to get a trade bill that this
22 committee can agree with that is somehow within negotiating
23 room of the House so that we can get a bill that we can both
24 agree with that the Administration will not veto; that,
25 hopefully, will not have the textile bill added to it on the

1 floor which will make it veto bait for sure.

2 I don't know if all of this can be done, but I want to
3 start, and I want to make a good faith effort, and I want to
4 see if we can reach some agreement in this committee.

5 As to time, we will continue on today for a reasonable
6 period of time. We will meet again next week, but I am not
7 sure exactly when for this reason. We are going to have to
8 have a later Superfund conference, and I have kept bugging
9 the Chairman about that, Chairman Rostenkowski, to call a
10 Superfund conference. There are some deep differences between
11 the House and the Senate, and I see no point in sending
12 emissaries back and forth. We might as well just sit down in
13 the conference and meet, and a fair number of members in this
14 committee are involved in trade are also involved on the
15 Superfund conference.

16 We are going to have a reconciliation markup at some
17 stage along the way, again with the Administration and
18 perhaps a concensus package, and it is going to require
19 Republicans and Democrats, as I understand it, Mr. Leader, on
20 a reconciliation markup. Whether there is going to be some
21 revenues in it or not is not yet decided, but there may be.
22 There may be some attempted further cuts in some programs,
23 and that is going to be controversial, and this committee is
24 going to be involved in that.

25 At some stage, the tax bill is going to be on the floor.

1 The chairman and I finished last night about 3:00 o'clock and
2 that bill is done. It should be printed and ready to be out
3 this afternoon. The House will take it up Tuesday or
4 Wednesday, and I expect when we get to the floor on that
5 there may be some members in this committee who are
6 interested in trade who also want to come down and be
7 involved in some debate on the tax bill.

8 So whether we can make it--the Leader has said we will be
9 here until October the 24th, so I think we have a chance.

10 Senator Dole. October 3rd.

11 (Laughter)

12 The Chairman. So with that, let me ask, first, I am
13 going to act in good faith in trying to get a bill out of
14 committee that we can live with. I don't want to spin our
15 wheels unnecessarily. And if the textile bill gets added in
16 committee, or something like that, I don't know what we do,
17 but we will just start and go.

18 Now let me ask for opening statements and take Senator
19 Danforth first.

20 Senator Danforth. Mr. Chairman, I don't want to make a
21 long opening statement because I think we should get with it.
22 Obviously, time is of the essence. I want to express
23 agreement with the Chairman's position. I think that it is
24 the role of this committee to at least to try to act
25 responsibly. I believe that there have been fruitful

1 discussions at the staff level moving toward some
2 concensus. The big challenge for all of us is going to be to
3 resist the temptation to put each one of our favorite ideas
4 on this bill. But I think with some degree of self-restraint
5 we have an excellent opportunity here, and, who knows, maybe
6 we can pass the new trade law.

7 The Chairman. Senator Heinz.

8 Senator Heinz. Mr. Chairman, let me yield to Senator
9 Bentsen. He was here first and I think he has something to
10 say.

11 Senator Bentsen. Well let's see that I do.

12 Senator Heinz. Yes, he does.

13 Senator Bentsen. Mr. Chairman, I would like to make a
14 very long statement, but I shall not. And I will put mine
15 in the record.

16 Shortly before Labor Day the Democratic Caucus in the
17 Senate met and offered a statement saying that they wanted a
18 trade bill and wanted to work with the Republicans in
19 developing a bipartisan bill and made that statement.

20 The Chairman, Senator Danforth, took up that statement
21 and met with some of us and said, we would like to work out
22 a concensus. We thereupon had staff from the majority and the
23 minority work on that for that purpose. And I think that
24 most of the members from this side of the aisle feel that,
25 in developing the concensus, that a sincere effort was made.

1 There were a number of reservations by members as to things
2 that they think should be done.

3 I had Mr. Yeutter talk to me and said that the
4 Administration wanted to work on such a bill. But then he
5 went on to say that he had certain limitations obviously
6 within which he had to operate. I am not sure if that is
7 anything but a distinction without a difference.

8 I am not yet convinced in all candor that the
9 Administration wants a trade bill this year. I do think that
10 members of this committee do, on both sides, and I am willing
11 to work in that kind of an effort to try to bring a trade
12 bill to the floor. It is not going to be easy in these
13 closing days.

14 The Chairman. Further comments?

15 Senator Heinz. Mr. Chairman, just very briefly.

16 I am convinced that with you and Senator Danforth and the
17 kind of bipartisan spirit that we have had to date on trade,
18 that we will produce, we will pass, and we will enact a trade
19 bill.

20 Second, I took particular note, Mr. Chairman, of your
21 comments regarding the must legislation the Finance Committee
22 will be involved with, and with the House on. You noted
23 reconciliation. You noted Superfund. I don't know whether to
24 be relieved or concerned that you left off the debt ceiling.
25 I would be relieved as floor manager of the bill.

1 (Laughter)

2 Senator Heinz. I would be concerned that the government
3 would come to a halt on October 3rd. While there are those
4 in this body who want to see it drastically reduced, I don't
5 know of anybody who wants it totally eliminated.

6 The Chairman. I am abjectively apologetic because I was
7 up to my ears in negotiating on the tax bill. Senator Heinz
8 carried the debt ceiling when I approached him to do it. I
9 said, you know, it is just the debt ceiling. It is a clear
10 cut matter. And, of course, we all knew better than that.
11 And he got everything thrown at him on the floor. And we
12 will go through it again, and I assume we are going to
13 attach Gramm-Rudman to it again. And I don't know if we are
14 or not, but there will be an effort. And clearly the debt
15 ceiling is not an hour's chore for this committee either,
16 and especially if we have to get into a conference with the
17 House.

18 Senator Dole?

19 Senator Dole. Let me just indicate that October 3rd is
20 still the target. I think we can make it. I have looked at
21 all the things we need to do, but with some cooperation on all
22 sides, we can do it.

23 And I asked Tip O'Neill this morning, and he sort of
24 didn't say, I guess would be the best response. So I put him
25 down as undecided on October 3rd.

1 (Laughter)

2 Senator Dole. But if we indicate October 3rd we can make,
3 which means we wouldn't have a lot of time for the trade bill,
4 which leads me to the final point. It has got to be
5 bipartisan. It has got to be something we can agree on.

6 I understand the staffs have been working diligently on
7 staff recommendations. Many of us are willing to compromise--
8 I would be--on the GSP provisions. But we could take a whole
9 day on the trade bill. That is quite a bit of time when you
10 only have 13 days left.

11 So if we could do it early next week. I assume most of
12 the rest of that week would be on the continuing resolution.
13 So I think it is possible.

14 Senator Bentsen. Mr. Chairman, if I might further add.
15 One thing I want to be sure of is that if we take action here,
16 it is a substantive bill and not just a trade bill in name
17 only.

18 Senator Dole. Right.

19 Senator Bentsen. I don't want it just to be mush or
20 pap. And, frankly, I do not think we are in a position where
21 the Administration has to dot every "i" and cross every "t".
22 If we have to get everything approved by the Administration
23 that we pass through this committee, then I seriously doubt
24 it will be a bill that is worthy of the name.

25 And I think that one thing we must do, because now for

1 several years I think we have lost our role in trade here in
2 the Congress, and I think it has to be reasserted and I think
3 it has to be reasserted in a strong way. And I think that
4 means that if we do it, one of the ways is through the
5 reauthorization of the negotiating authority to carry out the
6 work that has to be done by the Administration on trade.

7 The Chairman. I have got in order, Senators Symms, Roth,
8 Baucus, Moynihan and Chafee.

9 Senator Symms. Mr. Chairman, did you call me?

10 The Chairman. Yes. Senator Symms is next.

11 Senator Symms. Thank you, Mr. Chairman. I will ask
12 unanimous consent to insert my entire statement in the record
13 and try to be very brief. But I do agree with my
14 colleagues on both sides of the aisle that we have a trade
15 problem, and I wish we could get to work on a trade bill.
16 And I think that some of the Senators in the minority deserve
17 to be congratulated for the fact that they just had a working
18 group that reported out a report on their competitiveness,
19 and what we could do to improve competitiveness.

20 I would say, however, that I think we have to be
21 careful in trying to fix the trade problem by using the old
22 solutions, in my view, and I would like to see us pass a
23 trade bill because I think there are areas where we could
24 strengthen our trading posture. And it certainly is
25 important. I don't know whether it can be done in the next

1 two weeks because I do believe that this Congress should
2 adjourn on October 3rd; that the American people deserve to
3 have an opportunity to at least meet the people that they are
4 being asked to vote for.

5 And so I know that as one who is up for election, that I
6 am interested in going home for the month of October. But I
7 do think we have to address one problem, Mr. Chairman. And I
8 compliment all my colleagues who have been working on it on
9 both sides of the aisle. But what can Congress do to help the
10 American people become more competitive? And I think the
11 best thing the Congress could do to help the American people
12 be more competitive is get the government out of the way, and
13 reduce regulations on business, and try to reduce the tax
14 burden on business.

15 I would like to say that I hope that the tax reform
16 proposal is going to help. I am not certain about that at
17 this point, so I will withhold saying that. But I say we
18 ought to do things to make us more competitive. And I just
19 believe that it may be that we cannot get anything done in
20 the next two or three weeks that will have a substantial
21 impact on where we are going on this thing. If that is the
22 case, there is not too much need to spin our wheels too long
23 here in this committee or on the floor over something that
24 really can't be accomplished because Mr. Barnhart made a very
25 good statement about what is going to happen just to the

1 Federal Highway Program. We are not going to be more
2 competitive as a nation if we screw around here in the
3 Congress and let the highway bill go down the drain and you
4 have a bunch of bumpy, rocky, holey roads around the country.
5 That doesn't help anything either.

6 So there are some things I think we have to do that need
7 to be accomplished in an orderly fashion, and one of them
8 would be passing the Federal Highway Program so that we have
9 a sustained highway program for the country and not have that
10 in a state of chaos. And I hope we can get our priorities in
11 order.

12 And another one would be to pass a budget and meet the
13 targets of the Gramm-Rudman, so that the burden of the big
14 deficit will not be hanging over the heads of the American
15 taxpayers in competitiveness. And I hope we could do those
16 things. And then I, as one, would like to see a trade bill
17 come out of this committee; if you could do it the way the
18 chairman designed it, we could all agree on it and get the
19 Administration to agree on it. But it is like Senator
20 Bentsen said, if you have to cross every "i" and "t", it is
21 impossible to accomplish it.

22 The Chairman. Senator Roth and then Senator Baucus, then
23 Moynihan and then Chafee, and then Senator Bradley.

24 Senator Roth. Mr. Chairman, I just want to make a
25 couple of observations. First of all, I strongly support

1 your effort to try to get a trade bill out. I think it is
2 constructive. I think it is positive, and I think the staff
3 has come up with a good starting point. We all may have a
4 few changes, but I think it is a good paper.

5 And I agree with what Lloyd Bentsen says about not letting
6 the Administration dot every "i"; that it is important that
7 we assert the role of Congress. But having said that, I
8 would also like to point out that I think what we are doing
9 here has some real importance and impact as to what is going
10 down in the negotiations that Yeutter is now attending. And
11 I am concerned that, at least currently, it looks like we are
12 running into a roadblock in getting some of the items that I
13 think are necessary for future negotiations.

14 So that I think that whatever we do here is important, at
15 least as far as this Senator is concerned, that it is
16 important that we show that we are strongly supporting
17 Yeutter in his insistence that things like agriculture,
18 intellectual rights, services and disputes be on the agenda.

19 Frankly, I suggested several weeks ago when he was
20 before us that if we did not include these on the agenda we
21 should take a walk. And as I understand from the newspaper
22 reports, that is exactly what he is threatening to do.

23 Now I hope it will not be necessary, but I think to give
24 him maximum bargaining power, it is important that we
25 support our trade representative, who I think is doing a

1 banded up job. He is tough. He is a strong advocate. He
2 has made progress. So that I would hope what we do here will
3 be helpful. If he makes a breakthrough and gets the
4 agreement on agriculture and some of these other critical
5 items, then I hope we would give him the kind of
6 negotiating power that would enable him to keep the momentum
7 going.

8 The Chairman. Senator Baucus.

9 Senator Baucus. Mr. Chairman, before we begin, I think
10 it is important that we recognize and remember just how
11 important this bill is.

12 Senator Symms, from Idaho, said that we have a trade
13 problem. And the fact of the matter is, we have a trade
14 crisis. I mean, Ambassador Yeutter said that the trade
15 deficit this year is going to be upwards at \$200 billion.
16 And it wasn't too many years ago that we had a trade surplus.
17 In 1980, I think, we had \$8 billion in surplus. And it has
18 gone up to the point now where it is a \$200 billion deficit.

19 I do not want to be too dramatic about this, but I think
20 it is important to step back a little bit and see where we are
21 in America today.

22 In the sweep of history, there is no guarantee that a
23 country is going to continually grow and prosper. There is
24 no guarantee. We need only look at other countries, other
25 empires, other civilizations--the Egyptian, the Greek, the

1 Roman, and in modern times look at the UK--there is no
2 guarantee. And I submit that this has been the sense of
3 America, the twentieth century. But the question is: Is the
4 twenty-first century going to be the century of America?

5 We have got a crisis here. Let's face it. And we
6 cannot, somewhat glibly, talk about a "trade problem". And
7 I know it is a real severe problem and I know that the
8 Senator from Idaho knows that. And this is meant to be no
9 criticism from the Senator from Idaho.

10 Senator Symms. I understand. But I would just like to
11 make it clear. What I am saying is, the trade crisis--and I
12 agree with you--but it is a symptom of 25 years of policy
13 having the government try to interfere with everything from
14 the environmental regulations to anything else you want to
15 make a list of, and leave our producers with their hands
16 tied behind their backs.

17 We have financed our competition. We have done everything
18 possible to create this crisis. We have got to recognize
19 that. And I don't know whether we can fix it in two weeks.

20 Senator Baucus. I appreciate that. But I think it is
21 important also to remember some, I think, some fairly
22 startling statistics that someone indicated what has happened
23 to our country in the last 20, 30 years. And one is that
24 30 years ago, 26 of the top 30 corporations in the world were
25 American corporations. Today, that is only 15. Thirty years

1 ago the United States produced 60 percent of the world's GNP.
2 Thirty years ago, 60 percent. Today, it is only 20 percent
3 of the world's GNP.

4 Twenty-five years ago--I mean, the last 25 years--our
5 productivity has been going up, the American productivity
6 growth rate, about 2.7 percent on an annual basis. In Japan,
7 it is 8 percent. In the U.K., supposedly an empire in
8 decline, it is higher than ours, much higher. It is about
9 3.7 percent. That is productivity growth.

10 All I am only saying is that we have got problems, we
11 have got severe problems. And these aren't just academic
12 concepts either, and they affect people, very directly affect
13 people.

14 We have lost about 3.1 million workers due to our trade
15 imbalance since 1981. Those are the figures. 3.1 million
16 jobs lost due to the trade imbalance since 1981. Those are
17 jobs lost.

18 In addition, since 1965, the American families' earning
19 power has not increased one cent. It has been flat since
20 1965. That is in real terms. American families' earning
21 power had not increased since 1965. And we all assume,
22 somewhat snugly, that we are going to grow and prosper. The
23 fact is, that is just not going to happen. We all know what
24 Japan does. We know what other countries are doing to us.

25 Canada, for example, has five and a half times the amount

1 of subsidy for its exports than we have. Korea, for example,
2 banned auto, any cars. All auto imports are banned from
3 entering Korea. All foreign beef is banned from entering
4 Korea.

5 It wasn't until a few years ago in Korea that it was
6 illegal to smoke a cigarette in Korea. We are not simon-
7 purists. Let's not kid ourselves; we know we are not
8 simon-purists. But the point is that other countries are
9 taking advantage of us more than we are taking advantage of
10 them. It is because we are the largest, most lucrative
11 market. We all know the reasons why. But the fact is we
12 have got to recognize that and deal with that.

13 Now, frankly, I am not going to say that the trade law
14 is going to solve all our problems. We all know that it is
15 not. Much of this has to do with what is called
16 macroeconomics, with interest rates, monetary policy,
17 fiscal policy, our budget deficit, et cetera. And a lot has
18 to do with the kinds of things the Senator from Idaho was
19 talking about.

20 But it is equally important to have fair rules of the
21 game and tougher trade laws, much tougher trade laws, so that
22 other countries do not continue to take as much advantage of
23 us as they have in the past.

24 I agree with the Majority Leader, we should try to work
25 together very, very strongly to get a bipartisan bill here.

1 But I frankly think it is far worst to pass a weak,
2 watered down, whimpy, wallably, trade bill than it is to pass
3 a tough, strong trade bill that is fair to America and fair
4 to American workers.

5 We are wasting our time if we pass a weak bill here. We
6 are only doing a service to our people if we pass a good,
7 tough, strong trade bill, knowingly, we cannot be
8 protectionists--we shouldn't be--cannot take advantage of
9 other countries. We cannot let other countries continue to
10 take advantage of us. We have got to have a tougher trade
11 law.

12 The Chairman. Senator Moynihan, then Senator Chafee,
13 then Senator Bradley.

14 Senator Moynihan. Mr. Chairman, I will be brief, but I
15 have a request to make of you, sir. First, to thank you for
16 agreeing to have S. 1860 used as the vehicle for which we
17 will address ourselves.

18 Senator Danforth and I introduced that measure last
19 November. We had 33 sponsors then--13 on this committee--
20 and we have 37 now. We think within some realism about the
21 prospect of going forward. We wish we hadn't gone 10 months
22 until we had 10 days left. But two things, Mr. Chairman.

23 I would very much wish to register an objection to the
24 idea that some inextricable in terms of trade has taken
25 place which the United States is uncompetitive. I think it

1 is very likely that we are uncompetitive to the degree we
2 protect our uncompetitive industries.

3 The Chairman. Pat, let me interrupt you for just a
4 second, because I am expecting momentarily to have clearance
5 for us to be in session until 12:30. And I would like to
6 report out Louie Laun and the Highway bill if I could while
7 we are still permitted to meet.

8 Is there objection to reporting out Louie Laun^{as}
9 Assistant Secretary of International Economic Policy,
10 International Trade Administration, Department of Commerce,
11 the former head of the American Paper Institute, formerly
12 with the Small Business Administration. We are lucky to have
13 him back. And we had a hearing this morning. Is there
14 objection?

15 Senator Moynihan. No.

16 The Chairman. Is there objection to reporting out the
17 Highway bill?

18 (No response)

19 The Chairman. Without objection.

20 Excuse me, Pat. Thank you.

21 Senator Moynihan. I just want to say, it seems to me that
22 we should not accept the notion that we have moved some
23 inextricable change in the terms of trade and moved against
24 them, and that we are increasingly going to be noncompetitive.
25 I think the degree that we are noncompetitive is a mix of

1 extraordinary borrowing for the last decade--a trillion
2 dollars in six years--and the degree to which we protect
3 those segments of the economy which are noncompetitive. You
4 do that long enough and you go broke. That is sure.

5 So I would like to say, Mr. Chairman, we can keep talking
6 about all of those terrible things that foreigners do. Can
7 we not get from the Commerce Department in a short order,
8 because we ought to have this, an estimate of how much of our
9 imports into the United States are now restricted by one form
10 of agreement or another? I think about a third are under
11 some restraint.

12 And I would like to ask specifically the Commerce
13 Department to tell us what happened to semiconductors? Some
14 people worked out a deal in which they gave the Japanese
15 another cartel in semiconductors. All I know is what I read
16 in the Financial Times. The price of semiconductors has gone
17 up 600 percent since last spring; that it has represented a
18 \$1 billion subsidy to the Japanese; and that major computer
19 firms are saying, we now have no choice but to manufacture
20 offshore since the price offshore of an important
21 ingredient of our product is one-eighth of what it is now;
22 that the United States Government has intervened to help.

23 Thanks a lot U.S. Government. I mean, the computer was
24 invented in this country. It was invented at Harvard
25 University. It was developed first at Binghamton, New York

1 by a company called the International Business Machines
2 Company. We were absolutely on top of the world, number one.
3 No equal until we got into protection. And we will say
4 "no equal," but we will now be manufacturing in Taiwan.
5 What kind of bargain is that?

6 I think the Commerce Department should tell us who has
7 got the billion dollars. End of subject, Mr. Chairman.

8 Senator Baucus. Would the Senator yield, at least on
9 that point?

10 Senator Long. Mr. Chairman, I just want to say a word
11 about this. I just want to speak for just a moment.

12 Senator Moynihan. I have a water conference that is
13 going to take place.

14 (Laughter)

15 Senator Long. Well, I would like for the Senator to hear
16 it. The Japanese for years have been--as far back as I can
17 recall, now, for many years--have had an exchange ratio which
18 works out just as though they were selling us their
19 commodities at a 40 percent discount. And we were told year
20 after year that it couldn't be done until you guy's
21 Secretary of Treasury decided to do something about it. What
22 had he done? He changed it 40 percent. It will take some
23 time to show a difference, but after all this, I have been
24 told that nothing could be done unless the Secretary of the
25 Treasury decided to do it. He did it, just the way the

1 outcome had to be done. And it has been done.

2 Frankly, when I went over there and talked to the
3 Japanese, the best thing I could make out what they said to
4 me was, well, what are we going to have to do? Well, the
5 Secretary of the Treasury told them what they would have to
6 do and they did it. That's all. So now that has been
7 corrected.

8 Now here we have a tax policy. All their consumption
9 taxes and our social security taxes works out to be a
10 consumption tax. They give it back on their exports, so
11 that that, compared to ours, amounts to about a 14 percent
12 tax against your labor payroll being put on our commodity
13 and not on theirs. And we could change that, but we would
14 just like to not do anything about it.

15 Then they have got all kinds of subsidies that they are
16 using and we won't do anything about it. Then they have
17 cartels, and we are not in any cartels. And if you wanted
18 to, if you wanted to do anything about the cartels, tell
19 them, if you are going to make us form a cartel and make us
20 pay through the nose for oil, well then you have got to buy
21 our farm products. But they don't even do that.

22 So that here are all the things that our government
23 could do, and our government won't do anything for our
24 people, while they proceed to subsidize, to use cartels for
25 difference in tax policy, exchange rates.

1 Frankly, I gain the impression that our government is
2 our own people's worst enemy when it comes to trade. And
3 they have told our people were not competitive. Well, if you
4 would give the other guy a 100 percent advantage, of course,
5 you are not competitive.

6 Senator Baucus. Mr. Chairman.

7 The Chairman. Let me to go Senator Chafee because he has
8 been waiting for a very --

9 Senator Baucus. Well on this point though, just very
10 briefly if I might.

11 The Chairman. All right.

12 Senator Baucus. Senator Moynihan is critical of the
13 government's agreement with Japan on semiconductors. And the
14 fact of the matter is that it is true, the computer companies
15 have to pay more for semiconductors. There is no doubt about
16 it. But on the other hand, we all know that Japan was
17 dumping semiconductors in the U.S. We saw the Hatochi
18 circular saying whatever the U.S. competition is selling
19 semiconductors for, undercut by 10 percent. It was an
20 obvious case of dumping. And the 301 action that was brought
21 against semiconductors was just to stop the dumping. So it is
22 nothing that is a hundred percent black or white around here.
23 The fact is that they were dumping, and the result may be
24 higher prices for semiconductors, which is to the disadvantage
25 to the computers. But the fact is, Japan was dumping and

1 they were caught red-handed dumping.

2 The Chairman. Senator Chafee.

3 Senator Chafee. Mr. Chairman, I hope we can come up
4 with a bill. I hope we can come up with a significant bill.
5 As Senator Bentsen says, we don't want something that is
6 just papped out there. I hope we will come up with a bill
7 that will be more responsive to the unfair trade practices
8 overseas and to the lack of access for our superior goods to
9 foreign markets.

10 But I must say, Mr. Chairman, I think we are in a dream
11 world if we think that this legislation, or any trade
12 legislation is going to make, unless it is overwhelmingly
13 protectionist, which I hope would never come out of this
14 committee, is going to make all that amount of difference.

15 We have looked around and the problem is us in many
16 instances.

17 I took a survey of the staff in my office. We have 23
18 people working there. I said, how many of you whose
19 principal automobile is American? And, mind you, I have
20 exhorted them to buy U.S. cars. And as a result of the
21 strenuous efforts I have made, of the 23 people in the office,
22 two now have American automobiles.

23 (Laughter)

24 Senator Chafee. The second question I asked them, did
25 you buy a foreign car because of quality or because of price?

1 The answer, unanimously, was quality. Price was not a
2 factor. And quality comes right back to the kind of
3 workmanship and the kind of managerial efficiency we have in
4 our manufacturers in this nation. And everybody better
5 shape up, from us right through representing the U.S.
6 Government, and through the manufacturing lines, and in the
7 boardrooms of American corporations, or this trend is going
8 to continue.

9 The Japanese are not going to back out of the automobile
10 market because the price of the Yen drops 35 percent, nor
11 the Brazilians, when it comes to orange juice, or all the
12 other exporters into the United States.

13 So I think we have got a great big tough job ahead of
14 us, but we would be kidding ourselves if we thought the type
15 of legislation we passed is going to make all that much
16 difference. I hope it can make a difference. We are going
17 to try and make it a difference. But there are many other
18 factors involved beside the type of trade legislation we
19 passed.

20 Thank you, Mr. Chairman.

21 The Chairman. Senator Bradley.

22 Senator Bradley. Mr. Chairman, thank you very much.

23 I think we ought to move ahead and do what we can on the
24 trade bill. I think that we though also ought to recognize
25 that we sometimes are working with tools in the committee that

1 might not be adequate to the full task. And that means
2 recognizing what the full task is.

3 And I was struck this morning at the joint session for
4 Mrs. Aquino when the one message and the one plea and the
5 one pointed statement that she made was that they now have a
6 Democracy, and one of the biggest threats to that Democracy
7 is the \$26 billion debt to the financial system. And I
8 thought her point was on target and clearly I think that it
9 is broader than just the Philippines, because even if we had
10 a positive productivity growth, if we had no trade barriers
11 abroad, and we had no budget deficit in this country, because
12 of the way that we have handled the debt crisis, 33 percent
13 of our trade deficit would remain. And I think that the
14 committee ought to at least acknowledge the linkage between
15 trade policy, per se, and debt policy, and seek to do something
16 that reinforces what we want out of both, which is growth in
17 these countries, and better prospects for rulers like
18 Mrs. Aquino to succeed in combatting their fundamental
19 problems, which really is poverty.

20 The Chairman. Senator Mitchell?

21 Senator Mitchell. Well, I thank you, Mr. Chairman. I
22 have an opening statement I would like to make.

23 I look forward to the next few days as this committee
24 considers fundamental trade legislation. It is my sincere
25 hope that we can proceed in an expeditious manner to put

1 together a meaningful trade bill. Time is running out. We
2 all realize that it will be difficult to get a bill through
3 this committee, thoroughly considered on the Senate floor,
4 and then approved by a House-Senate conference committee.

5 But if we are truly committed to the process, if we
6 believe that Congress must act to respond to our trade laws,
7 then I believe we can find the time to complete action on a
8 meaningful bill this year. And I stress, "a meaningful bill."

9 Over the last two years, the Congress has invested
10 considerable time in an effort to respond to our growing
11 trade problem. Hearing have been held. Meetings staged.
12 Proposals studied. Bills considered, all of which are
13 intended to respond to the continued decline of American trade
14 competitiveness.

15 Unfortunately, so far this has not been a productive
16 effort.

17 The record of this Congress and of this committee has
18 been blind. As far as I know--and I will stand corrected if
19 this is not accurate--during this Congress, not one trade
20 bill reported by this committee has reached the President's
21 desk for signature.

22 There has been much sound, a great fury, but nothing has
23 been accomplished.

24 The House of Representatives has passed a trade bill, and
25 I, and I know you, Mr. Chairman and other members of the

1 committee, are pleased that we will now have this opportunity
2 to consider comprehensive trade legislation. And I hope the
3 senate leadership will give this bill the priority it
4 deserves, because to do otherwise would be a mistake. We
5 ought not to lose this opportunity to thoroughly consider
6 and establish an aggressive trade policy for this nation.

7 In the last few years, we have witnessed a rapid
8 deterioration of the United States competitive position in
9 world trade. Trade deficits have soared as industry after
10 industry, from agriculture to natural resources, from
11 manufacturing to information technology, have lost market
12 share at home and abroad.

13 Our national economy cannot continue to accommodate the
14 scores of plant closings, to millions of jobs lost, that
15 have resulted.

16 During the last four years we have witnessed a rapid
17 transformation of America's international economic position
18 as we have imported ever increasing amounts of foreign
19 merchandise and ever higher levels of foreign debt.

20 We have grown numb to the headlines which appear almost
21 monthly announcing a new record merchandise trade deficit.

22 This year, that trade deficit could reach \$180 billion.
23 This will mark the fifth year in a row in which the
24 United States trade deficit has reached a record level.
25 Over that 5-year period, we have accumulated a total

1 merchandise trade deficit in excess of one-half of a
2 trillion dollars. Since 1980, export sales have actually
3 declined while imports are up almost 50 percent, and this,
4 in spite of the dramatic decline in the price of oil. The
5 change has been most dramatic in the manufacturing and
6 agricultural sectors.

7 The \$17 billion surplus in manufacturing goods that the
8 United States ran in 1980 will be converted to a \$140 billion
9 deficit this year. The \$23 billion surplus the United States
10 ran in agriculture in 1980 will decline to zero this year.
11 Who would, or could, have predicted five years ago that the
12 United States with what is by far the most productive
13 agricultural economy in the world would actually become a
14 net importer of food products for two consecutive months in
15 this year?

16 The total this has placed on the economy is a matter of
17 serious concern. Entire regions of this nation dependent on
18 agriculture and natural resources are in the state of
19 virtual economic depression. The trade deficit is affecting
20 the fundamental health of this nation's economy as we all
21 have recognized, and as the chairman of the Federal Reserve
22 Board has recently stressed.

23 The economic imbalances created by the persistent
24 federal budget deficit is undoubtedly the fundamental cause
25 of our trade problem. We are struggling to correct this

1 problem. We must reestablish a sound fiscal policy for this
2 nation that will reduce our dangerous dependence on foreign
3 capital. But we must recognize that our recent difficulties
4 in international trade also relate to the inability, or what
5 is more accurately the refusal, of our government to respond
6 to a new international economic environment where other
7 nations increasingly pursue Americanist policies in
8 promotion of their domestic industries. Unfortunately, just
9 at the time when other governments have increased their
10 intervention in the marketplace to promote their industrial
11 growth, the American government has limited itself to what
12 has now become a rote repetition of ideological free trade
13 chance, the effect of which has been to forfeit the
14 international trade interest of American industries.

15 Domestic trade remedy laws offer little relief to
16 American industry when it is confronted by an indifferent or
17 even hostile Administration which has refused to use the
18 power it has under current law to defend U.S. interests.

19 The existing framework of both domestic and
20 international law must be modernized to respond to these
21 problems and to enable American industry to defend itself
22 against the increasingly complex and sophisticated unfair
23 trading practices of other nations.

24 This committee should produce a bill that overhauls
25 domestic trade laws to enable the United States to

1 aggressively respond to the unfair trade actions of other
2 nations.

3 Recent events have shown--sadly but true--that this
4 requires foremost new limits on Executive Branch discretion.
5 Just as important, the international trading system must be
6 overhauled and a new GATT round that not only extends the
7 application of international trade rules but also strengthens
8 the ability of the process to enforce existing international
9 obligations.

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1 Senator Mitchell. This Administration's record on trade
2 makes it clear that Congress must play an active role and
3 maintain continuing oversight of the trade negotiation
4 process to insure that our most import sensitive industries
5 are not sacrificed to obtain other objectives.

6 I want to underscore the importance of this Committee
7 writing a meaningful bill that will enable us to respond to
8 our declining trade problem. We must produce legislation
9 that will give American industries and American workers a
10 fair chance to compete at home and abroad. Otherwise, we will
11 only have agreed to a series of technical changes in the
12 laws that offer no meaningful prospect for a solution to our
13 trade problem and that will serve to confirm our failure to
14 represent the interest of American industries in international
15 trade.

16 All the nations of the world, and especially this nation,
17 will reap the benefits of free trade if we can help establish
18 a process that strengthens the practice of fair trade.

19 Thank you very much, Mr. Chairman.

20 Senator Chafee. Mr. Chairman?

21 The Chairman. Anybody else want to make a second
22 opening statement?

23 Senator Chafee. Mr. Chairman, I just want to say there
24 is an exquisite irony involved in all this today. We have
25 had some strong statements about the United States' competitive

1 position, our manufacturing goods losing out, what we have
2 to do under this trade bill, restrict the import of goods
3 or suggestions in that direction.

4 We have on the floor a bill that will help lower the
5 manufacturing cost of the United States' manufacturers, a
6 product liability bill, and we can't even get to consider it;
7 we can't even move to debate the bill. If we look around to
8 see where the problems are --

9 The Chairman. Does the Congress Committee Chairman
10 want to comment on the product liability bill?

11 Senator Chafee. If we want to consider where the
12 problems are, we ought to --

13 Senator Danforth. Yes, sir, on the floor and quickly.

14 Senator Chafee. -- do something about it ourselves.

15 Senator Mitchell. If he doesn't, I would like to.

16 (Laughter)

17 The Chairman. I think it is time to move on.

18 Gentlemen, are you ready?

19 Mr. Lang. Yes.

20 The Chairman. All right. Let's start -- we are
21 starting with 1860, that was the general request of the
22 members. There is staff suggestion and staff draft. I would
23 hope at the end of it, we can merge it, meld it, substitute
24 it, however we are going to do it, but I want 1860 to be the
25 vehicle. As I have indicated, we do have objection to votes,

1 although we don't have a quorum left for voting, anyway. We
2 do have objections from the floor to our meeting on votes
3 after we sent out the highway bill and Mr. Lang.

4 But we are going to need two or three days at a minimum
5 to discuss this and I want to start discussing it now for as
6 long as we can.

7 Senator Bradley. Mr. Chairman, is it your intention to
8 just meet till 12:30 today?

9 The Chairman. I wouldn't mind meeting -- we can discuss
10 it as long as we can go. I just don't know what we have or
11 whether we have votes coming. I know other members have
12 luncheon engagements and probably we won't go much beyond
13 one.

14 Go ahead.

15 Mr. Santos. Mr. Chairman, the staff has distributed a
16 proposal. It was dated September 14, 1986. A more detailed
17 description of that proposal is contained in spreadsheets
18 that have been distributed, and it was our intention that the
19 staff proposal be treated as an amendment of S-1860 so that,
20 to the extent S-1860 did not conflict with the staff
21 proposal, it was incorporated.

22 The first item on the staff proposal is the National
23 Trade Council. The National Trade Council is intended to
24 replace the Trade Policy Committee. The Trade Policy --

25 Senator Danforth. Mr. Chairman, I don't know whether --

1 is it appropriate, then, to make a motion that S-1860 be --
2 do you have language for the staff proposal?

3 Mr. Santos. We have -- not drafted legislative
4 language, but we have described it in these materials.

5 Senator Danforth. Well, would it be appropriate at this
6 point to move that S-1860 be amended as in the staff
7 proposal?

8 The Chairman. It is appropriate, and we have six
9 people here and we can vote on that. What we cannot do is
10 send anything out.

11 Senator Danforth. Well, in the interests of moving
12 things along, I would move that S-1860 be amended according
13 to the staff proposal.

14 The Chairman. Is there objection?

15 Senator Baucus. Mr. Chairman?

16 The Chairman. Senator Baucus.

17 Senator Baucus. Well, Mr, Chairman, frankly, I think
18 that the staff amendments to 1860 go in the wrong direction.
19 They are weakening. They are weakening changes, they are
20 weakening modifications to 1860. And I would very much
21 disagree that the mark-up should be 1860 as amended, at least
22 as it is described in the proposal that was circulated a few
23 days ago.

24 The fact of the matter is in some provisions 1860, as
25 amended by the staff proposal, in some sections is weaker than

1 current law; certainly in 201 it is weaker than current law.
2 And I think it is a mistake, that it is going backwards,
3 frankly, to move from 1860, which is a bipartisan bill agreed
4 to by both Republicans and Democrats in this Committee, a
5 strong bill, and is is very much a weakening. I am not
6 quibbling, it is very, very much a step backwards in the
7 wrong direction and I would very much oppose the amendment,
8 frankly.

9 And I am surprised that the Senator from Missouri is
10 making the amendment because the chief architect of 1860,
11 along with Senator Moynihan on this side and other Senators.
12 I just am a bit surprised that the Senator is making that
13 motion.

14 I might ask the Senator, why is the Senator making that
15 motion?

16 Senator Danforth. Well, I am making the motion in order
17 to move the ball toward the goal line. In other words, I
18 think that S-1860 is an excellent bill. I think that the
19 suggestions in the staff proposal, I am not sure that I
20 agree with every single one of them, but I think that -- I
21 think that if a consensus is reached in the Finance
22 Committee, it is most likely that it would be along the lines
23 of these proposals.

24 Senator Long. Well, Mr. Chairman, might I just suggest
25 that we just approach the thing on the subject of points,

1 just go point by point. You have several points in 1860,
2 and basically, if you just take the components and just go
3 ahead and vote on each point of it and see what you want, by
4 the time --

5 Senator Danforth. Well, I withdraw the motion. I was
6 attempting to take a lot of strides --

7 Senator Heinz. Mr. Chairman?

8 The Chairman. Senator Heinz and then Senator Chafee.

9 Senator Heinz. I understand you have withdrawn your
10 motion to amend S-1860.

11 Senator Danforth. Yes.

12 Senator Heinz. I commend you for doing that, for the
13 principal reason that we don't have a text of what it is the
14 general principles outline in what looks to be a very
15 comprehensive spreadsheet represent.

16 It may very well be that if the text is made available
17 before we return to mark-up, you may want to renew and I
18 might, if I have the text, support your motion. But until
19 we have the text, I would find that motion very difficult
20 even if I agreed with everything that was stated in the
21 spreadsheet as a substitute for S-1860 because I think we
22 know -- and Senator Long remembers those intricate mark-ups
23 we had of the 1979 Trade Act where we had to go over phrases
24 and words and sentences because, when it comes to the
25 interpretations made by the Commerce Department, the U.S.

1 International Trade Commission, the President, Senator
2 Danforth had a little trouble from time to time with the
3 ITC's interpretation of Section 201 vis-a-vis shoes. We
4 know just how interpretation, a single word, can be.

5 So, Senator Danforth, I am glad you withdrew your
6 motion, although it might be possible for me to --

7 Senator Danforth. Never agree to anything.

8 (Laughter)

9 Senator Heinz. Mr. Chairman, with that comment, I -- do
10 I detect a reference to another bill?

11 (Laughter)

12 The Chairman. Senator Chafee.

13 Senator Chafee. Mr. Chairman, I think we would be
14 better sticking with 1860, which we are familiar with
15 because we drew it up, and I think Senator Baucus has a good
16 point. I would like to stick with that and then, if the
17 staff has suggestions, well, we can debate those and
18 substitute them at the time.

19 The Chairman. I think we would be wise to follow
20 Senator Long's suggestion. I am not sure we need to vote
21 on everything as we go, but to go over the main principles.
22 That may unite us or it may divide us, as the case may be,
23 and we currently have divisions over 201, 301 in fast track
24 authority.

25 Mr. Santos. Well, the first item on our list is the

1 subject of a National Trade Council. Actually this was an
2 item in S-1837 which was introduced by Senator Bentsen
3 together with the entire minority.

4 This is a -- this council is to replace the Trade Policy
5 Committee which is not established by statute, in the sense
6 that it is not actually described in the statute; it is
7 referred to as an interagency committee. The National Trade
8 Council is to have a membership composed of most of the
9 principal Cabinet Secretaries, chaired by the President.
10 In his absence it is to be chaired by the U.S. Trade
11 representative.

12 The staff of the National Trade Council is to be the
13 staff of the U.S. Trade representative.

14 The intention here is essentially to raise the stature
15 of the current Trade Policy Committee and hopefully to give
16 it the dispositive role in the making of trade policy. At
17 the moment, trade policy tends to be -- flow through the
18 Economic Policy Committee where it is, perhaps one could
19 argue, diluted with other considerations.

20 So the purpose of this is to highlight trade policy
21 within the Executive Branch and give the U.S. Trade
22 representative a little bit more of a higher visibility,
23 higher stature, than he may have under the current
24 organization.

25 The Chairman. Let me ask you a question out of curiosity.

1 I don't have any real objection to 1837 or the way the staff
2 is suggesting altering it.

3 Does it make any difference how we structure this as to
4 whether the President pays any attention or not?

5 Mr. Santos. Obviously, Mr. Chairman, the President can
6 listen to any advisor he chooses, even though who may not
7 even be Cabinet officials, but there is a process through
8 which most trade policy is made. Most of the details of it
9 never come to the President's attention. He only decides
10 large issues.

11 One can argue that the procedure, the process, is
12 important, that, to the extent a trade official is in charge
13 in formulating the less than large issues, that it could
14 make a difference. But clearly the President is going to
15 listen to anybody he chooses.

16 It is felt that trade policy has been a lower priority
17 for some Administrations than it ought to be. This is just
18 a way of highlighting our interest in trying to make that a
19 higher priority.

20 The U.S. Trade representative, I should point out, was
21 conceived of as a bridge between the congressional interests,
22 and role and trade, and the Executive Branch, and he was sort
23 of both our man downtown and their man up here.

24 The Chairman. There is also a good example. It has
25 worked very well on some occasions and it has worked very

1 badly on some occasions under the same law.

2 Mr. Santos. Absolutely. No question about it.

3 The Chairman. It worked extraordinarily well when
4 Bob Straus was there, and he was up here talking to us all
5 the time, all the time, and he was down there talking to
6 President Carter all the time, and the process worked.

7 Mr. Santos. Absolutely.

8 The Chairman. And he had the President's confidence
9 and he had our confidence.

10 That is why I ask, in this particular area -- I don't
11 find it controversial one way or the other -- I don't know
12 if it makes any difference.

13 Mr. Santos. Well, you are quite right that no law can
14 force a particular stature, a particular policy, but it was
15 our effort here, it is really a matter of emphasis and a
16 matter of form in an effort to highlight our interest in
17 this issue.

18 Senator Long. Let me ask Mr. Lang, Mr. Chairman: What
19 difference do you think this would make?

20 Mr. Lang. I think the difference it would make is that
21 the existing interagency trade policy organization, which is
22 not explicitly created by statute, would be explicitly
23 designated by statute. The content of that interagency
24 process would be described and it would be set out by
25 statute that U.S.T.R. would be the chairman of the body that

1 was supposed to make those decisions.

2 I think the main effect of that would probably be
3 political. It would be a statement by the Committee that it
4 expected U.S.T.R. to be the central advisor to the President
5 on trade matters.

6 Senator Long. Well, would this do anything to improve
7 the communications of this Committee with those in the
8 Executive Branch?

9 Mr. Lang. I think the purpose of the provision is to
10 improve that communication. But, as Mr. Santos says, if the
11 Administration doesn't want to listen, eventually they don't
12 have to. But it would certainly suggest that the Committee
13 feels that it is important to have better communication with
14 the Administration. If you don't do it, it suggests you are
15 not too worried about it.

16 Senator Long. There is nobody from the Congress on this
17 Committee, apparently.

18 Mr. Lang. No. This is a committee that is designed to
19 try and coordinate the decisions of the Federal Government,
20 of the Executive Branch, about trade policy.

21 Senator Long. Well, I just wonder, would it be
22 permissible for them to invite somebody from this Committee
23 to go down while they are meeting and witness the confusion
24 that exists among that group, or the lack thereof.

25 (Laughter)

1 Senator Long. I mean, would that be possible?

2 Mr. Lang. I don't see anything that would prevent them
3 from inviting somebody down. I am not sure they would want
4 their confusion to be observed.

5 (Laughter)

6 Senator Long. It really helps sometime if you know
7 what's going on at the other end, why they can't get together
8 on something or what the problem is. But, anyway, it seems
9 that is one thing that might do some good. You know, it did
10 some good when you all came to the International Trade
11 Commission. See what goes on over there. You kind of get
12 a little bit more of a feeling of what you are dealing with.

13 The Chairman. Go ahead.

14 Senator Chafee. What is Cabinet-level? How can a
15 council be Cabinet-level, what does that mean?

16 Mr. Santos. Well, we have, for example, the Economic
17 Policy Council right now. It is composed of the Secretary
18 of the Treasury, Secretary of State, et cetera.

19 Senator Chafee. Oh, you mean the members of it are in
20 the Cabinet?

21 Mr. Santos. Yes, they are Cabinet members, they are
22 the seniormost officials of each agency that would be
23 relevant for these purposes.

24 Senator Chafee. Thank you.

25 The Chairman. Go ahead.

1 Mr. Santos. The next item is --

2 Senator Baucus. Mr. Chairman, might I ask a question?

3 I am just curious what the White House thinks about this.
4 Do they favor it, do they not favor it?

5 The Chairman. I see the legal counsel of the Special
6 Trade Representative, Mr. Holmer, there. Happy to welcome his
7 comments.

8 Mr. Holmer. I think in general, Mr. Chairman, we would
9 support the comments that have been made by the staff in
10 terms of what the practical effect would be. It will not
11 come as a surprise to any of you that any president would like
12 to be able to have discretion as to how he is going to
13 organize Executive Branch functions and how trade policy
14 advice is going to be funneled to him.

15 I think, Senator Long, if you were to come and sit on the
16 Economic Policy Council or the Trade Policy Review Group, you
17 would be impressed with the degree to which trade policy
18 issues are really at the forefront of the Administration's
19 agenda.

20 The one area where I think it may conceivably have a
21 negative impact is -- the way it works now is OMB and the
22 National Security Council and CEA have a seat at the table in
23 the Economic Policy Council and their views are expressed and,
24 in some instances, inconsistence views with the majority are
25 overridden.

1 What can happen, if you have this Trade Policy
2 Committee established this way, is they will make a
3 recommendation and send it over to the White House, and there
4 some ad hoc group meets where there is a cover memo from OMB
5 or a cover memo from CEA or a cover memo from the National
6 Security Council that might disagree with the recommendation
7 of the Trade Policy Committee. We think the present policy
8 works fine and is not in substantial need of change.

9 Senator Long. You don't think it is a good idea, then.
10 Or do you?

11 Mr. Holmer. We think, on net, that the President has
12 decided that the Economic Policy Council is the funnel through
13 which trade policy decisions should come to him, and we think
14 that process has worked excellently.

15 Senator Long. One thing we did do that made sense, and
16 I am proud to have played a part in it because we did it with
17 overwhelming Administration opposition when we did it, was
18 to say that the Special Trade Representative is a Cabinet-level
19 job. Now, you just look at the people we have had. I
20 mentioned Bob Straus. If you hadn't made it a Cabinet-level
21 job -- I know, I helped get the guy to take the job. He
22 wouldn't have taken that job if it hadn't been a Cabinet-level
23 job and you wouldn't have gotten Brock to take the job if it
24 wasn't a Cabinet-level job.

25 This man here, Yeutter, he wouldn't have turned down that

1 big salary he was making where he was over in Chicago to
2 come in here if it wasn't a Cabinet-level job. You put some
3 dignity in the thing where he was invited to some social
4 events and one thing or another, the guy is going to take a
5 job like that.

6 But if this is not really going to accomplish anything,
7 I wouldn't insist on it at all.

8 The Chairman. Why don't we go on to the next issue.

9 Mr. Holmer, why don't you just stay there in case there
10 are other comments to come along.

11 Senator Chafee. Put him down for "No."

12 (Laughter)

13 Mr. Holmer. Senator Danforth, there are "Noes" with
14 capital letters and we will let you know when there are
15 those, as well.

16 Mr. Santos. The next item is the National Trade Data
17 Bank. I think it is fair to say this item is actually
18 derived from both S-1860 and S-1837.

19 I should just again say S-1837 was introduced by all
20 of the members of the Democratic Party in the Senate; S-1860,
21 as you well know, is a bipartisan bill with many members on
22 this Committee who are also co-sponsors.

23 This item was drawn from both bills. S-1837 sets up a
24 National Trade Data Bank. Its purpose essentially is to
25 improve the quality, the timeliness, the utility of data

1 relating to trade within the Federal Government.

2 The provisions in S-1860 are directed a little bit more
3 at accumulating information that would be useful for the
4 exporting community. Making commercially useful data
5 available to the exporting community, we have, in effect,
6 blended both provisions so that this provision now calls both
7 for a National Trade Data Bank and for the accumulation of
8 information both with respect to basic economic realities
9 and those commercial considerations that would be useful to
10 the exporting community.

11 One change we have made from the two bills is that we
12 would make the Chair of the International Trade Commission
13 the Chair of this National Trade Data Committee; that is, in
14 the sense in charge of trying to maintain and improve this
15 data collection process.

16 The Chairman. Comments?

17 Senator Baucus. Mr. Chairman, I am just curious -- and
18 I am sure a lot has -- in how much thought has been given to
19 the general question of organization, we have discussed it
20 very briefly here, and also to data collection and
21 accumulation and dissemination.

22 I think we all agree to the concept in principle, but
23 I just don't know whether -- maybe we have, somebody has --
24 thought through all this enough to know whether we are
25 really doing something here that makes good sense or whether

1 we are just wasting our time here.

2 It relates to another point. These matters, I guess,
3 primarily are in the jurisdiction of another Committee,
4 they are not in this Committee's jurisdiction, and I don't
5 know whether the Governmental Affairs Committee has had
6 hearings on this, looked into this, or not.

7 Can somebody address the question agreed to which
8 somebody has looked into --

9 The Chairman. I haven't had Senator Roth mention it to
10 me and, of course, he has a deep interest in trade, and --

11 Senator Baucus. I'm sorry?

12 The Chairman. Senator Roth has not mentioned the
13 subject to me and he has a deep interest in trade and chairs
14 the Government Ops Committee. I don't know if he knows about
15 this particular provision in the bill or not.

16 Senator Baucus. Well, I am just curious as to whether
17 anybody has looked into this sufficiently enough to know
18 whether this is a meaningful provision or are we just wasting
19 our time passing some nice-sounding name and some nice-sounding
20 principle here.

21 Senator Long. I really can't see anything wrong with
22 asking the Special Trade Representative to identify the
23 barriers and distortions of trade and investment. How does
24 the STR feel about that?

25 Mr. Holmer. In terms of identifying barriers?

1 Senator Baucus. In this provision.

2 Senator Long. This provision, they report on barriers
3 to market access. It says here -- well, I guess apparently
4 now he is required to identify the significant barriers of
5 distortions in that trade report, and apparently -- well,
6 let's see, 1860 would say that he is to go into a little
7 more detail and indicate how much its elimination would
8 increase U.S. exports...

9 I mean, what is the attitude of the --

10 Mr. Bolten. Senator Long, if I may interrupt. I think
11 Senator Baucus was addressing the previous provision.

12 Senator Long. Pardon me?

13 Mr. Bolten. Senator Baucus was addressing the previous
14 provision in the spreadsheets.

15 Senator Long. Oh, all right, I will wait.

16 Is that the trade part you are talking about?

17 The Chairman. The National Trade Data Bank.

18 Mr. Holmer, what do you think about it?

19 Mr. Holmer. I would have two responses: One, and to
20 the point that Senator Long raised, we are very eager to
21 aggressively identify barriers to U.S. exports and we are
22 doing that as a part of the report mandated under Section 303
23 of the 1984 Trade Act.

24 With respect to this National Trade Data Bank, we very
25 strongly support the objective of trying to make sure that

1 both the Congress and the Executive Branch have the best
2 possible data for us to use in our negotiations. We question
3 whether or not the ITC is necessarily the best place to house
4 that responsibility. It would seem to us that perhaps the
5 Commerce Department is a more appropriate way to do that,
6 but I would hope, during the interregnum between now and
7 next Tuesday when you reconvene, that we might work with the
8 staff to try to find some acceptable language on a National
9 Trade Data Bank that could be incorporated into your bill.

10 There is some concern in the Administration about
11 increased cost and just duplicating existing efforts. But
12 we would like to work with the staff over the weekend to try
13 to correct those problems.

14 The Chairman. Further comments?

15 (No response)

16 The Chairman. Let's go on to the next one, which I think
17 is a little more controversial.

18 Mr. Bolten. Mr. Chairman, the next section addresses
19 Section 301 of the Trade Act of 1974.

20 Mr. Santos. We skipped ahead one page here, sorry.

21 Mr. Bolten. The next is a statement of National Trade
22 Policy. Essentially what we would do here is adopt the
23 provisions from S-1860 with some modifications to reflect the
24 changes, the other changes in the staff proposal. For
25 example, one of the significant changes in the staff proposal

1 is with respect to the escape clause and policy toward
2 industries that have been injured by imports, and we would
3 want to enhance this statement to reflect that.

4 But, in any event, it is essentially as it is found in
5 S-1860.

6 The Chairman. Comments?

7 (No response)

8 The Chairman. Go ahead.

9 Mr. Bolten. Senator, now we are up to Section 301 of the
10 Trade Act of 1974. I will briefly describe the existing
11 statute and then mention the three areas, the three broad
12 areas, that are addressed in S-1860 and in the staff proposal.

13 Section 301 is the statute that gives the President his
14 broad discretionary authority to enforce U.S. rights under
15 trade agreements and to respond to other unfair foreign acts
16 in the trade area.

17 The procedures of that provision have usually been
18 applied against unfair foreign practices like export
19 subsidies with products that end up in the U.S. or export
20 subsidies which displace U.S. exports in third markets or,
21 most commonly now, unfair barriers to U.S. exports into other
22 countries.

23 The procedure right now is that any interested party may
24 file a petition with the U.S. Trade Representative or the
25 USTR may initiate action on its own self-initiation. Once a

1 petition is filed, the USTR has to decide within 45 days
2 whether to initiate an investigation. Then the USTR has
3 between seven and twelve months to investigate the practice,
4 to engage in consultations with the foreign government
5 involved, and, if it involves a violation of a trade
6 agreement, generally the GAT, to bring the case to GAT dispute
7 settlement.

8 At the end of that period, the USTR is directed to make
9 a recommendation to the President on what action to take and
10 then the President has a set time limit within which he must
11 decide how to respond to that recommendation. The statute
12 as currently written, however, sets up a procedure wherein
13 the President really doesn't have to make a decision. The
14 USTR's recommendation comes in and the President's decision
15 has typically in the past been to keep talking about the case,
16 either continue with dispute settlement or continue
17 negotiating or continue to study the subject.

18 So under the existing statute, neither the initiation
19 of a case is mandatory on USTR, nor is there any mandatory
20 nature to the President's taking action against what is
21 identified as an unfair foreign barrier.

22 The Chairman. Comments.

23 Mr. Bolten. Senator, if I may, I will turn now to what
24 S-1860 and what the staff proposal have to do with that.

25 The S-1860, first on the point of self-initiation, puts

1 into place a mandatory initiation procedure. Looking at the
2 report of barriers to U.S. trade that Senator Long was
3 discussing a few minutes ago, the USTR is to identify those
4 practices that are likely to be found unfair, number one, and,
5 number two, constitute a significant barrier to U.S. exports
6 and to self-initiate cases on those that are likely to affect
7 the largest amount of U.S. trade.

8 The staff proposal on this point is quite similar to
9 S-1860, but the language is a little bit looser, leaving a
10 little more flexibility to USTR, and it would require USTR
11 to self-initiate some unfair trade cases from among those
12 listed in the barriers report and that are likely to result
13 in the greatest expansion of U.S. export opportunities.

14 I have just been referring to Item 2 of the spreadsheet.

15 Senator Chafee. Who draws up the NTE?

16 Mr. Bolten. I'm sorry, sir?

17 Senator Chafee. Under 1860, the STR is required to
18 initiate with respect to those acts, policies, practices,
19 identified in the NTE. Who does the NTE? The staff?

20 Mr. Bolten. U.S. Trade Representative's office
21 prepares a report annually. It is an inventory of all
22 barriers to U.S. exports. Not necessarily unfair barriers.
23 It is just a problem that U.S. exporters are having in getting
24 into another market. And from that, under S-1860, the USTR
25 is to pull out those practices that appear to be the most

1 egregious in terms of unfairness and those that seem to
2 effect the largest amount of U.S trade, and it mandates that
3 the USTR self-initiate some 301 cases on those practices.

4 Senator Chafee. Thank you.

5 Mr. Bolten. Skipping over Section 3 of the spreadsheet
6 to Section 4, which is really the nub of the contentious
7 issue on Section 301, is mandatory action under Section 301
8 cases.

9 S-1860 would mandate retaliation by the USTR within
10 15 months of the initiation of a case where the USTR has
11 previously decided that an unfair practice is involved. The
12 action the USTR must take must be necessary to enforce U.S.
13 rights and to fully offset or eliminate all the unfair
14 policies or practices.

15 The staff proposal also includes language on mandatory
16 retaliation, and it says two years, but it provides
17 circumstances in which the President need not retaliate.
18 They are listed on page 5 of the spreadsheet, on the far
19 right-hand column, and the circumstances under which the
20 President would not be required to retaliate are four:

21 The first is if the USTR finds that no unfair practice
22 is involved. That is contemplated also in S-1860.

23 The second is if the GATT determines that the practice
24 investigated under 301 turns out not to be a violation of
25 U.S. rights or doesn't deny the U.S. any trade agreement

1 benefits.

2 The third situation in which the President would not be
3 required to retaliate is one in which there is an agreement
4 reached with the foreign country that is acceptable to the
5 complaining domestic industry. A version of that is also
6 contemplated within S-1860.

7 The main difference between the staff proposal and the
8 S-1860 proposal is the addition of a fourth out for the
9 President; and that is, number four listed there, that the
10 President would certify to the Congress with a detailed
11 explanation that a satisfactory resolution of the problem
12 appears impossible and retaliation would cause serious harm
13 to the national interest.

14 It was the staff's view that the President needed some
15 sort of out like this in a number of cases and that if the
16 President did not have that kind of out, then we would end up
17 in a situation where USTR would decline to find practices
18 unfair in the first place in order that they would not have
19 to, at the end of the road, be retaliating against the
20 practice.

21 The other major area addressed in S-1860 and in the
22 staff proposal is on what practices are actionable under
23 Section 301. There is -- S-1860 makes no major changes in
24 U.S. law on this point, but adds quite a great bit of
25 language referring to the threat of the burden on U.S.

1 commerce. It also adds an illustrative list of practices
2 that would burden U.S. commerce and it enhances the list of
3 practices that would be considered unreasonable under
4 Section 301. Most of these are regarded as clarifications
5 of existing authority, but it was felt that they would be
6 useful to place in the statute and they are incorporated in
7 the staff proposal.

8 I would make mention of two particular provisions
9 appearing on page 7 of the spreadsheet. That is, that the
10 staff proposal incorporates provisions from two bills
11 sponsored by Senators Bentsen and Danforth and others. They
12 are S-2660, the state trading bill, which explicitly identifies
13 state trading practices as unfair under Section 301; and the
14 same with S-2226, which explicitly identifies the granting
15 of unfair trade concessions -- or rather the requiring of
16 unfair trade concessions as an actual practice under
17 Section 301.

18 Mr. Chairman, one final point that I would mention
19 about the S-1860 proposal and the staff proposal, there is
20 greater detail in the spreadsheet, one additional point to
21 mention is that S-1860 would enhance the retaliatory options
22 that the President has under Section 301 to include the
23 withdrawal of GSP benefits, and the staff proposal
24 incorporates that provision.

25 Senator Chafee. Well, also, you have quite a difference

1 in the times of action, haven't you?

2 Mr. Bolten. That is correct, Senator. The difference
3 in times are significant. The original S-1860 proposal was
4 for a retaliation decision within 15 months of the
5 initiation of the case. The staff proposal is that the
6 decision must come within two years of initiation of the
7 case or within nine months after the GATT panel finding, so
8 that the -- the latter provision being if there is a GATT
9 panel finding to come down, the USTR would have nine months
10 to negotiate an agreement with the foreign country concerned.

11 Mr. Santos. The next section deals with the escape
12 clause, Section 201 of the Trade Act --

13 Senator Baucus. Mr. Chairman, at this point I would
14 like to know what the Administration view is on the various
15 different Section 301 revisions and different options. We
16 have not only the staff and 1860, but there's HR-4800 which
17 is also described in the spreadsheets here with respect to
18 each of the provisions that Len outlined.

19 Which 301 provisions does the Administration agree with
20 and which ones not?

21 Mr. Holmer. If I could make a broader comment initially,
22 Senator Baucus:

23 We believe that the staff has done an excellent job of
24 addressing the principal concerns that Ambassador Yeutter
25 expressed during the hearings on Section 301, and we believe

1 that S-1860, as a result, would -- excuse me -- the staff
2 proposal with respect to Section 301 is a substantial
3 improvement over what existed before.

4 We would hope that it would be possible for the
5 Committee to go even further. Our overall view is that
6 Section 301 is really one of the shining lights of what it is
7 that the Administration has done to address our trade policy
8 problems, and, indeed, some of the criticisms that we get now
9 with respect to Section 301, which we have heard this
10 morning, was that USTR and the Department of Commerce have
11 gone too far and that we have too aggressively enforced
12 Section 301, the example being the semi-conductor case.

13 So we believe that the record is one that is exemplary
14 and that there is not -- there are not substantial
15 administrative or legislative changes that need to be made
16 with respect to Section 301.

17 Now, the staff has given the President and the U.S.
18 Trade Representative a substantial degree of flexibility;
19 for example, with respect to mandatory retaliation and with
20 respect to self-initiation of cases. And, as a result, I
21 believe that will substantially reduce the strength of
22 Administration opposition and concern with respect to S-1860.

23 If you want, I can go through item by item with respect
24 to those areas where we have concerns and suggestions that
25 we might have in terms of how it could be improved.

1 Senator Baucus. What is the Administration's major
2 objection to -- to what provision in 1860? Is there a
3 provision in 1860 that the Administration particularly objects
4 to?

5 Mr. Holmer. Well, the provision that we principally
6 object to with respect to S-1860 is virtually providing no
7 significant flexibility for the Administration in terms of
8 mandatory retaliation. We believe that the concern that was
9 expressed by Senator Danforth during Ambassador Yeutter's
10 confirmation hearing 15 months ago that it was imperative that
11 the U.S. use its retaliatory rights under Section 301 was a
12 very valid concern that he had, and I believe that the
13 record of this Administration in terms of retaliating or
14 having credible threats of retaliation have shown that 301
15 is a statute that can be used effectively in order to pry open
16 foreign markets.

17 And simply saying that you are going to have mandatory
18 retaliation in every case at a specified time deadline, with
19 no flexibility, we believe is going to be counterproductive
20 in terms of the effort to open up foreign markets.

21 Senator Danforth. As a practical matter, there is no
22 such thing as no discretion in the Administration. Isn't
23 that correct? I mean, no matter how we were to write this
24 bill, the Administration would continue, at least de facto,
25 to have discretion. 301 cases are still on USTR, the USTR is

1 part of the Administration. The USTR could sit on a case,
2 the USTR could make a finding of no unfair trade practice.

3 So my argument is that there is never going to be a
4 case where the USTR is just propelled pell mell into
5 retaliation. The question, I think, before us is can we
6 somehow strengthen our hand in 301 as opposed to the present
7 situation where the Administration can just do nothing if it
8 wants. And it seems to me that in 1860 and in the staff
9 proposals, we have the two approaches to doing that.

10 In reflection, I think that the problem with 1860 as
11 drafted is that the Administration would respond to a
12 mandate to retaliate by aborting a 301 case one way or
13 another short of the end.

14 I think that the staff proposal is a stronger proposal.
15 I think it is a stronger proposal because I think that it
16 prevents the aborting of the process and it smokes out the
17 Administration so that if the Administration wants to say,
18 "Well, we just don't believe in retaliation," it has to do
19 something; it can't just sit, it has to do something.

20 So that would be my analysis of the situation. I don't
21 think either 1860 or the staff proposal compels -- I don't
22 think there is any way to compel the Administration to do
23 something it really doesn't want to do.

24 I used to have the feeling, when I was in state
25 government, State Attorney General, people were suggesting

1 mandatory prison terms for this and that, and the thought
2 that I had at the time was, well, the legislature can
3 mandate minimum prison terms, but it cannot mandate that the
4 prosecutor will not execute his discretion or that the judge
5 won't find some way to dump the case, and, therefore, it
6 could be counterproductive. I kind of feel the same, on
7 reflection, about 1860 as originally drafted.

8 Mr. Holmer. My only response would be that we take
9 very seriously the statutory language and the legislative
10 history that you send to us, and if you tell us that we must
11 retaliate if there is a foreign unfair trade practice and
12 there is a trade practice that anyone objectively would regard
13 as being unfair, we will mandatorily retaliate. It may be
14 adverse to U.S. overall economic interests, it may be adverse
15 to the interests of the industry that brought the case, but
16 we will faithfully implement the statute. And all I am
17 trying to say is that we should try to draft language that
18 will give the President the kind of flexibility that you
19 would want him to be able to exercise in those cases where
20 there may be a circumstance where mandatory retaliation
21 really would redound to the detriment of either the U.S.
22 industry that has filed the case or the overall national
23 interest.

24 Senator Danforth. Well, I want the President to have
25 much less discretion than he has now. I wonder, in practice,

1 if it came right down to it, if we were to write a bill that
2 says that the President has to retaliate, whether the
3 President necessarily would retaliate. I doubt it.

4 Senator Chafee. There is a difference in the length of
5 times, too, isn't there, between the staff draft and the
6 1860?

7 Mr. Bolten. Senator, there is a difference in time.
8 The staff draft is a little more flexible on time.

9 The really big difference here, though, and it is the
10 point we were looking for in the staff draft, was to put an
11 end point on it. That is really how the President's
12 discretion is limited. There have been 301 cases that have
13 gone on literally for more than a decade because the
14 President was unwilling either to retaliate on the one hand
15 or to tell the domestic industry, "Sorry, I'm not going to do
16 anything for you."

17 So the staff proposal limits the President's discretion
18 in this way. It says it has to have an end point after
19 about two years. You have to choose one way or the other.
20 Either you tell the U.S. industry you are not going to help
21 them out and take the political heat for that, or, on the
22 other hand, you have to retaliate against the unfair foreign
23 practice.

24 Senator Danforth. What if the Administration were to
25 do nothing? What if we were to pass whatever it is and the

1 Administration did nothing? Two years comes and two years
2 goes and nothing is done.

3 Mr. Bolten. Senator, I suspect we would have some sort
4 of constitutional conflict. The Administration would be in
5 violation of the statute for having failed to take the action
6 mandated by the statute.

7 Senator Danforth. Subject to lawsuit?

8 Mr. Bolten. I don't know whether this is a matter that
9 the courts would consider justiciable. It might be possible
10 for a domestic party to bring the Administration to court
11 for having failed to take the action mandated, but it may be
12 something that the courts would not rule on.

13 Senator Baucus. I think this is all a very interesting
14 discussion. The only thing that concerns me slightly is
15 that I just think it helps to put more quivers -- more arrows
16 in the President's quiver when he is trying to negotiate out
17 a fair trade arrangement with other countries.

18 The President can always find a way to not retaliate,
19 it seems to me. That is your point, Jack, regardless of what
20 the law is. I don't know whether it is necessarily a
21 dramatic failure to exercise retaliatory action or if you can
22 find a way to finesse it, frankly. It seems to me that we
23 have all been around here long enough to know that where
24 there is a will, there is a way, regardless of the law,
25 frankly, and if the Administration has -- if there is a tough

1 provision here that tends to mandate that the President take
2 retaliatory action, but if for some very strong reason that
3 does not make sense, it still seems to me that the
4 Administration, and any Administration, can find a way to
5 subtly and delicately and sensitively handle it.

6 I frankly think it makes more sense to have a tough 301
7 action, quite a bit tougher, because it does put more arrows
8 in the President's quiver. It makes it easier, then, for the
9 President to go to other countries and say, "Hey, look, I've
10 got this tough law here." That helps American industries.
11 And the whole assumption, the whole premise here, is that
12 this is an unfair trade practice, that is what 301 is all
13 about, it is found to be unfair. And if that is the case,
14 it seems to me the tougher the law is, the more easily these
15 are going to be resolved in some generally fair way; and if
16 there is some extraordinary case where it does not make
17 sense, the President will find a way to correctly and
18 sensitively to get around it in a way that it should be
19 gotten around.

20 So I just think the provision should be strong.

21 Senator Chafee. Len, I was going to wind up now. It
22 is -- if everybody here isn't frozen to death, I am --

23 (Laughter)

24 Senator Chafee. But go ahead. You have an answer to
25 Senator Baucus.

1 Mr. Santos. I just wanted to make one observation that
2 we were concerned with, I think, in the drafting of this and
3 we did not want to put the President in the position of
4 declining to retaliate by labeling something fair that is
5 really unfair even though that might avoid retaliation, it
6 might result in the labeling of something for future purposes
7 that we would not want as a bad precedent.

8 So we were anxious not to force the President into being
9 disingenuous, because that might have a bad precedential
10 effect on similar activities in the future.

11 Senator Danforth. You would rather have the President
12 get out of it, if he is going to get out of it, --

13 Mr. Santos. Honestly.

14 Senator Danforth. -- by saying, "Yes, this is unfair,
15 but I'm still going to dismiss it," than by going through a
16 fiction of calling something fair --

17 Mr. Santos. Which anybody who has worked in the
18 Executive Branch knows is possible to do. You can write the
19 language.

20 Senator Chafee. I think the suggestion that the
21 President willing -- or would casually disregard admonitions,
22 legal admonitions, from the Congress to do something by X
23 days, I just don't think that is true. I think when the
24 President has to do something in a certain set period of time,
25 he will do it. He might not like it, but the tendency is to

1 do it and not to find, as you say, some disingenuous way
2 of dissembling.

3 Mr. Santos. Well, if I may, Senator Chafee, the only
4 thing is that many of these practices, while we can call them
5 unfair, are complex. They may not be straightforwardly
6 unfair, they may be at the margin. And the question is, do
7 you want him labeling that marginal case, the one that isn't
8 perfectly fair, just for the sake of getting out of this box
9 that he might be in.

10 Senator Chafee. Well, with that matter to mull over,
11 we will adjourn.

12 (Whereupon, at 1:00 p.m., the hearing was adjourned.)
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C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Committee Meeting of the United States Senate Finance Committee, held on September 18, 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 April 14, 1989.

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EXECUTIVE SESSION
99th Congress, 2nd Session
September 18, 1986

SENATE COMMITTEE ON FINANCE

EXECUTIVE SESSION

Thursday, September 18, 1986; 11:00 a.m.; Room SD-215

1. Nomination of Louis F. Laun, to be Assistant Secretary of International Economic Policy, International Trade Administration, Department of Commerce.
2. Legislation to extend for four years the highway trust fund taxes.
3. S. 1860, as amended by the Finance Committee staff proposal dated September 14, 1986.

(T0148)

BOB PACKWOOD, OREGON, CHAIRMAN

BOB DOLE, KANSAS
WILLIAM V. ROTH, JR., DELAWARE
JOHN C. DANFORTH, MISSOURI
JOHN H. CHAFEE, RHODE ISLAND
JOHN HEINZ, PENNSYLVANIA
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DAVID DURENBERGER, MINNESOTA
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CHARLES E. GRASSLEY, IOWA

RUSSELL S. LONG, LOUISIANA
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DAVID PRYOR, ARKANSAS

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510

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September 16, 1986

MEMO

TO: FINANCE COMMITTEE MEMBERS

FROM: FINANCE COMMITTEE TRADE STAFF

SUBJECT: SEPTEMBER 18, 1986 MARKUP OF TRADE LEGISLATION

Attached is the staff proposal which is to be the basis of the markup of trade legislation on Thursday, September 18, 1986. Also attached is a list of non-controversial miscellaneous tariff bills which form part of the proposal.

(TED-0528)

STAFF PROPOSAL

September 14, 1986

- (1) National Trade Council.--A National Trade Council would be established in the Executive Office of the President. The purpose of the provision is to reestablish the U.S. Trade Representative (USTR) as the principal adviser to the President on trade and to improve coordination of U.S. trade policy. The new National Trade Council would replace the existing and sometimes by-passed interagency group on trade, the "Trade Policy Committee" authorized under the Trade Expansion Act of 1962, and to specify that the USTR would provide the staff for the National Trade Council. National Trade Council membership would be limited by statute to insure USTR's central role. It is intended that the National Trade Council be the definitive forum for the making of trade policy within the Executive Branch.

- (2) National Trade Data Bank.--The development of coordinated trade policy would be encouraged by improving trade systems, enabling U.S. trade

negotiators to better identify sectors where export growth is possible if foreign markets are opened. The updating of input/output data is emphasized. A committee chaired by the independent U.S. International Trade Commission (ITC) would advise Congress on changes in law and funding requirements necessary to improve the National Trade Data Bank.

(3) Generalized System of Preferences (GSP).--USTR would be required to create a list of relatively competitive GSP beneficiaries, based on criteria including: per capita GNP; penetration of developed country markets in technically sophisticated goods; volume of GSP-benefitting trade; and debt service ratio. (This last criterion would exclude nations, such as Mexico, with major unfunded external debt problems.) GSP would be revoked on any individual product from these relatively competitive beneficiaries where USTR determined that doing so would redound substantially to the benefit of less competitive beneficiary countries.

(4) National security import controls.--Presidential decisions in section 232 cases would be required within 90 days of the Commerce Secretary's recommendation. (S. 1860 would be modified to delete industry-specific provisions.)

- (5) Intellectual property.--As in S. 1860/1869, in cases brought under Section 337 against imports that infringe intellectual property rights, the proposal would eliminate the requirement that petitioners show injury to a U.S. industry that is efficiently and economically operated. S. 1860/1869 would be modified so that petitioner could meet the requirement of a U.S. industry through significant investment or employment in the U.S. related to the intellectual property.

The proposal would enhance the remedies available for violations of Section 337.

- (6) Escape clause.--The process and outcome of Section 201 cases would emphasize adjustment more clearly. The standard for recommending and granting import relief would be identical for both the ITC and the President (i.e. such action as can reasonably be expected to lead to a domestic industry that can be competitive without further import relief after the expiration of such import relief). In no case could import relief exceed that necessary to eliminate injury. Threat of injury would be enhanced slightly to deal with the threat of targeted imports. Petitioners would be required to submit an adjustment plan.

Upon an ITC injury finding and recommendation, the President would be required to select among the forms of import relief described in current section 201, based on the above standard, unless he determined (1) that the industry (or part thereof) could not become competitive through section 201 import relief, (2) action would undermine U.S. national security, or (3) action would seriously injure another domestic producer. In cases where the President decided not to grant import relief, he would be required to grant TAA in an effort to facilitate adjustment. In addition to import relief and/or TAA, the President would have additional available options, including accelerated anti-dumping cases, multilateral agreements on excess capacity and depressed prices, limited antitrust exemptions and financial assistance.

(7) Section 301

Initiation. USTR would be required to self-initiate some unfair trade cases from among those listed in the annual inventory of foreign trade barriers that are likely to result in the greatest expansion of U.S. export opportunities.

Retaliation. Within two years of the initiation of a 301 case -- or, if referred to GATT dispute settlement, within 9 months of a favorable GATT panel ruling -- the President must take action to eliminate or fully offset the unfair foreign trade practice, unless USTR achieves a settlement of the case satisfactory to the petitioner(s) or majority of the interested industry. (If a case has been referred to GATT dispute settlement and the panel has not acted, the President is to consider the case as having been favorably resolved for the U.S. two years after initiation.) The President may postpone the retaliation deadline for renewable 60-day periods if he certifies to Congress, with detailed explanation, that a resolution appears imminent.

The President may terminate a case -- without either resolution or retaliation -- at any time prior to the retaliation deadline, but only if:

- (A) USTR finds no unfair practice; or
- (B) the President certifies to Congress that a satisfactory resolution appears impossible and retaliation would cause serious harm to the national interest.

Transfer from the President to USTR the authority to make determinations on unfairness.

Actionable practices. Augment the provisions on actionable practices under 301 to include language relating to targeting (drawn from S. 1860), state trading (from S. 2660), and unfair trade concessions (from S. 2226).

Retaliatory options. Augment the President's retaliatory options under 301 to include denial of GSP benefits.

- (8) New round.--The Administration would be authorized and encouraged to engage in multilateral trade negotiations. However, there would be no "fast-track" Congressional procedures for legislative implementation of such agreements absent further action by Congress to authorize the use of such procedures.

Specifically, "fast-track" implementing authority would become available if the President requested and Congress passed a concurrent resolution prescribed by law approving failed to disapprove by concurrent resolution prescribed by law the use of the "fast track" procedure. By law, the President's request for "fast track" authority would be accompanied by:

- Detailed statements of U.S. trade policy as they relate to agricultural trade, import sensitive industries, plans for the changes in the role of the dollar and the international exchange rate system, plans to ameliorate the trade-distorting consequences of Third World commercial debt, and policies regarding foreign and U.S. Government intervention in the marketplace having an impact on trade.

- A detailed statement of the relationship of such trade policy with a new round.

- An agreement or other evidence that the United States has obtained commitments from Japan and the Federal Republic of Germany to contribute to balanced world economic growth through increases in their share of non-petroleum imports from all countries. Similar commitments shall be obtained from such other industrialized countries as are in a similar position to contribute to balanced world growth.

This procedure to obtain "fast-track" authority would be available for one year following enactment

of this bill. The concurrent resolution would by law be considered on a "fast-track" basis without amendments. The "fast-track" trade agreement implementing authority would be available for three years, renewable by concurrent resolution extended, unless disapproved by concurrent resolution for additional three-year periods. These subsequent concurrent resolutions would be prescribed by law and would be unamendable and subject to time-certain action.

Specific negotiating objectives (related primarily to General Agreement on Tariffs and Trade (GATT) reform would be cited in the bill as the basis on which Congress grants approval/disapproval of the final agreement(s) and interim concurrent resolutions to renew "fast-track" authority. These would include:

- Revised dispute settlement procedures;
- Elimination of agricultural export subsidies;
- Definition and disciplines on negative effects of certain practices not covered by GATT (natural resources subsidies, targeting, upstream subsidies, and downstream dumping);

-- Others, including extension of GATT rules to cover services, investment and property rights; revised graduation criteria, accelerated implementation of concessions by countries with major trade surpluses, revision of GATT articles to better reflect exchange rate system and world debt situation.

(9) Non-Market Economy Dumping. In cases involving alleged dumping of goods from non-market economy countries, determine the fair market value of the imports by reference to the average import price of the same product from the (market economy) country sending the largest volume to the U.S.

(10) Miscellaneous tariff bills.

(11) Authorizations for USTR, Customs and the ITC.

(ls/jl)

NON-CONTROVERSIAL MISCELLANEOUS TARIFF BILLS
INTRODUCED IN THE SENATE DURING
THE NINETY-NINTH CONGRESS

Senate Bill No.	Subject Matter	Nature of Bill	Sponsor
717	butyl chloride	duty suspension	East
757	lasamid	temporary duty suspension	Chafee
782	hosiery knit- ting machines	extension of duty- free treatment	East
783	double-headed latch needles	extension of duty- free treatment	East
859	dicyclohexyl- benzothiazyl- sulfenamide	temporary duty suspension	Thurmond
1014	tungsten ore	temporary duty suspension	Grassley
1015	sulfapyridine	extension of duty suspension	Grassley
1044	methylene blue	temporary duty suspension	Heinz
1045	dicofol	duty-free treatment	Heinz
1058	manmade fibers	amend the TSUS	Danforth
1089	stuffed dolls and toy figures	temporary duty suspension	Chafee
1178	double-headed latch needles	extend duty-free treatment	Dole
1231	3,5-dinitro-o- toluamide	duty suspension	Grassley
1232	P-sulfobenzoic acid, potassium salt	duty suspension	Grassley
1274	Nairobi Protocal	implementation	Dole

Senate	Bill No.	Subject Matter	Nature of Bill	Sponsor
	1275	Pan American Games	duty free entry	Lugar
				Quayle
	1403	needlecraft display models	extend duty-free treatment	Heinz
	1769	synthetic rutile	extend duty suspension	Heinz
	1811	frozen cranberries	temporary duty suspension	Chafee
	1955	lottery materials	authorize importation	Dodd
	2232	mancozeb dinocap	temporary duty suspension	Heinz
	2233	polyvinylbenzyltrimethylammonium	temporary duty suspension	Heinz
	2234	3-amino-3-ethyl-1-butyne	temporary duty suspension	Heinz
	2235	1,1-bis(4-chlorophenyl)-2,2-trichloroethanol	temporary duty suspension	Heinz
	2236	maneb zineb mancozeb metiram	temporary duty suspension	Heinz
	2237	2,4-dinitro-6-octyl phenyl crotonate, 2,6-dinitro...	temporary duty suspension	Heinz
	2241	clock radios	temporary duty suspension	Moynihan
	2321	d-6-Methoxy-methyl-2-naphthaleneacetic acid and its sodium salt	temporary duty suspension	Armstrong

Senate	Subject Matter	Nature of Bill	Sponsor
2338	extracorporeal shock wave lithotripters	amend the TSUS reclassification	Dole Thurmond
2360	4-chloro-2,5- dimethoxy aniline	temporary duty suspension	Chafee
2361	3-nitro phenyl- 4-beta-hydroxy sulfone	temporary duty suspension	Chafee
2367	W.M. Keck Observatory	duty-free entry	Matsunaga Inouye Cranston Wilson
2399	stuffed toy figures	temporary duty suspension	Chafee
2470	menthol feedstocks	amend TSUS to continue the duty suspension	Thurmond
2488	nonbenzenoid vinyl acetate- vinyl chloride- ethylene terpolymer	temporary duty suspension	Bradley Lautenberg
2490	silk yarn	duty suspension	Lautenberg Bradley
2501	triphenyl phosphate	extend duty suspension	Danforth
2509	1-(4-(1,1-dime- thylethyl) phe- nyl)-4-...	duty suspension	Wallop
2511	imported cantaloupes	extend tariff suspension	Bentsen
2521	hatter's fur	permanent duty-free importation	Sasser
2607	small toys	extend duty suspension	Danforth

Senate	Subject Matter	Nature of Bill	Sponsor
2613	indirect process electrostatic copying machines	duty suspension	Moynihan
2615	1-(3-sulfopyridinium) hydroxide	duty suspension	Glenn
2616	umbrella frames	extend duty suspension	Glenn
2668	jacquard cards	temporary duty suspension	Bradley
2694	glass inners for vacuum flasks	lower duty	Dixon
2696	slabs of iron and steel	tariff classification	Heinz
2729	single-headed latch needles and hosiery knitting needle	temporary duty suspension	Heinz
2761	doll wig yarns	temporary duty suspension	Moynihan
2774	sethoxydim	temporary duty suspension	Long
2775	3-Ethylamino-p-cresol	duty suspension	Long

September 13, 1986