

1 EXECUTIVE COMMITTEE MEETING  
2 TUESDAY, SEPTEMBER 23, 1986  
3 U.S. Senate  
4 Committee on Finance  
5 Washington, D.C.

6 The committee met, pursuant to notice, at 10:06 a.m. in  
7 Room SD-215, Dirksen Senate Office Building, the Honorable  
8 Bob Packwood (chairman) presiding.

9 Present: Senators Packwood, Danforth, Chafee, Heinz,  
10 Durenberger, Grassley, Long, Bentsen, Baucus, Bradley, and  
11 Mitchell.

12 Also present: Alan Holmer, Legal Counsel, Special Trade  
13 Representative; Lynn Schlitt, General Counsel, International  
14 Trade Commission; Gilbert Kaplan, Deputy Assistant Secretary  
15 for Import Administration, Commerce Department.

16 Also present: Len Santos, Josh Bolten, Trade Counsel,  
17 Majority; Jeff Lang, Trade Counsel, Minority; Bill Wilkins,  
18 Staff Director, Minority; and Susan Taylor, Administrative  
19 Director.

20 (The press release announcing the meeting follows:)  
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1 The Chairman. The committee will come to order.

2 So far we have had no objection to our meeting today. We  
3 took up at 9:30 so we could go until 11:30 anyway, but there  
4 has been no objection to our going beyond that, and I would  
5 hope we could go beyond that.

6 When we get a quorum, I would like to report out, if  
7 there is no objection, Mr. Wells as the nominee for the Tax  
8 Court. We had a hearing on his nomination at 9:30, and his  
9 record is exemplary, and I see no reason why we cannot  
10 report him out when we get a quorum.

11 I think we might as well continue on from where we were,  
12 which was operating from S. 1260, as amended by the staff  
13 draft, and continue working on that. And where did you  
14 leave off? I left about five minutes before you finished.

15 Mr. Santos. We had gotten through a description of the  
16 Section 301 provision and we are now ready to proceed with  
17 201.

18 The Chairman. All right.

19 Mr. Santos. I will reference the page of the spread  
20 sheet in case members want to look at the spread sheet to  
21 guide them.

22 The next section we will be describing is the provision  
23 dealing with relief from injury caused by import competition.  
24 This is described, beginning on page 9 of the spread sheet.

25 This provision, which is generically referred to as the

1 "escape clause", or "Section 201". The staff proposal is  
2 essentially to leave the injury standard alone. There would  
3 be no change in what is required to prove injury before the  
4 International Trade Commission. There is a change in the  
5 standard in terms of determining threat of injury--threat of  
6 serious injury. There, we have adopted the language from  
7 S. 1860, which references various indications of injury such  
8 as targeting and other matters. But, essentially, we have  
9 left the injury standard alone.

10 The place where we have made a significant change is with  
11 respect to the basis --

12 Senator Heinz. Len, excuse me. The threat of injury  
13 language as described on page 12, item 6 of the spread  
14 sheet. Is that right?

15 Mr. Santos. That is correct, Senator Heinz. And it is  
16 identical to the language in S. 1860.

17 The Chairman. Let me interrupt a minute. Several people  
18 asked me about reconciliation. I am assuming we are going  
19 to have to get together with the House soon. And I might say  
20 to Senator Bentsen, I have still been unsuccessful on  
21 Superfund in getting the chairman to call a conference. I  
22 will soon be calling a meeting of the Senate conferees on the  
23 Superfund.

24 But then on reconciliation, we have to be done by the  
25 1st of October. And as you may be aware, they put in, what

1 was it, a half or a quarter percent tariff, across the board  
2 tariff, and the reconciliation yesterday? Am I right?

3 Mr. Santos. Yes, I think a small across the board  
4 tariff. That's correct.

5 The Chairman. It is relatively small, but their  
6 reconciliation is just 180 degrees apart from our in the way  
7 we went at it. And I don't think it is going to be just an  
8 hour's work for us in the reconciliation, even though it is  
9 a relatively small amount.

10 Go ahead. I didn't mean, Len, to interrupt.

11 Mr. Santos. Well, continuing on page 9 of the spread  
12 sheet, item 2, with respect to the ITC's remedy recommendation,  
13 this is the first place in the process where we have made a  
14 significant change in our proposal. There, we have proposed  
15 that the ITC make its recommendation based on such action as  
16 can reasonably be expected to lead to a domestic industry  
17 that can be competitive without further import relief after  
18 the expiration of relief.

19 The concept here, essentially, is that at the moment, the  
20 ITC is supposed to recommend such relief as will remedy the  
21 injury. And it was our feeling that it would be useful to  
22 focus the analysis a little more narrowly on the question of  
23 what relief can be calculated to improve the competitiveness  
24 of this industry.

25 That same standard--turning now to the next page on the

1 spread sheet--that is, the Presidential basis for decision on  
2 import relief, that same standard would apply to the  
3 President's decision, so that both the ITC and the President  
4 would be asked to look at the very same standard in terms of  
5 determining, for the ITC, what it should recommend, and for  
6 the President, what action to actually take.

7 Senator Heinz. Mr. Chairman, a point of clarification.

8 The Chairman. Senator Heinz.

9 Senator Heinz. Isn't there one other significant  
10 difference, and that is, unlike any previous requirement,  
11 the industry is supposed to submit an adjustment plan.

12 Mr. Santos. That is correct, Senator Heinz, at the  
13 outset.

14 Senator Heinz. And the rationale for what you are doing  
15 is because there is an additional requirement hosed on the  
16 industry, which is to demonstrate how it can become more  
17 competitive. That is the reason for charging the ITC with --  
18 or capacitating the ITC with the kind of standard limit, and  
19 in a sense, floor, that you have just described. Is that  
20 correct?

21 Mr. Santos. Well, Senator Heinz, I am not sure that we  
22 thought of it as an essential prerequisite, but it would  
23 certainly assist the ITC in making its recommendations to  
24 have --

25 Senator Heinz. The two go together.

1 Mr. Santos. They go together. They are logically  
2 linked. And the idea here is to focus this whole process on  
3 the question of, is this an industry that can benefit through  
4 import relief in becoming competitive at the end? Because  
5 Section 201 is not conceived as an endless relief statute. It  
6 comes to an end at some point. And the question is, at that  
7 point, can this industry become competitive without further  
8 relief?

9 Senator Danforth. Len, let me give you a hypothetical.

10 Let's suppose, say, the shoe industry, has historically  
11 manufactured a wide range of shoes, all price ranges  
12 manufactured in the United States, all types of shoes  
13 manufactured in the United States, let's suppose that the  
14 best judgment of the ITC and the President are that a  
15 fraction of the shoe industry can be saved. Manufacturing  
16 shoes for a certain segment of the total needs. Would that  
17 kind of partial salvation of the industry be sufficient to  
18 meet the standard?

19 Mr. Santos. With respect to that segment which could be  
20 competitive, yes. In other words, there is nothing to  
21 prevent in our proposal the ITC from saying, with respect to  
22 high price shoes, we recommend import relief because this is a  
23 part of the industry which, after five years, can compete  
24 with foreign competitors. With respect to the other portion  
25 of the industry, we conclude that it is not an industry that

1 can become competitive. Our focus should be on facilitating  
2 adjustment.

3 So the ITC, as we conceived of it, would not be precluded  
4 from a divided recommendation between parts of the industry  
5 that it thought could become competitive and those that could  
6 not.

7 The Chairman. I take it the prospective judgment as to  
8 whether it can be competitive is simply subjective. I mean,  
9 you have got a plan, but you do not know at the end of five  
10 years whether it will be competitive or not.

11 Mr. Santos. That is correct, Senator. But the whole  
12 concept of asking the government to grant import relief  
13 necessarily involves some judgment; has all along some  
14 judgment as to the utility of import relief. 201 has never  
15 been conceived of merely as throwing government aid to people  
16 just for the sake of throwing money at them. It was  
17 conceived as a means of adjustment. And for those industries  
18 that can become competitive, then that presumably would be  
19 the goal in this case, and for those that cannot, then  
20 making the process less painful would be the goal.

21 The Chairman. Now, part of making the process less  
22 painful is trade adjustment assistance. Do you mean it just  
23 in the way we have got the program now?

24 Mr. Santos. Well, Senator, in this section of our  
25 proposal we have not included any proposal to change trade

1 adjustment assistance. There are members of the committee--  
2 in fact, this committee did report out a significant change  
3 in that program. We have not proposed that as part of this.  
4 So to the extent it was not changed, it would be the current  
5 program.

6 But to continue then, the concept here is that to the  
7 extent the President, following an ITC judgment as to the  
8 possibility for this industry to become competitive, to the  
9 extent the President concludes that it has that possibility  
10 then he is required to grant such relief as is calculated to  
11 achieve such competitiveness, recognizing that import relief  
12 is not the only tool here. And we have proposed giving him  
13 the additional tools which S. 1860 had proposed giving him.  
14 Antitrust relief, if he wants to propose financial  
15 assistance, and other kinds of governmental measures to  
16 improve the industry's competitiveness.

17 To the extent that he concludes this is not an industry,  
18 or some portion of this industry cannot become competitive  
19 again because perhaps of extremely high wage costs or other  
20 factors, then he cannot simply say he will take no action.  
21 Under our proposal, at a minimum in that case, he must grant  
22 trade adjustment assistance.

23 It was conceived by us that trade adjustment assistance--  
24 and we realize there is controversy in this committee and the  
25 Senate as to the utility of the current program, but we had



1 conceived of that as a means of at least telling industries  
2 where judgment had been made that they really did not merit  
3 import relief; that the government would help in making the  
4 transition from whatever the industry to other kinds of  
5 productive uses of those resources.

6 If the President concluded that an industry could become  
7 competitive, he could still decline to grant import relief  
8 under two circumstances. One is where he concluded that  
9 granting such relief would damage another domestic  
10 producer, and the second case was where granting import  
11 relief would damage the national security. Those would be  
12 the only two circumstances where, having concluded that this  
13 was an industry that merited import relief, he could still  
14 turn it down.

15 Senator Baucus. Len, where are you reading from?

16 Mr. Santos. Well, I've forgotten where I've referenced.  
17 The ITC remedy recommendation is item 2 on page 9. The  
18 Presidential decision making I've just referred to is item 3  
19 on page 10.

20 The Chairman. Mr. Holmer, don't hesitate to jump in.  
21 Mr. Holmer is the legal counsel for the Special Trade  
22 Representative, and to the extent that the Administration has  
23 comments or objections, why don't hesitate to make them.

24 Senator Chafee. Well, isn't the Administration opposed  
25 to this limitation of the President's powers?

1 Mr. Holmer. Senator Chafee, we are. Even under the  
2 staff proposal, we believe that the President does not have  
3 the kind of discretion that would need to be had in a few  
4 circumstances.

5 For example, there is no exception provided in the  
6 instance where the cost to consumers may be two, or four, or  
7 five billion dollars. It seems to me that ought to be a  
8 consideration made on whether or not there should be import  
9 relief provided.

10 There is no exception if the cost is going to be  
11 \$200,000 per job saved. It seems to me we should look at a  
12 situation also where, what do you do if import relief is  
13 going to cause the collapse of a foreign economy, that is  
14 going to cause the collapse of a major U.S. bank? It seems  
15 to me that is the kind of --

16 The Chairman. Say that again. If import relief --

17 Mr. Holmer. What do you do if, by imposing import  
18 relief at the U.S. borders is going to so directly hit a  
19 foreign economy, that it is going to cause conceivably--this  
20 is a hypothetical, understand--but could conceivably cause  
21 the collapse of that foreign economy, which could then cause  
22 the collapse of a U.S. bank, a major U.S. bank? Is that the  
23 kind of consideration that the President ought to take into  
24 account in determining whether or not he should grant import  
25 relief? We believe that it is, and that is why we believe

1 Congress was very wise in enacting Section 201 in the Trade  
2 Act of 1974 which let the President consider a wide range of  
3 factors.

4 Senator Heinz. Mr. Chairman, can we hear what the staff  
5 has to say about that?

6 Mr. Santos. Well, with respect to the cost to consumers,  
7 all import relief cost the consumer something. 201 is a  
8 provision of law which necessarily involves a cost to  
9 consumers. To the extent we have proposed something here  
10 which said that if the President concluded that import relief  
11 would cost something to the consumer, can turn down relief  
12 for that reason, we would have created an exception as large  
13 as the rule.

14 So it was our thought that we should not provide that  
15 kind of rationale to turn down relief. We think that the  
16 standard--that is, action which is calculated to achieve  
17 competitiveness of the industry following the period of  
18 relief--subsumes within it an analysis of the cost benefit  
19 analysis -- the cost benefit criteria.

20 The Chairman. You assume what?

21 Mr. Santos. That the standard that we have given for  
22 the President to act, that is, such action as --

23 The Chairman. Includes assumption of the consumer cost?

24 Mr. Santos. It does, because, Senator, to the extent  
25 that the cost to the consumer is unusually high--more than

1 the norm--as I said, all import relief involves some cost  
2 to consumers. So to the extent that it is unusually high, we  
3 think this might be a basis for the President to say, this  
4 is not an industry that can become competitive after five  
5 years, or however long the relief, because the difference  
6 between the level of protection needed to get this industry  
7 to a competitiveness level and the reality--the  
8 competitive reality; this is so great--that even after five  
9 years it cannot become competitive.

10 It is a factor in deciding that it is really not a case  
11 where an industry can ultimately adjust.

12 Senator Long. Mr. Santos, when Mr. Dent had that job as  
13 Special Trade Representative, he came there from being  
14 Secretary of Commerce. And he came to my office one time  
15 during the month before he left office in a change of  
16 Administrations, and he said to me that with regard to these  
17 shoes--and this is something he knew something about. He had  
18 been in textiles and knew something about the trade very  
19 well--he said that these shoes that they are buying over  
20 there in Italy, they are being put on a shelf and sold at  
21 the same price, or sometimes maybe 1 percent or something,  
22 just a pittance below the price of a U.S. shoe. He said,  
23 as a practical matter, the consumer is not getting any benefit  
24 out of that.

25 Now I have seen these estimates. And I don't know how

1 they are arrived at. I assume that they just smoke an  
2 opium pipe to get themselves in a mood.

3 (Laughter)

4 Senator Long. Then they come out with: This will cost  
5 us a million dollars to provide a \$10,000 job to an American  
6 citizen. I assume that that is the kind of way they are  
7 doing that type of thing.

8 Now do you just buy those figures that they give you?  
9 Do you just, off the top of your head, or where do we get  
10 some of these figures?

11 For example, I assume that they are going to tell us  
12 of an enormous injury to the American consumer that happens  
13 when they buy that thing overseas.

14 Now it looks to me like most of the injury is going to  
15 occur to that agent who is bringing that shoe in, and whoever  
16 is buying the foreign shoe and selling it. And pushing that,  
17 by the way, price it slightly below the U.S. shoe and push  
18 it as a foreign shoe. He doesn't want them to buy the U.S.  
19 shoe. He is going to make 10 times as much money by selling  
20 the foreign one.

21 Now is that suppose to be an injury to our consumers?

22 Mr. Santos. Well, Senator Long, when the Administration  
23 and the private industry come up with their estimates, I  
24 do not know precisely how they calculate it, but, in general,  
25 those who rely on imports for their living--retailers,

1 et cetera--are always opposed to import relief. It makes  
2 imports perhaps more expensive, and therefore, arguably  
3 diminishes demand for it.

4 Our concern was to write a provision, or at least to  
5 propose something here, that, on the one hand, made the  
6 standard for recommending relief much more focused, on the  
7 one hand, and on the other hand, did not permit the  
8 President to simply cite what is always entailed in import  
9 relief as a reason for not granting it. That was our reason  
10 for not proposing that consumer cost, as a separate issue, be  
11 a basis for turning down relief.

12 So I think we tried to respond to your concern, at least  
13 as I understand it, which is that there is always going to  
14 be someone out there who will scream about import relief,  
15 and to the extent an Administration wants to use that  
16 excuse, and to the extent the statute cites that as a basis  
17 for turning down relief, it is, in a sense, essentially  
18 making the statute meaningless.

19 Senator Heinz. Mr. Chairman, I just wanted to raise a  
20 point of clarification.

21 By the way, Russell, just to illustrate your point--and  
22 this is not my point of clarification--two years ago the  
23 President ordered import relief for steel, pursuant to an ITC  
24 recommendation. He rejected it and then put in his own  
25 voluntary restraint program. Particularly during the last

1 year, of course, the dollar has weakened substantially versus  
2 many of the steel importing countries, and so imports should  
3 be a good deal more expensive today than a year ago, or two  
4 years ago, and the price of steel is, however, 10 percent  
5 below today what it was two years ago, in spite of this  
6 import relief, which I think proves your point. It is very  
7 difficult to estimate with any accuracy--you have got a 50  
8 percent chance of being wrong--of exactly how the consumer is  
9 going to benefit.

10 You mentioned shoes. I had a little billboard of shirts--  
11 some made in Taiwan, some made in the Philippines, some made  
12 in Sri Lanka, some made in the United States--all Arnie  
13 Palmer brand Sears shirts, all still coming in a totally  
14 different prices to the importer, all being sold exactly at  
15 the same price at one of my favorite retailing stores.

16 Excuse me, Mr. Chairman, I just wanted to put in a word  
17 for --

18 The Chairman. Well, is the conclusion that the  
19 retailer will sell the product at the highest price the  
20 retailer can get for it regardless of where it came from?  
21 I assume the answer to that is yes.

22 Senator Heinz. It would be irrational for the retailer  
23 not to do so.

24 I wanted to add a question about the way this works isn't  
25 the staff's proposal. First, the President -- is it the

1 President or the ITC who has to make a judgment that all or  
2 a portion of the industry will be competitive? If someone  
3 decides that a portion of the industry cannot be competitive,  
4 what does that mean? Does it mean that if 10 percent of the  
5 firms cannot become competitive that that is the grounds,  
6 either for the ITC or for the President, to not order import  
7 relief?

8 Mr. Santos. For that segment of the industry, that would  
9 be a rationale that could be decided, yes.

10 Senator Heinz. For that segment of the industry.

11 Mr. Santos. That segment of the industry, yes.

12 Senator Heinz. But for the part of the industry that  
13 could become more competitive, the President has to look at  
14 that segment and make a determination as to the ITC, and the  
15 ITC similarly has made a segmented judgment.

16 Mr. Santos. Well, Senator, I think the way that -- let  
17 me step back and try to explain what we had in mind here.

18 Most industries have many parts to them. And Senator  
19 Danforth was citing the shoe industry. There is a great  
20 range in the pricing and the styling, et cetera, that  
21 determines the market for shoes.

22 My understand, for example, of the shoe case was that the  
23 ITC concluded that certain portions of that industry were  
24 well established and could become, and remain, competitive,  
25 and there were others that could not.



1 Now, if that were the conclusion of the ITC under our  
2 proposal, with respect to that portion of the industry if  
3 thought had a chance of surviving, in effect, it would have  
4 to recommend such relief as was appropriate to that segment  
5 of the industry.

6 With respect to the segment of the industry--a thought--  
7 really could not return to competitiveness, it would be  
8 obliged to recommend at the minimum trade adjustment  
9 assistance.

10 Senator Heinz. Just following up on that, let's assume  
11 I am an ITC commissioner. That is where the process starts.  
12 And I am looking at the industry, and I am saying, well, I  
13 can either look at this industry as having a few firms that  
14 we can never help and a lot of firms we can, or I can look  
15 at this same industry and say, if I have no import relief, a  
16 few firms will be competitive, the rest will not. I will  
17 not have any import relief for them, and for this 5 or 10  
18 percent of the industry, which either are or will be  
19 competitive because they are in some kind of special niche  
20 because they have got something special going for them.

21 They do not need any import relief because they are  
22 doing fine now; and, therefore, as an ITC commissioner, why  
23 can't I always find that import relief is not necessary to  
24 help an industry become competitive?

25 Mr. Santos. Well, in theory, that --

1 Senator Heinz. If I look at it that way. And does not  
2 the staff draft permit me to look at it that way?

3 Mr. Santos. Yes, it does permit you to look at it that  
4 way if you choose to. Yes.

5 Senator Heinz. I'll tell you, that is a really confusing  
6 way to look at it. Is that what you intended?

7 Mr. Santos. Well, you are asking me --

8 (Laughter)

9 Mr. Santos. Certainly not, Senator.

10 Senator Heinz. I don't mean that you intended to  
11 confuse us. I don't mean that at all. I mean, is that what  
12 the staff or you had in mind in drafting this proposal?

13 Mr. Santos. We really did not. That seemed to me, that  
14 description that you juave gave of a process, seemed to me a  
15 fairly disingenuous way to approach a determination. I mean,  
16 what we are trying to achieve here is to give, in effect, a  
17 subsidy through imposition of quotas or tariffs for some  
18 temporary period of time to give the industry a chance to  
19 recoup.

20 Senator Heinz. I think the problem can be addressed,  
21 but you have to--and we don't have any language--so it is  
22 hard to address it. But there has to be some qualification  
23 as to a significant portion of the industry, or there has to  
24 be some -- you cannot allow the decision to be made on a  
25 reductio ad absurdum basis because that is not what you

1 intend, I don't think. If we accepted this, it would be what  
2 we intended. I think that issue has to be addressed.

3 Otherwise, you do open possibilities for mischief that is  
4 unintended. But, frankly, some of us have seen some mischief  
5 on the ITC in terms of the interpretation of statutes that  
6 is, frankly, appalling from one or two members.

7 Thank you, Mr. Chairman.

8 The Chairman. Senator Bentsen.

9 Senator Bentsen. Thank you, Mr. Chairman.

10 Let me say a word just in defense of the staff and for  
11 their proposal on the escape clause.

12 The reason we invoke that escape clause is that we are  
13 trying to say that an industry that is not competitive on  
14 import competing products cannot make an unfair competition  
15 case. Now what we are trying to do in invoking it is to get  
16 them to make some positive adjustments that will make them  
17 competitive.

18 Now what we have had in the past is a standard for the  
19 ITC that is an impossible standard. The results are that the  
20 President does not take it seriously any time he gets a  
21 recommendation from the ITC on the escape standard, because  
22 the relief that is granted is often far more than a  
23 President can accept or should accept.

24 So what you are trying to do here is to give something  
25 that I think is much more pragmatic, much more feasible,

1 where the ITC would just be taking testimony on how to make  
2 that industry competitive and would it be competitive if this  
3 kind of relief is granted?

4 I think in that kind of an instance. the President is  
5 much more likely to take that kind of a recommendation  
6 seriously. I think he has to. In addition to that, as  
7 opposed to S. 1860 in current law, you are not talking about  
8 adding the staff over at ITC. You are not adding to the  
9 bureaucracy. They have got the staff to take that kind of  
10 testimony.

11 So I think it is an improvement and a step forward,  
12 Mr. Chairman.

13 Senator Heinz. Mr. Chairman, would you yield further?

14 The Chairman. Senator Heinz.

15 Senator Heinz. I don't necessarily agree with Senator  
16 Bentsen. But I want to be sure I understand the way this  
17 works. And we haven't had any hearings on this, and we  
18 haven't seen the language. And as we all know, in trade law,  
19 language is extremely important. But then what you have  
20 described so far, Len, and what the Administration has  
21 objected to, is a process where the ITC makes its  
22 recommendation--let's assume they make it on the right basis,  
23 taking into account the kind of discussion we had a moment  
24 ago--and goes to the President, and the comments you have  
25 made, as I interpreted them, have only to do with the

1 President either accepting the relief recommended by the ITC,  
2 or perhaps accepting them but imposing substantially  
3 equivalent relief. I don't know whether you allow him to  
4 impose substantially equivalent relief if he wants to change  
5 a quota from a tariff or a tariff to a quota. I don't know  
6 how the legislation works in that regard, whether he has got  
7 a rubber stamp of what the Commission proposes or not. But  
8 your idea is to pretty much lock him in, as I understand it,  
9 if competitiveness -- if he agreed on competitiveness being  
10 achieved.

11 What happens though if he says, I'm going to give  
12 substantially less relief than was recommended here. I am  
13 not going to give no relief. I am not going to give the  
14 exact same for substantially equivalent relief. (A) Can the  
15 President do that? And, (B) What, if any, constraints are  
16 there on him doing that under what you propose?

17 Mr. Santos. Senator, I just want to perhaps correct--and  
18 I realize that the spread sheet just does not say one way or  
19 the other, and that leads perhaps to a misunderstanding of  
20 what we had intended here--but what we had intended is to  
21 give the President total discretion based on a standard that  
22 is identical to the ITC standard, so that if the President  
23 decided that this is an industry that can become  
24 competitive, but he disagrees on the amount of relief  
25 necessary to achieve that, he is free to adopt that different

1 amount of import relief.

2 So, first of all, we do not actually lock, or we do not  
3 propose to lock the President in any specific sense other  
4 than in this sense, that he has the ITC judgments before him  
5 as to what is required, and to the extent he does something  
6 else, he will need to explain himself, because it is the same  
7 standard he has.

8 Senator Heinz. Yes. That is a little confusing because  
9 the spread sheet purports to say that if the industry can  
10 become competitive, and the President agrees with that, he has  
11 only two outs: national security or injury to a domestic  
12 producer.

13 You are saying, no, he has got a third out. Anything else?

14 Mr. Santos. Well, his out is that he disagrees with the  
15 ITC on two things, either that it can become competitive, or  
16 the amount of relief necessary to achieve it. So that if the  
17 President chose, for example, to grant quotas instead of  
18 tariffs, or tariffs instead of quotas, because he thought  
19 that was better calculated to achieve the results, even in a  
20 case where the ITC had recommended a different kind of import  
21 relief, he would be free to do that. But he would have to  
22 explain himself.

23 Senator Heinz. One last question. On the criteria  
24 seriously injure another domestic producer, is that -- could  
25 that domestic producer be in a different industry or do they

1 have to be in a same or related industry?

2 Mr. Santos. We conceived of it as being any domestic  
3 producer.

4 Senator Heinz. Of what? Of anything.

5 Mr. Santos. Of anything.

6 Senator Heinz. Presumably, that is to take into account  
7 some fellow who is selling fabricated products from, you know,  
8 a hypothetical example would be protection for a primary  
9 producer is being considered. Secondary producers, or  
10 fabricators, might have a tough time making it for import,  
11 and that would allow the President --

12 Mr. Santos. That is a clear case. Copper and copper  
13 fabricators was a case recently.

14 Senator Heinz. Mr. Chairman, I don't know quite what  
15 to think of the staff's draft. I am mulling it over. There  
16 is a lot of new information here. I would like to make this  
17 suggestion, that if the committee does decide to go in this  
18 direction, that we leave it as a second track, or, versus  
19 current law, a second track that a petitioner may elect--may  
20 elect. This is really experimentation at the last minute  
21 without the benefit of hearings. And I would hope that, in  
22 view of that, if we did decide to have this kind of procedure  
23 available--and there are some things that are appealing in it  
24 to me, and there are some things that I just have some  
25 questions about because it is so new--I would hope we would

1 agree that it would be as at the option of the petitioner to  
2 follow it so that we would not make a change in which has had  
3 modest benefit of analysis, discussions, hearings, and so  
4 forth.

5 The Chairman. Let me ask if I can, Len, or maybe  
6 Mr. Holmer, what kind of success have you had currently under  
7 201?

8 Mr. Holmer. I think that question really underlies what  
9 the Administration's position is on these amendments.

10 During the Reagan Administration, there have been 16  
11 cases that have been filed. Ten times the ICC found no  
12 injury, which meant there were six cases that went to the  
13 President for Presidential decision. Four of those six times  
14 the President provided very meaningful relief to motorcycles,  
15 specialty steel, cedar shakes and shingles, and in one  
16 instance outside of Section 201, in the carbon steel case,  
17 because of some legal technicalities, because of the bizarre  
18 nature of the ITC decision. Apologies to my ITC colleagues  
19 in the room.

20 The two instances where we went negative were copper,  
21 where the President found that the number of cooper  
22 fabricators jobs that would have been lost were far greater  
23 than the cooper miners jobs that would have been saved; and  
24 footwear, where the Administration found that the -- the  
25 President found that the consumers were going to have to pay



1 \$2 billion more, where there was going to be substantial  
2 retaliation, and where he concluded that import relief would  
3 not affect the competitiveness of the U.S. industry.

4 We add all that up and we don't believe that record  
5 would justify any fundamental changes being made with respect  
6 to Section 201.

7 Senator Baucus. Mr. Chairman.

8 The Chairman. Max.

9 Senator Baucus. Following up on that though, what is  
10 your experience with companies and petitioners filing  
11 adjustment plans, like how many have filed adjustment plans  
12 under 201, and what has your experience been? How many  
13 refilings, and based upon your experience with these clients,  
14 what can we do to help make this process a little better,  
15 work a little better?

16 Mr. Holmer. We have ITC representatives here who might  
17 be able to respond to that question for you, Senator Baucus.  
18 I am not aware of what the record is at the ITC in terms of  
19 the number of --

20 Senator Baucus. Well, I am just curious how many have  
21 filed and how well that worked, the adjustment plans.

22 The Chairman. Do you want to have somebody from the ITC  
23 answer?

24 Senator Baucus. If possible, yes.

25 The Chairman. Who is here from the ITC that can respond

1 to that question?

2 Mr. Holmer. Lynn Schlitt, who is the General Counsel for  
3 the ITC, is here, Mr. Chairman.

4 The Chairman. Good.

5 While I have got 10 people here, is there any objection  
6 to reporting Mr. Wells to be a member of the Tax Court?

7 (No response)

8 The Chairman. Without objection, we will report him out.

9 Ms. Schlitt. Senator, under the current practice,  
10 petitioners are not required to file adjustment plans. There  
11 have been several cases in which petitioners have come in and  
12 explained or described in greater or less detail their plans  
13 or hopes for adjustment for the domestic industry and ideas  
14 about how they intended to go about it as part of making a  
15 presentation to the Commission on seeking relief. But they  
16 are not required to, and there is not a standard for an  
17 adjustment plan to be provided.

18 Senator Baucus. I understand it is not required. My  
19 question is what has the experience been? How many have  
20 filed, and to what degree does that help petitioners with a  
21 favorable ITC ruling, and how well grounded and how  
22 substantive have these adjustment plans been, and how often  
23 have they repeated their adjustment plans?

24 Ms. Schlitt. Frankly, I just don't believe that, as I  
25 understand, generally as I understand an adjustment plan from

1 the bills that I have seen, that petitioners have filed them.  
2 I mean, they talk generally about plans, but in a number of  
3 cases--several come to mind; two or three over the last few  
4 years--but nothing that could be called a plan so much more  
5 as general ideas about what --

6 Senator Baucus. So you are saying there have been no  
7 significant adjustment plans filed. Is that correct?

8 Mr. Holmer. Senator Baucus, if I could speak more to the  
9 Presidential phase in this. If an industry has not filed an  
10 adjustment plan with the ITC, and the ITC does recommend  
11 import relief, the Administration has requested generally  
12 that the industry file an adjustment plan.

13 I can remember specifically the motorcycle case where  
14 there was a very positive adjustment plan and a positive  
15 experience; the specialty steel case; the carbon steel case;  
16 the footwear case, which was an unsatisfactory experience  
17 from the prospective of the footwear industry. But I do  
18 believe that through that process we have used the adjustment  
19 plan mechanism in order to assist the President to decide  
20 whether or not import relief would be warranted.

21 Senator Baucus. Based upon the Administration's  
22 experience then, do you recommend that plans be required or  
23 they be optional? Should we outline what the contents of a  
24 plan, what the plan should provide? What is your  
25 recommendation, based upon your experience with adjustment

1 Mr. Holmer, Well, we would certainly offer informal  
2 advice to any industry that wants to obtain import relief,  
3 that they would be well advised to provide an adjustment plan.  
4 We would want to leave it to the discretion of an individual  
5 firm or union as to whether or not they wanted to provide  
6 such a plan.

7 Senator Baucus. Why not require it? Wouldn't that  
8 help make the industry more competitive?

9 Mr. Holmer. Oftentimes, we find, Senator Baucus, that  
10 it is very difficult to get the industry together and to  
11 get the industry and labor together to be able to file one  
12 single plan.

13 Senator Baucus. Well that is all the more reason for  
14 requiring it. It would force them to get together a little  
15 more, don't you think?

16 Senator Heinz. Filing at what stage? When the petition  
17 is filed or after injury is granted? Or what stage are we  
18 talking about here?

19 Mr. Santos. We had proposed that it be submitted at the  
20 time the petition is filed.

21 Senator Heinz. Max, are you talking about have it filed  
22 at the time the petition is filed, or after there has been a  
23 finding of injury?

24 Senator Baucus. Well, frankly, my preference would be  
25 earlier in the process. I am not really addressing the

1 timing. I am more addressing the propriety and the degree  
2 to which a plan helps industry to become more competitive  
3 to adjust, and the degree to which it helps the ITC or the  
4 President to make a favorable decision to help make the  
5 industry more competitive.

6 Senator Heinz. Could I engage in a little dialogue on  
7 this, just a little bit?

8 I have given the question a lot of thought. And there is  
9 a kind of chicken and egg problem. The industry, which is  
10 labor and management in different firms, has an incentive to  
11 compose their differences and compromise if they can see some  
12 real relief for them if they do.

13 If they do not see any real relief, if there hasn't been  
14 an injury finding at a minimum and perhaps a tentative  
15 recommendation of relief, there is nothing for them to  
16 coalesce around. There is no pot of gold at the end of the  
17 rainbow or the journey. And as a result, it is very  
18 difficult, as I understand the -- what is being proposed  
19 here, to get a realistic adjustment plan, one that really  
20 does do all the things that you or maybe I would like them --  
21 like such a plan to do, vis-a-vis the industry and its  
22 component parts, submitted up front unless the industry has  
23 just about gone belly up already and the people are saying,  
24 my God, the last great chance we have. We've lost everything  
25 we've got, you know, let's throw the shoe at the ITC and see

1 if it drops. They have tried that.

2 I just have some real reservations about having them  
3 enter into a process that is very tough, very strict, without  
4 any assurance at all that they can get anything out of it,  
5 because there is a lot of discretion down the road here for  
6 the President.

7 (CONTINUED ON FOLLOWING PAGE, PAGE 31)

1           Senator Chafee. Mr. Chairman, I would like to ask  
2 Mr. Santos a question, if I might.

3           If I read the staff proposal, the only outs for the  
4 President are those listed on page 10; namely, it can't be  
5 expected to lead to competitive industry, it would undermine  
6 U.S. security, and it would seriously injure other domestic  
7 producers. Is that right?

8           Mr. Santos. That is correct, Senator.

9           Senator Chafee. And I think that the definition of  
10 U.S. national security is probably a pretty tight one. It is  
11 pretty hard for him to use that escape valve. National  
12 security, I presume, is defined; it's not something just in  
13 the President's mind. He can't use that as an excuse to  
14 veto an ITC decision on shoes, for example.

15           Mr. Santos. Well, Senator, I would actually -- we had  
16 a specific case in mind. There was a case in the Eisenhower  
17 era, when President Eisenhower turned down relief for the shoe  
18 industry because Spain had threatened to terminate certain  
19 base agreements with respect to the posting of U.S. military  
20 personnel.

21           Now, that seems to me to come pretty close to the kind  
22 of case where, if the President thought it was a serious  
23 enough threat, he could say that, but he would be forced to  
24 say that. I mean, part of the rationale here is that he  
25 state his reasons and state them with some precision so that

1 people who are involved can judge for themselves. So I  
2 think that is a case where he might have made that argument.

3 I assume, let us say with respect to high technology  
4 items on which the Defense Department relies on imposing  
5 import limitations --

6 Senator Chafee. But, in other words, what we are doing --  
7 I just want to understand what we are doing here. What we're  
8 doing is to say, "Mr. President, no longer can you use the  
9 escape valve of the effect of this on a foreign nation." The  
10 decision may wreck Bangladesh, but, since it doesn't meet  
11 any of these three, Bangladesh isn't important to our  
12 national security, so he can't -- that's that.

13 So we are taking that final discretionary power away  
14 from the President.

15 Mr. Santos. I think that's a correct interpretation,  
16 yes,

17 Senator Baucus. Would the Senator yield?

18 Senator Chafee. Yes.

19 Senator Baucus. I might add incidentally here -- Len,  
20 help me -- isn't there a case, maybe Spain or Canada, where  
21 a country decided to protect its footwear industry on the  
22 basis on national security because the soldiers had to have  
23 shoes?

24 Mr. Santos. Sweden. Sweden has done that a number of  
25 times, said that they needed a shoe industry and therefore



1 imposed import limitations on national security grounds.

2 Senator Baucus. I'm just suggesting that presidents  
3 and countries, if they want to, can broaden that definition  
4 of national security very widely.

5 Mr. Santos. They can, although our purpose in  
6 narrowing the criteria was not to encourage disingenuous  
7 interpretations of the criteria.

8 We were trying here, Senator, to focus, as I said, this  
9 analysis much more precisely. As we interpreted the mood of  
10 this Committee, it was that a number of domestic industries  
11 were being permitted to disappear and that the rationale for  
12 that was a kind of a general predisposition against import  
13 relief for all of the usual reasons that are cited: cost to  
14 consumers, foreign economic interest. We tried to respond to  
15 that in this proposal by narrowing the analysis for the  
16 President on the one hand and making the standard a little  
17 tougher for the industry on the other.

18 Senator Chafee. Well, let me ask you a question. You  
19 pointed out that some of the things you don't have are the  
20 considerations of the cost to the consumer. Yet it seems to  
21 me that's pretty important. Why did you leave that out?

22 Mr. Santos. Well, Senator --

23 Senator Chafee. And I heard what Senator Long said  
24 about trying to calculate what is the cost to the consumer  
25 and I don't agree with what the Senator said. I think you can

1 calculate. I think that there are -- now, maybe these  
2 figures that are tossed around about the import of low-cost  
3 shoes and what the consumer saves are ephemeral, I don't know.

4 Mr. Santos. Well, two parts to the answer: The first  
5 part is that we did not want to create an exception, a  
6 rationale for turning down relief that was as large as the  
7 basis for granting it. In other words, since all import  
8 relief does represent a cost of some sort to a consumer, we  
9 felt that separating that out as a basis for declining to  
10 grant import relief would be to grant such a large exception  
11 that essentially it could be used at any time by any president  
12 for any reason. And our purpose here is to try and force a  
13 somewhat more rigorous analysis.

14 Now, as to the second part of the question, is this a  
15 factor in this proposal? It is, I think, in the extreme case;  
16 that is, in the case where import relief is unusually  
17 expensive, I think it would be a factor in deciding that this  
18 is an industry that simply does not have the prospect of  
19 returning to competitiveness. Because the more expensive the  
20 relief, the less likely this is an industry that can become  
21 competitive. The two are sort of inversely correlated. And  
22 so our thought was in extreme cases, it would be a factor in  
23 the basic standard that we've set out here.

24 Senator Chafee. Am I correct in saying -- my last  
25 question -- am I correct in saying that the argument over 201

1 is an argument over the President's discretion?

2 Mr. Santos. I think that is correct. I would add to  
3 that, it is an argument over arbitrariness, I think, in part.  
4 Not just discretion, but the kinds of reasons that presidents  
5 use in saying no or yes. And the preception, I think, is that  
6 it has become a politicized process; that where it's  
7 convenient to grant import relief for politically important  
8 reasons, presidents will grant import relief, whether or not  
9 that's a case that merits import relief on the basic economic  
10 factors, and that in other cases they will turn down import  
11 relief even where it may be merited but the politics of it  
12 aren't right.

13 What we were trying to do here is try to narrow the focus,  
14 the analysis, so that the politics of a situation will be a  
15 little less of a factor. Clearly, we have not eliminated  
16 that, and we didn't intend to eliminate it. We have, as I  
17 said, retained considerable discretion; we've just given him  
18 fewer reasons, more specific reasons, for saying no.

19 Senator Chafee. Okay. Well, if you disagree with the  
20 decision, it's an arbitrary one.

21 (Laughter)

22 Senator Chafee. Thank you, Mr. Chairman.

23 Senator Bentsen. Mr. Chairman.

24 The Chairman. Isn't, though, what we're trying to have  
25 is a much more feasible objective? And there are a lot of

1 industries in our country -- not a lot, but some -- that  
2 unfortunately are never going to be competitive again and  
3 they ought to be allowed to die out, and to go to the extent  
4 that is required under the present law to see that they suffer  
5 no injury. What's the standard there that's an arbitrary  
6 high standard that's entire too expensive and --

7 Mr. Santos. The ITC has asked to recommend relief that  
8 will remedy the injury, remedy the injury.

9 Senator Bentsen. And that's a standard that is just so  
10 high, our President just laughs at it, he scoffs at it, he  
11 does nothing about it, he dismisses it. And here, what our  
12 objective should be is, if we can be competitive, with a bit  
13 of time and a substantial capital investment, then we ought  
14 to keep those jobs here and we ought to try to see that that  
15 industry has the temporary protection that it needs.

16 It seems to me that that's a much more realistic  
17 standard. You never get the politics out of it, but it's a  
18 standard that has a productive end for our country, and,  
19 frankly, I think it's a substantial improvement, improvement  
20 over 1860, improvement over current law.

21 Mr. Santos. I would just point out -- I know we've gone  
22 on here about this issue -- but one problem with the ITC  
23 recommendation right now is that in a sense it is a higher  
24 standard than the President has asked to judge, so that what  
25 happens is that ITC recommendations come down and then the

1 President is put in the position of looking as though he is  
2 not following the ITC recommendation based on an adjustment  
3 question. The ITC is not asked to really look at adjustment.  
4 That is not their primary function. Under our proposal, it  
5 would be their primary focus of their analysis.

6 So we have tried, as I said -- in many ways, our  
7 standard is a little tougher for industries, but once they  
8 meet it, once the ITC concludes that it meets that standard,  
9 once the President finds that, then we do sort of push the  
10 process along in favor of the industry.

11 The Chairman. If it was not answered when I was out,  
12 Mr. Holmer mentioned the \$2 billion saved -- I can't remember  
13 if you were referring to shoes or not -- and I was curious  
14 about Senator Long's question about the fraction of a  
15 difference and the consumers don't save anything, and I do  
16 recall seeing the shirts passed around, one made here, one  
17 made in Taiwan, and selling at the same price here.

18 How do you come to that \$2 billion saving? What  
19 presumption do you make about lower sales prices because of  
20 the imports being cheaper?

21 Mr. Holmer. Oh, there are a variety of econometric  
22 models that are used by the Council of Economic Advisors or  
23 the Commerce Department or private consulting groups that  
24 have some range as to what the overall cost is going to be,  
25 and normally the Administration will take a number that's

1 relatively in the midpoint to try to make sure that it's  
2 somewhere close to what the reality might be.

3 It is the best economic guess that the economists can  
4 make.

5 Senator Long. Let me just touch on that for a second.

6 Now, you can find places where you can get the help --  
7 that is, the manpower and womanpower -- fifty cents an hour  
8 or sixty-five, something like that, over in Asia. For example,  
9 if you're trading with Red China, I assume that that being a  
10 Communist nation, aren't they pretty much still engaged in  
11 state trading? Most Communists nations are. Are they?

12 Mr. Holmer. I believe that's correct, Senator.

13 Senator Long. Now, I think whether you trade with them  
14 or somebody else, you could make a deal with them, minus --  
15 those who would say, "Well, no, it's got to all be" -- well,  
16 that general agreement on tariff and trade; minus that, you  
17 could make a deal with all kinds of people, say, "Well, here,  
18 we'll buy it from you and take advantage of your low wage  
19 costs provided you buy something from us." Now, any time we  
20 do that, your people are going to oppose it on the basis that  
21 you've got this deal over there with GATT, that you won't  
22 ask for anything in return, isn't that right?

23 Mr. Holmer. That we won't ask for anything in return?

24 Senator Long. Well other than the trade -- that either  
25 they trade with one of the GATT partners or strictly on a

1 matter of price and nothing else. Isn't that about the  
2 size of it?

3 Mr. Holmer. Well, one of the fundamental parts of the  
4 GATT is an agreement that you won't have quotas except under  
5 certain exceptions and that --

6 Senator Long. Well, that you won't favor --

7 Mr. Holmer. -- and that you won't favor one country  
8 over another.

9 Senator Long. You won't favor anybody who gives you a  
10 break, basically, you know, anybody that favors you. Right?  
11 I mean, that's what we're talking about, right?

12 The Chairman. Wait a minute. You won't favor anybody  
13 that favors you?

14 Senator Long. Let's say if you buy something from  
15 Red China, that you aren't going to ask them to buy something  
16 from you in return.

17 Mr. Holmer. Well, no, the agreement is that if a foreign  
18 country grants a concession to another foreign country, they've  
19 got to grant the same concession to us, and vice versa.

20 Senator Long. Well, it all works out to the same thing,  
21 as I see it. You aren't going to ask them to buy anything  
22 from you when you're buying from them. Isn't that right?

23 Mr. Holmer. Well, private party purchases are not  
24 covered by the GATT rules.

25 Senator Long. Well, you're finding a lot of ways of

1 ducking the question.

2 (Laughter)

3 Senator Long. I mean, it's the same thing with the GSP.  
4 I mean, I've been trying to say, well, look, when you got  
5 down here and give these people special preference, they get  
6 an advantage coming into our market that others don't receive.  
7 Your people say, "Oh, that violates the GATT," for us to ask  
8 anything in return." I mean, that's the same thing in  
9 trading with a Communist country, isn't it, that your people  
10 want to -- "Oh, no, the GATT agreement won't let us ask  
11 anything in return when we go over here and say, well, we'll  
12 give all these countries an advantage."

13 Mr. Holmer. Well, there is a GATT issue, but I think  
14 we passed that threshold in the 1984 Trade Act when you  
15 directed and we are implementing a very detailed program  
16 where we are extracting concessions from the beneficiaries  
17 of the GSP program, and we are doing it very aggressively.

18 Senator Long. Well, now, why shouldn't we do the same  
19 thing when we're trading with Communist countries? As far  
20 as they're concerned, they're willing to barter with you,  
21 make all kinds of deals with you, but basically -- there's  
22 nothing in their trading that says that if you'll buy from  
23 them, that they'll buy something from you. There's nothing  
24 in their way of doing business that contradicts that.

25 But my understanding is, based on what you're telling me



1 here -- if I get an answer at all to the question -- is that  
2 we can't trade with them that way because it's against the  
3 general agreement on tariff and trade for us to say, "Well,  
4 look, here's something we'd like to see and we'll buy from  
5 you if you'll buy from us."

6 You say an individual could do it.

7 Mr. Holmer. Well, an individual could, and most of the  
8 Communist countries are not members of the GATT and therefore  
9 we have some additional flexibility in dealing with them that  
10 we would not have with respect to GATT signatories.

11 Senator Long. But we can't make a deal with them,  
12 government to government, that, "Here, we'll buy this from  
13 you if you'll buy from us." The government can't help you.

14 Mr. Holmer. I'm not sure if that's accurate, Senator.

15 Senator Long. Well, would you tell us something that  
16 is accurate, then? I mean, I assume you're here to inform  
17 us. What can you tell me about that?

18 Mr. Holmer. Well, Senator, the heart of the issue that  
19 you're getting at is most-favored-nation treatment, which is  
20 the heart of the GATT, and it is accurate that if we do grant  
21 some concession to one GATT signatory that is preferable to  
22 what we give to the others, they have a right to come to us  
23 and say, "Give us the deal you gave to them"; the same way  
24 we have a right to go to them and say, "If you give somebody  
25 else a deal that's better than what you've given us, we have

1 a right to have you give us the same deal."

2 The Chairman. Well, how does that work out when the  
3 Common Market gives North Africa preference on citrus and we  
4 ask for the same thing?

5 Mr. Holmer. We take them to the GATT and we win and we  
6 get a settlement that is of significant benefit -- not  
7 perfect from our perspective, but significant benefit -- to  
8 our orange and lemon exporters and those of some other citrus  
9 exporters in the U.S.

10 Senator Long. How do we go about trading with Russia  
11 and other non-market countries? How do we trade with them?  
12 We sure don't trade according to GATT rules, do we?

13 Mr. Holmer. Well, normally the trade is done on the  
14 basis of private decisions made by private companies or  
15 individuals in the United States working with the appropriate  
16 party in that Communist government or in that Communist  
17 country.

18 Senator Long. Well, you just find a way of getting  
19 around a deal, then. For example, if someone wants to sell  
20 something to the Communist country and buy something in  
21 return, what does he do? He goes and makes his deal, and then  
22 what does this government do to help fulfill its part?

23 (Pause)

24 Senator Long. Mr. Santos, can you help me with what  
25 I'm trying to find out here?

1 Mr. Santos. Well, I think what you're asking is why  
2 can't the U.S. Government seek to obtain better access for  
3 U.S. goods in Communist, non-market countries by conditioning  
4 their access to our market on obtaining that access. I think  
5 that's your question.

6 And I think, in general, with respect to non-GATT  
7 signatories, there is nothing to prevent it under  
8 international rules. The problem is that the U.S. Government  
9 in general is not in the business of selling and buying  
10 products on behalf of its companies.

11 So I think it's a philosophical question as to whether  
12 this Government should in effect intervene on behalf of its  
13 companies to achieve certain advantages for them. But under  
14 the GATT rules, since these countries are mostly outside of  
15 the GATT, there's nothing to prevent it.

16 Senator Long. Mr. Lang, can you give me any help on  
17 that matter?

18 Mr. Lang. I think so, Senator. Some Communist  
19 countries receive most-favored-nation treatment from the  
20 United States: Poland, Hungary, Yugoslavia, China. Others  
21 do not, and most of them are not members of the GATT.

22 When a Communist country applies to be a member of the  
23 GATT, since they don't have a price system and they don't  
24 have a market system, generally what we have done in the past,  
25 and presumably would do in the future, is simply negotiate

1 market shares with them. These agreements are expressed in  
2 protocols to the GATT and, since the trade is so small, we  
3 haven't focused too much attention on it in the Committee.

4 When you get to the problem of a Communist country  
5 exporting significantly to the United States -- for example,  
6 China in textiles -- generally what we do, again, is work  
7 out some kind of quota agreement. With China we have a  
8 textile quota agreement, a bilateral agreement, that limits  
9 the amount of access that China has to the United States.

10 I am not aware of the United States Government ever  
11 having a program of engaging in barter with Community  
12 countries, but it is clear that in the private sector most  
13 trade with Communist countries is conducted essentially on a  
14 barter basis. And for that reason, a lot of American  
15 countries have set up subsidiaries that are in the business  
16 of marketing products from socialist countries, because if  
17 they didn't find a market for those products, they couldn't  
18 sell anything to those countries.

19 So, in effect, the private sector does some of what  
20 you're suggesting the Government could do, but, of course,  
21 it's at less advantage to the American economy.

22 Senator Long. Well, we find a way to do it and pretend  
23 we don't know about it, I assume.

24 Mr. Lang. Right.

25 Senator Long. Okay, thank you.

1           The Chairman. Do you remember the circumstance --  
2 this is may 10, 12 years ago -- when we had the Polish golf  
3 carts coming into this country? This is not a joke. They  
4 were marking golf carts, but the problem was we had no market  
5 price in Poland because there were no golf courses, they don't  
6 use them in Poland, and we didn't know what it cost to make  
7 them because they didn't have any market economy, and we had  
8 a dickens of a time trying to figure out what they were worth  
9 in Poland assuming they were sold in Poland under a market  
10 system.

11           I can't remember how we resolved it. Do you know if  
12 they're still selling golf carts in this country?

13           Senator Heinz. ...

14           The Chairman. Go ahead.

15           Senator Baucus. Mr. Chairman, if I might ask a  
16 question on -- I think it's on page 10, under 3, it's the  
17 conditions under which the President may decline to grant  
18 import relief under the staff proposal. One is where such  
19 action would seriously injure another domestic producer.

20           I'm just wondering what that means, because it seems  
21 arguably any action taken under 201 where the President grants  
22 relief is going to adversely affect another domestic  
23 producer.

24           It's a consumer question, to some degree again, and I'm  
25 wondering just what the provision means. How serious must the

1 injury be? Must it be more serious than the injury to the  
2 primary producer, or as serious? I'm just curious as to  
3 what's contemplated here.

4 Mr. Santos. I think what we had in mind here was a  
5 fairly high standard of injury. The 201 provision now  
6 contains the words "serious injury" and we would, in effect,  
7 ask that the ITC and the President follow that same standard.

8 This is not sort of the routine injury that is the  
9 result of any import relief. We're talking about a case,  
10 for example, in the case of copper, I think we were thinking  
11 about that case, the President declined to grant import relief  
12 because granting import relief to the copper producers would  
13 have thrown a lot of people out of work in the copper  
14 manufacturing fabricating segment.

15 So that's the kind of standard we are thinking about.  
16 "Serious injury" is meant to be more than routine injury.

17 Senator Baucus. What if the primary applicant's injury  
18 is very serious and the secondary industry damage is serious?

19 Mr. Santos. Well, this is a question for the President  
20 to decide. He may cite injury, serious injury, to a domestic  
21 producer as a reason for not granting relief. It doesn't  
22 mean that in such a case, he may not grant relief. He may  
23 still choose to grant relief even where it does seriously  
24 injure another domestic producer. It's a question for him --

25 Senator Baucus. And even though the injury there is

1 less serious than it is to the applicant, if no relief were  
2 granted.

3 Mr. Santos. Well, the word "serious" is the same  
4 standard that appears with respect to the petitioner's case  
5 before the ITC, so --

6 Senator Baucus. I know the word's the same. I'm  
7 wondering about the application.

8 Mr. Santos. Well, we tried to use the same word  
9 because we wanted it to have the same meaning.

10 Senator Baucus. What I'm getting at is what's intended,  
11 how much latitude?

12 Mr. Santos. We intend the President to have latitude.  
13 We hope he'll interpret it reasonably.

14 Senator Baucus. Thank you.

15 The Chairman. Further comments?

16 (No response)

17 The Chairman. Go ahead, Len.

18 Mr. Santos. The next section of the spreadsheet begins  
19 on page 15. It's entitled "Negotiating Authority for Trade  
20 Agreements." Most of this falls under the category of  
21 so-called new round authority, although, in the staff proposal,  
22 we have proposals not only on multilateral negotiations, but  
23 also on bilateral negotiations, so this is not strictly a  
24 new round provision.

25 The essence of the staff proposal is take the position

1 that until the President asks for fast-track authority,  
2 Congress should not grant it. That is the essence of it.  
3 The existing fast-track authority expires January 3, 1988.  
4 The President is said to be interested in fast-track  
5 authority, but there has never been an explicit request for  
6 such authority.

7 So what we have done is divide this section into two  
8 different portions. The first is a --

9 The Chairman. Let me ask you something here. We should  
10 not grant fast-track authority because he hasn't asked for it.

11 Mr. Santos. That's one reason.

12 The Chairman. Are you suggesting if he does, we should?  
13 I mean, if that's --

14 Mr. Santos. We are proposing --

15 The Chairman. If Mr. Holmer simply says, "We want it,"  
16 do we grant it?

17 Mr. Santos. No. Under our proposal, we grant it under  
18 certain circumstances, and we do set out the circumstances.

19 But to start first with the situation we're in now,  
20 this fast-track, of course, is a question of the Senate rule.  
21 We're talking here about a question of what procedures will  
22 be followed in the Senate and in this Committee when a trade  
23 agreement is submitted for approval. We're not talking about  
24 the question of whether there should be a negotiation,  
25 whether a new round is a good idea, whether the issues should



1 be resolved in a new round. With respect to those issues,  
2 we would propose a section in the bill which would say that  
3 Congress supports the concept of multilateral trade  
4 negotiations, we think that they can achieve useful things  
5 for the U.S. economy, and so on and so forth. So there would  
6 be that statement.

7 But with respect to the procedure which would be used  
8 to implement agreements which may be reached in such a  
9 setting, the staff proposal is that such procedures -- that  
10 is, the fast-track -- not be made available for implementation  
11 unless the following events occur: The first is the President  
12 submit a request asking for the fast-track procedure and that  
13 that request be accompanied by a document containing three  
14 elements. The first would be a detailed statement of the  
15 trade policy of the United States. By that we do not mean  
16 generalizations; we mean fairly industry-specific approaches  
17 to trade for --

18 The Chairman. For all of the industries of the United  
19 States?

20 Mr. Santos. Well, our view would be that certainly for  
21 the major portions of this economy, that this would be  
22 responsive to the complaints that we've heard members make  
23 to the effect that there is no trade policy in this  
24 Administration. We don't judge that question in here. We  
25 simply say, state what it is with some specificity, for

1 import-sensitive industries, for high technology industries,  
2 whatever the logical breakout might be. We're not talking  
3 about the thousands of TSUS categories here. We're talking  
4 about the major -- agriculture, manufacturing --

5 The Chairman. TSUS?

6 Mr. Santos. I'm sorry, tariff schedules of the United  
7 States. There are thousands of breakouts in there; we don't  
8 propose that level of detail.

9 But certainly we propose more than a generalized  
10 statement of policy.

11 And, incidentally, this statement of policy would include  
12 a statement of exchange rate policy, a statement with respect  
13 to debt and its effect on trade. What is this Administration's  
14 policy? And presumably it wouldn't be just this  
15 Administration; it might be a future Administration's policy.

16 So the statement of policy is intended to be a fairly  
17 comprehensive document which responds to the concern of many  
18 members, either that there isn't a policy or they don't like  
19 the policy in place.

20 The second portion of the document would be a statement  
21 again explaining how this generalized policy relates to the  
22 multilateral round of trade negotiations; again, a rationale.  
23 Why does it serve U.S. interests? How do we expect to achieve  
24 our objectives? Not revealing any secret strategy, but at  
25 least setting out for Congress, for the American people, a

1 clear view, some vision of what this process is supposed to  
2 achieve.

3 And the third element would be some evidence, whether it  
4 be in the form of agreements or any other way in which the  
5 Administration thinks it can submit evidence, for the  
6 proposition that major industrialized countries -- and here  
7 we have primarily in mind the Japanese and the West Germans --  
8 that major industrialized countries that have relatively  
9 good economic circumstances are going to contribute to  
10 balance world growth through increases in their share of  
11 non-petroleum imports.

12 The staff proposed this simply because it is, I think,  
13 accepted wisdom now that in the absence of growth in the world  
14 economy, in the absence of increased imports in other  
15 economies from us and from elsewhere, there is some question  
16 as to whether the system itself can survive. We think this  
17 is an appropriate thing for the President to focus on at the  
18 outset of the multilateral negotiations.

19 The Chairman. Let me make sure I understand.

20 Let's say the President wants to submit to us fast-track  
21 authority to enter into negotiations for a free trade  
22 agreement with Venezuela. Before he can even ask that, he  
23 has to set forth in some detail our trade policy, get some  
24 kind of an agreement from Japan and Germany that they will  
25 increase their imports or inflate their economy or something,

1 and what else? Before we can grant him fast-track to  
2 negotiate with Venezuela?

3 Mr. Santos. The concept here is that fast-track  
4 authority is available once it's granted for both bilateral  
5 purposes and multilateral purposes. So once available in  
6 three-year segments -- and we propose it be made available in  
7 three-year installments, so to speak, for up to a total of  
8 nine years -- once it's available, then the President could  
9 come forward and say, through this pre-clearance process that  
10 we used in the case of Canada, he could say, "I propose to  
11 negotiate a free trade agreement with Venezuela and I would  
12 like to take advantage of the fast-track procedure which has  
13 been made available, which I expect to have made available to  
14 me when I submit this request, and I ask Congress to give the  
15 pre-clearance necessary to take advantage of it."

16 So the bilateral part of this is a separate -- there is  
17 a separate procedure to initiate bilateral trade negotiations,  
18 but the fast-track is only available if it is agreed to as  
19 part of a multi-lateral round. So, in a sense, you're right.

20 The Chairman. A bilateral fast-track would not be  
21 available at all unless the multilateral fast-track has first  
22 been agreed to.

23 Mr. Santos. That's correct.

24 The Chairman. Even though that is not being used.

25 Mr. Santos. That's correct. The thought here is

1 essentially this is an extraordinary grant by Congress;  
2 that is, Congress gives up two very important prerogatives:  
3 the right to debate legislation at its -- as long as it wishes,  
4 and the right to amend legislation. Fast-track, in a sense,  
5 precludes both. It says that within a time certain, Congress  
6 must act, and that it must act without amendment, and that  
7 struck us as a fairly extraordinary grant of power which  
8 should only be conceded to the President when Congress is  
9 satisfied with whatever representations it's asked him to  
10 make.

11 Senator Long. Let me just speak to that for a second.

12 With regard to a senator representing a state where  
13 they have a problem and he knows that the Administration is  
14 not sympathetic to his position so those problems tend to  
15 get a lot worse, and know that in all probability, by the  
16 time the negotiating spokesmen of this country get through  
17 and bring it back in here, that, under that fast-track, once  
18 that was agreed to, that that's a death sentence as far as  
19 some industry in his state is concerned. If he wants to  
20 defend them, he'd better start fighting when that fast-track  
21 proposal comes up, because, from that time on, he's dead.

22 Do you understand that, Mr. Santos?

23 Mr. Santos. Yes, I do, sir.

24 Senator Long. So that that's his only chance. So  
25 that -- now, I sometime analyze this problem and thought,

1 well, even as a member of the Committee, if I didn't think  
2 I was going to be able to support that bill, I'd better be  
3 careful before we agree to the fast-track.

4 But I found myself thinking as far as senators out  
5 there who have seen what can be done to them with a fast-track,  
6 if that thing's amended, it will be amended right here in  
7 this Committee. It's not going to be amended on the floor.  
8 In other words --

9 Now, the experience we had when we operated on a fast-  
10 track, the first time we used it with Mr. Straus, we met  
11 right here in the Committee just as though we were passing a  
12 bill and the special trade representative agreed with us --  
13 to go along with what the majority of us recommended. So we  
14 were in position to have our day in court here in this  
15 Committee and the senators pretty well gave one another the  
16 benefit of the doubt when they had amendments to offer.

17 But it's one thing -- senators may be able to protect  
18 themselves on this Committee in a fast-track arrangement, but  
19 some fellow out there on that floor who has a serious  
20 problem could be an idiot to just sit there and let that  
21 thing go through. Isn't that about the size of it?

22 Mr. Santos. There is no question that the fast-track  
23 diminishes the opportunity for amendment by non-Committee  
24 members.

25 Senator Long. When we're in the process of passing

1 that fast-track, he can stand there will hell freezes over  
2 and have a chance to win, but once that's agreed to, he's  
3 pretty well dead. Here's an agreement, the President's  
4 behind it, the Committee's behind it, all the free traders  
5 are behind it, and he's out there pretty well speaking for  
6 one state all by himself.

7 Mr. Santos. Well, Senator, I would like to respond.

8 There's no question that -- you're right, the fast-track  
9 does diminish the ability of any single member to either  
10 alter the agreement or block it, there's no question about  
11 that.

12 We thought we were responding, at least in part, to that  
13 concern by doing two things in this proposal. One is that  
14 that the concurrent resolution that we propose must be  
15 enacted in order for the fast-track to be available is not  
16 merely a resolution of this Committee or of the Ways and  
17 Means Committee, it is the resolution of Congress. So that  
18 members of Congress can vote on that in deciding whether to  
19 make the fast-track available.

20 The second thing is that these are granted in three-year  
21 installments. This is not a grant that is available for nine  
22 years and, when they come back nine years from now, it's  
23 either up or down. Each three -- at three-year intervals,  
24 the question is again before the Congress: Should we extend  
25 the fast-track authority beyond that?

1           To the extent that the President is being unresponsive  
2 to people's concerns in various areas, those would be the  
3 occasions in which to focus the pressure, the leverage. And  
4 so we've tried to build in some leverage without destroying  
5 the process. I mean, the concept of fast-track is that  
6 without it, no one is going to negotiate with the United  
7 States because essentially any agreement will become  
8 unraveled in the legislative process.

9           So we tried to balance those two considerations.

10          Senator Long. Well, to me it is just as simply as the  
11 old theory, does the end justify the means? I struggled  
12 around with that concept for many, many years. I finally  
13 concluded that it's all a matter of degree. In other words,  
14 it all depends on the extent of which -- really it's a matter  
15 of comparing the benefit to the cost of it.

16          Basically, what you're saying here is that if the fast-  
17 track is to be provided, that those who want it should carry  
18 the burden of proof to show that they need it and that the  
19 benefit would justify the cost of it. That's what we're  
20 talking about mainly. And you're proposing that those who  
21 want it should make the case.

22          Mr. Santos. That is what we --

23          Senator Long. Shouldn't happen automatic. And may I  
24 say, my experience has been as a senator here for 38 years,  
25 once you give the Administration the authority, even for a



1 week, they'll say that you set the precedent and that you've  
2 got to do it for them forever, that it's an insult to the  
3 President if you don't. And on this side, you'd better be  
4 careful in letting them get some of your authority, if only  
5 for 15 minutes, because from then on they'll say, "Well, you  
6 see, you did it for him, you've got to do it for somebody  
7 else. You did it under these circumstance, you've got to do  
8 it again; otherwise you're insulting the President," or  
9 some such thing as that.

10         There's no end to it once you've started, so that you  
11 better be careful.

12         Senator Danforth. Mr. Chairman, I think Senator Long  
13 has correctly stated the situation. It is very easy for  
14 Congress to lose control.

15         International trade is an area that has been expressly  
16 given to us by the Constitution, and under the Constitution,  
17 the Legislative Branch, the Congress, has responsibility for  
18 interstate and foreign commerce. It's our responsibility.  
19 Everything that the Administration has is delegated by us.

20         Now, in point of fact, what's happened is that we have  
21 created an ongoing relationship with the Administration, and  
22 we have had to do that. We can't manage trade policy day to  
23 day. We can't really -- say, last week when the Congress was  
24 in session, we couldn't very well have sent down members of  
25 Congress to have discussions with the other trade ministers.

1 We are not in a position to operate trade policy on a  
2 day-to-day basis. So we have to delegate something to the  
3 Administration.

4 The question is, do they ever come back to us? Do they  
5 ever give us the time of day? And if we were to just give  
6 them blank check authority to negotiate trade agreements,  
7 they wouldn't give us the time of day. I mean, forget about  
8 Congress. They have foreign policy objectives, they have  
9 things that don't concern us and our constituents that they  
10 have to take care of, so they wouldn't give us the time of  
11 day.

12 So the question is, how are these things worked out  
13 in practice? How can we delegate enough responsibility to  
14 the Administration so that they can handle the practical  
15 requirements of trade agreements and, at the same time,  
16 maintain some role for those of us in Congress?

17 And I think that that's what the staff has been searching  
18 for. Some kind of situation so that they ask us, we give them  
19 authority, we do so for a limited period of time, and we do so  
20 if they present to us some meaningful course that they are on  
21 and that they intend to follow.

22 Now, with respect to the policies of other countries,  
23 generally economic policies, expansion of their own economies,  
24 I think it's been well recognized by the Administration and  
25 by a lot of people in this country that our trade difficulties

1 are not related exclusively to specific sectoral trade  
2 problems, but that a large part of our trade problems are  
3 related to overall economic policies that are pursued in  
4 other countries.

5 If, for example, Japan builds its economy on exports  
6 and creates an economic program which discourages consumption  
7 at home, the only place they can go to sell goods is abroad,  
8 and that's what's happened.

9 So what the staff has done is to say, "How do you  
10 increase -- how can we in Congress increase the pressure on  
11 other countries to be responsible participants in an  
12 international economic community," what it amounts to. And  
13 I think that that's really an excellent idea, to try to give  
14 Congress some handle on policies which can make reasonable  
15 trade relations impossible. I really think the staff has  
16 done an excellent job in this suggestion.

17 Senator Long. Let me just make this one point and  
18 then I'll be through, Mr. Chairman. I just want to make  
19 this point:

20 When we gave that fast-track authority under the Carter  
21 Administration, Bob Straus was the special trade representative.  
22 He told us in this Committee that he was going to respect the  
23 views of the Committee and, when he brought his measure back  
24 in here, he expected to sit right with us and abide by what  
25 this Committee thought should be in that fast-track proposal

1 that came back. And when that matter went back to the Senate,  
2 not only was every member of this Committee ready to support  
3 it, but on that Senate floor it didn't run into one whisper  
4 of opposition. It didn't require a single speech being made.  
5 We could have just laid it down there and told anybody that  
6 wanted to make a speech to come put his speech in the record  
7 if he wanted to because there wasn't a single senator out  
8 of the whole hundred senators there who had any opposition  
9 whatever to that proposal, and that was because Mr. Straus  
10 had done one terrific job in going around and finding where  
11 the opposition was, satisfying all these people, and we didn't  
12 have any industry group to fight when they came back in with  
13 that proposition.

14 Were you around, Mr. Lang, do you recall that?

15 Mr. Lang. Yes, sir, I was.

16 Senator Long. So that was -- now, if you can do one of  
17 them like that, I'd say more power to you. But there was a  
18 case where every member of this Senate was satisfied that  
19 this was something that he was willing to go along with.  
20 Isn't that right?

21 Mr. Lang. Yes, sir, and you may remember that in at  
22 least one case, the Committee required the Administration to  
23 renegotiate an agreement -- it was the Government Procurement  
24 Agreement -- because it might have affected minority  
25 procurement programs of the government, and Ambassador Straus

1 renegotiated the agreement and brought it back before the  
2 time ran out.

3 Senator Baucus. Mr. Chairman?

4 The Chairman. Max.

5 Senator Baucus. Frankly, I think the points that Jack  
6 made are all very good. It just seems to me, as we grapple  
7 with this and try to find the right combination between  
8 congressional control and Executive control, it's a ver-  
9 difficult question.

10 It seems to me that we have to keep in mind, too, how  
11 dramatically the world is changing. If you look back at the  
12 time when the Constitution was drafted, it's clear to me that  
13 the reason the framers put control of economic policy, foreign  
14 and domestic interstate commerce, in the hands of the  
15 Legislative Branch is because it was basically an internal  
16 matter. And foreign policy has evolved to be primarily in  
17 the prerogative of the Executive Branch because foreign  
18 policy has basically been a political philosophy or political  
19 matters, it has not been economic policy in the main. But  
20 that is dramatically changing now, and it is putting a lot of  
21 strain, frankly, I think, on the Constitution.

22 I think as time evolves economic policy is going to more  
23 and more drive foreign policy. If you look at other countries,  
24 they tend to be either state trading countries or  
25 parliamentary countries where the executive and legislative

1 branch are more merged, they are more together. By  
2 definition they are more together because they are in effect  
3 one, it's one government, it's one policy. We don't have that  
4 in our country. We have a very definition bifurcation,  
5 division, split between the Executive Branch and the  
6 Legislative Branch.

7 I think that, as a consequence, that we in the Congress  
8 should tend to err on the side of getting the Congress more  
9 involved, because it is our responsibility to more directly  
10 control economic policy and also because I think we have to  
11 just protect ourselves and help encourage the Administration,  
12 any administration, to think more about economic policy than  
13 it has in the past.

14 Now, Bob Straus performed a terrific service. That was  
15 in part because, even though he is an Executive Branch  
16 official, he had the imprimatur of the Executive Branch, and  
17 we all knew he was the Executive Branch for all intents and  
18 purposes in negotiating a new GATT round.

19 There are various ways to skin a cat here. If  
20 Ambassador Yeutter is another Bob Straus, or if there's  
21 somebody in the Administration who is another Bob Straus  
22 who is the Administration on these matters and we know speaks  
23 for the Administration, well, that tends to accomplish our  
24 purpose of the merger or the coalescence or the synthesis of  
25 of the two branches of government. But we don't know that

1 there's going to be another Bob Straus around -- and we hope  
2 that there are, in that sense, anyway -- but in the meantime,  
3 because we don't know that for sure, it seems to me, as we  
4 grapple with the basic question of how to resolve these two --  
5 these conflicts and this tension between the two branches of  
6 government, because economic policy in the future is going  
7 to more drive foreign policy, I think, anyway, we should tend  
8 to err on the side of bringing the Congress a little more  
9 directly involved in these processes.

10 Senator Chafee. Mr. Chairman?

11 The Chairman. Senator Chafee, go ahead.

12 Senator Chafee. Mr. Chairman, I just want to say that I  
13 think the fast-track procedure has been successful, and whereas  
14 there might be occasion to review it, as Senator Baucus has  
15 suggested, with a view of the input of the Congress, I think  
16 we ought to bear in mind that, absent the fast-track  
17 procedure, I don't think we'd get these agreements approved.  
18 And I think that it's a tribute to Congress that we passed a  
19 fast-track procedure and thank goodness we did.

20 And it's true that when we passed those GATT, even when  
21 Bob Straus was here, and I was here at the time, the excellent  
22 job he did, we were under less pressure from the trade  
23 deficits. I don't know what the trade deficit was then.

24 Do you know, Mr. Lang? I suspect may 30 or \$40 billion --

25 Mr. Lang. Right.

1           Senator Chafee. -- something in that neighborhood, and  
2 this year it's going to be \$170 billion.

3           But I think what -- one of the problems we're running  
4 into here today in the whole discussion of this trade bill  
5 and the whole atmosphere of the trade discussions overall,  
6 not just here, but in the nation, is that somehow the view  
7 is coming to the fore that the problems with our trade  
8 deficit result from our trade laws. And I think our trade  
9 laws are a minor portion of the problems in our trade  
10 deficit. And, indeed, when we had the testimony here on  
11 the tax bill and in connection with this legislative, every  
12 economist who didn't agree on anything, every economist came  
13 and agreed that whatever we did on taxes and to a degree on  
14 trade were really the most important factor, that was minor  
15 compared to the value of the dollar, for example, or the  
16 interest rates, all of which stem back to the deficit that  
17 we're running in this country.

18           So that I would hate to see us, because we're concerned  
19 about \$170 billion trade deficit, figure that we're going to  
20 attack this problem through the trade laws and we're going to  
21 tighten up on everything and we're going to cut back on the  
22 President's discretion, we're going to change the fast-track  
23 procedure, because we want to get rid of that trade deficit.  
24 And instead, I think what we ought to be doing around here is  
25 paying attention to some of these other factors. We can't even



1 get a product liability bill up to discuss on the floor,  
2 never mind vote on it. We can't even get to talk about it.  
3 There's a filibuster on that very subject that would help  
4 reduce the cost of producing our goods which would help make  
5 us more competitive. And the Foreign Practices Act -- now,  
6 I understand that that is in the bill. Is that right,  
7 Mr. Santos?

8 Mr. Santos. It is a title in S.1860, yes.

9 Senator Chafee. That the Banking Committee has now  
10 brought that forward.

11 Mr. Santos. That's correct.

12 Senator Chafee. And is it the original bill that we  
13 passed here about three or four years ago?

14 Mr. Santos. My understanding is that it's very similar  
15 to the provision in S.1860. I --

16 Senator Chafee. Well, thank goodness.

17 Senator Heinz. I would like to respond to that.

18 Senator Chafee. Well, I'm in full flight now and --

19 (Laughter)

20 Senator Chafee. I'll let you --

21 Senator Heinz. The answer is yes.

22 Senator Chafee. Good, good. Well, that's good and, as  
23 you recall, the House wouldn't even consider it. And the  
24 Chairman of the Subcommittee in Telecommunications in the  
25 House stonewalled me with a 12-page letter on the subject,

1 and that's cruel and unusual punishment and I think it's  
2 improper.

3 Finally, Mr. Chairman, I think if this country could  
4 pay more attention to the quality of the goods which we  
5 produce, it would help us with this trade deficit.

6 In sum, what I'm saying, Mr. Chairman, is the \$170  
7 billion trade deficit is something we shouldn't tolerate, but  
8 the answer to the solution of it doesn't entirely lie, or to a  
9 great extent, lie in the kind of trade measure we have. So  
10 I just hope that we won't derail the fast-track procedure.  
11 In fairness to Mr. Santos, I don't think that he's suggesting  
12 that, but he's suggesting curbing it, and I think it's worked  
13 to our success and I wonder if we'd ever pass one of these  
14 GATT provisions, ratify GATT, or get into a fast-track  
15 procedure with another nation or a procedure that would  
16 permit us --

17 The Chairman. Where I thought it worked perfectly was  
18 in the Israeli Free Trade Agreement. There, some of the  
19 members had objections. Remember Dave Pryor had some  
20 objections about phosphates and we argued about how soon this  
21 should go into effect and we gradually phased it in over 10  
22 years. But there was long negotiations back and forth with  
23 the Committee before the Administration ever went ahead.  
24 And by the time they were done, everybody pretty much agreed  
25 with the conclusion, although I don't think but for the

1 fast-track provision as a backstop, we ever would have got  
2 there.

3 Senator Chafee. Well, in that case, Mr. Chairman, I  
4 think your point to a degree is well taken, except that  
5 didn't present the most onerous task. As you recall, the --  
6 I believe, am I right, Mr. Santos, the European community  
7 already has a free trade with -- and I believe we have a trade  
8 surplus with Israel, and so if we didn't get into the game,  
9 we were going to be excluded. Furthermore, the amount that  
10 we're dealing with with Israel is relatively minor, say,  
11 compared to something like Canada.

12 The Chairman. Yes, but I recall that apparel  
13 manufacturers and the textile manufacturers and the leather  
14 goods manufacturers, especially gloves and handbags, came,  
15 but with serious misgivings. And remember the avocado growers  
16 coming with serious misgivings?

17 Senator Chafee. Gold chain manufacturers.

18 The Chairman. Yes, gold chain manufacturers with  
19 Israeli jewelry, were all here, even though this was a tiny  
20 country with a relatively, comparatively speaking, slight  
21 trade with us with grave misgivings about the agreement at  
22 the start. I think by the time we finished, everyone was  
23 in reasonable accord, but it wasn't that easy a thing just  
24 to slip through.

25 Senator Danforth. Mr. Chairman, I think there is going

1 to be some question as to whether there will be any fast-  
2 track authority granted. I basically agree with  
3 Senator Chafee: I think we should have fast-track authority.  
4 I think this is the way to do it. You know, somehow we have  
5 to maintain a handle on the Administration, but there are  
6 senators who believe that fast-track authority is a  
7 misguided idea and that it just gives up too much authority  
8 of Congress. I know Senator Wilson has been very outspoken  
9 in this and I would expect him to lead a charge against  
10 anything we do to extend fast-track authority.

11 Senator Baucus. Mr. Chairman?

12 The Chairman. Senator Baucus and then Senator Heinz.

13 Senator Baucus. Mr. Chairman, I think Senator Chafee  
14 made a very important statement when he said that we  
15 shouldn't unnecessarily focus on the trade bill; that is,  
16 unfair trade practices and trade laws are not the primary  
17 cause of our trade deficits. I think he's right. I do not  
18 think that's the primary cause. However, I think it's a very  
19 important cause and we shouldn't dismiss that as an important  
20 cause and do whatever we possibly can here to bring our trade  
21 laws up to date.

22 Nevertheless, I think he's right in suggesting that  
23 there are other issues and, as I hear him, the one that he  
24 seems to be focusing on is just outright competitiveness,  
25 the United States just has to be more competitive, even when

1 the rules of the game are more even and more commonly  
2 adhered to by other countries.

3 I would just suggest that what we might do in a  
4 preamble, a statement of goals and policies, or something,  
5 put in a section on competitiveness. I mean, the  
6 Administration commissioned the Young Commission to do a  
7 study on competitiveness. They came up with, I think, an  
8 excellent set of recommendations. I think it was about a year  
9 ago. But we never saw it. It didn't get the light of day.  
10 Perhaps we should have a section here that it's not only  
11 trade laws that adversely affect balance of trade, but also  
12 lack of competitiveness and the United States has to take  
13 certain actions to correct that.

14 The Chairman. Senator Heinz.

15 Senator Heinz. Mr. Chairman, I just wanted to ask staff  
16 a couple of clarifying questions on this area.

17 First, under current law, where at least bilateral  
18 negotiating authority is involved, as we experienced with  
19 Canada, the Committee, under current law, has the authority  
20 to disapprove, in effect to take an action the consequence of  
21 which would be to disapprove the utilization. I point that  
22 out because the description of current in the spreadsheet  
23 omits that particular right that we have now. And in view of  
24 the discussion we've had, it is material to point out that  
25 when Senator Danforth or any of the rest of us say there needs

1 to be a way of keeping Congress in the loop, that's not  
2 unprecedented. Congress has been in the loop all the way  
3 along.

4 Is that not correct, Len?

5 Mr. Santos. It has been, and I might point out that is  
6 noted at page 20, Item B, in the spreadsheet.

7 Senator Heinz. Well, I noted that, and that brings up  
8 a second question, and that's with respect to tariff  
9 agreement authority, and this section that we have been  
10 dealing with, 3A, has been non-tariff authority, as I  
11 literally read the spreadsheet, and maybe I misinterpreted  
12 what you said there.

13 Is there -- what is the status on tariff authority?  
14 Is it being treated the same way as non-tariff authority here?

15 Mr. Santos. Yes, Senator. On page 20 of the spreadsheet,  
16 Item B, in the staff proposal column, we just simply --  
17 perhaps it was too shorthand -- we said "provision in  
18 Section A applies." So what we are proposing here is that  
19 whatever procedure is available apply to both tariff and  
20 non-tariff agreements.

21 Senator Heinz. Now, on page 19, under the staff  
22 proposal, you, with respect to the bilaterals, indicate the  
23 procedures of current law requiring pre-approval by Congress  
24 would continue to be available. Actually, it is pre-approval  
25 by --

1 Mr. Santos. By the Committee.

2 Senator Heinz. -- the Committee.

3 Mr. Santos. Yes, that's correct, Senator.

4 Senator Heinz. And that is what you mean?

5 Mr. Santos. Yes.

6 Senator Heinz. Thank you.

7 Mr. Santos. If I might just explain a couple of things.

8 The staff proposal leaves open one important question  
9 which we simply could not resolve at a staff level and I  
10 just wanted to note that it is not resolved, and that is the  
11 question of assuming the President submits a request for this  
12 fast-track procedure and submits the document that we require  
13 of him, what then is the precise mechanism by which the  
14 fast-track becomes available?

15 One alternative is to require that, absent a  
16 concurrent resolution by Congress in a limited time frame,  
17 subject to no amendment, absent that, there would be no  
18 fast-track; or the other alternative is the fast-track would  
19 be available after a limited period of time unless Congress  
20 acted to disapprove. And that question is left unresolved.

21 Senator Heinz. Speaking for myself, I would hope it  
22 would be the first one, Alternative One. I think it's  
23 important that Congress or, for that matter, the Committee  
24 under current law would have to act -- well, that's not  
25 exactly accurate -- that the Congress would, given such a

1 large grant authority, have to act affirmatively.

2 Mr. Santos. Then a couple of other items to note in  
3 this section --

4 Senator Danforth. Mr. Lang, correct me if I'm wrong,  
5 I think Senator Bentsen feels very strongly --

6 Mr. Lang. Yes, Senator Bentsen would agree with  
7 Senator Heinz on that question. That is, he has felt  
8 strongly throughout this process that the affirmative  
9 approval of the Congress of such a concurrent resolution  
10 would be necessary as a condition to the Administration  
11 getting access to the fast-track.

12 Senator Danforth. I would like to indicate my  
13 agreement with that.

14 Mr. Santos. I think, in fairness, I should point out  
15 I think Senator Packwood has a preference for the second  
16 alternative, but I assume he will so state at the appropriate  
17 time.

18 A couple of other items to note in the so-called  
19 new-round provision which, as I said, is not strictly limited  
20 to the new round, we have incorporated the objectives from  
21 S.1860 and from S.1837. Those bills are the major bills  
22 addressing new-round authority and we would propose to  
23 incorporate the negotiating objectives set out there.

24 Also included in this section is the requirement that  
25 where the President brings back for fast-track implementation



1 an agreement with a country where state trading enterprises  
2 are a dominant presence, that such an agreement reflect  
3 commitments by that country to engage in state trading on a  
4 commercial basis.

5 And, finally, with respect to the bilateral agreements,  
6 I think I have already explained that we would propose to  
7 keep the pre-clearance procedure that was used in the case of  
8 Canada, assuming the fast-track was made available upon the  
9 President's request; and with respect to existing  
10 negotiations in bilateral negotiations, we would propose to  
11 make the fast-track available only if the Congress acted to  
12 grant pre-clearance again in those cases.

13 Senator Danforth. Okay, what is next?

14 Mr. Bolten. Mr. Chairman, we have a series of narrower  
15 issues which I will try to move through fairly quickly.  
16 These are all issues which are addressed in titles of S.1860.

17 The first is Item E in the spreadsheet. It is  
18 "Generalized System of Preference."

19 Senator Danforth. What page are you on?

20 Mr. Bolten. That is page 24 of the spreadsheets.

21 Senator Baucus. Mr. Chairman, are we off the fast-track,  
22 are we off negotiating authority?

23 Senator Danforth. I hope so.

24 Senator Baucus. I would like to ask a question, if I  
25 could, on this. Seriatim or 60 days, what's all that about?

1 Mr. Lang. What page are you on?

2 Senator Baucus. It's on page 18.

3 Mr. Santos. Well, the 60-day idea is really a way to  
4 insist that Congress decide, depending on which procedure  
5 we are talking about. If we are talking about the procedure  
6 that Senators Heinz and Danforth said they preferred, what we  
7 had in mind there was that a concurrent resolution would be  
8 submitted at the beginning of a 60-day period following the  
9 President's request, and that Congress essentially would have  
10 60 days to approve. If it didn't approve within those 60  
11 days, then the fast-track would not be available.

12 Senator Baucus. I'm sorry. I'm referring to another  
13 provision here somewhere that if, at the end of a certain  
14 period of time -- it's either negotiating authority or --  
15 maybe it wasn't fast-track -- then --

16 Mr. Santos. I think you are referring to -- I should  
17 point out the 60 days we are talking about are 60 -- well,  
18 working days, days in which both houses of Congress are in  
19 session excepting Saturdays and Sundays, you know, that kind  
20 of a 60-day period.

21 You may be referring, Senator, I think, to the period  
22 we set out during which the President would have to ask for  
23 the fast-track authority.

24 Senator Baucus. So that's the 60 days.

25 Mr. Santos. Well, that actually is a year-long period.

1 We had envisioned requiring that if the President wanted  
2 fast-track, he ask for it within one year of the date of  
3 enactment.

4 Senator Baucus. Then, with a 60-day --

5 Mr. Santos. That is when the the -- upon his request,  
6 that 60-day period would begin to run, and, depending on  
7 which procedure we used, he would either have the authority  
8 at the end of the 60 days absent congressional disapproval  
9 or he would only have it after 60 days if Congress acted to  
10 approve.

11 Senator Baucus. Yes, I appreciate that. I apologize.  
12 I am looking for another provision, but I don't see it here,  
13 so I will let it go. Thank you.

14 Senator Danforth. Okay, page 24.

15 Mr. Bolten. Mr. Chairman, the GSP program provides  
16 duty-free entry of a specified set of universal products to  
17 goods from less-developed countries. The issue that is raised  
18 by the legislation and raised in S.1860 is how do we get  
19 countries out of the program, at what point do we graduate  
20 them?

21 The existing program graduates countries that achieve  
22 a per capita GNP above an inflation index level of \$8500.  
23 The concern that was raised in S.1860 is that this approach  
24 leaves within the program a number of very highly competitive  
25 countries that are still designated as beneficiaries, but that

1 not only have large trade surpluses with the United States,  
2 but are also competing in the United States in products that  
3 are relatively technically sophisticated and normally  
4 associated with developed countries.

5 Under the existing program, there is only that one  
6 mechanism for country graduation of per capita GNP and, in  
7 addition, there is also placed in the 1984 Act, there was  
8 graduation based on failure to provide adequate protection  
9 to intellectual property and other misdeeds in connection  
10 with international trade. These are the issues that  
11 Senator Long was raising earlier.

12 Nevertheless, Senator Dole and others who co-sponsored  
13 this provision believe that several countries should no  
14 longer be receiving GSP benefits. The S.1860 provision  
15 mentions by name three countries -- Korea, Hong Kong and  
16 Taiwan -- as countries that are especially competitive  
17 internationally and should no longer be getting GSP benefits.

18 Currently under the GSP program there are 140 countries  
19 receiving the benefits, but the dollar volume of the  
20 benefits are concentrated among countries like those three  
21 that were mentioned. Sixty-five percent of the total of all  
22 GSP benefits now go to the top five countries of Taiwan,  
23 Korea, Brazil and Mexico.

24 The S.1860 proposal would mandate the President to send  
25 up to the Congress legislation withdrawing GSP from those

1 three countries and any others that were considered to be  
2 highly competitive internationally.

3 In the course of the hearings, it came out that there was  
4 a great deal of agreement with the concept of trying to push  
5 GSP benefits down the ladder of development toward the  
6 less-developed countries, but there were three specific  
7 problems that came up in the connection with just complete  
8 graduation of those three countries. The problems were,  
9 number one, that, although in some respects those countries  
10 are highly competitive, in others they are not. Korea, for  
11 example, has a per capita GNP of only \$2,000.

12 The second problem that came up is that the existing  
13 GSP program has been used in a variety of ways to obtain  
14 trade concessions from our trading partners that possibly  
15 otherwise would not have been possible to get. In particular,  
16 the intellectual property community strongly opposed the Dole  
17 provision because of the concessions that some of these  
18 countries have provided in opening their markets and in  
19 protecting U.S. intellectual property within their markets.

20 And finally, and perhaps this was the most important  
21 defect we perceived in the S.1860 proposal, that if GSP  
22 benefits were withdrawn from these highly competitive  
23 beneficiaries, most of the trade they lost would probably not  
24 be picked up by less developed countries, but rather by  
25 more developed countries like Japan, and which would seem to

1 be a complete reversal of the intent of graduating those  
2 countries from GSP in the first place.

3 So we sought a proposal that would maintain the  
4 intent of shifting the GSP benefits down the ladder of  
5 development without producing the perverse result of  
6 actually letting the benefits float up the ladder of  
7 development.

8 The staff proposal would require USTR to maintain a  
9 list of relatively competitive beneficiary countries based  
10 on a variety of criteria and that the USTR would be required  
11 to revoke GSP on any individual product -- that's product,  
12 not the entire country -- but on any individual product from  
13 those relatively competitive beneficiaries where USTR  
14 determined that doing so would redound substantially to the  
15 benefit of a less developed country.

16 Mr. Chairman, that's the GSP proposal. It is one we  
17 have discussed with Senator Dole's staff and he has indicated  
18 a willingness to look for some sort of compromise on this  
19 particular measure.

20 Senator Danforth. Well, this is the compromise. Does  
21 he agree with this?

22 Mr. Bolten. Senator, I don't know whether Senator Dole  
23 specifically agrees with all the features of this  
24 compromise, but he has indicated a receptivity to this  
25 general idea.

1 Senator Chafee. Mr. Chairman?

2 The Chairman. Senator Chafee.

3 Senator Chafee. I am a little distressed that you have  
4 to keep, say, Taiwan on the GSP list because otherwise you  
5 would lose the leverage over them on the intellectual  
6 property. There ought to be a better way of doing business  
7 than that. They shouldn't be doing what they're doing on  
8 the intellectual property and I don't think we should be  
9 required to bribe them when they have this extraordinary  
10 access to our market and the trade imbalances with -- how  
11 much is it, with Taiwan, for example, Mr. Bolten?

12 Mr. Bolten. I don't have the figure directly in front  
13 of me. It is quite large, though. It is up in the teens of  
14 billions.

15 Senator Danforth. Korea is ten billion.

16 Senator Chafee. And to suggest that the only way we can  
17 get access or get protection for our intellectual property,  
18 them taking our tapes and making copies of them and sending  
19 them back, is through keeping these countries on GSP, which  
20 is -- just was not designed for those type of nations seems  
21 to me a travesty. I would hope there would be a better way  
22 of handling this. Frankly, I don't see why we are not  
23 engaged in a -- or are we? -- I guess we were working on a  
24 bilateral solution to the intellectual property, weren't we,  
25 with Taiwan?

1 Mr. Bolten. That is correct, Senator.

2 Senator Chafee. And they insisted everything's taken  
3 care of, which is contrary to what the Americans say.

4 Senator Baucus. Mr. Chairman?

5 The Chairman. Max.

6 Senator Baucus. Mr. Chairman, I agree with that. I  
7 wonder if somebody could justify it. What's the rationale?

8 The Chairman. Mr. Holmer, do you --

9 Mr. Bolten. Senator, for --

10 Senator Baucus. Before I'd tie in graduation to  
11 elect property rights.

12 Mr. Bolten. Well, that was done, Senator, in the 1984  
13 Act, which --

14 Senator Baucus. Is that what is contemplated in this  
15 staff proposal?

16 Mr. Bolten. No, sir. The staff proposal simply  
17 contemplates that whenever it is determined that graduating  
18 a product from a country like Taiwan would benefit a lesser  
19 developed country, then the graduation would become mandatory.

20 Senator Baucus. So that it has no tie with --

21 Senator Danforth. Wouldn't there be a tie? I mean,  
22 let's suppose that they haven't been --

23 Mr. Bolten. Oh, the tie in existing law would remain,  
24 that if Taiwan were not cooperating in the intellectual  
25 property area, then the USTR would still be directed to



1 withdraw GSP benefits.

2 Mr. Holmer can comment on it in more detail, but USTR  
3 has reported that this particular leverage has been useful.  
4 Whether we ought to have to use that kind of leverage or not,  
5 USTR reports that the leverage has been useful in obtaining  
6 some of the goals we have been seeking in those intellectual  
7 property negotiations.

8 Senator Baucus. It probably has been useful, but I  
9 think it is the wrong kind of leverage to use.

10 Mr. Bolten. Well, Senator, I should point out that at  
11 a staff level, there was a great deal of agreement with that  
12 point of view, and the telling point, in terms of --

13 Senator Baucus. I'm sorry, with which point of view?

14 Mr. Bolten. With the point of view that we should not  
15 have to use leverage to obtain that which these foreign  
16 countries should be doing in the first place. But the  
17 telling point with respect to crafting a staff proposal was  
18 that complete graduation of a country like Taiwan would most  
19 likely end up with trade simply floating up the ladder of  
20 development to a country like Japan rather than being picked  
21 up by a less developed country like Malasia. So that we  
22 sought to craft a proposal that would simply do the  
23 graduation only where you could be sure that the benefit  
24 would come down to a less developed country.

25 Senator Baucus. Well, what do the studies show on that

1 point? As I understand it, there are some studies that show,  
2 yes, that the benefit will go upstream or upgraded to the  
3 Japans or the Canadas of the world, not to the lesser  
4 developed countries, but that's in the short term. What do  
5 the studies show in the longer term?

6 I mean, it just seems to me that a good analogy here  
7 would be learning to ride a bicycle. I mean, are we going  
8 to graduate a country when it becomes -- the bicyclist becomes  
9 an olympic gold-medalist, or are we going to graduate a  
10 country when the bicyclist is a little wobbly, you take  
11 away the learner wheels or side wheels, or whatever it's  
12 called?

13 It just seems to me that once a country gets on its  
14 feet, generally it shouldn't make much difference whether the  
15 benefits go to country A or country Z, whether it's a  
16 developed country or a less developed country. The whole  
17 point of GSP is to get the country on its feet and to get the  
18 bicyclist riding the bicycle on its own, unaided.

19 Mr. Holmer. If I could, Senator Baucus, there is a  
20 general review that has been mandated by Congress -- it is  
21 ongoing right now -- where exactly that kind of calculation  
22 is being made on a country and product-specific basis. And  
23 in those instances where the exporters in that country are  
24 at a stage where they are really able to achieve substantial  
25 international competitiveness, they will be graduated from GSP.

1 Senator Baucus. What stage is that study in now?

2 Mr. Holmer. The general review is due January 4th of  
3 next year.

4 Senator Baucus. It is due January 4th of next year.

5 Mr. Holmer. Right.

6 Senator Baucus. Well, it seems to me, then, there are  
7 two separate questions, there are separate and distinct  
8 questions. One is, what is the effect of graduation on the  
9 various range of countries? The second question, it seems  
10 to me, is regardless of that effect, is it proper to deny  
11 GSP graduation to a country because the effects tend to help  
12 a developed country more than a lesser developed country?

13 Personally, I think that we shouldn't pay that much  
14 attention to that second question. I think if a country is  
15 developed and it is on its own two feet, as a general matter  
16 the world is better off without all these intricate little  
17 rules trying to decide whether to graduate because country A  
18 is helped more than country B and so forth. I mean, we  
19 shouldn't get into that very much, if at all.

20 Mr. Bolten. Senator, the point on that that we looked  
21 at on the staff side of that was that in many respects, even  
22 those countries which we regard as competitive internationally,  
23 like Korea, are in fact in some sectors of their economy  
24 quite underdeveloped. And the question is, are they riding  
25 one big bicycle or are they riding a lot of little bicycles?

1           We thought it still made sense to make sure that all of  
2 the bicycles were up and running.

3           Senator Baucus. Korea, I think, is riding a motorcycle,  
4 in some cases.

5           (Laughter)

6           Mr. Bolten. Senator, Korea is in the truck, in some  
7 cases, but in others, it is not. Again, citing their  
8 per capita GNP at \$2,000.

9           Senator Baucus. With all that Hyundai cars, they are  
10 riding cars now. They have their driver's licenses.

11          Senator Chafee. Well, Mr. Chairman, I just want to say  
12 I think Senator Baucus has got a good point. First of all,  
13 I find it hard to believe -- maybe you have studies -- but  
14 I just can't believe taking away Taiwan's GSP is suddenly  
15 going to mean that all the clock radios are going to be made  
16 in Japan. I don't believe it. And I don't think that  
17 differential is going to make everything flow back to  
18 another country which -- I don't know what the advantage  
19 Japan, for example, would have, because clearly they don't  
20 have GSP.

21          So what you seem to be saying is that Taiwan can't  
22 compete with Japan, and I don't believe it, in these  
23 categories. Now, maybe you are right, but I would have to  
24 be shown it.

25          Mr. Bolten. Well, Senator, I would imagine it would

1 depend on the individual case involved. There may be a  
2 number of cases where, in fact, the benefits wouldn't shift  
3 at all, but that would be something for USTR to look at in  
4 the course of the review on the individual products.

5 Senator Baucus. May I ask a question? I don't  
6 understand, though, once a country is on the competitive  
7 list and once a product is deemed, I guess, competitive, is  
8 the graduation then on a per-country or a per-product basis?

9 Mr. Bolten. The graduation would be by country, by  
10 product, as it is now under the existing program.

11 Senator Baucus. Country's on the list, it's competitive.

12 Mr. Bolten. Right.

13 Senator Baucus. Then is the product -- then you  
14 determine whether a product is competitive, is that correct?

15 Mr. Bolten. That's correct.

16 Senator Baucus. And if the product is competitive,  
17 then is the graduation with respect to the product only?

18 Mr. Bolten. Yes.

19 Senator Baucus. Not with respect to the entire country  
20 generally.

21 Mr. Bolten. No, sir.

22 Senator Baucus. Thank you. So we are just talking  
23 about one bicycle.

24 Mr. Bolten. We are, Senator.

25 Senator Baucus. Thank you.

1 Mr. Bolten. Mr. Chairman, if I might move on to  
2 page 25 of the spreadsheets, Section F, relating to dumping  
3 by non-market economy countries. This is the Polish golf  
4 cart problem that Senator Packwood was referring to earlier.

5 Under the dumping laws, dumping is defined as selling  
6 an import in the United States at less than fair value. In  
7 the normal case, fair value is defined as the price of the  
8 same product in the home market where it is produced, or, if  
9 necessary, the cost of producing that product in its home  
10 market.

11 The problem arises in connection with non-market  
12 economy countries where, as Senator Packwood mentioned earlier,  
13 it is virtually impossible to figure out what the prices are  
14 in that economy or what the actual costs of producing a  
15 product are in that economy.

16 The approach that the Commerce Department has taken under  
17 the existing law to resolve the question of how to determine  
18 fair value of a non-market economy product for dumping  
19 purposes has been resolved in the past through looking to a  
20 surrogate market economy. In the Polish golf cart case,  
21 the Commerce Department went initially to Canada to see what  
22 the prices and costs in Canada were. When they found out  
23 that wouldn't work, it ended up going to Spain to look at the  
24 factors of production of producing golf carts in Spain.

25 Almost everyone involved in this process -- not completely

1 everyone, but most of the people involved in this process,  
2 including the Administration, have concluded that this  
3 surrogate approach is in most cases unworkable and at least  
4 bizarre in its results when applied in particular  
5 circumstances.

6 So there has been a search on for a number of years to  
7 find a different way of setting a benchmark for fair value  
8 against which to compare the cost of non-market economy  
9 imports.

10 The proposal in S.1860 would set the benchmark for fair  
11 value at the average price in the U.S. of imports of the same  
12 product from market economy producers. The staff proposal  
13 on this point is a refinement of that approach and would set  
14 the benchmark for fair value at the average price in the U.S.  
15 of the same product from the one market economy producer with  
16 the largest volume of exports to the United States. This was  
17 done, in large part, for administrative convenience so that  
18 the Commerce Department would not have to look at the price  
19 of every single import from every single country of that  
20 product and we felt it would arrive at a pretty fair  
21 benchmark for fair value of the product because you would be  
22 looking at the imports from the country that is sending the  
23 most to the United States.

24 The other feature of the staff proposal relates to the  
25 question of how to determine whether a non-market -- whether

1 there is, in fact, a non-market economy operating with  
2 respect to the product in question. The original Senate  
3 bill, S.1860, would have required the Commerce Department to  
4 establish a list of non-market economy countries, in part at  
5 the request of the Administration. The staff proposal deletes  
6 the requirement of the list, I understand because of  
7 sensitivities on the part of many non-market economy  
8 countries that don't like to be stigmatized by being placed  
9 on a list like that.

10 Senator Heinz. Mr. Chairman?

11 Senator Danforth. Senator Heinz.

12 Senator Heinz. Seems like a pretty reasonable proposal.

13 The Administration has supported non-market economy  
14 legislation quite consistently. How does this fit?

15 Mr. Kaplan. Well, we do support changes in non-market  
16 economy legislation, and the only thing we are convinced is  
17 acceptable is lowest import price. However, this does  
18 possibly present a pretty good compromise.

19 It has some very positive features, the first of which  
20 is administrability. I think this can be done, and a lot of  
21 the things that have been kicking around for a few years may  
22 not be able to be done. On the other hand, it could be quite  
23 erratic. We don't know for sure and we are trying to analyze  
24 exactly what it means.

25 But just to give a quick example: If you take a case on



1 automobiles, you would probably be thrown into Japan as a  
2 comparison, which seems probably like not the best comparison.  
3 You might want a lower cost, sort of import car from a  
4 European country or something.

5 On the other hand, if you are doing something like  
6 paintbrushes or some kinds of steel from China, you probably  
7 would be thrown into Korea, Sri Lanka and other Pacific-rim  
8 countries, and that is probably about where you want to be.

9 So we are looking at it. We are working with the staff  
10 to see exactly how it would play out and it may be a  
11 reasonable compromise.

12 Senator Heinz. Thank you.

13 Senator Baucus. Mr. Chairman?

14 Senator Danforth. Senator Baucus.

15 Senator Baucus. Mr. Chairman, frankly, I am a little  
16 concerned with all the eggs in one basket; that is, the  
17 largest market country, for some of the reasons already  
18 suggested.

19 I am wondering how great the additional administrative  
20 burden will be if we make the standard not the largest, but,  
21 say, the two or three or four largest, or something, to get  
22 a little bit of a better sense of what the true market costs  
23 are.

24 I am also wondering, some country may be dumping, not  
25 actually our ... duty laws, but still dumping, near dumping,

1 really below cost, and the largest supplier would probably  
2 be the one better able to, as a lost leader or something,  
3 to sell at a lower cost than somebody else, which may be good  
4 to our consumers but may not be an accurate reflection of  
5 what the average market cost is.

6 So I am wondering again how great is the additional  
7 administrative burden if we expand the basket to include  
8 several countries rather than just the largest one.

9 Mr. Kaplan. I think the advantage of having one right  
10 at the beginning is you can go to it, really dig into it and  
11 find an appropriate product to compare with. If you have to  
12 go across two or three or four, that becomes almost  
13 impossible. One is hard enough because you don't have real  
14 firm data, you just have customs invoices; but two or three  
15 or four would be significantly harder, I think.

16 Senator Baucus. What if the one is obviously  
17 inappropriate, for whatever reason? Then what do you do?

18 Mr. Kaplan. That is covered in the staff proposal.  
19 There are provisions where, if there are QRs, quantitative  
20 restraints, on a certain country or dumping orders or the  
21 amount of sales is diminimus, then the administering authority  
22 would have discretion to not use that particular country and  
23 to go to another one. So I concur that there is a problem in  
24 some instances and there ought to be discretion to go to  
25 another benchmark in those cases.

1           Senator Heinz. Under the staff proposal, is that the  
2 next largest?

3           Mr. Kaplan. I don't believe it says precisely what you  
4 have to go to. It says that you would have discretion not to  
5 use that benchmark, and then I assume the Administration would  
6 draft some regulations to say what it would do. Next largest  
7 would certainly be a reasonable place to go.

8           Senator Danforth. Okay, let's move on.

9           Mr. Bolten. Mr. Chairman, the next provision appears  
10 on page 26 of the spreadsheet, Item G. It is the  
11 intellectual property rights section. This relates to  
12 Section 337 of the Tariff Act of 1930.

13           Neither S.1860 -- there are a number of intellectual  
14 property proposals that have been made in various connections,  
15 but neither S.1860 nor the staff proposal extends beyond  
16 Section 337 in its intellectual property proposals.  
17 Section 337 is the statute that outlaws the importation of  
18 goods that are traded with some unfair method of competition.  
19 The statute is most commonly used to obtain exclusion of  
20 goods that violate U.S. intellectual property rights; i.e.,  
21 goods that violate U.S. patent rights, trademarks or  
22 copyrights. The most common case brought under Section 337,  
23 and it is the International Trade Commission that adjudicates  
24 these cases, the most common case is one involving imports of  
25 a product that infringe a valid U.S. patent. The typical

1 procedure there is for a petition to be brought before the  
2 International Trade Commission, the case is decided  
3 initially by an administrative law judge, and the typical  
4 remedy would be exclusion of those infringing goods at the  
5 border.

6 The remedy is especially useful because, with respect  
7 to imports that infringe intellectual property rights, it is  
8 often difficult to get the offending party into court, so  
9 your only chance to really obtain some kind of relief against  
10 the goods is to catch them at the border and have them  
11 excluded.

12 The proposal in S.1860, principally sponsored by  
13 Senators Roth and Lautenberg, would essentially make it  
14 somewhat easier to obtain relief under Section 337. The  
15 primary change involves a requirement in the existing statute  
16 that to obtain 337 relief an industry must prove injury to  
17 a U.S. industry that is efficiently and economically  
18 operated. Both S.1860 and the staff proposal, which  
19 incorporates most of the S.1860 proposal, would eliminate  
20 that injury requirement, the theory being that the injury  
21 hurdle is really unnecessary and that mere proof of  
22 infringement of an intellectual property right ought to be  
23 sufficient to obtain relief under the statute.

24 The principal change in this regard between the staff  
25 proposal and S.1860 is with respect to the extent to which the

1 petitioner must show the existence of a U.S. industry. The  
2 original S.1860 proposal retained a requirement that the  
3 petitioner show a U.S. industry, but didn't define the term,  
4 didn't indicate what that means. The staff proposal  
5 essentially adopts the proposal made in the house bill,  
6 H.R. 4800, which would require that there be some economic  
7 activity in the United States associated with the  
8 intellectual property, such as large investment in  
9 engineering or research and development or licensing.

10 The remainder of the S.1860 and staff proposal relates  
11 to enforcement of orders under Section 337. Both the  
12 S.1860 proposal and the staff proposal are designed to  
13 strengthen the ability to obtain enforcement of 337 orders,  
14 including an increase in the civil penalties and, in some  
15 cases, making available a remedy of not just exclusion of the  
16 goods at the border, but also seizure and forfeiture of the  
17 goods.

18 Mr. Chairman, that is pretty much it on the Section 337  
19 proposal.

20 Senator Danforth. Any comments or questions on  
21 intellectual property rights?

22 Senator Chafee. Yes, Mr. Chairman. I wanted to ask two  
23 questions, if I might.

24 First, what do we do about the case where the country  
25 takes a U.S. intellectual property -- say, a tape of a band

1 and rock group that's been taped here -- they take it, just  
2 copy it there, and then they sell it abroad, don't try to  
3 bring it into the U.S. What can we do then?

4 Mr. Bolten. Senator, the remedies for that are very  
5 limited and they are not addressed, for example, in a  
6 Section 337 type action.

7 The one way to attack that is probably through a  
8 Section 301 action in which the United States would go after  
9 the country probably where the infringing goods are being  
10 sold and seek in some way to push that country to enforce  
11 proper intellectual property protection laws.

12 There are a number of countries which do not now have  
13 these kind of laws in place, so that the U.S. copyright owner  
14 has difficulty protecting his rights in that third country.  
15 I know Mr. Holmer can comment in more detail, but it is  
16 certainly --

17 Senator Chafee. Is Taiwan the worst offender or have  
18 others moved up into the contest?

19 Mr. Bolten. I don't know exactly who the dirtiest are,  
20 but a number of the countries that have been mentioned where  
21 I understand there has been some improvement or some movement  
22 are Singapore, Korea and Taiwan to some extent.

23 Let me ask Mr. Holmer to comment on the status of those  
24 negotiations.

25 Mr. Holmer. Well, Taiwan is a very significant offender,

1 Senator Chafee, although they have made substantial strides  
2 to improve their intellectual property protection. We need  
3 to see what the results of those commitments are going to be.

4 Senator Chafee. Who are the other bad actors?

5 Mr. Holmer. Well, we have that difficulty, as you know,  
6 with respect to Korea, although we have been able to achieve  
7 a satisfactory resolution of an intellectual property rights  
8 case with respect to Korea. Indonesia has been in difficulty.  
9 A number of the countries in South America have not provided,  
10 from our perspective, adequate protection of intellectual  
11 property rights.

12 Senator Chafee. Finally --

13 Mr. Holmer. That is not a full list.

14 Senator Chafee. On page 26 of the spreadsheet, on the  
15 Senate bill, I am interested in the gray market provisions.  
16 In other words, I am for protecting the gray market.

17 Mr. Bolten, what do you do about that under the staff  
18 proposal?

19 Mr. Bolten. Senator, under both the S.1860 proposal  
20 and the staff proposal, the intent is to avoid addressing  
21 the gray market issue. In other words -- and that was, I  
22 understand, the express intent of the original crafters of  
23 the S.1860 provision. That is, to leave the gray market  
24 issue for resolution outside this particular piece of  
25 legislation.

1 To the extent that a gray market good is found to be an  
2 infringing good, then it would be subject to some relief  
3 under Section 337. But to the extent that it is not an  
4 infringing good, then there is no reason to consider it as  
5 subject to any sort of 337 enforcement.

6 Senator Chafee. All right, fine, thank you.

7 Senator Danforth. Now, is there anything else in the  
8 bill that we haven't covered?

9 Mr. Santos. Just a couple of small items I can cover  
10 very quickly, if you wish, Senator.

11 There is a provision relating to Section 232 of the  
12 Trade Expansion Act. This is the provision that permits the  
13 President to limit imports of a commodity which threaten to  
14 impair the national security.

15 There is a provision in S.1860 which does two things:  
16 One is it requires that presidential decisions be made within  
17 90 days of the receipt of a recommendation of the Secretary  
18 of Commerce. Under current law, the Secretary of Commerce  
19 has a year in which to conclude an investigation of whether  
20 imports of a commodity threaten to impair the national  
21 security and then he is required to send his report to the  
22 President. The provision in S.1860 requires that the  
23 President's decision be made within 90 days and the staff  
24 proposal would retain that time limit.

25 The other aspect of S.1860 on this issue is the



1 requirement that, absent a presidential decision by the  
2 ninetieth day following the Commerce Secretary's  
3 recommendation, the Commerce Secretary's recommendation would  
4 go into effect and we in the staff proposal have also retained  
5 that.

6 The one thing we have not retained from S.1860 is the  
7 requirement geared essentially to the machine tool case. At  
8 the time that S.1860 was filed in November of last year -- I  
9 guess it was October -- the President had taken a great deal  
10 of time to decide the Section 232 case on machine tools. In  
11 fact, he had not yet decided that case. And this bill had a  
12 provision in it which would have had the effect of, upon the  
13 date of enactment, putting into place the Commerce  
14 Secretary's recommendation in the case of machine tools. We  
15 have deleted that provision from our proposal because, since  
16 that time, the President has decided to seek arrangement on  
17 machine tools with various exporting countries.

18 The final item in this spreadsheet, on page 28, is a  
19 trade impact statement. That was an item in S.1860 which  
20 essentially requires that every federal agency, before taking  
21 a major action that can affect international trade, analyze  
22 its impact and issue a report. This is an attempt, in effect,  
23 to make people think before they jump, so to speak, and we  
24 have retained that in the staff proposal.

25 Senator Danforth. All right. Senator Packwood has asked

1 me to announce that the time of the next meeting of the  
2 markup is uncertain due to the fact that the conferees have  
3 yet to meet on reconciliation or on the super-fund bill. I am  
4 not sure whether we have to act on another debt ceiling  
5 before we adjourn. Does anybody know the answer to that?

6 Mr. Wilkins. Yes, we do.

7 Senator Danforth. Well, those items are on our agenda  
8 and Senator Packwood has asked me to state that, because of  
9 that, it is not certain when we will next meet on the trade  
10 bill.

11 Thank you.

12 (Whereupon, at 12:26 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 23, 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.

CHAIRMAN - MR PACKWOOD, MR CHAFFETZ, MR HOLLING, MR DANFORTH,  
MR BENTSEN, MR LONG, MR GRASSLEY, MR BAUCUS, MR BRADLEY,  
MR DURENBERGER, MR MITCHELL

EXECUTIVE SESSION  
99th Congress, 2nd Session  
September 23, 1986  
TRADE MARK-UP

SENATE COMMITTEE ON FINANCE

EXECUTIVE SESSION

Tuesday, September 23, 1986, ;10:00 a.m.; Room SD-215

1. Nomination of Thomas B. Wells to be a Judge on the United States Tax Court.
2. Consideration continued on the text of S. 1860, as modified by the Finance Committee staff proposal dated September 14, 1986.

*Chuck Grassley*

SENATOR CHARLES E. GRASSLEY  
TRADE MARK-UP STATEMENT  
FINANCE COMMITTEE HEARING  
SEPTEMBER 18, 1986

THANK YOU MR. CHAIRMAN:

I AM VERY CONCERNED WITH OUR MOUNTING TRADE DEFICIT AND THE RELATIVELY SHORT AMOUNT OF TIME WE HAVE IN THE COMMITTEE TO ADDRESS THIS ISSUE.

IT WOULD BE MY STRONG HOPE AND DESIRE TO SEE THIS COMMITTEE WORK IN A BIPARTISAN FASHION...AS WE DID WHEN S.1860 WAS ORIGINALLY CRAFTED...TO PASS OUT A TRADE BILL THAT IS BOTH STRONG AND FAIR. WHEN I ORIGINALLY SAW THE STAFF DRAFT PROPOSAL, I WAS CONCERNED THAT WE MAY NOT HAVE GONE AS FAR AS I MIGHT LIKE. NEVERTHELESS, FOR THE SAKE OF SEEING THE SENATE PUT FORTH A TRADE BILL THIS YEAR, I AM WILLING TO COMPROMISE. HOWEVER, I DO NOT WANT TO SEE A BILL SO DILUTED THAT IT BECOMES A CASE OF TOO LITTLE, TOO LATE, WITHOUT ANY MEANINGFUL AFFECT.

I WILL BE OFFERING SEVERAL AMENDMENTS TO THE BILL, AS I SUSPECT WILL OTHER MEMBERS OF THE COMMITTEE. I DO NOT DO SO TO SLOW THE PROCESS OR DAMPEN THE CHANCES OF PASSAGE, BUT INSTEAD TO STRENGTHEN SOME OF THE LEGISLATIVE LANGUAGE. THESE ISSUES FOR THE MOST PART HAVE ALREADY BEEN RELAYED TO THE COMMITTEE STAFF.

MR. CHAIRMAN, I BELIEVE IT IS IMPORTANT THAT WE PASS A BILL OUT OF THIS COMMITTEE. IN AND OF ITSELF, IT WILL NOT GREATLY REDUCE OUR TRADE DEFICIT...FOR AS MOST OF US ON THIS COMMITTEE KNOW...THE PROBLEM IS MUCH MORE MACROECONOMIC. YET, WE MUST DEVELOP NEW POLICIES THAT CREATE A LEVEL OF CONFIDENCE FOR OUR FARMERS, OUR BUSINESSMEN, AND OUR TRADING PARTNERS.

AS OUR TRADE DEFICIT MOUNTS, I BELIEVE WE ARE APPROACHING AN IMPORTANT CROSSROADS ON TRADE. THE NEXT YEAR OR TWO WILL DETERMINE:

- \* WHETHER THE WORLD DRIFTS DOWN THE ROAD OF PROTECTIONISM, OR WE PURSUE AN OPEN WORLD ECONOMY;
- \* WHETHER THE EUROPEAN COMMUNITY AND JAPAN ACCEPT THE RESPONSIBILITY COMMENSURATE WITH THEIR ECONOMIC POWER; AND
- \* WHETHER WE CAN DEVELOP WITH OUR TRADING PARTNERS A SOUND INTERNATIONAL MONETARY SYSTEM.

HOW DID WE GET TO OUR CURRENT RECORD TRADE DEFICITS? FIRST, WITH THE STRENGTH OF OUR ECONOMY, WE HAVE ATTRACTED MASSIVE FOREIGN CAPITAL INFLOWS. IN SOME RESPECTS, THIS HAS HELPED TO TEMPER OUR FEDERAL DEFICIT. YET, AT THE SAME TIME, IT HAS AGGRAVATED OTHER SEGMENTS OF THE ECONOMY. WE HAVE SEEN OUR TRADING PARTNERS BENEFITTING NOT ONLY ON THEIR CAPITAL INVESTMENTS, BUT ALSO FROM A DOLLAR THAT MAKES THEIR GOODS MORE PRICE COMPETITIVE. THE RESULT HAS BEEN A LARGE INFUX OF IMPORTED GOODS INTO THE UNITED STATES AND THE CROWDING OUT OF U.S. EXPORTS.

SECOND, WE'VE FAILED TO ENFORCE EXISTING TRADE LAWS TO OFFSET THE UNFAIR TRADE PRACTICES THAT IMPEDE THE EXPORT OF AMERICAN MADE GOODS.

ON THAT SCORE, THE TIME HAS CLEARLY COME FOR THE CONGRESS AND OUR TRADE NEGOTIATORS TO TAKE BOLD NEW STANDS AGAINST UNFAIR TRADE PRACTICES, WITHOUT FEAR OF BEING LABELED PROTECTIONIST.

WE SHOULD REMIND OUR "TRADING FRIENDS" THAT IN THE INTERNATIONAL TRADE ARENA, AS ON THE "BLOCK NEXT DOOR", YOU GET A FRIEND BY BEING A FRIEND. AS FREE TRADE'S BIGGEST MARKET, WE'VE BEEN A TRUE FRIEND TO THE WORLD. THUS, OUR POLICY OUGHT TO MAKE OUR TRADING FRIENDS LIVE UP TO THEIR END OF THIS BASIC CREED.



AND DON'T BE FOOLED...DON'T LET ANYONE TELL YOU THAT OUR  
TRADE DEFICIT AND OUR BUDGET DEFICIT AREN'T RELATED...BECAUSE  
THEY ARE.

...EVERY DOLLAR THE GOVERNMENT BORROWS REDUCES THE SIZE OF  
THE SAVINGS POOL FROM WHICH U.S. COMPANIES CAN BORROW;

...WHEN OUR FIRMS CAN'T BORROW, THEY CAN'T MODERNIZE;

...THEY CAN'T ADJUST TO NEW COMPETITIVE FORCES IN THE  
WORLD MARKET;

...THEY CAN'T STAY COMPETITIVE WITH IMPORTS HERE AT HOME;

...GOVERNMENT BORROWING ALSO KEEPS INTEREST RATES  
HIGH...COMBINED WITH A SHORTAGE OF CAPITAL FOR INVESTMENT, THIS  
MAKES THE U.S. ATTRACTIVE FOR FOREIGN LENDERS;

...HEAVY FOREIGN BORROWING, COMBINED WITH THE TRADE  
DEFICIT, MAKES US A DEBTOR NATION...THE WORLD'S LARGEST...AND  
IT HAS HAPPENED VIRTUALLY OVERNIGHT.

THIS LINKAGE MUST BE UNDERSTOOD BEFORE WE EMBARK ON A NEW, TOUGH, TRADE POLICY.

MR. CHAIRMAN, LET ME END BY SAYING THAT THE UNITED STATES REPRESENTS THE BIGGEST IMPORT MARKET IN THE WORLD. WE HAVE MADE IT AVAILABLE TO THE WORLD WITH FEW RESTRICTIONS. OUR TRADING PARTNERS MUST BE TOLD WE WILL NO LONGER TOLERATE ONE-WAY STREETS. IF WE ARE EVER GOING TO REDUCE OUR TRADE DEFICIT, WE HAVE GOT TO START SOLVING OUR PROBLEMS, NOT REPEATING OUR MISTAKES. THE TIME HAS COME FOR US TO PASS A TRADE BILL OUT OF THIS COMMITTEE THAT IS FAIR, STRONG AND COMPREHENSIVE. IT WOULD BE MY GREATEST HOPE THAT WE CAN DO THAT IN THE NEXT SEVERAL DAYS.

# Dave Durenberger news

U.S. Senator for Minnesota



## STATEMENT OF SENATOR DAVE DURENBERGER SENATE FINANCE COMMITTEE TRADE MARKUP SEPTEMBER 18, 1986

Mr. Chairman, over the past nine months this Committee has devoted an extraordinary amount of time and resources to achieving the goal of making the nation's tax system fairer and more equitable. As part of that process, we sought to level the investment playing field among different industries. We all know how difficult it was to achieve that goal. But in the end I believe we succeeded.

I am convinced that we face an equally difficult challenge in attempting to rewrite our nation's trade laws. But I think that if we focus on the issues that all of us on this Committee share in common, we will succeed in our effort to adapt our trade laws to changing times and trading patterns.

One thing I am convinced of: There is not a single member of this Committee who should be labeled a protectionist. All of us know that free and open competition at home and abroad is the surest way to expand the wealth of nations and their citizens and to increase political stability. Where trade is not free, to be fair it must be no more nor less than required for the healthy development of the family of nations. Since the end of World War II, international trade has provided an unparalleled increase in the standard of living to many parts of the world.

And we know that protectionism, whether in the form of a tariff or a non-tariff barrier, can only shrink trade, reduce national wealth, and increase the likelihood of retaliation which spirals into further worldwide protectionism. Yet in the cross-currents of international trade in 1986, we see a dangerous trend whereby governments attempt to manage and cartelize trade in an effort to unfairly protect domestic industries from foreign competition.

It is easy to understand why the advocates of free trade are in danger of becoming an extinct species. Despite the huge drop in the value of the dollar and the price of oil in the last twelve months, the U.S. trade deficit with the rest of the world continues to set monthly records. We are certain to top last year's record \$148 billion trade deficit, and have this year already replaced Brazil as the world's Number 1 debtor nation.

Although foreign unfair trading practices have, to some extent, contributed to our trade deficit, it is important to remember that our massive and continuing trade deficit is, in large part, a direct result of our budget deficit. The abnormally high interest rates resulting from the deficit have attracted capital from all over the world and pushed up the value of the dollar to levels that have made American exports

As every member of this Committee knows, there is not a single sector of the economy that has been insulated from the effects of the overvalued dollar. Our farmers and other commodity producers have lost markets that are not easily regained. Every American manufacturer who tried to export in the 1980s faced overwhelming odds because the dollar value of his product was way out of line.

At the same time, lower-priced imported steel, machine tools, automobiles, computers, and textiles have taken over increasing shares of our domestic market, driving American companies out of business or forcing them to set up operations abroad. The net result has been a permanent loss of manufacturing jobs at home and significant declines in our market share abroad.

High interest rates in America also have a pernicious effect on investment strategies abroad. As foreigners choose to put their investment capital in high interest bearing American government securities, they forego investments in their own domestic markets which would stimulate their domestic demand for goods and services, including American products and services. In this way, our deficit has slowed growth in Europe and in the Third World with the result that fewer opportunities exist for American companies to expand their markets.

There can be absolutely no doubt that so long as the U.S. government continues its irresponsible spend and borrow policies, economic growth in the private sector will stagnate, living standards will decline, America's industrial competitiveness will continue to diminish, and our deficit in trade will continue to grow.

Mr. Chairman, there is no single solution to our trade deficit. As I've noted, the most important step we in the United States can take to reduce the trade deficit is to reduce the budget deficit. But our trade deficit cannot be solved solely by actions we take in Washington. For too long, international trade has been a one-way street. The giant \$4 trillion U.S. economy has become the world's sales bazaar where exporters from every nation on the globe are welcomed to sell their products.

But are American companies granted reciprocal access to foreign markets? We all know the answer to that question is No; and that's one of the reasons that we're here today in an effort to strengthen our nation's trade laws. If there's one thing that I hope we achieve during this markup, I hope it will be that we send a clear and unmistakable signal to our trading partners that they must take immediate steps to roll back their barriers to American products and services and allow us to compete in their home markets on a level playing field. Otherwise, our domestic market is not going to be as free and open as in the past.

Moreover, American business, especially our hard-pressed farmers, should not have to compete with foreign producers who receive direct and indirect government export subsidies. That's just not free trade and it's certainly not fair trade. It is my hope that our representatives at the GATT round that just began in Punta del Este this week, will hold firm in their effort to eliminate all foreign government subsidies, especially those that have destroyed the export market for the American farmer.

Mr. Chairman, for the most part, I believe the staff trade legislation proposal is a workable compromise between the many competing views we all hold on this Committee. For the most part, it preserves the President's discretion in the area of foreign trade. However, I believe there is one element of the staff draft that must be reconsidered. That is the proposal that would not allow the President to weigh the national economic interest, and the affects on consumers, of granting relief in a Section 201 case.

I believe it is incumbent on this Committee to allow the President to weigh a variety of competing economic and foreign policy issues when he decides whether or not to insulate a domestic industry from foreign competition. Too often, the American consumer is asked to pay the price for inept American management, and poor worker productivity. I hope my colleagues will join me in modifying this portion of the staff proposal.

We don't have much time to complete our work on this legislation. However, I've seen the Chairman work miracles before in this Committee and am confident that we will write a trade bill that will make our trade laws more effective and responsive to the needs of American industry and the American consumer.

Statement of Senator Dole

Dole

TALKING POINTS FOR TRADE BILL MARKUP

- o I want to congratulate Senator Packwood who has found the time, despite all the other preoccupations of the Committee, to conduct an extensive series of hearings during the last several months focused on the issues that we are beginning to address today.
  
- o Every month we seem to be presented with alarming news concerning our trade situation. This week, for example, we learned about a record current account deficit for the second quarter of the year.
  
- o The public expects its elected representatives to address concerns of serious national importance. This is one of them.

- o This is no longer just a "trade" issue. It is now an issue affecting our overall economic situation. Chairman Volcker has rightly called attention to the link between our trade balance and our prospects for continued economic growth.
  
- o No one should be under the illusion that what is produced in this committee's bill, or in any bill, will solve our trade problems. Fundamental long-term changes will be required for that, and many of them are not entirely within our control: exchange rate adjustment, relative economic growth rates among our trading partners, competitiveness of U.S. products.

- o Yet neither can we be content with mere hand-wringing. If a month doesn't go by with bad trade statistics, it seems a day doesn't go by without a Congressional lament or denunciation of the trade situation.
  
- o Here at last we are presented with an opportunity to do something. Nothing miraculous: but some intelligent, useful things which can help open our foreign markets, compensate for unfair trading practices which put our industries at a disadvantage in world trading, and provide relief for our besieged domestic industries while they attempt to adjust to changed economic conditions.



- o People ask me constantly, "Will there be a trade bill this year?"
  
- o My answer is: If we continue to look at our trade problems as a potential Republican issue or a potential Democratic issue, we're not going to get anywhere.
  
- o The trade crisis is of sufficient magnitude that it needs to be looked at as an urgent national issue. If so, we may just get somewhere.

Optional:

- o If we are serious about getting a trade bill marked up and reported in time for floor action, our best hope is to accord the staff proposal a strong presumption of support. It is a product of compromise on the part of Senators Packwood, Danforth, and Bentsen. Therefore, I recommend that we show restraint in offering amendments.
  
- o To demonstrate my own conviction in this regard, I myself expect to compromise on the GSP provision which I have authored in S. 1860, in this spirit of compromise. It is only in this way that we have a hope of getting something done quickly in time for passage this year.

ISSUE

PRESENT LAW

H.R. 4800

SENATE BILLS

STAFF PROPOSAL

A. NATIONAL TRADE POLICYMAKING

1. National Trade Council

Sec. 141 of Trade Act of 1974 establishes the Office of the U.S. Trade Representative in the Executive Office of the President (1) to be the chief U.S. representative for trade negotiations; (2) to report and be responsible to President and Congress on administration of the trade agreements program; (3) to advise President and Congress on matters related to the trade agreements program; and (4) to chair the interagency trade organization.

Sec. 242 of Trade Expansion Act of 1962 requires President to establish an interagency trade organization (Trade Policy Committee structure) consisting of USTR and heads of other agencies as President designates, to assist him in carrying out his trade functions, including making recommendations on basic policy issues arising in administration of the trade agreements program.

Amends section 141 of the Trade Act of 1974 to add the functions enumerated in Reorganization Plan No. 3 of 1979 concerning the USTR's role in international trade policy. Amends section 242 of the Trade Expansion Act of 1962, to newly prescribe by statute the membership of the interagency Trade Policy Committee.

Requires the USTR to submit an annual statement to the House Ways and Means and Senate Finance Committees, including trade policy objectives and priorities; actions proposed or anticipated during the year to achieve these objectives; and any proposed legislation. In connection with this statement and its implementation, USTR must consult with the Committees and with private sector advisors.

2. National Trade Data Bank

S. 1837: National Trade Council: Creates Cabinet-level National Trade Council in the Executive Office, chaired by USTR, at same level as NSC, with small staff for trade policy coordination; NTC would take over functions of TPC, EPC or other such committees.

Section 923, S. 1860: Requires Commerce to develop and maintain an effective system to pull together trade information resources of Federal agencies, organize the information in a useful form and disseminate it to exporters. System must use state-of-the-art data processing and retrieval equipment.

S. 1837: National Trade Data Bank: Creates interagency National Trade Data Committee, chaired by USTR, which would survey and recommend changes in current system of collecting, analyzing and distributing data on trade and would consult with private sector advisory committees; would create a National Trade Data Bank using existing data (with appropriate safeguards).

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 ensure USTR's central role. It is intended that the National Trade Council be the definitive forum for making of trade policy within the Executive Branch.

Combine provisions in S. 1860 and S. 1837, with modification that the Chairman of the International Trade Commission shall chair the National Trade Data Bank.

ISSUE

PRESENT LAW

H.R. 4800

SENATE BILLS

STAFF PROPOSAL

3. National Trade Policy  
Statement

S. 1860: Declares it to be national  
policy to--

Same as in S. 1860, with modifica-  
tions.

- (1)- eliminate/offset unfair trade practices and other trade-distorting measures by vigorous enforcement of U.S. rights;
- (2)- strengthen and reform international trade rules by agreements;
- (3)- help potentially competitive U.S. industries faced with injury from imports take measures necessary to improve their competitiveness or otherwise adjust;
- (4)- reform exchange rates;
- (5)- increase LDC participation in the trading system;
- (6)- revise U.S. law to eliminate NME practices that distort trade;
- (7)- protect intellectual property rights of U.S. persons;
- (8)- reduce disincentives to U.S. exports in U.S. law; and
- (9)- respond immediately to national security import problems.

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**B. TRADE BARRIERS AND DISTORTIONS TO TRADE**

**1. Report on Barriers to Market Access**

USTR required to identify significant barriers or distortions to U.S. exports or investment, in annual National Trade Estimates Report.

Requires annual National Trade Estimates report to Congress on trade barriers to identify trade barriers that had significant adverse impact on U.S. exports during the previous year.

S. 1860: Requires the annual National Trade Estimates report of foreign trade barriers to quantify, for each trade barrier reported, how much its elimination would increase U.S. exports (volume and value, by product). Also requires the NTE to consider the international competitiveness of the goods or services involved.

Same as S. 1860

**2. Self-Initiation of Investigations**

Authorizes the President to self-initiate action or the USTR to self-initiate investigations.

Requires USTR to self-initiate a section 301 investigation within 90 days after identifying in USTR's annual trade barriers report to Congress a foreign act, policy or practice which has a significant adverse impact on U.S. exports, is likely to fit the criteria for mandatory 301 retaliation, and is not already under section 301 investigation, if: (1) consultations with domestic interests affected determine that section 301 negotiations will likely result in expanded export opportunities for U.S. products; (2) U.S. exports would not suffer significant adverse effects because of displacement in export markets, retaliation or mirror procedures; and (3) self-initiation is in the U.S. economic interest.

S. 1860: Requires USTR to self-initiate investigations on an annual basis under section 302(c) of the Trade Act of 1974 with respect to those acts, policies and practices identified in the NTE that:

(1) are likely to contravene trade agreements or be unjustifiable, unreasonable or discriminatory and burden or restrict U.S. commerce; and

(2) constitute a barrier to a significant portion of all the goods and services that USTR (in the NTE) estimates would have been exported if all the trade barriers identified in the report did not exist.

Requires USTR to self-initiate some unfair trade cases from among those listed in the annual trade barriers report that are likely to result in the greatest expansion of U.S. export opportunities.

In considering which cases to self-initiate, the USTR must take into account the potential increase in U.S. exports that would occur if the unfair act, policy or practice were eliminated, and the extent to which the act, policy or practice nullifies or impairs U.S. trade agreement benefits.

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3. Transfer of Authority to USTR	<p>USTR receives and reviews petitions, determines whether to initiate investigations, conducts the factual investigation (based on petition or self-initiation), represents the United States in consultations and dispute settlement with foreign governments, and recommends to the President what section 301 action, if any, he should take.</p> <p>President determines whether action is appropriate and, if so, what action will be taken.</p>	<p>Transfers to USTR the authority to make "unfairness" determinations in section 301 cases. President would keep the authority to decide and implement 301 action, based on the USTR's recommendation.</p>	<p>S. 1860: Transfers all functions of the President under sections 301-303, including "unfairness" determination and retaliation decision, to USTR (in consultation with the Trade Policy Committee).</p>	<p>As in H.R. 4800</p>
4. Mandatory Action	<p>If the President determines that action is appropriate:</p> <ul style="list-style-type: none"> <li>(1) to enforce U.S. rights under any trade agreement; or</li> <li>(2) to respond to any act, policy, or practice of a foreign country that (a) is inconsistent with the provisions of, or otherwise denies U.S. benefits under, any trade agreement, or (b) is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce,</li> </ul> <p>then the President:</p> <ul style="list-style-type: none"> <li>(A) shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of the act, policy, or practice; and</li> </ul>	<p>Requires that in cases involving foreign violations of trade agreements or other "unjustifiable" practices, the President must retaliate in an amount equivalent in value to and necessary to eliminate fully the foreign burden or restriction on U.S. commerce. Form of retaliation would be discretionary; could include tariff increases, import restrictions, or fees or restrictions on foreign services. Before taking action to restrict imports, the President would be required to take into account the likely impact on U.S. agricultural exports.</p>	<p>S. 1860: Mandates retaliation by USTR within 15 months of initiation, where there has been an affirmative unfairness determination. Action must be taken as necessary to enforce U.S. rights and to offset or eliminate all unfair acts, policies or practices.</p>	<p>Mandates retaliation by the President within 2 years of initiation (or 9 months after a favorable GATT panel ruling). Action must be taken as necessary to enforce U.S. rights and to offset or eliminate all unfair acts, policies or practices. (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. 2 years after initiation.)</p>

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(Mandatory Action cont'd.)

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(B) may (1) suspend, withdraw, or not apply trade agreement concessions; and (2) impose duties or other import restrictions on the products of, and fees or restrictions on the services of, the foreign country for such time as he deems appropriate; and

(C) may also restrict the terms and conditions, or deny issuance, of any prospective service sector access authorization (e.g., licenses).

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No section 301 retaliation would be required if:

(1) GATT determines that the practice is not a violation of U.S. rights or does not deny trade agreement benefits; or

(2) The President determines that the foreign country is taking satisfactory steps to fulfill U.S. rights, or that the foreign country has agreed to a satisfactory phase-out, or settlement, of the practice, or that the country has agreed to provide adequate compensation; or

(3) The President determines such action is not in the economic interest of the U.S. and he reports the reasons to Congress.

Presidential action would remain discretionary in cases where foreign acts, policies or practices are unreasonable or discriminatory and burden or restrict U.S. commerce, except in injurious targeting cases, where relief would be mandatory and only its form discretionary.

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S. 1860: No section 301 retaliation required if:

(1) USTR determines that the affirmative determination was incorrect or is no longer valid (USTR would be required to review its unfairness determination if there were a contrary GATT decision); or

(2) an agreement is reached with the foreign country that is acceptable to the domestic industry and petitioner (if any), or to USTR and the industry or petitioner.

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No section 301 retaliation required if:

- (1) USTR finds no unfair practice;
- (2) GATT determines that the practice is not a violation of U.S. rights or does not deny trade agreement benefits;
- (3) an agreement is reached with the foreign country acceptable to the petitioner(s) or majority of the interested industry; or
- (4) the President certifies to Congress, with detailed explanation, that a satisfactory resolution appears impossible and retaliation would cause serious harm to the national interest.

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5. **Deadlines for Determination and Action**

USTR must make a recommendation to the President (subject to possible 90-day extension) within:

- 7 months if an export subsidy covered by MTN agreement
- 8 months if a domestic subsidy or both domestic and export subsidies covered by MTN agreement
- 30 days after conclusion of dispute settlement if involves MTN agreement other than subsidies (e.g., GATT generally)
- 12 months in any other case (e.g., services)

President must determine within 21 days what section 301 action, if any, is appropriate (may be procedural action, e.g., to continue negotiations or dispute settlement).

6. **Actionable Practices**

Acts, policies or practices of foreign governments actionable under section 301 include acts, policies or practices that: are inconsistent with, or otherwise deny benefits to U.S. under trade agreements; or are unjustifiable, unreasonable or discriminatory.

Definition of "unreasonable" actionable acts, policies, or practices specifically includes denial of fair and equitable market opportunities, opportunities for establishment of an enterprise, and provision of adequate and effective protection of intellectual property rights.

Requires USTR to make "unfairness" determination (or decide not to), and recommend to President what, if any, action to take, within maximum 9 months (11 months in targeting cases).

President would be required to take action within 21 days after he gets the USTR's recommendation on a 301 case. Delay (up to 90 days) would be permitted only in narrow circumstances.

Defines toleration of cartels as an "unreasonable" practice actionable under section 301.

Targeting: Applies section 301 to cases where USTR determines that export targeting exists with respect to particular merchandise, and ITC determines that imports of that merchandise cause or threaten material injury to domestic industry.

S. 1860: Requires USTR, within 90 days of initiation, (1) to make an "unfairness" determination and (2) to publish a Federal Register notice of such determination (which, if the determination is affirmative, must include a list of foreign goods and services that could be subject to retaliation). Mandates retaliation by USTR within 15 months of initiation where affirmative unfairness determination. Action can be delayed up to 90 days, if the petitioner requests (or, in a self-initiated case, and if the petitioner (or domestic industry) determines adequate progress is being made.

S. 1860: Adds threat of burden or restriction on U.S. commerce as element of section 301 cause of action. Defines "burden on U.S. commerce" by an illustrative list of practices, including:

- (a) practices adversely affecting U.S. trade;
- (b) export subsidies that displace U.S. exports to another country;
- (c) import restrictions or export performance requirements that direct foreign exports to U.S. markets; and
- (d) trade restraining agreements that direct foreign exports to U.S. markets.

S. 1860: Provides for additional "unreasonable" unfair practices actionable under section 301: infant industry protection; combinations of acts, policies or practices; and inadequate or ineffective protection against anti-competitive practices.

Requires retaliation, subject to exception, within two years of initiation or, if referred to GATT dispute settlement, within 9 months of a favorable GATT panel ruling. (If the GATT panel has not acted within two years of initiation, the President is to consider the case as having been favorably decided for the U.S.) 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.

Same as S. 1860.

Same as S. 1860.



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6. Actionable  
Practices  
cont'd.

S. 2660: Makes unfair "state trading" practices actionable under section 301:

As in S. 2660.

(1) when a foreign government requires a state trading enterprise to buy or sell, or compete with U.S. firms, on basis not dependent on commercial considerations;

(2) when a foreign country assists a state trading enterprise in buying or selling in international trade, or competing with U.S. firms, on basis not dependent on commercial considerations; or

(3) when a foreign country fails to give U.S. firms adequate opportunity, in accordance with customary business practice, to sell to, or buy from, state trading enterprises.

"Commercial considerations" defined by reference to similar arm's-length transactions, or constructed value of merchandise as computed under U.S. antidumping law.

S. 2226: makes "unfair trade concessions" actionable under section 301 as a denial of trade agreement benefits to U.S. "Unfair trade concessions" defined as collateral concessions required by foreign governments from U.S. firms as a condition of doing business, including (but not limited to) requirements to make substantial local direct investment or to license intellectual property.

As in S. 2226.

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7. Retaliatory Action	Retaliatory actions open to President under section 301 authority include: (1) all appropriate and feasible action within his power; (2) denial/suspension of trade agreement concessions, duty increases, import restrictions, fees or restrictions on services, or denial/restriction of service sector access authorizations.	Adds explicit authority to graduate a country or product from duty-free treatment under the Generalized System of Preferences (GSP) as section 301 retaliation.	S. 1860: Expands USTR's retaliatory authority to include withdrawal of GSP benefits and restriction or denial of Federal licenses, permits and other authorizations that permit access to the U.S. market by foreign suppliers of products related to a service.	Same as S. 1860.
8. Modification and Termination of Retaliation	President's discretion encompasses termination or modification of retaliation at any time.	Allows modification or termination of section 301 retaliation if the GATT subsequently finds the foreign practice is not illegal, the practice is eliminated, or retaliation is ineffective based on a USTR biennial review and recommendation, after consultation with domestic interests.	S. 1860 requires automatic termination of any retaliatory measure after 7 years, unless petitioner requests its continuation. If continuation requested, USTR must conduct a review of the effectiveness of the retaliatory measure, of different measures that might be taken, and of the effects on the U.S. economy, including consumers. USTR must submit a report to Congress on the review and any resulting modifications in retaliatory measures.	Allows modification or termination of section 301 retaliation if the GATT subsequently finds the retaliation a violation of U.S. obligation, if the foreign practice is subsequently eliminated or reduced, or if the practice's burden or restriction on U.S. commerce subsequently increases or decreases.  Same as S. 1860.
9. Compensation Authority	No authority to compensate other nations for the effects of U.S. retaliation that is inconsistent with international obligation.	Authorizes the President to give compensation to foreign countries if section 301 retaliation violates international obligation.	Authorizes the President to give compensation to foreign countries if section 301 retaliation violates international obligation.	Same as S. 1860.

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**BELIEF FROM INJURY CAUSED BY IMPORT COMPETITION**

1. **Adjustment Plans**

Petitioner may submit adjustment plan with section 201 petition.

Optional industry adjustment advisory group prepares adjustment plan.

S. 1860: Provides for optional tripartite plan development groups to prepare an industry assessment and competitiveness strategy, if requested by the petitioner in a 201 case.

Same as in S. 2099.

S. 2099: Requires petitioner to submit adjustment plan.

2. **ITC Remedy Recommendations**

ITC finds the amount of the increase in, or imposition of, any duty or import restriction on the article investigated which is necessary to prevent or remedy the serious injury found, or, if ITC determines that TAA can effectively remedy such injury, ITC recommends the provision of TAA; ITC then reports to the President.

Optional industry adjustment advisory group prepares adjustment plan.

S. 1860: Amends section 201(a) to provide that purposes of import relief may include facilitating the orderly transfer of resources to alternative uses enhancing competitiveness. Requires the ITC to investigate factors other than imports that may be a cause of injury or threat, and to include such findings in its report to the President. Requires the ITC's recommendation on relief to determine whether adjustment assistance can effectively assist in remedying (rather than remedy) the serious injury or threat found by the ITC.

The ITC is to recommend such import relief as can reasonably be expected to lead to a domestic industry that can be competitive without further import relief after the expiration of import relief. Relief may not exceed that which is required to remedy injury.

S. 2099: ITC remedy recommendations: Makes it possible (but not mandatory) for the ITC to recommend TAA in addition to import relief. Requires ITC hearing on remedy recommendation and adjustment proposal.

Same as S. 2099 with respect to ITC authority to recommend TAA in addition to import relief. Requires ITC hearing on remedy recommendations and adjustment proposal.

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3. Presidential decision on import relief

Within 60 days of receiving an affirmative determination from the ITC, the President must provide import relief, unless he determines that such relief is not in the national economic interest. The President shall report to Congress on his determination and action.

In determining whether and how long to provide import relief, the President must take into account the effect of import relief on consumers (including price and availability imports and domestic articles) and on competition in domestic markets.

If ITC recommends import relief, the President must evaluate extent to which trade adjustment assistance (TAA) has been made available to workers and firms in the industry, and may direct the Secretaries of Labor and Commerce to expedite consideration of TAA petitions.

If ITC determines that provision of TAA can effectively remedy injury and thus recommends TAA instead of import relief, then President is required to direct Secretaries of Labor and Commerce to expedite consideration of (TAA) petitions.

4. Options for import relief

Import relief may include:  
(1) tariffs;  
(2) tariff quotas;  
(3) import quotas;  
(4) orderly marketing agreements; or  
(5) any combination of the above.

Requires the USTR to take the adjustment plan into account in determining whether to provide import relief, and premits USTR to condition provision of import relief on compliance with elements of the plan.

Requires that the effect of import relief on domestic consumers be taken into account by the ITC and the USTR. Requires that USTR consider and report on the effect of any grant of import relief on U.S. agricultural exports.

Requires expedited consideration of petitions for trade adjustment assistance for workers and firms where there has been an affirmative finding of serious injury by the ITC, within the last three years, regardless of USTR's eventual decision on relief.

S. 2099: Requires President to evaluate adjustment proposal and effects of relief on adjustment and consumers.

S. 1860: If an assessment and strategy has been submitted to the President in a 201 case, he must provide the import relief recommended by the ITC, or substantially equivalent relief, unless Congress passes "fast track" legislation permitting otherwise.

S. 1860: Makes ITC's estimate of effects of relief on consumers binding on President.

President is obliged to grant import relief if such action can reasonably be expected to lead to a domestic industry that can be competitive without further import relief after the expiration of import relief. The President may decline to grant import relief if:

- such action cannot reasonably be expected to lead to a competitive industry;
- such action would undermine U.S. national security;
- such action would seriously injure another domestic producer.

The President would be obliged to grant TAA when he declined import relief. The President could grant import relief as well as TAA to an industry with no reasonable prospect of becoming competitive if he believed that such relief was required to facilitate adjustment.

S. 1860: Provides additional options for import relief:

- accelerated AD/CVD cases,
- multilateral negotiations,
- antitrust relief.

S. 2099: Adds two additional options for import relief: (1) antitrust relief and (2) multilateral negotiations.

Same as S. 1860.

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5. Post-relief follow-up

So long as any import relief remains in effect, the ITC is required to keep under review developments with respect to the industry concerned, including the progress and efforts made by firms in the industry to adjust to import competition. Upon request of the President, ITC shall make reports to the President concerning such developments.

Requires annual follow-up reports by the ITC on adjustment by an industry granted section 201 import relief.

Sec. 305, S. 1860: If relief granted in a "strategy" 201 case, assessment and strategy becomes public. Interagency committee monitors industry adjustment, and must recommend government actions or fast-track legislation to aid adjustment. If committee decides firms or workers not following through on the strategy or commitments, it then consults with the original plan development group or with industry firms; if committee decides compliance failure not justified by changed circumstances and has adversely affected implementation of (adjustment) objectives of the strategy, President can request ITC review, and then can terminate or modify the import relief.

S. 2099: Requires ITC evaluation of relief after it terminates. Requires President to monitor achievement of goals of adjustment agreement; permits termination or modification of relief if actions agreed to are not taken; authorizes submission of fast-track legislation necessary or appropriate to achieve goals of adjustment agreement.

S. 2099: Bars 201 investigations for any industry that has had 201 relief during two non-consecutive periods. For any industry that has had 201 relief in a previous non-consecutive period, sole objective of 201 relief the second time is to be orderly transfer of resources out of the industry (and the adjustment proposal must specify how); import relief cannot exceed relief provided before; and no extension of relief will be allowed.

Same as current law.

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6. Threat of  
Serious Injury

ITC must take into account all factors which it considers relevant, including, not not limited to: a decline in sales, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing under-employment) in the domestic industry concerned.

Adds to existing factors: decrease in market share, extent to which import restraints abroad divert exports to U.S., inability of producers to generate capital for modernization.

S. 1860: Elaborates on the existing factors to be examined concerning threat of serious injury, and adds: decline in market share; targeting actions that cause or threaten serious injury; existence of preliminary or final affirmative antidumping or CVD determinations on goods produced by the industry; lack of ability of firms in the industry to maintain existing levels of R&D; the extent to which trade restraints abroad divert exports to the U.S.

Same as S.1860.

S. 2099: Elaborates on the existing factors to be examined concerning threat of serious injury, and adds: (1) targeting; (2) existence of preliminary or final affirmative antidumping or CVD determinations on goods produced by the U.S. industry; (3) lack of ability of firms in the industry to maintain existing levels of R&D; (4) the extent to which trade restraints abroad divert exports to the U.S.; (5) increase in capacity, or unused capacity, abroad likely to result in increased imports into the U.S.; (5) rapid increase in market penetration and the likelihood that it will increase to the level of serious injury; (6) probability of price-suppression or price-depression caused by imports; (7) potential for product-shifting; and (8) other demonstrable adverse trends that indicate probability that imports will cause serious injury. The first four new factors are in S.1860; the last four track the threat factors added to the AD/CVD law in the 1984 Act.

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7. Provisional Relief for Perishable Agricultural Products	<p>Statutory authorities for CBI and for U.S.-Israel Free Trade Area provide safeguard provisions for removing duty-free treatment and restoring MFN duty rate for perishable products. Petitioners for section 201 import relief on agricultural perishable products may also file request with Secretary of Agriculture for emergency relief. Secretary must consult with USTR and determine within 14 days whether there is reason to believe a perishable product from Israel or from a CBI country is being imported in such increased quantities as to be a substantial cause of serious injury to the domestic industry, and recommend to the President emergency relief if warranted. President must determine within 7 days after receiving recommendation whether to take emergency action restoring normal duty rate pending final action on import relief petition. Includes live plants, vegetables, fresh mushrooms, edible nuts or fruits (including raisins, bottled olives), fresh cut flowers, frozen citrus juice, as listed in sec. 404(e), Trade and Tariff Act of 1984.</p>	<p>Provides fast-track import relief for perishable products (import restrictions or tariff increases above MFN duty rates) before a determination of serious injury by the ITC, if a request for such relief is made during a section 201 case, if the Secretary of Agriculture determines within 20 days that such relief is warranted, and unless the USTR decides within 7 days that the action is not in the national economic interest. "Perishable products" are defined by tariff classification, as in section 404(e) of the Trade and Tariff Act of 1984, and include live plants, vegetables, fresh mushrooms, edible nuts or fruits (including raisins, bottled olives), fresh cut flowers, frozen citrus juices, and kiwifruit.</p>	<p>S. 1860: Provides fast-track relief where a section 201 petition is filed on a perishable product, if petition requests such relief and is also filed with USDA. Secretary of Agriculture determines within 14 days whether such relief is warranted, and President then has 7 days to decide whether such action is in the national economic interest. "Perishable products" not defined. Emergency relief can include tariffs, quotas, tariff quotas, or any combination; it lapses when regular import relief is proclaimed, when the ITC makes a negative injury determination or the President decides not to give relief, or when the President decides relief is no longer warranted due to changed circumstances.</p>	<p>Same as current law.</p>
8. Provisional Import Relief	<p>No provision in present law.</p>	<p>Authorizes <u>provisional import relief</u> (suspension of liquidation and retroactivity of any later tariff relief) before a determination of serious injury by the ITC, if USTR finds "critical circumstances" exist. "Critical circumstances" exist if a substantial increase (absolutely or relatively) in the quantity of an article imported into the U.S. over a relatively short period of time has led to circumstances in which a delay in the taking effect of import relief would cause harm that would significantly impair the effectiveness of such relief.</p>	<p>S. 1860: Authorizes <u>provisional import relief</u> (any action under section 203(a) including tariffs or quotas) before a determination of serious injury by the ITC, if President finds that "critical circumstances" exist. "Critical circumstances" exist if significant increase in imports (actual or relative to domestic production) over short period of time has led to circumstances in which delay in imposition of relief would cause damage to domestic industry difficult to remedy at time relief could be provided under section 203.</p>	<p>Same as current law.</p>

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9. Review of  
Past Injury  
Determinations

There is no provision requiring  
ITC to review past injury determi-  
nations.

S. 1860: Special provision limited  
to cases where ITC unanimously found  
injury and President declined relief  
in 1/1/84 - 10/1/85 period (footwear  
and copper). If, within one year  
after enactment, either industry  
files a petition to review its past  
201 injury determination, ITC would  
be required to rule on the review in  
60 days (and recommend appropriate  
relief if it reaffirms the past  
injury finding).

Same as current law.



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D. NEGOTIATING AUTHORITY FOR  
TRADE AGREEMENTS

1. Objectives

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Sections 103-108, Trade Act of 1974, set forth overall negotiating objectives; sector negotiating objectives; international safeguard procedure objectives; supply access objectives; objectives on services, investment, and high technology products; and authorize bilateral agreements and agreements with developing countries.

Section 121, Trade Act of 1974, specifies areas in which the President must seek GATT revision.

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Sets overall and principal trade negotiating objectives for tariff and nontariff negotiations under Sections 101 and 102:

Overall negotiating objectives:

(A) more open, fair, and non-discriminatory international trading system for goods, services and related foreign investment;

(B) equitable and reciprocal competitive opportunities in general as well as individual sectors;

(C) expanded and improved GATT rules and procedures to restore their relevance and effectiveness.

Principal objectives:

(1) Improve GATT dispute settlement;

(2) Strengthen GATT subsidy/CVD rules by:

(a) prohibiting export subsidies on primary (agricultural) products;

(b) renegotiating subsidies rules to prohibit injurious resource input subsidies, upstream subsidies, and other forms of injurious government intervention;

(c) sanctioning special penalty measures to discourage persistent injurious subsidy practices; and

(d) authorizing countervailing measures against subsidized displacement of sales in third country markets.

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S. 1860: Amends section 104 of the 1974 Trade Act to list the specific negotiating objectives that section 102 agreements will be measured against, including:

-- Overall objectives closely similar to existing section 103: better market access, reduction or elimination of barriers, and overall balance between benefits and concessions within agricultural, manufacturing, mining and services sectors.

-- Principal objectives:

-- Equivalent competitive opportunities for U.S. exports in all foreign markets (including developing countries), with respect to manufacturing, mining, agriculture, services, and investment;

-- Improving trading rules:

-- improving GATT decisionmaking to provide timely and decisive dispute settlement, including establishment of a roster of nongovernmental GATT experts, and a ministerial level mechanism to monitor and consult on GATT compliance;

-- having similar rules apply to subsidies on primary and non-primary products;

-- revisions to define and discipline adverse trade effects from resource input subsidies, targeting, and dumped or subsidized inputs;

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Similar to S.1860 and S.1837, including extension of GATT rules to cover services, investment and intellectual 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 and better enforcement of GATT rules against noncommercial state trading and unfair trade concessions requirements.

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Negotiating objectives  
(cont'd.)

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(4) Strengthen GATT rules on dumping and antidumping by:

- (a) developing ways to detect, deter and counteract input dumping;
- (b) expediting procedures to provide more timely antidumping relief;
- (c) developing means to counteract dumping that displaces sales in third country markets;
- (d) authorizing special measures to deter repetitive dumping.

(5) Develop rules to limit and counteract injurious industrial export targeting practices;

(7) Develops rules and reduce barriers for trade in services, high technology products, investment restrictions and requirements, and intellectual property rights protection.

(6) Better balance LDC participation in the trading system by reducing and eliminating LDC reliance on special and differential treatment; and making more-developed LDCs take on international obligations commensurate with their level of development.

(8) Strengthen rules for trade in agricultural commodities, by developing rules to discipline trade distorting import and import practices, and by eliminating tariffs, quantitative restrictions, export subsidies and other nontariff practices.

(13) Develop rules imposing responsibility on surplus countries to undertake policy changes aimed at restoring current account equilibrium, including advance implementation of trade agreements;

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-- extension of GATT or the Codes to cover services, investment performance requirements, intellectual property rights and expanded entity coverage in the Procurement Code;

-- revision of GATT Article XVIII and Part IV to establish procedures for graduating advanced developing countries;

-- any revisions necessary to Article XII to address persistent current account imbalances of any country with the world (Japan, etc.);

-- accelerated implementation of trade agreement concessions by countries with persistent current account surpluses (Japan, etc.);

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Negotiating Objectives (cont'd.)

(9) Improve the operation of the MTN Codes; widen Code coverage and participation;

(10) Strengthen GATT rules on safeguards, to ensure transparency and promote adjustment;

(11) Develop principles, rules and procedures concerning offsets and countertrade to minimize their impact on domestic industry;

(12) Reduce, eliminate or harmonize specific trade barriers, particularly those identified in National Trade Estimates, as well as trade-impeding disparities in tariff levels;

(14) Develop mechanisms to assure greater trade and monetary coordination.

(3) Enhance the GATT by adoption of a new GATT article, or amending existing GATT articles, declaring that denial of internationally-recognized worker rights is an unjustifiable means for a country or its industries to gain comparative advantage; or gain adoption of a worker rights Code.

-- revisions to enhance transparency in the trading system, including replacement of quotas with tariffs or auctioned quotas, and the use of tariffs for domestic adjustment;

-- increased coordination of and with the IMF and the World Bank, to ensure GATT Secretariat participation in IMF stabilization plans and Bank structural adjustment loans;

-- establishing minimum workplace standards to provide greater discipline over human rights abuses of workers.

2. Types of Agreements

Objectives are to be achieved, to the maximum extent feasible, by multilateral agreements, but where non-multilateral agreements are more effective or appropriate, or multilateral agreements are not feasible, non-multilateral agreements should be negotiated.

No provision.

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3. Trade Negotiating Authority

a. Non-Tariff Authority

PRESENT LAW

Section 102, Trade Act of 1974, authorizes the President to enter into trade agreements to reduce, eliminate, or harmonize nontariff barriers, until January 3, 1988; agreements are subject to Congressional approval of implementing legislation under section 151 "fast track" no amendment procedure.

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Extends existing Section 102 authority until January 3, 1989. Authority is extended automatically for two additional years, until January 3, 1991 if USTR submits report to Finance and Ways and Means Committees by November 3, 1988, testifying that sufficient progress has been made to justify continuation of negotiations, and continuation is likely to achieve the negotiating objectives.

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S. 1860: Rewrites Section 102 of the Trade Act, with the following changes:

- Provides tariff and non-tariff negotiating authority for 5 years from January 3, 1988;
- Requires the President, at least 150 days before entering into a section 102 agreement, to notify and consult with Senate Finance and House Ways and Means Committees; and submit statement of how the agreement does or does not meet negotiating objectives listed. If President does not so notify and consult, or if either Committee disapproves negotiation within 60 days after notice, "fast track" implementation under section 151 is denied.
- Scope of section 102 widened to explicitly include any duty or import restriction, subsidies and other "distortions", trade in goods and services, and foreign direct investment by U.S. persons.

S. 1837: Provides tariff and non-tariff negotiating authority, under Section 121 of 1974 Trade Act; however, before entering into format negotiations, President must submit notice to Congress describing preparations for negotiations, anticipated benefits and positions of negotiating partners; if either of Senate Finance or House Ways and Means disapproves negotiations within 60 days, "fast-track" treatment not available.

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The President is granted ten years (from January 3, 1988) of negotiating authority to enter into bilateral, regional or multilateral trade agreements involving both tariffs and non-tariff barriers.

With respect to multilateral or regional agreements, the President may obtain the Section 151 fast track procedures (as described in current law) for implementation, if he submits to Congress:

1. A request for fast track procedures;
2. A detailed statement of U.S. trade policy;
3. A statement of the correlation between such policy and the negotiations to be undertaken;
4. Evidence of commitments from strong economies within the G-5 (Japan and Germany) to contribute to balanced world economic growth through increases in their share of non-petroleum world imports.

The staff proposes that one of the following alternative procedures be followed in making section 151 "fast track" implementation available:

1. Congress must act upon an unamendable concurrent resolution authorizing fast track within 60 days of the President's request; or,
2. Fast track becomes available 60 days after the President's request unless the Congress disapproves by unamendable concurrent resolution.

Fast track is available for three years and may be extended for two additional three-year periods through the same procedure followed at the outset. Extension would be

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Negotiating authority cont'd.

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based on an Administration statement and consultation regarding achievement of objectives.

With respect to bilateral agreements, the procedures of current law requiring pre-approval by Congress would continue to be available for ten years, starting on January 3, 1988.

In the case of a particular bilateral negotiation for which pre-clearance is obtained, fast-track procedures would be available for three years, subject to renewal for additional three-year periods.

This extension would be applicable to existing negotiations only if Congress consented through the pre-clearance procedure outlined in current law.

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b. Tariff Agreement Authority

None, except for bilateral requests under Section 102 subject to Committee disapproval of negotiations within 60 days and subject to Congressional "fast track" approval of implementing legislation.

Restores President's authority under section 101 of Trade Act of 1974 to negotiate tariff reduction agreements and proclaim the results. Negotiating authority lasts until January 3, 1989, and is extended automatically until January 3, 1991 if USTR submits a report to the Committees on Finance and Ways and Means by November 3, 1988 certifying that (1) sufficient progress has been made to justify continuation of negotiations, and (2) continuation is likely to achieve the negotiating objectives specified above.

S. 1860: Provides tariff authority together with non-tariff authority under Section 102. S. 1837: tariffs covered by other provisions on negotiating authority.

[b] Provision in sec. [a], supra applies.

Tariff cuts on certain import-sensitive articles (articles subject to section 503(c)(1)(E) of the Trade Act of 1974 as amended) are excluded from President's proclamation authority. Tariff cuts on such items must be approved by the Congress in implementing legislation given "fast-track" treatment.

Staging provisions of Section 109, Trade Act of 1974, apply, which require that any duty reduction exceeding 10% be phased in over 10 years or by no more than 3 percentage points per year. Existing pre-negotiation requirements under sections 131-135 (ITC advice, hearings, private sector advice) also apply, as well as exclusion under section 127(b) of items subject to import relief or national security actions.

4. Congressional Consultations

Before entering into any section 102 agreement, President must consult with committees of jurisdiction on subject matters affected and implementation. USTR must consult on continuing basis with ten Congressional advisors (five from Finance Committee, five from Ways and Means).

Requires that Congressional consultations include nature of agreement, and how it will achieve objectives.

S. 1860: USTR must consult with interested Congressional committees on a continuing basis (at least annually) on negotiations and negotiating objectives.

Same as S. 1860.

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5. Re-tariffication

S. 1860: Re-tariffication:  
Provides authority during negotiations for President to: impose or increase tariffs in lieu of any import quota that is or may be imposed under law, or to administer such quotas through import licenses, and auction the licenses.

Same as S. 1860.

6. Standstill/  
Rollback

S. 1860: Standstill/Rollback:  
Amends section 103 to provide that when the U.S. enters into negotiations with a foreign country on a section 102 agreement, the U.S. must seek an interim agreement under which any country participating in the negotiation would agree, for the duration of the negotiations:

Same as S. 1860.

- not to impose any new barriers to trade or trade-distorting actions (other than actions to prevent serious injury or the threat thereof to domestic industry, or actions against unfair trade); and
- to reduce intervention in the market and allow market forces to govern growth of industries characterized by overcapacity or overproduction.

7. Conditional MFN

To ensure that a foreign country which benefits from a section 102 trade agreement is also subject to the obligations, the President may recommend to Congress in the implementing bill and statement of administrative action that the benefits and obligations apply solely to the parties to the agreement, if such application is consistent with the terms of the agreement.

Conditional MFN implementation of trade agreements is required, but only if it is appropriate and consistent with the terms of the agreement.

S. 1860: Conditional MFN application of trade agreements is recommended (but not required) if consistent with the terms of the agreement.

Same as S. 1860.

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8. Surplus Countries

Section 123 of the Trade Act of 1974 provides authority for balance of payments surcharge.

Negotiating objectives include development of rules imposing responsibility on surplus countries to undertake policy changes aimed at restoring current account equilibrium, including advance implementation of trade agreements.

Sec. 119 (Gephardt amendment) requires Presidential action (quotas on agreements) to reduce trade deficit with countries:

(1) determined by ITC to have had excessive trade surpluses with U.S. in 1985 and 1987-90; and

(2) determined by USTR to have employed trade practices that contribute to the surplus.

S. 1860: Negotiating objectives include revision of GATT Art. XII to address persistent current account imbalances of any country with the world, and accelerated implementation of trade agreement concessions by countries with persistent current account surpluses.

S. 1404: Requires President to take all actions within his power to eliminate unfair trade practices of Japan or offset effects of those practices on merchandise trade balance between Japan and U.S.; President must act within 90 days of enactment.

Same as S. 1860.

9. Agreements with State Trading Countries

S. 2660: imposes additional requirements on any section 102 agreement with a country where state trading accounts for a significant share of traded goods; any such agreement would have to provide that its state trading enterprises will make purchases (except for procurement for government use) and sales on the basis of commercial considerations, and that it will afford U.S. firms adequate opportunity to compete for participation in such purchases or sales. Requirements would apply to all future section 102 agreements, and to extension of GATT or Codes to such countries.

Same as S. 2660.

10. Miscellaneous Tariff Agreements with Canada

President may enter into bilateral tariff agreements with Canada until Jan. 3, 1988 under section 102, subject to Congressional approval under fast-track implementation procedure.

Adds 5-year authority for President to enter into and proclaim reduction or elimination of duties on list of 11 items, to extent equivalent tariff concessions are granted by Canada.

No specific provision, although general bilateral agreements authority would be extended for ten years. See 3.a.



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11. Agreements with State Trading Countries

No provision.

No provision.

S. 2660, Section 7: Where state trading accounts for a significant share of a foreign country's exports or of the goods exported to that country from the United States and they unduly burden or restrict United States trade, then the President may not enter a trade agreement with such a country or agree to its accession to an international trade agreement (such as GATT) unless the country agrees to follow GATT rules against noncommercial state trading.

Same as Section 7 of S. 2660.

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**E. GENERALIZED SYSTEM OF PREFERENCES**

Any beneficiary country which reaches a per capita GNP level of \$8,500 in a particular calendar year, indexed annually by 50 percent of the annual change in U.S. GNP since 1984, must be graduated from GSP on all eligible articles over a 2-year phase-out period.

Individual articles may lose GSP eligibility by withdrawal of GSP in annual GSP review process, or by exceeding competitive need ceilings, or in response to petition.

Would require USTR to "reallocate" duty-free treatment benefits under GSP to Latin American countries that are in debt to U.S. banks, by waiving product "competitive need" ceilings under existing authority in certain circumstances.

S. 1860: Requires President, within 90 days after enactment, to submit draft "fast track" bill providing for withdrawal of GSP benefits within two years of enactment from any foreign country, based on per capita income and other indications of economic development and international competitiveness. Bill must provide for GSP withdrawal from Hong Kong, Taiwan and Korea, as well as any other appropriate countries, but exempts any country that enters into a free trade zone agreement with the U.S. under section 102 of the 1974 Trade Act.

Requires USTR to maintain a list of relatively competitive beneficiary countries, 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. 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.

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F. DUMPING BY NONMARKET  
ECONOMY COUNTRIES

Under Section 773(c) of Tariff Act of 1930, market value of merchandise from state-controlled economies is determined on basis of either (1) the price at which such goods produced in a "surrogate" market economy are sold in the surrogate country or in export markets, or (2) the constructed value of such goods produced in a "surrogate" market economy.

Commerce Department determines in each case whether economy of country of export of the product investigated is state-controlled to the extent that fair value cannot be determined under the regular anti-dumping rules.

Would make the primary benchmark for fair value, in cases involving alleged dumping of goods produced in nonmarket economy countries, the average price in the U.S. of imports of the same product from market economy producers.

Commerce would publish annually a list of countries deemed nonmarket economies, based on enumerated criteria. The list would be subject to public comment, and would not be judicially reviewable in context of individual cases.

Would make the primary benchmark for fair value the average price in the U.S. of the same product from the market economy country sending the largest volume of that product to the U.S.

Adopts the criteria in S. 1860 for determining whether a country is a nonmarket economy, but eliminates the requirement for maintenance of a list.

ISSUE	PRESENT LAW	H.R. 4800	SENATE BILLS	STAFF PROPOSAL
G. INTELLECTUAL PROPERTY RIGHTS (SECTION 337)	Section 337 of the Tariff Act of 1930 provides for relief against unfair methods of competition and unfair acts in the importation of articles into the United States or in their sale. In order to obtain relief for violations of section 337, substantial injury must be proven.	Amends Section 337 of the Tariff Act of 1930, to eliminate the requirement to prove injury, but only with regard to enforcement under section 337 of property rights under Federal intellectual property law such as valid and enforceable patents, process patents, registered trademarks, copyrights, or registered mask work rights.	S. 1860: Amends section 337 of the Tariff Act of 1930 on unfair practices in import trade:	Same as H.R. 4800.
1. Injury Test			-- Declares <u>per se</u> "unfair" unauthorized importation or sale of articles that (1) infringe valid U.S. product patents, (2) are made by a process covered by a valid U.S. process patent, (3) infringe a valid U.S. copyright, (4) infringe a valid U.S. mask work, or (5) infringe a valid trade secret. Declares importation or sale of an article which infringes a valid U.S. trademark to be <u>per se</u> unfair if manufacture or production of the imported article was unauthorized.	
2. Economic and Efficient Industry Test	The injury must be shown to have occurred to an economically and efficiently operated industry.	Petitioners would not have to prove that the industry is economically and efficiently operated, in cases involving property rights under Federal intellectual property law.	-- Eliminates requirement that the industry must be economically and efficiently operated in all section 337 cases.	Same as S. 1860.
3. U.S. Industry Requirement	The injury must be shown to have occurred to an industry "operated in the United States."	Petitioners would still be required to demonstrate that an industry exists or is in the process of being established in the United States. U.S. industry defined as significant economic activity in the United States, but could be satisfied by significant investment in engineering, R and D or licensing.	Requires that there be a U.S. presence, but does not define the term.	Requires that there be a U.S. industry as defined in H.R. 4800. Definition also applicable to cases involving trade secrets and common law trademarks.

<u>ISSUE</u>	<u>PRESENT LAW</u>	<u>H.R.4800</u>	<u>SENATE BILLS</u>	<u>STAFF PROPOSAL</u>
4. 337 changes-- procedure:			S. 1860:	
(a) Time limits for temporary exclusion orders	Under section 337, ITC can issue temporary and final exclusion orders prohibiting entry of merchandise. There are no time limits for issuance of temporary exclusion orders.	Sets deadline for ITC rulings on temporary exclusion orders at 90 days after initiation of the investigation (150 days in more complicated cases).	Imposes a 90-day deadline for Commission determinations on temporary exclusion orders.	Same as S. 1860.
(b) Cease and desist orders.	Section 337(f) provides for ITC use of cease and desist orders "in lieu of" exclusion of articles.  Penalties for violation of such orders are set at the greater of \$10,000 or the domestic value of the articles.	Clarifies that cease and desist orders can be used in addition to or in lieu of exclusion.  Increases the civil penalty for violation of such an order to \$100,000 or the domestic value of the articles.	Same as H.R. 4800.  Increases civil penalties for violation of an order to \$10,000 or twice domestic value of the articles.	Same as H.R. 4800.  Same as S. 1860.
(c) Default provisions.	No default procedures in existing law.	Adds new default provisions where the respondent fails to appear.	Adds new default provisions where the respondent fails to appear.	Same as S. 1860.
(d) Revocation of 337 orders	Existing ITC practice consistent with S.1860 language.	Places burden of proof on persons previously found "guilty" seeking revocation or modification of an ITC order. Change in order made on basis of new or newly available evidence or grounds permitted by Federal rules of civil procedure.	Same as H.R. 4800, except change in order made only on the basis of new or newly available evidence.	Same as S. 1860.
(e) Seizure and forfeiture	No provision for seizure and forfeiture in existing law.		Allows ITC to order seizure and forfeiture of goods in appropriate cases.	Allows seizure and forfeiture where a shipment has previously been denied entry and the owner notified of the exclusion order.
(f) U.S. Government importation	Under sec. 337(i), importations by U.S. Government or for U.S. Government use are exempt from ITC exclusion orders, in cases based on patent claims; patent holders are entitled to compensation.	Broadens 337(i) exemption to include trademarks, copyright, and maskworks.	Broadens 337(i) exemption to include trademark and copyright cases.	Same as H.R. 4800.

<u>ISSUE</u>	<u>PRESENT LAW</u>	<u>H.R.4800</u>	<u>SENATE BILLS</u>	<u>STAFF PROPOSAL</u>
H. MISCELLANEOUS PROVISIONS				
1. National Security	Section 232, Trade Expansion Act of 1962, requires the Secretary of Commerce to investigate, upon request or own motion, the effects of imports of an article on national security and report his findings and recommendations to the President within one year. If he finds "an article is being imported in such quantities or under such circumstances as to threaten to impair the national security," the President, if he concurs with the finding, must take such action for such time as he deems necessary to "adjust" the imports. There is no time limit for the President's decision.	Amends section 232 to require Secretary of Commerce to complete within three months his investigation of whether imports threaten to impair national security. The Secretary would then report his findings to the President, and within 30 days of receiving the report, the President must determine whether he agrees with Commerce's advice, and if so, determine how long and how much to restrict imports, and report his findings (and their rationale) to Congress. Import restrictions, if any, must be implemented within 15 days of the President's decision. Would apply prospectively and to cases where Presidential decision is pending on date of enactment.	S. 1860: Requires Presidential action on the Secretary of Commerce's recommendation under section 232 within 90 days; otherwise President must issue proclamation that fully implements such recommendations. Applies to pending cases.  S. 1860: Adds two additional factors to those already considered by Commerce and the President in making determinations under section 232: "Long-term dependence of the United States on imports of" the articles investigated, and "the extinguishment of a viable domestic industry producing articles for" national security.	Presidential decision 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.)
2. Trade Impact Statement	No requirement.		Section 922, S. 1860: Requires each Federal agency, before taking any major action that may affect international trade, to make a trade impact statement concerning the action's potential impact on U.S. international trade, and the ability of U.S. firms to compete in foreign markets. Requires all Administration comments on legislation to include detailed statement on legislation's impact on trade and competitiveness. All Federal actions potentially subject to TIS requirement except actions under Trading with the Enemy Act or actions subject to reporting or consultation under Export Administration Act.	Same as in S. 1860.