

1 OPEN EXECUTIVE SESSION TO ORGANIZE FOR THE 117TH
2 CONGRESS
3 THURSDAY, FEBRUARY 25, 2021
4 U.S. Senate,
5 Committee on Finance,
6 Washington, DC.
7

8 The meeting was convened, pursuant to notice, at
9 9:49 a.m., in Room SD-215, Dirksen Senate Office
10 Building, Hon. Ron Wyden (chairman of the committee)
11 presiding.

12 Present: Senators Stabenow, Cantwell, Menendez,
13 Carper, Cardin, Bennet, Casey, Warner, Whitehouse,
14 Hassan, Warren, Crapo, Grassley, Cornyn, Thune, Portman,
15 Cassidy, Lankford, Daines, Young, Sasse, and Barrasso.

16 Also present: Democratic staff: Michael Evans,
17 Deputy Staff Director and Chief Counsel; Ian Nicholson,
18 Investigator and Nominations Advisor; Joshua Sheinkman,
19 Staff Director; and Jayme White, Chief Advisor for
20 International Competitiveness and Innovation.

21 Republican staff: Gregg Richard, Staff Director;
22 Mayur Patel, Chief International Trade Counsel; and
23 John O'Hara, Trade Policy Director and Counsel.

1 The Chairman. This is how we are going to proceed,
2 having consulted with our friend, Senator Crapo, the
3 ranking member. I believe we have a quorum, so what we
4 are going to do is address these routine matters. And
5 then after we have completed them, we are going to break
6 for 5 minutes, just 5 minutes, in order to have our
7 guest come for the hearing.

8 So turning to the routine matters, members received
9 materials on Tuesday. They are a designation of
10 subcommittee, members, a designation of members to serve
11 on Joint Tax, a designation of members to serve as
12 Congressional Trade Advisors on Trade Policy in
13 negotiations, and an authorization of the committee's
14 rules, which would remain unchanged from our
15 longstanding rules.

16 Senator Cornyn has filed an amendment to the
17 committee rules. It is my understanding that Senator
18 Cornyn is going to discuss the amendment, but he will
19 not ask for a vote.

20 After Senator Cornyn has discussed his amendment,
21 and any other Senators who wish to discuss the amendment
22 have done so, I will ask for the various committee
23 members -- committee matters to be approved en block by
24 voice vote. Then, as I indicated, we will adjourn the
25 business meeting and convene our hearing on the

1 nomination of Ms. Tai.

2 So I will now recognize Senator Crapo for any
3 remarks he would make about how we will proceed today,
4 and when Senator Crapo is done we will recognize Senator
5 Cornyn to discuss his amendment to the committee rules.
6 Senator Crapo?

7 Senator Crapo. Thank you very much, Mr. Chairman.
8 And once again, I appreciate our friendship and our
9 working relationship and the consultation we have had on
10 this rule package and these designations.

11 I know we will move to Senator Cornyn to discuss his
12 amendment immediately, and following that I encourage
13 all of my colleagues to support this rule package and to
14 also support the designations and other actions that we
15 are going to take today. Thank you very much, Mr.
16 Chairman.

17 The Chairman. Very good. Senator Cornyn?

18 Senator Cornyn. Thank you, Mr. Chairman. I would
19 like to call up my amendment to Rule 2, which I believe
20 members have a copy of. Simply stated, I think it is a
21 good time to revisit the committee's practice of
22 conceptual markups. In other words, I think we ought to
23 know what we are voting on before we vote, as opposed to
24 a concept. And I understand that this has been a
25 longstanding tradition. I have tried to explain to some

1 of my friends and constituents back home, particularly
2 lawyers, that we do not actually have plain English
3 legislative text that we are voting on. And obviously
4 this committee is unique in that regard.

5 So the amendment I am offering would require that
6 members be provided a copy of actually the plain English
7 text prior to a markup of legislation, and require texts
8 to be provided 48 hours in advance, and an amendment's
9 text 24 hours in advance.

10 Due to the complexities and the special nature of
11 tax legislation, the amendment excludes the requirement
12 from tax legislation. But I know we have voted -- we
13 have debated the concept of conceptual markups before,
14 as recently as 2009, when we considered health care
15 legislation. But I think this is a conversation worth
16 having again.

17 And it is not just that members of the Senate and
18 the Finance Committee know what we are voting on before
19 we actually vote, it is so that the public can know what
20 it is we are voting on and so we can hear from them.
21 Conceptual markups just strike me as a way to kind of
22 hide the ball from the public in terms of accountability
23 and transparency. So I know that this has been a
24 longstanding tradition in the Finance Committee, but I
25 think it is a tradition that we should look to change,

1 where it is feasible to do so.

2 And so that is my amendment.

3 The Chairman. Very good. Let me just make three
4 quick points. One of course is traditionally -- and
5 this has been the case in the 2017 tax bill, for
6 example. It was done on the basis of conceptual kind of
7 work. And that is so that people can understand in
8 plain English, rather than having a discussion of, well,
9 let's strike subparagraph D at paragraph 5 of section D
10 of section 1253B, 2B, or something like that.

11 That is what we would be dealing with, colleagues,
12 if we accept this amendment. And so I would just add,
13 also because we have members who feel very strongly
14 about policy on both sides of the aisle, it is going to
15 be easier for members to actually draft amendments in
16 their ideas if we use the system we have today, rather
17 than get us into this kind of La La Land of arcane
18 language where nobody is going to have any idea how to
19 proceed.

20 So it is my understanding that my friend from Texas
21 would withdraw his amendment at this time?

22 Senator Cornyn. Mr. Chairman, if I could just
23 respond briefly, I do not want to minimize the
24 importance of this amendment, but I do not intend to ask
25 for a vote on it today. But I would point out that in

1 my previous life, I was a judge for 13 years. And we
2 essentially are delegating our authority to judges and
3 lawsuits on how to interpret the language that is voted
4 on conceptually here, written up by the staff, and then
5 ruled on by judges when there is litigation.

6 And then of course judges have a whole litany of
7 canons of interpretation of what in the world was
8 Congress talking about when it passed this law? And I
9 just think that we are contributing to not only
10 litigation where our authority is essentially delegated
11 to the judiciary to figure out what it is we meant when
12 we marked up a bill, and when we passed legislation.
13 And I just think more clarity and more precision and
14 more accountability for Congress, along with maintaining
15 our authority to actually make laws ourselves and not
16 delegate that to the judiciary, would be a worthy goal.

17 So I understand what the chairman's position is. I
18 am not going to ask for a vote at this time. But I do
19 think this is an important issue, and I would just ask
20 my colleagues here on the committee to think about this
21 some more. Maybe we can have some further discussion.
22 And, Mr. Chairman, I would hope that, to the extent
23 feasible, that we could aspire to plain English text.

24 I understand the challenge that you just -- the
25 example you gave, but I do think, to the extent

1 feasible, it is a worthwhile goal.

2 The Chairman. Well, I want to tell my colleague I
3 appreciate his withdrawing this. And I am glad to keep
4 thinking about this issue. It obviously has
5 implications on a variety of fronts, and we will keep
6 talking about it. And I thank my colleague.

7 Senator Young. Mr. Chairman, would it be possible
8 for me to be recognized for 60 seconds?

9 The Chairman. Sure. Of course.

10 Senator Young. Thank you.

11 The Chairman. And then we will move to complete our
12 business and get to the hearing. Senator Young?

13 Senator Young. So in July of 2019, I had an
14 opportunity to speak briefly on this issue. And I spoke
15 with some measure of passion. I will keep this
16 dispassionate. But nonetheless, the Ways and Means
17 Committee in the U.S. House of Representatives, same
18 jurisdiction as the Senate Finance Committee, I know it
19 would be very odd institutionally for the Senate ever to
20 learn from the example of the U.S. House of
21 Representatives, but I am not aware there has ever --
22 ever -- been any challenges with respect to the arcana
23 of language confusion as to legislative text.

24 It is our jobs to vocalize in plain English what
25 provisions -- and to the extent there is disagreement

1 about what provisions mean, those are healthy debates
2 that we need to have.

3 So this should be empowering to the American people.
4 The gentleman's proposed amendment, which he has since
5 withdrawn, and I just think we are trying to prove that
6 what works in practice actually works in theory. And
7 let's not go down that road.

8 So thank you, Chairman, for your continued thought
9 about this. It is my fervent hope that we do not
10 continue thinking about it for years and years into the
11 future.

12 Thank you.

13 The Chairman. This discussion will continue, and I
14 thank both of my colleagues for allowing us to move
15 forward.

16 We now have a quorum. I move that we approve the
17 subcommittee assignments, the committee rules, the
18 designation of the members of the Joint Tax Committee,
19 and the designation of the Congressional Trade Advisors.

20 Senator Crapo. Second.

21 The Chairman. All in favor, say "aye."

22 [A chorus of ayes.]

23 The Chairman. All opposed, say "nay."

24 [No response.]

25 The Chairman. The "ayes" have it, and the business

1 matters are agreed to. The business meeting is
2 adjourned. We will be back in 5 minutes so that our
3 guests can have a chance to get comfortable, and we will
4 actually begin the hearing on Ms. Tai's nomination.
5 Thank you.

6 [Whereupon, at 9:59 a.m., the meeting was
7 concluded.]