Briggs.
4/29/87
58 s.
(p 2 &
pg.12A)

EXECUTIVE COMMITTEE SESSION

WEDNESDAY, APRIL 29, 1987

Senate Finance Committee

Washington, D.C.

The session was convened, pursuant to recess, at 9:37 a.m. in Room SD-215, Dirksen Senate Office Building, the Honorable Lloyd Bentsen (Chairman) presiding.

Present: Senators Bentsen, Matsunaga, Moynihan, Baucus, Bradley, Mitchell, Pryor, Riegle, Rockefeller, Daschle, Packwood, Roth, Danforth, Chafee, Heinz, Wallop, Durenberger, and Armstrong.

Also present: Bill Wilkins, Staff Director; Jeff Lang, Chief, International Trade Counsel, Josh Belten, Trade Counsel, Minority.

Also present: Alan Woods, Deputy U.S.T.R.; Alan Holmer, Chief Counsel, U.S.T.R.; and Robert Jones, Deputy Assistant Secretary, Department of Labor.

The Chairman. This meeting will come to order. Please be seated and cease conversation.

I would like to announce that the vote on the Bradley division of the Mitchell amendment -- that is the second half and deals with the question of market access -- that the second half of the Mitchell amendment was approved yesterday by a vote of 12 to 8.

Now insofar as today's schedule, when Senator Chafee appears we will get to his technical amendment that he asked us to hold over until today, but we will be dealing with section 301, and we would be pleased to have staff proceed on that. Mr. Lang, if you would.

I might state that we will try to finish 301 today. I am not sure that we can. We seem to have made considerable progress in trying to work out some agreement. On section 201, we would move to that if we finish, or the negotiating authority -- one of the two, for tomorrow. I really expect we will go to 201 before the negotiating authority; but we are working amongst the members to see if we can't get closer together on the negotiating authority.

We are delighted to have Senator Chafee here. Yesterday he suggested that we delay taking up his amendment, of which he is the author. It deals with the question of technology transfer divisions of S. 490.

Senator Chafee, we would be pleased to have you discuss

it with us.

Senator Chafee. Thank you very much, Mr. Chairman.

The technology transfer that I am dealing with here are amendments to the AID bills. What we are trying to do is to encourage the LDCs to enact copyright and patent and intellectual protection laws. What we are saying is that foreign assistance can be used to help those nations do that.

However, in the language that I have in there, there is one provision in particular that has a couple of lines that I would like to delete, in that our negotiators feel that it hurts them, and these deletions are satisfactory to me.

Do you have the proper page there?

Mr. Lang. Yes. I believe the material you are talking about is on spreadsheet page 98.

Senator Chafee. It is the deletion of langauge.

Mr. Lang. Right.

If you will notice, in the righthand column on spreadsheet page 98, there is a list of the assistance that could be provided. And I believe the provisions about which the Administration had reservations that you want to amend are B and D.

Senator Chafee. Mr. Chairman, if you would look on page 98, on the S. 490 column and in the first full paragraph starting with "Amends the foreign assistance pact," if we could put a period after "intellectual property laws"

and take out "and in developing their own indigenous technology." It was my understanding that the Administration is perfectly happy to have that take place, but they don't want it mandated, because that would not be of assistance in our negotiations.

Am I correct there, Mr. Holmer?

Mr. Holmer. Yes.

Senator Chafee. All right.

And the other provision that they had trouble with --

The Chairman. Tell me the concern. You say the period after "intellectual property laws," and then you ask that we strike "and in developing their own indigenous technology"?

Senator Chafee. That is correct.

The Chairman. What is the purpose?

Senator Chafee. Well, the purpose is that we don't want it to be required that he do this; that it is an option that he can do, but their feeling was that getting that specific about developing their own indigenous technology was not helpful. I don't think it is cataclysmic.

The Chairman. Would you comment on that, Mr. Holmer?

Mr. Holmer. The concern, Mr. Chairman, was that this provision as currently drafted, we felt, would be requiring us to fund LDC research and development, and we would prefer not to have that mandate.

The Chairman. Well, so would I. I quite agree.

Mr. Holmer. And therefore, the Chafee amendment is totally acceptable to us.

Senator Chafee. The Chafee amendment to the Chafee amendment is what we've got here.

All right, then, Mr. Chairman, the other provision is at the bottom there, as you work your way down to D. Again, we would delete, where it is somewhat similar, where it says, "Expand current programs to aid the development of R&D capability itself." Again, we want to encourage the intellectual property development of the laws, the copyrights, the patents, and so forth; but not necessarily to -- as you notice, this paragraph starts off with "the assistance shall." Again, we did not want to mandate that "we shall" expand current programs to aid the development of the R&D capability. And that whole paragraph.

That is all, Mr. Chairman. Thank you very much. Shall we delete D?

The Chairman. Yes. Is there any question or objection to that part of it?

(No response)

The Chairman. If not, would you propose the amendment?

Senator Chafee. I would propose the amendment, Mr. Chairman, with both of those provisions.

The Chairman. Further questions?

(No response)

The Chairman. All in favor of the amendment as stated make known by saying Aye.

(Chorus of Ayes)

The Chairman. Opposed?

(No response)

The Chairman. Motion is carried.

Senator Chafee. Thank you very much, Mr. Chairman.

The Chairman. Mr. Lang, would you proceed on section 301? Do you have any comments at this time, or are we prepared to go ahead and consider amendments?

Mr. Lang. Yes, sir. The section 301 provisions of the spreadsheet begin on page 52. I am not sure how you would want to proceed on this.

The Chairman. I think we have an amendment by Senator Packwood that he desires to propose, and if he is ready at this time we would be happy to hear it.

Senator Packwood. Mr. Chairman, I am ready; but, so that everyone is fully conversant with what I am doing, if you would be good enough to give me a little time to explain why I got to where I have gotten, I would appreciate it.

The Chairman. Yes, of course.

Senator Packwood. My amendment does not touch the issues of export targeting or adversarial trading or state trading enterprise. I know there is some controversy, and

others have amendments. I just haven't touched that in my amendment.

Senator Chafee. Before we start, what page are we on, Mr. Chairman.

Mr. Lang. It begins on spreadsheet page 52.

Senator Packwood. What I would like to do, with the indulgence of the committee, is very briefly go through current law to make sure that I understand it and that the committee members understand it, and then the Chairman's bill and where I have some differences with it, and see if what I propose might be acceptable.

All the way along I realize that we start in this area with almost two different philosophies. The Congress is convinced that the Administration has solely a State Department view -- and I don't mean just this Administration, I mean any Administration; "Do not do anything to irritate any country -- period. If that means giving away the store, then give away the store, but don't upset." Whereas, the Administration, I think, is inclined to view Congress as having the position that, "Don't worry about foreign sensitivities; if any import costs 50 jobs in my State, stop it. It doesn't matter if it's a trade-off; it doesn't matter that it creates 100 other jobs -- stop it."

And so you start with these two almost adversarial philosophies. I am not sure they are as adversarial as each

side thinks the other's is, but we start there.

Then, I thought the admonition we had from former Ambassador Strauss was the best we had on 301: "Make it mandatory, but not compulsory." And we have asked every witness since then if they could draw a distinction on that, and you cannot. Either at some stage you make something mandatory; or, at the end of it, it isn't.

Now, with that in mind, as I understand the current law it is as follows: Any domestic industry can petition, for any reason they want -- it doesn't even have to be a valid reason in anybody's judgment; they have a right to petition just like anybody has the "right" to file a lawsuit. You may not get far with it, but you have the right to file it. But to be actionable, it has to be an action taken by a foreign government, and it must deny U.S. benefits under trade, and be otherwise unjustifiable or unreasonable or discriminatory. And that covers almost anything.

There is relatively little difference in the petitioning process between the Chairman's bill and what I will suggest -- this is for the petitioner, not the self-initiation -- with the exception that both the Chairman and I at the end of the process of a petition for violations of a trade agreement, we have a form of mandatory retaliation. We both do, and I will get to what that is in a minute. That is the difference.

Now, under the present process, when you are all done -- whether it is a petition process or an initiation process -- at the end of it there is no mandatory retaliation; the President has total discretion.

Now again, I will ask the staff -- correct me if I am wrong so far -- is that roughly it on the present law?

Mr. Lang. Yes.

Senator Packwood. At the end, it doesn't matter if it is reasonable or unreasonable, or justifiable or unjustifiable, or a trade agreement or a non-trade agreement -- no compulsion at the end.

Now, under the Chairman's bill, as I say, the petition process is almost identical to the present process, except if you've got a trade violation then you mandate retaliation. I do the same thing.

The more critical discussion has been over the self-initiation rather than the petition process. Under the Chairman's bill -- and this is where the Administration has some misgivings -- the bill distinguishes between "significant" and "insignificant" violations. This is not to be confused with the definition of "significant trade barriers" that appears in that book that comes out once a year. It is not quite the same distinction that the Chairman uses in its bill; is that correct?

Mr. Lang. Yes. The S. 490 has a two-part definition

of "significant." Either it is significant in the sense of exports directly, or it would lead to a precedent that might improve the prospects for U.S. exports -- "

Senator Packwood. I find the Administration does not object to all that much sort of a de facto distinction if they are bringing the action; they just don't want us to start listing significant barriers. Am I right, Mr. Holmer? You don't want to be in that box?

Mr. Holmer. That is correct.

Senator Packwood. All right.

So, the Chairman says there are significant barriers -- and I assume those that are not significant are insignificant. This bill doesn't say "these are insignificant," but you have "significant and insignificant barriers."

Again, "'Significant' is a barrier that adversely affects a significant portion of U.S. exports, or the elimination of which would establish a beneficial precedent."

Now, within the term "significant" -- bear in mind those are both significant, but within the definition of "significant" they then fall into two categories, and a term of art is used for each one. One is called "unjustifiable" -- that is a synonym for a violation of a trade agreement. The others are called "unreasonable," and

they are violations of non-trade agreements.

Am I okay so far, Mr. Lang, on that?

Mr. Lang. Yes, sir.

Senator Packwood. So, when you hear the term "unreasonable" or "unjustifiable" as it is used as we are going through 301, remember we are talking about a term of art. Does it violate a trade agreement, or does it not violate a trade agreement? "Unjustifiable" does, "unreasonable" does not.

Now, when it gets down here again, where "mandatory" is often misused, you have got investigations and you have got retaliation. It is one thing to mandate investigations; even that has to be done under the present process. But it is another to mandate retaliation.

The STR under the Chairman's bill and under mine must initiate investigations for violations of a trade agreement -- i.e., unjustifiable. For practices that do not violate a trade agreement -- and this is unreasonable -- for all practical purposes the USTR also has to initiate an investigation, because the Chairman says the only reason they don't have to do it is if "after consultation with the majority of the domestic industry affected, it is determined that the initiation would be detrimental to the efforts of resolving the problem."

Now, my hunch is, if an industry complains and you have

gotten to the process, it is an unreasonable issue, not an unjustifiable one; if you have gotten to the process of going ahead, the complaining industry is not likely to say, "Well, no, we don't think it is important," unless at some stage along the way some settlement has been reached, and that is another matter. But to start, my hunch is that the USTR is going to be initiating investigations in both areas.

Now, under the Chairman's bill -- now we are in retaliation -- "For violations of trade agreements" -- i.e., unjustifiable -- the Chairman says, "You must retaliate unless: The GATT has ruled against the United States' position," and he allows them 19 months; it is 15 months plus two two-month extensions, "or the majority of the complaining industry accepts an agreement" that eliminates the offending practice. It may or may not be likely.

"For practices that are not violations of trade agreements" -- this is in the Chairman's bill -- "these are unreasonable." And there the Chairman does not mandate retaliation, even though you have had to do an investigation.

Now, here are the distinctions I would make in my bill, and I hope it will be acceptable: Petition? Roughly the same as the current law, plus what the Chairman has added. I have no quarrel with that at all.

I mandate, however, that the Special Trade Representative has to initiate investigations of cases, and

rather than calling them "significant" or "insignificant," and this is a concession to the STR, and I think it is a good one, that they don't want that distinction, "they must initiate investigations of cases likely to: a) result in greater expansion of U.S. efforts, or b) establish a beneficial precedent." That is very, very similar to the Chairman's bill.

I make no distinction, however, at the start. I make no distinction at the investigative level, where you are going to have to do the investigation between alleged violation of trade agreements -- i.e., unjustifiable -- and non-trade agreements -- i.e., unreasonable -- because there are cases where the non-trade violations are infinitely more significant from the standpoint of the economy than trade agreements. Services are not yet part of GATT, and yet is a very significant issue for us. So, I didn't want to make a distinction, where we call some things "significant" or "unjustifiable" that are actually less significant or less a concern to us than other issues that don't rise under that definition.

So, I say at the start, at the investigative level, I don't make a distinction between the "unjustifiable" or the "unreasonable" or the "significant" or the insignificant" but I do use that standard that they must investigate "if it is likely to lead to greater expansion of U.S. exports or

a beneficial precedent," the same two standards the Chairman uses.

Now here is where we start moving closer to what Bob Strauss says and a bit beyond. Let us now assume the USTR has had to initiate an investigation, but we haven't had the distinction of "significant, insignificant, justifiable, unjustifiable," but the investigation involves a trade violation. We have got an existing agreement. And in our estimation, the investigation proves that the complaint is justified. Then, I require us to file a complaint with GATT. It is a violation of a trade agreement, and so it will be pursuable through GATT. And GATT has, under my initial proposal, 18 months to decide. If they do not decide within that time, it is presumed that they will have decided favorable to us, unless the complaining party is responsible for the delay -- wants to give the USTR more time or simply will not cooperate with the USTR in producing the evidence that is needed. But otherwise, 18 months. At the end of that time you mandate retaliation.

And the President must retaliate, with the following four exceptions: GATT rules against us within the 18 months, or a settlement is reached that is satisfactory to the complaining industry, or there is compensation -- now this is a difficult one, although we did it recently in Europe and we did it with the leather situation in Japan -- the other side

simply can't give politically; they just can't. So it becomes very clear that, if we pursue retaliation, we are not going to get what we want for the complaining industry. We all understand domestic politics. So, they give compensation. If the alleged violation, if eliminated, would have allowed us $400 or $400 million of exports into their country in leather, and they can't give on leather, we get a $400 million reduction someplace else. Just did it with the market.

Senator Heinz. Bob, would you yield?

Senator Packwood. Yes.

Senator Heinz. Could you give an example of that?

Senator Packwood. Well, the recent one would have been the one with Europe -- one of the staff could explain it -- where we wanted in.

What happened when Spain and Portugal went in and we demanded in and couldn't get in, but we got compensation in -- what area?

Mr. Woods. It was a whole number of areas, Senator. We got some of the compensation in the agricultural sector which was affected -- corn, basically.

The Chairman. That was particularly true on Spain, as I recall.

Mr. Woods. That is right, with Spain and the Portuguese.

The Chairman. That is what we are talking about, yes.

Senator Heinz. Mr. Chairman, let me make my inquiry clear: If they didn't want to do something, I can understand that; most people don't want to do anything in this area. But what is the definition of "impossible"? That seems to me, unless we have a definition-understanding of it, it seems to me that someone just says, "Well, we can't do that."

Senator Packwood. "Impossible" is a firm that I should redefine, because I do not mean physically impossible. I mean you negotiate, and it is simply clear that they are not going to give. The best example here is Japan and leather. For whatever reasons, they would not give. They politically could not give, they said; but in exchange they gave us compensation. As I recall, it was aluminum. Am I mistaken, or not?

Mr. Woods. A number of areas.

Senator Packwood. A number of areas. Where somebody comes to the United States and says, "Your farm supports violate GATT," and they take you to GATT, and GATT is about to say, "Yes, your farm supports violate GATT" -- we can't give. We just won't give. The politics of it are such that we cannot give, and so we say, "In exchange, we will offer you compensation in -- "

Senator Heinz. Well, what we are doing here is we are saying, "Here is an unjustifiable practice. The GATT has

ruled in our favor" -- and if it hasn't, there is another out here.

Senator Packwood. Well, we may not have gotten to a GATT decision; the other country may say, "We are just not going to give," and you compensate as a negotiated thing before the GATT finding.

Senator Heinz. But as I understand the operation of this exception, this exception can take place even if the GATT has ruled in our favor, on an unjustifiable practice.

The Chairman. Yes. But under the provisions of GATT now, they reply often not in a specific sector but in an alternative sector, and they do that under the laws of GATT.

Senator Heinz. I understand.

The Chairman. And I think, on what you are talking about, Senator, I have a concern, too, as to whether they can do it or not, and I think we ought to write some pretty tough definition of that in the report on the bill.

Senator Heinz. I am not sure that I like establishing a precedent in our law which says that if the other country claims they don't have the political will to do something about it, that's an out, even if we've gone to the GATT and even if it is unjustifiable.

But I just wanted to raise that concern.

Senator Packwood. Yes. The reason I want to do it is, if you have reached this stage and you are making a petition

for leather, and you are not going to get leather, your choices then? They say, "No." Do we say "No" on something else? Or are you willing to trade it off -- and I understand what it is -- for an equivalent amount of barrier reductions in other areas? The complaining industry does not get what it wanted, but it is a provision well-known in GATT law now, and it has been done on a number of occasions.

So, I have: "The President must retaliate unless a) the GATT has ruled against us; b) a settlement is reached that is satisfactory to the parties; c) compensation" -- and then the last one is national security, where, if the President simply wants to say "for reasons of national security," and I don't mean national economic benefit, but security, he says, "these are the reasons I cannot do it."

Now, where is where both Senator Bentsen and I go beyond Strauss's "mandatory but not compulsory": If these four areas, these four exceptions -- GATT rules against us, settlement, compensation, or national security -- if none of those exceptions apply, the President must retaliate.

Now, whether or not you could sue him, whether or not you could bring a mandamus action in court and say, "Mr. President, you must retaliate," I don't know what your legal standing would be at that stage. But if he does refuse to act, and there are none of these exceptions, he will probably be sued in court, and he will have to defend

himself there, and he will have a very difficult political explanation to make with the Congress and the public.

In the non-trade cases -- Senator Bentsen calls them "unreasonable" -- I follow the Senator's 19-month time limit, and at the end of it both he and I do not mandate retaliation in the so-called unreasonable cases, and I think probably we don't do it for two reasons. All of us, I suppose, place a higher importance, a legal importance, to agreements that have been reached. And also, the international community has obviously said, "Yes, these are certain agreements we have reached, and violations of them occupy a higher privileged position in our concept of law than do non-agreements." And so, neither the Chairman nor I mandate retaliation in the unreasonable non-trade cases.

So that is basically the proposal I would suggest. I have not bounced it off the Administration. I don't know if they like it; I don't imagine they will like the final mandatory retaliation. But I tried to walk as thin a line as possible in meeting Bob Strauss's definition.

Senator Heinz. Mr. Chairman, would the Senator yield?

The Chairman. Yes. enator Heinz.

Senator Heinz. On the national security exception, it is U.S. policy to try to get Japan to increase their defense budget and take responsibility for protecting the sea lanes out to the distance of 1000 miles from whatever the

continental limits are of Japan. It would seem to me that any time the President wanted an out with respect to Japan -- and I assume there are other countries that might be in this bailiwick -- he would say, "Well, if I impose this mandatory retaliation, notwithstanding the fact that it is unjustifiable, notwithstanding the fact that the GATT may have ruled that it is a GATT violation," the Japanese have told me that they are going to be so mad that they are just not going to do what we want them to do in terms of national security, that "this is prejudicial to our national security and therefore we are not," that "I am going to use my authority under the protection to get out of what you want me to do." Is that an example of what could happen under the Senator's amendment?

Senator Packwood. It could happen. I don't want to draw a law so tight that the President has almost no discretion. I don't think that retaliation ought to be mandated in every case, no matter what, and I think national security is a legitimate defense. And to the extent that a President uses it willy-nilly and unjustifiably, he will have to explain that, apologize for it, and defend it. But I think national security is a legitimate exemption.

The Chairman. Senator, I had deep concern the more I studied it, what we have done on 490, that we do have an exception for national security. I know that that can be

can be abused; any one of these exceptions can. The biggest loophole of all is the question of national economic concern, and we have closed that one.

But, frankly, I felt when it came to national security that the President must have some degree of interpretation that he can make in that regard. I am quite willing to see what we can do to tighten up the parameters of that in any kind of report language that we deal with, if we can get to conference on this, and if this takes place.

I would like to also note, and I am not sure that Senator Packwood cited this, that in 490 we have those provisions, that if we have mandatory retaliation it is not necessary if we have a GATT ruling that is contrary to the United States against it, and that if you have a settlement that is acceptable to a domestic industry that offsets any unfair trade practice. That was in 490, and we have it.

So, what in effect has been added on the mandatory retaliation exceptions is the question of national security, which you are addressing now, and the other one where the USTR certifies that it is impossible for a company to eliminate the practice. That one concerns me, too. And again, if we can tighten up on that in the report language, I want to try to do that.

But overall, I think that Senator Packwood has made a proposal that I think is a good one. I assume the

Administration opposes the mandatory retaliation.

In this one, insofar as the initiation of investigations, the language says that, "They shall initiate the investigations." It does not determine the number, and you can't do that, obviously.

But I was concerned somewhat about the length of time, Senator. We had a period, as I recall, of 15 months plus two two-month extensions.

Mr. Lang. Yes, sir.

The Chairman. And you were talking about more months.

Senator Packwood. I was talking about 24 maximum. You had 19 maximum.

The Chairman. Yes.

Senator Packwood. In my mind, I think that could be a bargainable point, because 19 months is the time they have under the "unreasonable," the non-trade pieces, anyway; and 13 or 14 months is the time that GATT estimates it could take them to resolve a case. Now, we have one or two horror stories of years, but nobody is talking about giving them that amount of time.

The Chairman. No. I can recall getting involved in the Citrus Case in Geneva. It must have been 14 or 15 years ago.

Mr. Lang. Sixteen.

The Chairman. Thank you. Sixteen. It seems like 30,

but anyway --

Senator Heinz. Mr. Chairman, I might just make an observation on the national security issue. In principle I don't oppose -- in principle -- some kind of national security exception, for obvious reasons. But I think I would be inclined to oppose this one withouth clarifying language in the statute.

I have seen Presidential authority abused in the Export Administration Act, by this Administration as well as by others, because we left too large a loophole. And it would be a mistake not to learn from those lessons. So, I would hope in the language we could define national security, going further than we have gone.

Senator Daschle. Mr. Chairman?

The Chairman. Yes, Senator Daschle.

Senator Daschle. I have a question with regard to under the exceptions that Senator Packwood provides. The compensatory trade benefits -- in the original 490 we talk about settlements being offset or eliminated, and that offset as I understand it would be in the industry affected under the original bill. What concerns me a little bit is, when we deal with compensatory trade benefits in the Packwood amendment, it doesn't appear that there is any requirement that the compensatory benefit be offset in the industry affected, that they would have broad range.

Senator Packwood. It is not sectoral.

Senator Daschle. Well, I am just wondering if, given our experience with Spain and Portugal and in my opinion how little of the actual compensatory arrangement dealt with agriculture, if that is any indication of future negotiations and settlements of this kind, I think you would find that in this particular case that in agriculture it was unacceptable, simply because there wasn't enough compensatory consideration given.

I wouldn't think you would want to tie the President's hands or the hands of the USTR: but, to the extent it is practical that compensation be provided in the sector affected, we would want to encourage that in the report language or in some other understanding of this.

The Chairman. Senator, I share that concern; but, under the GATT, the rules now provide that they can compensate in another sector, and in some instances I know that would be almost what it would have to be.

On the Spanish incident, as I recall, we had forward of $600 million worth of damage, and we were talking about milo and grains, and that type of thing. The compensation was not directly related to that.

Would you comment on that, Mr. Woods?

Mr. Woods. Yes. We got compensation in both the coarse grain sector and in others.

The Chairman. Yes. Right. In part we did.

Mr. Woods. But we would have no problem, Senator, with non-mandatory language, if you were, directing us to make every effort to get compensation in the sector affected. In fact, that is what we try to do, as a matter of fact.

Senator Baucus. Mr. Chairman?

The Chairman. Yes, Senator Baucus.

Senator Baucus. I would ask Senator Packwood: Is your reason for the compensation exception to mandatory retaliation based upon public policy, or is it based upon the GATT provision? It seems to me, as a matter of public policy, it is not a good idea to give in to this exception perhaps so easily. I just have a hard time accepting the point of view that the offending country should choose which unfair trade practice it wants to remedy, rather than in this case the United States deciding which unfair trade practice it wishes to address.

I undertand that it is in the GATT, and that that puts us in a box; but it seems to me that perhaps we could find -- you know, there are ways, and there are ways. Maybe we can find a way to define the compensation exception in such a way that there is a strong incentive for the U.S.

I would go that route, but in the last resort.

Senator Packwood. By and large our experience has been that we only do go that route as a last resort, if it comes

kind of desperate where we are going to get compensation or nothing, and if under GATT the offending country has the right to pick compensation.

Senator Baucus. I think, though, generally that is not a good idea for the offending country to be able to pick and choose. I think GATT made a mistake on that, but there it is.

Senator Packwood. If there is a way to draft the language that says our preference -- obviously, our preference is sectoral, if we can get it. If you cannot, then say, "All right, we'll take the next-best rather than nothing." If there is some way you can say to the USTR, "You are to do your damnedest to get our wheat into the country," then they will try their damnedest. If they can't, then what?

Senator Baucus. Well, then just work -- to be candid -- to draft that exception a little more narrowly, frankly.

The Chairman. Well, we can try that.

Let me say to Senator Moynihan, who is one of the principal authors of this provision, would you care to make a comment? I am talking about under 490, Senator.

Senator Moynihan. Right. Mr. Chairman, I do thank you.

I would like to speak for just a moment, if I can, to this proposal about the initiation of 301 actions by the

Trade Representative in situations where we have certain identified problems.

It seems to me, Mr. Chairman, that what we have been trying to do here is to establish the proposition that we are going to have a positive trade policy. It is not going to be passive. And it is not going to just depend on individuals identifying the fact that there are some rules being broken and then coming to some places where their case will be heard.

There is a sense in which we can -- I don't want to go beyond my knowledge here -- have legal systems involved from rudimentary rules as the self-help as the entire activating mechanism; if you thought a crime had been committed and it was at your expense, you would file in a court that would hear your case.

Over time, we began to create prosecutors. The States said, "We will see that laws are enforced, whether the individuals are aware of this or not," that there would be an active enforcement of rules.

And while the USTR can initiate cases now, it is in the nature of a political event. I mean, when we do, something out of the ordinary has happened, and why? As against something that one would hope would be routine and would not require explanation. If there is a sense that something consequential has happened, that there is unjustifiable trade

barriers or the trade barriers, if removed, would lead to an expansion of American exports, that ought to be the routine of our trade policy, not the exception. And it ought to be understood by other countries that we will act that way.

There are laws out there. They are in fact laws -- these are treaties. I guess the GATT is an executive agreement, but it has the force of law. "That is the law, and we will enforce the law in a positive manner" -- we won't wait to see if anybody complains that they were robbed or waylaid or beaten, or whatever; but that the prosecutor will see to it that the law is enforced, and impartially; that we look over at the Supreme Court or to any of our great institutions of justice, and there is Justice, blind. Why is justice blind? Because it is impartial.

The choice to carry forward a trade action in the present situation is not blind. It is perceived as being directed to this country for some reason or other that may have nothing to do with trade. Whereas, the provisions that we now have in 301, being automatic, do not indicate any animus against the nation involved, and do not indicate any bias on our part, but are simply the enforcement of a system of international trade, which clearly we wouldn't be here if the system were itself self-regulating and in that sense did not need an executive or you might say prosecutorial

assumption.

Does that make any sense to my colleagues?

Senator Packwood. I have tried, and I think Senator Bentsen has tried in a slightly different definition way to do that, but your analogy of the prosecutor I think is apt in both what Senator Bentsen and I are trying to do. We pass laws. We say, "If you rob a bank, you are going to go to jail."

Senator Moynihan. And the bank doesn't have to take you to court.

Senator Packwood. No. But the prosecutor makes the decision as to whether to bring the case.

Senator Moynihan. That's true.

Senator Packwood. Not the legislature. And in this case, at least in my provision, I say to the USTR, "Wherever there is a violation of a trade agreement, you must initiate an investigation. And if the investigation proves that conclusion, you have to retaliate," in these certain circumstances. But I don't know how you draw a law that takes away from the prosecutor or the Special Trade Representative any discretion as to what they will pursue.

Senator Moynihan. Could I just ask, then, if we can't do this. I think we may be close to an understanding. Somebody around here -- I see a distinguished prosecutor over there -- said prosecutors aren't free to decide, "Well,

he robbed a bank; but then, his mother was sick," you know. I mean, there is a little discretion when you are thinking of preparing your case, but can we discuss this? I would wish to be instructed.

The Chairman. Senator Danforth?

Senator Danforth. Mr. Chairman, I have several things to say; but, just in answer to this question, as I understand it, there still are two ways to initiate a 301 case. The 301 case can be brought by the affected industry. and it can be initiated by the Administration.

There are several points I would like to make. First, I think that Senator Daschle's point should not go forgotten. Alan Holmer appeared to agree to it, and Senator Packwood appeared to agree to it; so I take it, Senator Packwood, that your proposal has been modified. Is that right?

Senator Packwood. Well, let us understand what we are talking about. I only regard compensation as a last-ditch fall-back.

Senator Danforth. Right.

Senator Packwood. And you cannot, for whatever reason -- I use the word "impossible," but it is probably the wrong word; very few things are physically impossible -- where you can't get your first preference, sectoral response. And to the extent we can draft it that tightly and say that the USTR must be denied three times before they can go to

compensation, then that is fine with me.

Senator Danforth. So, as I understand your instruction to the drafters, if we agree to this amendment, it would be first to clarify that compensation is a last resort rather than a first resort; and, second, to clarify, according to what Alan Holmer indicated would be acceptable to him, that where possible the compensation should come from the sector or as close as possible to the sector that is affected by the grievance in the first place. Is that where we stand now?

Senator Packwood. That is where I hope we would end up whether or not we drew this in the bill.

Senator Danforth. Is that understood, Jeff, in the drafting process? I mean, I just didn't want that to be lost in the discussion as we move on to other things.

Mr. Lang. Yes, sir.

Senator Danforth. All right.

Now, let me ask, with respect to the section in 490, if amended according to Senator Packwood's amendment, what would be the Administration's view of this? Would the Administration view that the 301 as altered, as we anticipate it, would be reasonable? Outrageous? How would you feel about that?

Mr. Woods. Well, we would feel that Senator Packwood's amendment is an improvement. Notwithstanding, we still have problems both with self-initiation and mandatory

retaliation.

Let me say, Senator, you said earlier that compensation would be the last resort -- I would hope that retaliation would be the last resort. I think that is indeed the point that the Administration has been trying to make on this question.

Senator Packwood. Well, let me interrupt so that you can understand very clearly where we are: you are at the last resort. You have gone through the investigation; you have tried to negotiate with them; you have been unsuccessful. Now at that stage, we say you have to retaliate. This bill will say you have to retaliate -- Senator Bentsen's provision says that; my provision says that -- unless you have these four exceptions.

I don't think any of us are saying, you know, "File your complaint and retaliate," but we want to make sure that you are not let off the hook as you are under the present law with getting to the end and saying, "Oh, well, for almost no reasons we are not going to retaliate anyway."

Senator Danforth. Mr. Chairman, if I could reclaim the floor.

The Chairman. Yes, Senator.

Senator Danforth. For the past several months Senator Packwood has been meditating in Zen-like fashion on the meaning of mandatory but not compulsory.

(Laughter)

Senator Danforth. And I have thought, ever since he began talking about this, and ever since he asked Ambassador Strauss about it, I have thought that in that meditation is the key to the bill; I really think that. I think that what we want to do, especially in 301 and in the adversarial trade provisions, what we want to do is to increase -- significantly increase -- the likelihood that unfair trade practices will be responded to by the Government of the United States, that something will happen, that we will not have the situation where grievance after grievance piles up and nothing comes of it, and it all sort of dissipates in a good feeling created by say the visit of a foreign prime minister, or some such thing.

(Laughter)

Senator Danforth. On the other hand, I think that the point has been well taken by the Administration that, clearly, trade is a very important subject, but it is not the only thing on the national agenda, and that a President has to have some degree of discretion. And I think Senator Packwood very rightly has focused on this Zen issue, "mandatory but not compulsory." And I think that this is going to be the issue that is going to be the key to whether or not we can get a bill which is tough enough to do some good and flexible enough not to cause the President to veto

it. It is really an amazing challenge. I think that Senator Packwood's amendment is a major step forward to getting the bill passed.

I am not going to re-ask the question of Ambassador Woods and Mr. Holmer, but I notice that they are not retching.

(Laughter)

Senator Danforth. In the immortal words of Russell Long, "Their lips tell us no-no but there is yes-yes in their eyes."

(Laughter)

Mr. Woods. I am going to have to get dark glasses, Senator.

(Laughter)

The Chairman. I must say, Senator, that is well stated.

(Laughter)

The Chairman. But I feel very strongly that the record of previous administrations has not been encouraging when it comes to the question of mandatory retaliation, and I think it is imperative that we have it. I think that the exceptions that we have cited take care of those cases: for example, the GATT ruling against us, or a settlement acceptable to domestic industry, or the question of national security, and even the one about it being impossible to

perform in that particular sector -- that one does concern me. I think Senator Daschle and others have legitimate concerns there, and any way we can tighten that up, I want to see us do it.

I think we are making some progress in getting this together. I still think Senator Packwood ought to give some on that 24-month limitation.

Senator Bradley. Mr. Chairman?

The Chairman. Yes, Senator Bradley.

Senator Bradley. You said you thought he ought to give where?

The Chairman. On the 24-month, where we had 19 months.

Senator Bradley. Let me ask, does the provision that Senator Packwood has offered require that, when compensation is offered by the offending country, that that compensation has to be approved by the petitioner? It has to be accepted by the petitioner? As I understand the Chairman's approach, the petitioner signs off and says, "Yes, we accept that, even though we didn't get our sector dealt with, we sign off on it." Is that also embodied in yours?

The Chairman. Mr. Lang, would you like to speak to that?

Mr. Lang. Yes.

Under S. 490, there is an exception for a settlement that is acceptable to the domestic industry, and that is

directed primarily to the situation in which the foreign government is willing to reduce but not completely eliminate the trade distortion that is the subject of the 301 case. Otherwise, the mandatory retaliation, the standard for it, is that it completely offsets the foreign action.

I think what Senator Packwood is talking about is a situation not where the foreign government partially reduces the barrier, although it may involve that, but where they completely offset the action either partially or entirely by compensating the United States in a different sector -- that is, by removing trade distortions they maintain in sectors that don't affect the petitioner.

The Chairman. Well, I think the point that Senator Bradley is talking about -- I don't believe that 490 stated that the petitioning party had to be satisfied in the entirety; but if they were, then that was an acceptable deal. Isn't that correct?

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

Senator Bradley. My concern, leading to a second point, is that if you let a country essentially know up front that you are not going to come at them full-blast on the particular sector that is offending, but you have in the law that they can offer compensating trade benefits that will ultimately be accepted by the USTR in a negotiation, doesn't that possibly lead to a situation where Country-X,

who wants to really protect and continue the obstacles and the impediments and trade barriers in specific areas but they know that they are therefore vulnerable to 301 action, and so they add additional barriers so that, when the 301 action is brought, they can throw those into the pot and say, "Well, there are your compensating trade benefits," without ever touching the trade barrier that occasioned the petition in the first place? That is a concern.

Senator Packwood. Bill, here is what you are trying to get at. Again, it isn't all that easy for the offending country, because now they have to give dollar-for-dollar compensation. And to go back again to the Japanese leather, which is the best example, we just could not crack it on leather; we couldn't get in on leather. So they gave us compensation. How much did you say, Mr. Woods -- $4600 million dollars?

Mr. Woods. No, no.

Senator Packwood. Oh, that was the Spanish case. Well, they gave us compensation in other areas. One, it presents a problem for them in the sense that they say, 'Okay, we will remove these barriers and these tariffs," but I don't know what you are going to do when they say, "Just before the settlement we threw up brand new ones that we didn't give away," because that has not been the situation in the past. They have to go to some of their own industries that

didn't even know they were involved in this case, really, and say, "We hate to tell you this, but because of the lobby of the leather manufacturers, we can't give there, but we are going to give on aluminum." And the aluminum industry says, "You are going to what?"

So, it is a last ditch. And I like Senator Daschle's idea of somehow writing into either the language or the report language, "You are to thrice demand sectoral response." But I don't want to see us get into a situation where we get nothing, when you can get compensation.

Now, there is also an unwitting beneficiary on our side. Some industry that is not involved on our side suddenly gets foreign tariffs reduced or barriers reduced that they didn't know they were going to get, they weren't a petitioner in this case. But better that than nothing.

Senator Bradley. Well, it is just a concern that I have about new barriers being put up as chips in the game.

As I understand your provision, also, the USTR decides what case they will initiated based upon what has the greatest potential export expansion for the United States?

Senator Packwood. Well, I pretty much have taken those words from Senator Bentsen's bill. They must -- they must -- self-initiate. Senator Danforth is right, you can still petition. Anybody can petition; none of us have changed that. They must initiate investigations if -- and we have two

standards, and they are almost the same as Senator Bentsen's -- they result in a greater expansion of U.S. trade, or establish a beneficial precedent.

Senator Bradley. Is the "unjustifiable" criteria for mandatory initiation eliminated?

Senator Packwood. No. The word is eliminated, but if the violation is a trade agreement, which is the term of art for "unjustifiable," they must retaliate.

Senator Bradley. Oh, all right. That is what I wanted to confirm; because, if they have violated a treaty they shouldn't have any way out.

Senator Packwood. We investigate. We decide if they violated the trade agreement. I had an 18-month limit; Lloyd would like to bring that down a bit, and I think I can be amenable to that. But if it is a trade agreement, there is retaliation, unless -- and we have got those four exceptions.

Senator Moynihan. Could I pursue that, Mr. Chairman?

The Chairman. Senator Rockefeller has been trying to be recognized.

Senator Rockefeller. Mr. Chairman, a question for Senator Packwood.

On the compensation matter, if for example on the semiconductor matter, hypothetically it was, I believe, that the Japanese were unable to yield on that, simply could not

do it, as you indicated in the matter of leather, and the Japanese came back with a compensation package with respect to auto parts or something of that sort -- that would be deemed by your provision to be acceptable?

Senator Packwood. That would be compensation, yes. If the negotiators -- and here you have got to rely on the efforts of the negotiators -- if they come back and sit down with you and say, "Senator Rockefeller, here is when we met, here is who we met, here is what we offered, here is what they said. We could only get a third of what you want" or a half of what you want "and the other half we are going to do in auto parts."

Senator Rockefeller. Now, leather is one thing and the hypothetical matter of chips is another. I mean, there are higher values on some penetrations than on others. You don't make a distinction between them? It is sort of the financial value that you attach to them?

Senator Packwood. Don't forget, you know, it is a comparable value. If it is $600 million in benefits you are being denied, the compensation is $600 million in something else.

Senator Rockefeller. The chips have different relationships to the future than does leather. That is my point.

Senator Packwood. I understand that, but don't forget

that our negotiators don't have to accept compensation. They can say, "No, we are going to retaliate. You won't let our auto parts in, you won't let our chips in -- we are going to put on the tariffs that we have put on the Japanese goods." Compensation is not compelled; it really is a last-ditch acceptance to get something where otherwise you may have to retaliate and you don't want to.

Then you are then balancing, "Do I want to retaliate? Or do I want to get $600 million in coal" or aluminum, or whatever it may be?

It is a thin line, and there are going to be cases where you and I will disagree with the USTR; but I don't know how to draw it any tighter, unless you just want to say, "No compensation." In that case you just get retaliation. It may make you feel good, but you don't get much.

Senator Heinz. Would the Senator yield?

The Chairman. Senator Moynihan has been seeking recognition.

Senator Moynihan. Mr. Chairman, I would ask if I could get some counsel from my colleagues here, and actually from Senator Chafee. He and I are the ones who specifically were assigned to handle this particular provision, and I had thought that we had wanted to make this process more automatic, more routinized, yet less idiosyncratic, less responsive to

the politics of our country, and less responsive to the politics of other countries.

There are products traded in international trade from this country which are produced in three Congressional Districts, and if they are a significant export opportunity outlet that is blocked, you may be sure those three Congressional Districts will think of little else. Others are diffuse, although possibly much more important.

I go back to the image of the gradual evolution of legal systems, from self-help through the routinized expectation that the law will be enforced.

If we don't want to do that as a body, then I don't want to do it as an individual; but I thought that was the direction we were taking.

The Chairman. Senator, let me say we do, insofar as violation of trade agreements, and we have very much kept that in. There is a mandatory retaliation. The record of this Administration and previous Administrations has been wanting, as far as I am concerned, in that regard.

Senator Moynihan. Yes. Yes.

The Chairman. And obviously they want a free hand on that, and they oppose this kind of mandatory action. But it is very definitely in either one of these bills.

Senator Moynihan. Can I ask then -- I am trying to get us a bill, and I want to be with you, sir -- there is a

provision here that troubles me that the USTR is to initiate cases where -- under section 301 -- where they are likely to result in the greatest expansion of U.S. exports. Who knows that sort of thing?

Ambassador Woods, if you knew that sort of thing, would you be working for $78,000 a year?

(Laughter)

Mr. Woods. Only for a short while, Senator.

(Laughter)

Senator Moynihan. Since you have been hanging in there for so long, do I take it that maybe you don't know that sort of thing? Do you know anybody who does, who would be willing to tell somebody else?

Mr. Woods. Well, it is a difficult economic calculation, there is no question about it.

Senator Moynihan. Yes.

Mr. Woods. But in fact, working with the Department of Commerce, we do try to make caculations like that with regard to what likely U.S. exports would be if specific barriers were removed. And in fact, that is the criteria that we apply to making decisions about self-initiating 301 cases.

That having been said, I will freely admit it is a very imprecise criterion. It is very hard to do that. You just don't know ultimately how hard U.S. manufacturers might try

to enter that market, even once the barrier is removed.

So, it is a difficult one. But we do try to make such an assessment, yes, sir.

Senator Moynihan. I thank you.

Senator Bradley. Mr. Chairman, if I could?

The Chairman. Senator Bradley.

Senator Bradley. It seems to me that Senator Moynihan's question is well taken. I mean, this bill makes light years of progress over what it was prior, in terms of actually having some initiation. I mean if you go from '71 to '85, you had about 13 or 14 things initiated. And when politics got into the problem, we have had nine and six settled in the last couple of months. So, it seems to me that the initiation question is important. I guess I would come down more on the side of the traffic ticket analogy -- if you break the law, you get punished -- than one that gave maximum latitude on the decision whether to do it or not.

But I think the key point is that, as long as there is some initiation, then we will have achieved the objective, which is to make the offending country unsure as to whether they might get hit next.

So, I think that is good, and that is one of the important points of the mandatory initiation.

The problem comes, I think, when Senator Moynihan talks

about making it like a traffic ticket as opposed to Congressional Districts, on the compensatory benefits side. I mean, you know, if you are negotiating with a country and you can't get access in a particular market, but you know here you can do compensatory benefits, what do you do? You look down your list and say, "Who helped us on the last eight votes, and what industries do they have in their Districts? If we have got to go compensatory benefits, let's do it in a way to help our people." So that is not new, but it kind of moves in the opposite direction of the traffic ticket analogy that strengthens the rule-based system.

But I don't say that as criticism; just as kind of a comment, because I think that we really have moved a long direction toward the analogy of the traffic ticket with what we have and also with Senator Packwood's amendment.

Senator Packwood. Bill, it is interesting, but I don't think I have ever heard that particular complaint. It is well enough known in politics that people like to help their friends who have helped them, but very seldom have I heard the argument about the USTR -- whether it is Bob Strauss or Clayton Yeutter or Bill Brock or anybody -- that they said, "Okay, we have got to have compensation. The steel industry opposed us, and the aluminum industry helped us; so let's give it to the aluminum industry."

Senator Moynihan. No, Bob. The problem is that those

poor men don't have any friends.

(Laughter)

Senator Bradley. You know, we are entering a really different environment, where it is going to be much more active than 301 cases. In the past, where you said, "Gee, there haven't been many responses," that is because they didn't initiate anything. We are not going to appear where they initiate a lot, and while the USTR I'm sure will hold out for substantive criteria, there will still be some concern that you have opened a process up to a much wider political flow and dynamic, which is -- we are politicians, you know, but we have to be aware that that's what we are doing.

Senator Heinz. Mr. Chairman?

The Chairman. Yes, Senator Heinz.

Senator Heinz. Two questions. First, as I understand Senator Packwood's amendment, it applies both to cases that are initiated by the Government and ones that are initiated by petitioners. So, under his amendment, going back to the compensation issue, it is possible for the person who has initated, the petitioner, to spend a lot of time and a lot of money, and at the end of the road he is told, "Sorry, they just politically wouldn't cooperate; they were impossible. You cared about chips, but, frankly, they had so many other things they could give us that we settled

for auto parts," or something nice, or beef, something wholesome.

It seems to me that, first, that is really a disincentive, for petitioners to go ahead and attack the really tough, genuinely unjustifiable trade barriers, knowing that there is a very significant out. It is the really tough trade barriers that we ought to be attacking.

And I also worry that, where a country has a large number of trade barriers, they are at an inherent advantage in this process, where they can really pick and choose what they are going to give us. And if you are the USTR -- and I say this without any intention of being critical of USTR -- you will have a lot on your plate. Presumably, you will be pursuing your self-initiated cases as highest priority, and petitioner-initiated cases are going to receive lower priority. If I was USTR, I suppose I would be looking around for a way to settle those deals and kind of get them done.

So, I remain quite concerned about this provision. I would scrap it.

Mr. Woods. Senator, if I may, I think that the thing that we have to recall as we are doing this -- and since I am not going to be negotiating cases under this law, in any case, it is not going to have much effect on me -- is whether we are looking for market-opening or market-closing

solutions, whether the end result will be either to open the market for the product which is the subject of the 301 case, open the market for products of equivalent value which are not the subject of the 301 case, or closing the United States market. I submit that the last really ought to be the last thing that we try to do. It seems to me that that makes sense.

Yes, it is true, Senator, that in some instances we are not going to achieve our goals for one reason or another in some 301 cases and open the market for either the case we have petitioned or the case where a petitioner has actually come before the USTR.

But let us take a case like Japanese tobacco, for example, where we were successful in opening the Japanese market. Now, had we retaliated against the Japanese for not opening the Japanese market on tobacco -- which they ultimately did, and I understand foreign tobacco sales are up 57 percent in Japan since that has occurred -- if we had retaliated against the Japanese on tobacco, and we would have judged the value of that retaliation, we couldn't have retaliated against Japanese cigarettes coming into the United States, or if we would have it wouldn't have been anything like the value of the cigarettes going into Japan. What we would have to have been forced to do to retaliate is retaliate on other items, items different than cigarettes

from Japan, in order to get the level of compensation involved.

What we would have done when we do that, and the reason these retaliations are so difficult for us, is that we injure other U.S. industries that depend on inputs from Japan, or which are importers of products for other reasons. That is the reason that the Japanese semiconductor retaliation was so difficult. We got letters, literally, from enough members of Congress and Senators alone on things that were on our retaliation list on the Japanese semiconductors, that we wouldn't have retaliated at all if we had paid attention to each and every one of those.

Retaliation is very, very difficult to do and not shoot ourselves in the foot, and we have to exercise great care about it. That is the reason the mandatory retaliation provisions of this bill are so difficult for us and why we don't like them. It does injure some U.S. industries or individuals when we undertake that, and that is the reason why we think the idea of market opening, even if it isn't in the specific area in which the case we brought, is so much better an alternative for us and is so much more advantageous to U.S. companies and industries than retaliation. And in that sense, I think Senator Packwood's amendment is a large advancement.

Senator Chafee. Mr. Chairman?

The Chairman. Yes. Senator Chafee.

Senator Chafee. Mr. Chairman, I want to commend Ambassador Woods for those remarks, because I think we want to keep our eye on the target here, and that is to achieve market access; that is what we are all here for. I don't think the thrust of this committee is for us to erect barriers, it is for us to be able, to the greatest extent possible, to achieve access into other countries for our goods.

I would like to ask Ambassador Woods a question. Where there is a settlement of the case aggreable to the majority of the industry or the petitioner, which is part of our bill, is that a word of art, the majority? How do you tell what is the majority of an industry?

Mr. Woods. It has been introduced, as best I know, in this law for the first time. I am not sure we have sort of a way of establishing what that is.

Senator Chafee. I mean, is it the number of companies in the business? Do you take total volume in the industry and then who has what market share, or what volume? How do you tell?

Mr. Woods. Mr. Lang may have a definition for that.

Mr. Lang. Senator Chafee. in the bill, as written, which was adapted from language that had previously been introduced by members of the committee in other contexts, in

other Congresses, the language was "the majority of the representatives of the domestic industry." I think the objective of those Senators was to assure that, if the petition was brought before USTR by a trade association or a group of trade associations or a union, their views would be given consideration ratable to the fact that they represented a larger proportion of the industry than individual firms would have.

Our understanding of that provision has always been that USTR would be making something of a judgment about what was acceptable to a majority of the representatives of the domestic industry. But if you try to get too specific about that, I believe you are going to have some rather difficult drafting problems, because you are going to have to go to a majority of sales or something like that, and it might unbalance the process in favor of one particular petitioner or company.

Senator Chafee. Well, I would hope that it wouldn't be too specific, because I can see a host of problems if you try to tell what is a majority of an industry. Many firms don't belong to the trade associations. Frequently, trade associations don't even represent the majority of the sales, if one major company stays out, for example.

But you think it is vague enough that, for example, people can't bring a suit under it, saying he didn't base his

decision on the majority?

Mr. Lang. On the litigation point, I think litigation in this whole area is pretty speculative. There is almost no litigation in court under section 301.

Senator Chafee. Well, I hope there won't be.

Mr. Lang. As far as the objective, I think the objective in introducing the provision was to assure that USTR didn't settle the cases by consulting only a small number of firms in the industry, or a minority of the industry, or something like that. Perhaps we can work with your staff on some report language that would be more specific about that, but I think --

Senator Chafee. Well, I am not sure you want things too specific; that is the trouble in this particular area.

Mr. Chairman, I just want to say that I think Senator Packwood's proposals are good. I am not sure that we have solved the quandary that Ambassador Strauss gave us and that Senator Danforth reiterated here today. I think with any bill we have got to have the provision at least that serious harm to the national security is an out. I don't know how you can have any bill without something like that in there.

The Chairman. Well, in the Bentsen/Danforth bill we did not have it. But I think that soon afterwards we realized that we had to work something like that in, and

what Senator Packwood has proposed seems acceptable to me. On this question of legislation, as far as judicial interpretation, that is always going to be difficult in this area, I think. Part of it, hopefully, we can handle in the report. If we get too specific in the legislation, though, we are going to have some trouble.

Senator Rockefeller. Mr. Chairman?

The Chairman. Yes, Senator Rockefeller.

Senator Rockefeller. Two questions, one to Mr. Lang.

The changes that Senator Packwood is proposing with respect to initiation, in your judgment would that make it any easier for the Administration not to initiate in certain cases? And, according to your answer, would you explain it?

Mr. Lang. I think the answer to your question is No. As we understand what Senator Packwood is proposing, he is requiring mandating the Administration to initiate cases which meet either of the two tests in S. 490 for "significant." Therefore, the effect of his amendment is to broaden the classes of cases that are subject to mandatory initiation to both "unreasonable" and "unjustifiable," and I would assume discriminatory cases as well. Those two standards are the standards for the definition of "significant," which was the trigger that turned on mandatory initiation under S. 490. And those definitions of "significant" can be found at the bottom of spreadsheet page

53. They are, "The reduction or elimination of the barrier would establish a precedent that is beneficial to U.S. exports in general, even though the aggregate value of U.S. exports directly affected is not large, or the barrier or distortion adversely affects a significant portion of U.S. exports."

There is a slight difference in the language that Senator Packwood has given us in this summary, but we have been talking about some specific language with the staff, and I gather the specific language would be drawn very directly from S. 490.

So, I think the difference is that you are broadening the classes of cases subject to mandatory initiation to include unreasonable and discriminatory cases.

Senator Rockefeller. let me ask one more. Well, maybe I had better ask it of Senator Packwood. We have used the example of leather, and in a sense it is a good one becuase it is quite an extreme one. But, on the other hand, who knows what is extreme these days, because our trading partners are going to be growing rapidly, as indeed they have in the last few years, and who knows what problems we will have?

Where you know, for example in leather, under your initiation section, that there is an impossibility of pentetration, culturally or otherwise, or there is simply a

stonewalling, would your provision mean that we would not do a 301?

Senator Packwood. Oh, no. Do you mean where you think at the start your chances are slim, but it is clearly a trade violation?

Senator Rockefeller. You absolutely know it is not in the cards.

Senator Packwood. No, no. I would just put it the other way around: You have done the investigation. You find it is a trade violation, that in your judgment it is a trade violation. You have got to start down the mandatory retaliation on that area. You can't say at the start, "No, I don't think we will get in with leather; so, let's forget it." That is at the end of the process, not at the start of the process.

Senator Rockefeller. But your words here are, "is most likely to result in the greatest expansion of U.S. exports." How does that fit into the question I am asking you?

Senator Packwood. Because I don't think you can know at the start whether or not that is going to be successful. But look at the other second part, the precedent. It doesn't have to be a very large proportion; but where it sets the precedent, that is where your leather case would fall in -- not on the quantity, but on the fact that this is the kind of example of the trade barrier we are trying to knock

down, and the fact that it only amounts to $15 or $20 or $30 million a year is not the factor to be determined.

Senator Rockefeller. Thank you.

The Chairman. Further questions?

Senator Bradley. Mr. Chairman, if I could?

The Chairman. Yes, Senator Bradley.

Senator Bradley. If I understand your amendment, you had "unjustifiable," which means treaty violations, led to a mandatory response.

The Chairman. That is correct.

Senator Bradley. You had "unreasonable violations," unfair trade practice, whatever, "did not lead to mandatory response."

The Chairman. That's right.

Senator Packwood. Mandatory investigation but, as with Senator Bentsen's bill, not mandatory retaliation.

Senator Bradley. In your bill was it "mandatory investigation for unreasonable," Mr. Lang?

The Chairman. No.

Mr. Lang. In the Bentsen/Danforth bill there was not mandatory initiation for the unreasonable track.

The Chairman. But for the unjustifiable, we had --

Mr. Lang. But for the unjustifiable, that's right.

The Chairman. -- mandatory.

Mr. Lang. Under Senator Packwood's amendment, as we

understand it, both would be subject to mandatory initiation, but only on justifiable cases, as in the Bentsen/Danforth bill, would they be subject to mandatory retaliation.

Senator Packwood. The reason I did that, I at least want the Administration to have to initiate investigations of less than trade agreement violations. If at the end of it they say, "Well, you are right; they won't let us sell insurance in Korea, but we are not going to retaliate," at least they have had to do the investigation and they have had to come to us and say, "But we are not going to retaliate."

Whereas, if they never have to do the investigation, you never at least have the conclusion of the facts at all.

Senator Bradley. Can the President still terminate a case that is unreasonable under this approach, if he thinks it hurts the national interest, the national economy?

Mr. Lang. Under the Bentsen/Danforth bill, an unreasonable or discriminatory case is subject to the time limit. But at the end of the time limit, the President can simply make a statement to Congress that he believes it is impossible to get a satisfactory result from retaliation, and refuse to do it.

Senator Bradley. Can he do that under the Packwood amendment?

Mr. Lang. My understanding from what Senator Packwood

has said is that he can.

Senator Chafee. Well, there is another difference, also, in the overall categorization. In the Bentsen/Danforth legislation the first decision that is made is are the barriers significant. Isn't that correct?

Mr. Lang. Yes, sir.

Senator Chafee. And then, if they are significant, then you get into this "unjustifiable" or "unreasonable. Whereas, Senator Packwood eliminates the term "significant."

Mr. Lang. He does, indeed. The only reason I didn't emphasize that part of it is because he has defined the class of cases subject to mandatory initiation in almost the same terms as "significant" is defined in the Bentsen/Danforth bill. But you are right, the word is dropped.

Senator Packwood. And the reason for that is, they don't want to have some country saying, "Well, these violations aren't even significant; you haven't even called them significant." So, you just remove that impediment that is kind of an embarrassment to the USTR.

The Chairman. Yes. That is one of the arguments Mr. Woods had made earlier as far as the determination between them.

Senator Roth, you have been signalling.

(Continued on following page.)

for auto parts," or something nice, or beef, something wholesome.

It seems to me that, first, that is really a disincentive, for petitioners to go ahead and attack the really tough, genuinely unjustifiable trade barriers, knowing that there is a very significant out. It is the really tough trade barriers that we ought to be attacking.

And I also worry that, where a country has a large number of trade barriers, they are at an inherent advantage in this process, where they can really pick and choose what they are going to give us. And if you are the USTR -- and I say this without any intention of being critical of USTR -- you will have a lot on your plate. Presumably, you will be pursuing your self-initiated cases as highest priority, and petitioner-initiated cases are going to receive lower priority. If I was USTR, I suppose I would be looking around for a way to settle those deals and kind of get them done.

So, I remain quite concerned about this provision. I would scrap it.

Mr. Woods. Senator, if I may, I think that the thing that we have to recall as we are doing this -- and since I am not going to be negotiating cases under this law, in any case, it is not going to have much effect on me -- is whether we are looking for market-opening or market-closing

Senator Roth. Yes.

Senator Packwood. So, that is where you get back to this question that Senator Chafee and the others were raising, that is what is a majority to agree to a settlement.

Senator Roth. I wasn't clear as to the language here where we say: "acceptable to the domestic industry in the case where the action is brought about by a sufficient, or only part of the industry." Would that be satisfied by, let's say, one company.

Senator Packwood. You would bind the whole industry by their settlement with that company?

Senator Roth. Yes.

Senator Packwood. I didn't intend that, and I don't think anyone wants to have that situation. I see what you mean, but I did not intend that the STR be bound by that.

I didn't intend that, and I don't think anyone wants to have that situation.

The Chairman. Mr. Lang, how do you read that?

Mr. Lang. Mr. Chairman, under the Bentsen-Danforth bill, the settlement agreement would be subject to the petitioner's agreement if the petition is an initiated case.

In self-initiated cases, our reading of the Bentsen-Danforth bill is that the majority of representatives of the U.S. industry would be the standard for a settlement.

Senator Roth. Let me ask you this, Mr. Lang. Let's say, the action was brought by one company, would other companies if they thought it were sufficiently important be able to freely enter that?

Mr. Lang. Oh, yes. The standing rules in Section 301 cases are very open.

Senator Roth. I guess, Mr. Chairman, that is the answer--it is a matter of importance. You would think other companies within the industry would enter into the act.

Senator Packwood. I was just talking to Senator Bentsen. I think Senator Roth raises a good point. Neither Senator Bentsen nor I intended in petition cases--we might have one petitioner and let that petitioner be the determining factor in the settlement.

Senator Wallop. Mr. Chairman?

The Chairman. Yes, Senator Wallop?

Senator Wallop. The definition of a majority of the U.S. industry--how do you arrive at that? The ones that have the majority of the market or the majority of the workers?

The Chairman. We went through that before.

Mr. Lang. The phrase shown on spreadsheet page 57, item (b) in the right-hand column, shows the definition that is currently in the Bentsen-Danforth bill. The phrase is "a majority of the representatives of the U.S. industry

that would benefit from favorable resolution of the case."

The reason for using that phraseology is because sometimes a petitioner in these cases is a trade association or a union or a group of trade associations; and it would be very difficult to define what a majority was. The purpose was to assure that a minority was not able to settle the case and freeze out the interests of the U.S. industry as a whole.

So, there is some flexibility in the current Bentsen-Danforth bill left to the USTR as to what they define as a majority of the representatives of the industry.

The Chairman. Senator Roth?

Senator Roth. Mr. Chairman, I think that is a very important question. Let me make just one comment there. Would we end up with all these cases being taken into court to determine whether or not that requirement was satisfied? There are probably always going to be some disgruntled people within an industry. Do we have any language that says that the USTR's word is final and cannot be contested? Maybe that shouldn't be done, but I don't think we want to set up procedures where the disgruntled are going to take that action into court on the grounds that a majority of the industry is not satisfied.

The Chairman. Mr. Lang, would you care to comment on that?

Mr. Lang. As someone who defended the Government in these kinds of cases for four or five years and also brought some of these. To get some of these 301 cases into a court--I don't know if Mr. Holmer would agree--but it is an area where the President, even with Senator Packwood's amendment or the Bentsen-Danforth bill, has quite a wide discretion; and there are some threshold questions that make it rather difficult to get these cases into court.

But if the committee wants, we can certainly commit the settlement option to more Presidential discretion. I think some Senators might be --

The Chairman. I might have some questions about that myself.

Mr. Lang. Yes. Some Senators will be concerned that you are giving USTR too much of an out, since the purpose is to restrict these exceptions rather narrowly.

Senator Roth. Mr. Chairman, later on I propose to give much more authority to USTR that is currently given to the President. Perhaps that will satisfy some of your concerns; but I think you are right. You don't want to shut off the right of appeal, but on the other hand, I think we don't want to find ourselves in a situation where we have just opened up Pandora's Box.

So, I would urge that the committee look at that question rather carefully as though that were not just ending up with

a lot of litigation because of a few disgruntled persons.

Going back to the other question of where the petitioner is satisfied and other industry may not be, I raise a question because I am not certain where I stand on the matter.

It does seem to me that, as long as the industry are free to enter into the matter, their rights are pretty much protected. Otherwise, you would have a problem. Some small outfit may raise a case and be satisfied, where it would hurt the industry generally; but it seems to me that, as long as we are certain that the other companies can enter within a reasonable time, you give the kind of protection that is needed.

The Chairman. Actually, we go beyond that in ours, and we talk about a preponderance of the industry. Right?

Mr. Lang. Yes, sir.

The Chairman. Yes. Senator Pryor?

Senator Pryor. Thank you, Mr. Chairman. I would like to ask Mr. Lang, if I might. This sort of follows on Senator Rockefeller's line of questioning. If the Packwood language, as proposed, had been in place at the time of the Rice-Miller case, how would that language have affected the ultimate outcome of that petition?

Mr. Lang. There may be some interpretation necessary from USTR General Counsel, but I think a rough reading of it is that the Japanese barriers on rice are inconsistent

with their GATT obligations and would, therefore, fall on the trade agreement violation track. Under Senator Packwood's amendment, therefore, the Trade Representative --as under current law--would be required to take that case to the international body concerned, in that case the GATT.

But there would be a time limitation on how long the GATT process could continue. If a GATT panel reported in 18 months or fewer than 18 months, then the President would have to retaliate if he were unable to get the barriers eliminated or get a settlement that was acceptable to the rice millers, the petitioners in that case, within six months after the GATT panel decision was handed down.

If the GATT panel made no decision in 18 months or less, then under Senator Packwood's amendment, as I understand it, the United States would consider that the panel had decided in favor of the United States and the same six month fuse would begin to burn; so that if at the end of that period, if the barrier had not been eliminated, or a settlement had not been undertaken that was satisfactory to the rice millers or if the United States had not accepted completely offsetting compensation for Japan, then the President would be required by U.S. law to retaliate.

And the measure of the retaliation would be to completely offset the detriment to U.S. exports caused by the Japanese barriers.

Senator Pryor. This would be pursuing the Packwood language?

Mr. Lang. Yes, sir. That is under the Packwood language.

Senator Pryor. All right. And what about the Bentsen language? Would that be basically the same?

Mr. Lang. Yes, sir. The main difference would be that the GATT would have only 15 months to make that decision. Under the Bentsen-Danforth bill, the President must retaliate at the end of 15 months plus two two-month extensions.

So, the difference is essentially--when you boil it all down--I guess the difference is five months.

Senator Pryor. Mr. Chairman, if I might, I am trying to conjure up an amendment that relates to giving to the USTR more discretion in agricultural matters or disputes, in going to GATT or not going to GATT; and I think we can talk about this later.

Senator Packwood. You would sort of treat it like a nontrade agreement violation, where you wouldn't have to take it to GATT?

Senator Pryor. Frankly, the agricultural community, I think, feels that the GATT process for agricultural products is sort of a black hole, and I think we could give the USTR more discretion in this. And I will at the appropriate time offer an amendment. Thank you, Mr. Chairman.

The Chairman. Senator Matsunaga?

Senator Matsunaga. A point of clarification, Mr. Chairman. Under the Packwood amendment, is there any case you can think of, Mr. Lang, wherein there is a difference between the GATT ruling and the USTR determination where the GATT ruling will not prevail?

Mr. Lang. The difference between a GATT ruling? There have been occasions where the United States determination of its rights was not confirmed by a GATT panel. For example--is that responsive to your question?

Senator Matsunaga. You see, as I understand under the Packwood amendment, when GATT does not come forward with a determination within a period of time--what is it?--six months or 18 months?

Mr. Lang. 18 months.

Senator Matsunaga. Then, the President may retaliate according to the findings of the USTR or recommendations of the USTR. Supposing the time elapses and then GATT comes forth with a determination which is in conflict with that recommendation of the USTR? Who prevails?

Mr. Lang. In that situation, as I understand Senator Packwood's amendment, the President would no longer be mandated to retaliate. And under the Bentsen-Danforth bill, if he had already retaliated and wished to withdraw the retaliation or continue it, there is a special authority

allowing the United States to compensate the foreign governments adversely affected. However, I should point out that there are cases in which a panel has ruled contrary to the United States, and the United States has later gotten that reversed.

Senator Matsunaga. But of course, if GATT rules, then the initial determination would determine it.

Mr. Lang. The initial domestic United States determination?

Senator Matsunaga. Right.

Mr. Lang. All that would happen, Senator Matsunaga, is that the mandatory retaliation provisions would no longer apply; that is, an exception to mandatory retaliation would be available to the President. He would still be within his authority to retaliate; he simply wouldn't be required to retaliate.

The Chairman. Are there further comments?

Senator Packwood. I would propose my amendment changing the time limits on the mandatory retaliation to conform to your 15 months and two two-month extensions.

The Chairman. Good. Thank you. Any further questions?

Senator Baucus. Mr. Chairman?

The Chairman. Yes, Senator Baucus?

Senator Baucus. I am wondering if, in the meantime, we could work to narrow that compensation exception and

maybe also somewhat narrow the national security exception and try to find some language.

Senator Packwood. Needless to say, you and I have much the same interests in terms of the agricultural retaliation, and I would think Senator Daschle would have the same interests. And I will try to narrow that as much as possible so that we direct the USTR toward what is his first priority, second priority, and third priority.

The Chairman. I strongly share that. I have got the same problems in my State. Senator Daschle has it, and a number of members of this committee have spoken to that point; and to the extent that we can get that compensation within the sector, I very much approve of that.

Senator Chafee. Mr. Chairman?

The Chairman. Yes, Senator Chafee?

Senator Chafee. I would only ask one thing. In keeping with the concern here voiced about what is a majority, you might take another look at that, Mr. Lang, and see if we can fix it up so that people aren't going to be suing. I understand the barriers that exist that you mentioned, but in this litigious society, I think people find their way around that pretty quickly. So, if you would look at that?

Also, I would like to ask Mr. Woods a question. As I understand, Senator Packwood, you are amending your amendment to go to Senator Bentsen's time. Is that correct?

Senator Packwood. Yes, that is correct.

Senator Chafee. What is your reaction to that, Mr. Woods?

Mr. Woods. As you may recall, Senator, in the present proposal, we proposed a 24-month time limit on a 301 case. Obviously, we prefer a 24-month time limit on a 301 case.

Senator Chafee. But this is 19, isn't it?

Mr. Woods. But 19 months would not be unacceptable to us.

Senator Chafee. Thank you.

The Chairman. If there are no further questions, we will put the motion before the committee. The clerk will call the roll.

The Clerk. Mr. Matsunaga?

Senator Matsunaga. Aye.

The Clerk. Mr. Moynihan?

Senator Moynihan. Aye.

The Clerk. Mr. Baucus?

Senator Baucus. Aye.

The Clerk. Mr. Boren?

(No response)

The Clerk. Mr. Bradley?

Senator Bradley. Aye.

The Clerk. Mr. Mitchell?

(No response)

The Clerk. Mr. Pryor?

Senator Pryor. Aye.

The Clerk. Mr. Riegle?

(No response)

The Clerk. Mr. Rockefeller?

Senator Rockefeller. Aye.

The Clerk. Mr. Daschle?

Senator Daschle. Aye.

The Clerk. Mr. Packwood?

Senator Packwood. Aye.

The Clerk. Mr. Dole?

(No response)

The Clerk. Mr. Roth?

Senator Roth. Aye.

The Clerk. Mr. Danforth?

Senator Danforth. Aye.

The Clerk. Mr. Chafee?

Senator Chafee. Aye.

The Clerk. Mr. Heinz?

Senator Heinz. No.

The Clerk. Mr. Wallop?

Senator Wallop. Aye.

The Clerk. Mr. Durenberger?

Senator Packwood. Aye.

The Clerk. Mr. Armstrong?

(No response)

The Clerk. Mr. Chairman?

The Chairman. Aye.

Senator Riegle. Report me in the negative.

The Clerk. 14 yeas, and two nays.

The Chairman. I must say that that is a significant vote and a significant bit of progress in resolving some of the concerns about Section 301. I am sure it doesn't resolve everyone's concerns; and I doubt that that kind of legislation could ever be written, in all candor.

Let me say it is a major move by this committee, and I appreciate the very good discussion that took place this morning. I think it was very helpful in understanding it.

Senator Packwood. If I may, I would like to thank the chairman for his generosity and understanding and to Mr. Lang also for the help he has given all the way along on this. Senator Danforth is right; this is a major move over the hump in trying to get a bill we can pass.

The Chairman. Mr. Lang, we have some technical amendments, don't we?

Mr. Lang. I think there are a number of Senators who might have amendments they want to offer with regard to Section 301. You had an amendment that I understand you wanted to offer that would delete the constructed value method of calculating the State trading amendment. Under

that amendment, it would be a practice within the scope of Section 301 for a foreign government to engage in State trading on other than a commercial basis, and the Administration has suggested that the constructed value method of calculating the extent to which a foreign government has traded with a State trading company on other than a commercial basis should be deleted; and they should simply be able to make the calculation of whether purchases and sales are not on a commercial basis under the circumstances of the particular cases.

My understanding from you was that you would leave the rest of the provision standing, but take out the specific method of calculation.

The Chairman. That led to some serious problems in trying to utilize the provision as it had been previously drafted.

Senator Packwood. Mr. Chairman?

The Chairman. Yes?

Senator Packwood. I think it is a good amendment.

The Chairman. Is there any question concerning it?

(No response)

The Chairman. If not, all in favor of the motion make it known by saying "Aye."

(Chorus of ayes)

The Chairman. Opposed?

(No response)

The Chairman. The motion is carried. Are there other amendments to be offered by members of the committee on Section 301? Senator Riegle?

Senator Riegle. Thank you, Mr. Chairman. I have an amendment that deals with anticompetitive practices that I am offering along with Senator Wallop. He supports it; I don't know that he intends to be a co-sponsor. He may well; and I gather that he does.

This amendment would expand the definition of "unreasonable" under Section 301 to include procurement practices by foreign private companies or groups of companies, namely industries, that are not currently accountable for what shows up as an unfair trade practice under the statute. The way the statute works now, in order for a finding to be held in the area of, say, a major industry that doesn't allow us to compete fairly, the government involved has to be found to be in complicity with that arrangement.

This would modify that standard to say that, if the government in effect knows about it, tolerates it, that that is not acceptable; and it would give us an opportunity to be able to use those barriers--those second-level barriers, if you will--as the basis for moving forward with an action against them.

This is a severe problem, particularly with respect to

auto parts where, at the present time, the Japanese automobile industry is very skillfully sort of working in combination to prevent American suppliers of automobile parts from being able to compete in that area.

This happens to be an area where we are highly competitive and where we are fully able in a number of areas to offer a comparable product. But last year we saw roughly $5.7 billion in auto parts coming one way, and our ability, coming back the other way, of about $240 million against that total. So, we are really up against a wall in that area. I don't mean to limit it solely to the question of automobile parts because there are other examples.

But that is what the amendment would do.

The Chairman. Let me understand. What is the difference between this and what the House bill has?

Senator Reigle. It is not different. It would be the same as the House language, what I would offer here.

The Chairman. So, it strongly supports the market oriented --

Senator Riegle. Absolutely.

The Chairman. To show that progress is being made. I know I had one gentleman in dealing in the parts business who said he has as much trouble now in Tennessee in dealing with the parts situation as he does in Tokyo.

Senator Riegle. He is exactly right.

The Chairman. Because they have a Japanese company manufacturing automobiles there, and yet they get all their parts from Japan.

Senator Riegle. That is exactly right, and as the transplant production--as we call it--is more and more Japanese manufacturers setting up final assembly facilities here in the United States, if American companies that produce parts are not able to compete on a fair basis for an assembly operation that may be right down the street, it is a very severe inequity and it is a growing on in terms of the financial impact.

But you are right in describing it as a market-opening opportunity. We want the chance to compete. This is not anything other than a way in to that marketplace to be able to compete on an equal footing.

The Chairman. That relates to the Moss Talks and you would require the USTR and Commerce to report back to Congress on that? Is that a part of it?

Senator Riegle. I am sorry?

The Chairman. It relates to the Moss Talks, the progress being made there.

Senator Riegle. Yes.

The Chairman. It requires the USTR and the Department of Commerce to report back.

Senator Riegle. And it also covers services, I might say. It is important that we understand that the service component in international trade is growing all the time, and there are equivalent problems here. We have had major shipping companies come to us and say that they are caught in the same industry blockage problem. So, this would read services as well as products.

The Chairman. Senator Wallop?

Senator Wallop. Mr. Chairman, this is sort of an assault on the cartels that exist as well within the Japanese trading community. We, for example, in Wyoming have the product soda ash; we had an earlier complaint in which the Japanese Fair Trade Commission found the existence of a cartel, ordered it stopped. It stopped; we went from nine percent of the market to eighteen percent of the market, whereupon the lid reestablished.

And we have demonstrated innumerable times greater quality, greater quantity, greater accessibility and price, etcetera. We have had Japanese companies ask us if they bought a year-end supply of nine million tons, would that put us over the 18 percent of the market, but yet they refused to admit the cartel exists.

It is a devious kind of thing which the Japanese Government claims it does not believe exists, but the Japanese bureaucracy won't come to grips with it.

And it is just an expansion of the definition of "unreasonableness," to include cartels.

Senator Chafee. Mr. Chairman?

The Chairman. Yes, Senator Chafee?

Senator Chafee. I am not sure I fully understand this. If General Motors manufactures its own spark plugs or filters, is that an anticompetitive activity, if they have a private company that supplies them with their spark plugs?

Senator Riegle. I certainly wouldn't think so.

Senator Chafee. The classic one that existed for so many years was AT&T and Western Electric. Was that the kind of activity that is anticompetitive by private firms or among private firms that have the effect of restricting access of Japanese goods, if you want?

Senator Wallop. The answer to that would be no. I mean, for example, Asahi glass owns its own soda ash manufacturing plant, so you would not assume that you would break down an integrated product; but what happens is that Asahi glass is also part of the trading groups who insist that other glass manufacturers buy their manufactured product in order to be able to sell their products anywhere in the marketplace, in Japan or abroad.

Trading companies have sort of the ability to restrict your access to markets if you don't purchase your products --your raw product--in advance from the trading company.

Senator Riegle. If I could maybe just elaborate a bit, today domestic manufacturers in this country get parts from multiple sources--some produced within their own corporations, some from American suppliers, some from foreign suppliers. There is a mixture, and it is a very open process, as I am sure you know.

The pattern as we see it in other instances, particularly in the case of Japan, is that just as our system is open in that respect, theirs is essentially, virtually completely closed. And an American parts manufacturer, whether it is a part that goes into a Japanese car manufactured in this country or in Japan is not really given the opportunity to compete for that business, even though they may be able to compete even more favorably on the basis of quality or price. They are just shut out from the beginning.

There is a persistent industry-wide pattern that is so obvious that I don't think there is any question about it.

Senator Chafee. What does the Administration say about this?

Mr. Woods. Senator, we are sympathetic to the practices that Senator Riegle and Senator Wallop are trying to address. We do, however, believe we already have authority under Section 301 to respond to unreasonable acts or policies or practices by other governments. What we are concerned abbut is that we do need some discretion to decide when toleration

by a foreign government of anticompetitive private practices amounts to an actionable case.

Right now, we have three criteria that we use in making that determination. It is how flagrant is the anticompetitive practice, on the one hand. How significant is the burden of restriction on our trade, on the other. And finally, are those activities inconsistent with local law, not U.S. law? We don't want to get ourselves into the circumstance where we are applying extraterritorially the standards that we apply in the United States.

So, I guess if the committee should adopt this amendment, what we would ask is that the language of the report somehow indicate that we have some discretion in determining what amounts to toleration, which I think is the key language here--that we do not want to get ourselves into trying to regulate private practices of companies--private companies--in other countries; or we will find ourselves in the same position vis-a-vis our companies here in the United States.

But we do think that it is important to be able to question the government's involvement in such activities.

Senator Wallop. Speaking for myself, I would have no objection to such an effort in the report. I think it is important, and I understand what you are trying to say. And I think it is consistent with what Senator Riegle and I are trying to do.

Senator Chafee. I think Senator Riegle has a point, particularly with what is taking place in this country, as I understand it. You get the Honda producers over here, but suddenly all the parts are bought from Japanese firms that are not allied directly through ownership with Honda; and the American suppliers are squeezed out.

Now, would this help solve that problem?

Mr. Woods. Senator, as I said, we believe we already have the authority under the law as it currently exists to do it, and that would be our position on it.

Senator Rockefeller. Mr. Chairman?

The Chairman. Yes, Senator Rockefeller?

Senator Chafee. But isn't the real question whether it can be done in the report language?

Senator Riegle. I am prepared to have the report language speak to the issue of flexibility. I don't want us handcuffed in each case. What I do want to make sure we do, however, is, where governments are acting as silent partners in a sense with a kind of cartel or what constitutes almost an economic conspiracy to keep our folks out, I think we have to be able to reach through and get to that problem.

So, I am open to trying to work that out in terms of report language.

Mr. Woods. I would think we could work that out then because, as I said, we are sympathetic to the issue you are

trying to get to. We think we already have that authority under law. If you adopt the amendment, we could work out that language.

The Chairman. Let me understand, Senator Wallop. This takes care of the amendment that you were originally considering?

Senator Wallop. It does, Mr. Chairman.

The Chairman. I am delighted because we had some four or five amendments on this question of "unreasonableness," and I was hoping that we could get a consolidation of a number of those because some of them have very minor gradations. Is there further question this? Senator Rockefeller?

Senator Rockefeller. Mr. Chairman, I think it is very important for several reasons, other than the several problems settled here. I think it does send a message to the Fair Trade Commission in Japan, which is not exactly the strongest body in the Pacific Rim. They are also not serious about enforcing their own antitrust laws, and I think this sends a message with respect to that.

And there is this particular problem of cartels; they fall under what we talked about in an earlier discussion, like NEC, which is the largest chip producer, which is just one of many, many companies like Semetomo. It gets into the whole distribution and supply relationship. I think it is a

constructive message as well as a specific remedy of the certain problems raised here under the amendment.

The Chairman. Senator Matsunaga, you did ask to make a comment?

Senator Matsunaga. Yes. My concern, I think, was partly expressed by Mr. Woods, and that is: Are we now projecting ourselves into foreign countries to determine what is antitrust and what is not, when even in our own country we have difficulty in determining that question? Under this, would your interpretation take us into that aspect?

Mr. Woods. That goes to the issue of discretion, and I would hope we would not be doing that. That is applying our law, as it were, to circumstances in other countries. That gets into very difficulty territory, it seems to me, on a legal basis.

Senator Wallop. The direct answer to that is that it is not our intention, and I think it will be resolved by the report language effort that we intend to make.

Senator Riegle. Yes. This doesn't address at all the question of what the laws might be in another country in that area. It has to do with opening a market. We have got a closed market problem; and as this bill is designed to do from start to finish, it is to try to give us a chance to compete where we feel we are able to compete but where the

door is shut. So, this doesn't really move to that second level of what the pattern of law or practice is in that way. It simply says that if you have got an industry working in such a way as to foreclose fair American competition by American suppliers, that that is something that we feel has to come down.

Senator Matsunaga. So, you are suggesting that the report language clarify the exact language used in your amendment?

Senator Riegle. I think we have reached that understanding.

Senator Bradley. You are talking about conspiratorial or even -- forced activity. Right?

Senator Riegle. Yes.

The Chairman. Senator Roth?

Senator Roth. In this amendment, we provide the word "toleration," which infers passive action as far as the government is concerned. Where the government is something more than passive, are we adequately covered?

Mr. Lang. I should think so, yes. The answer of the people who are going to be administering the law is yes. I am not quite sure what you would be suggesting, but --

Senator Roth. Obviously, market opportunity, we say in this case, includes where a government tolerates anticompetitive activities. What I am suggesting is where

there is more than tolerating but --

Mr. Lang. Promoting?

Senator Roth. Promoting them.

Senator Wallop. I think most of the rest of the bill goes to that.

Senator Roth. Basically, I think that is right, but I just wanted to make certain that it doesn't create any inconsistencies.

Mr. Lang. I know of none, Senator Roth. We will look carefully and make sure.

The Chairman. Let me say that I am appreciative of the fact that Senator Riegle and Senator Wallop have been able to combine their pieces of legislation and put it in a more generic perception; and I think it is a positive action toward trying to open up those markets, and hopefully we can bring it about. Are there any further comments?

Senator Danforth. Mr. Chairman?

The Chairman. Yes?

Senator Danforth. I have just one general comment, and that is that where we attempt in this legislation to pinpoint certain abusive behavior and state specifically that this behavior would be included within our understanding of unreasonable trade practices, that the statement of one complainant does not by implication rule out other complaints. In other words, the enumeration of certain

practices does not mean that we are excluding other practices.

The Chairman. Senator Wallop?

Senator Wallop. Mr. Chairman, if I may, I would agree with that principle in this instance. I think it broadens rather than constricts the approach.

Senator Danforth. Yes, but maybe we could perhaps include language such as "including but not limited to." I want to make it clear that there is no rule of statutory construction applicable here, that the expressed statement of specific conduct can be read to exclude other types of conduct.

The Chairman. Mr. Woods, any objection? Mr. Holmer?

Mr. Woods. No objection.

The Chairman. Senator Riegle, Senator Wallop, any problem with that?

Senator Riegle. No.

Senaeor Wallop. No.

The Chairman. All right. With that understanding, that will be included in it. The motion is before the committee. All in favor make it known by saying "Aye."

(Chorus of ayes)

The Chairman. Opposed?

(No response)

The Chairman. The motion is carried. We are open to further amendments.

Senator Chafee. Mr. Chairman?

The Chairman. Yes, Senator Chafee?

Senator Chafee. I have an amendment dealing with export targetting; and if somebody would pass that out, I would appreciate it.

The Chairman. All right.

Senator Chafee. Mr. Chairman, I believe this is on page 63 of the spreadsheets. Now, Mr. Chairman, we have included in here targetting as actionable under 301. And what I would do is say that if the President were unsuccessful in negotiating an agreement to eliminate or fully offset the effects of export targetting and if he decides not to take retaliatory action, then he must convene a private sector panel which would be modeled after the Young Commission to advise him in six months on nontrade measures to restore the competitiveness of the United States.

And what are we talking about when we talk about nontrade measures? Well, they could be some R&D support through the Defense Advance Research Projects Agency. It could be technology assistance through the Office of Productivity. It could be preferential government procurement, regulatory relief--something like that.

I feel very strongly about targetting, but if in the event the decision was not to take retaliatory action, then I think those industries that have been targetted are entitled

to some type of relief. And I might say that this isn't totally new--this proposal. This type of administrative assistance was given to the machine tool industry last May when the President announced his decision on that 232 machine tool case.

Are there any comments?

The Chairman. Do you have the specific language here for us?

Senator Chafee. I think we have that here.

The Chairman. If you will give us an opportunity just to read it. Do you have it?

Mr. Lang. Yes, sir. Just give me a minute. The export targetting provisions of the Bentsen-Danforth bill are found beginning at the middle of spreadsheet page 63. As we read this amendment, nothing in it would derogate from those provisions.

Senator Chafee. I don't want to derogate from them.

Mr. Lang. Yes.

Senator Chafee. I am supportive of them. I consider targetting a haenous practice and, in case the President didn't retaliate, then at least the industry that is targetted gets some relief.

Mr. Lang. We know of no objection.

The Chairman. Do you see any problem with that, Mr. Lang?

Mr. Lang. No, sir.

Senator Baucus. Mr. Chairman?

The Chairman. Yes, Senator Baucus?

Senator Baucus. I would like to ask the sponsor of the amendment the intent of this amendment. Is the intent to set up this private sector panel only if all the potential 301 actions, including the case of mandatory retaliation, for some reason there is no retaliation? Or is the intent to allow the President the option of setting up a panel, say, under the case of mandatory retaliation if under the discretion of the President this kind of solution in his judgment is better?

Senator Chafee. No. The objective, obviously, is to have him retaliate or seek one of the solutions; but if he doesn't, then this is something to take care of those industries that have been targetted.

Senator Baucus. Frankly, Mr. Chairman, it would help me first if I could see the language of the amendment.

The Chairman. Here it is.

Senator Baucus. Well, it is just a statement; it doesn't have any language in it.

Senator Matsunaga. It is not the exact language.

Senator Packwood. I wonder if Mr. Woods has a problem with it.

The Chairman. Yes. Mr. Woods?

Mr. Woods. Thank you. We do have a problem, although we are obviously concerned about targetting as well. We do have some problems with this in that we place the Federal Government in the position of deciding what is best for an industry or for farmers for that matter, rather than letting them decide what is best for themselves.

The other thing that I would note--although we don't have legislative language here--it says: The President then must implement these nontrade measures. It is hard for us sitting here today, it seems to me, to judge what the budgetary impact of such measures might be, that such a panel might recommend. In the case of the machine tool industry, which wasn't a targetting case but a different kind of circumstance, the funds for that came from the Department of Defense. It was a national security issue, and the action that was taking place there, we were obviously capable of doing that within certain budget constraints.

This sort of opens the door without any sort of indication of how it closes, and I would be a little bit concerned about the budget implications of that, without the ability to say what they are because you are talking about cases that are out there in the future.

Senator Chafee. Obviously, I would like to see the word "must" in there, but if that is a big stumbling block we could give the President some discretion. But I am just

concenred about these targetting things, and I know that you don't like the targetting; but we are past that hurdle, I hope.

Mr. Woods. What I would say is that, if you gave the President the option of considering the kinds of actions you suggest within the context of certain budget constraints, although we would still have problems with the nature of the commission, I think that certainly would go some ways to allay our concerns.

The Chairman. We don't have the exact language before us, but I thought he had that discretion with what I read as the intent of the amendment. "The President must implement nontrade measures which he believes will restore the competitiveness of the domestic industry." Doesn't that give him some latitude as to his judgment?

Mr. Woods. "May" instead of "must"?

Senator Durenberger. Mr. Chairman?

The Chairman. All right. Senator Durenberger?

Senator Durenberger. I wonder if I couldn't just take one step back and look at the hurdle that Senator Chafee said we have already crossed? At some point I was going to bring this up, anyway, and I just may bring it up as an amendment to my colleague's amendment. And I solicit advice from the STR on this.

My amendment would delete Section 305(c) of S. 490 as

it relates to defining export targetting as an unreasonable practice. And it is sort of a way perhaps of testing whether or not the people on this committee feel that targetting is something that is good or it is something that is bad.

And I step back to a statement that Senator Chafee agreed with that Ambassador Woods made a little while ago, and that is that our trade policy ought to be open markets, not closed markets. And targetting, as a concerted Government supported activity on the part of another country, when it affects us adversely, I suppose we bridle about; but when we practice it, we think it is legitimate Government policy. For example, the creation of NASA. With all of the spinoffs for the commercial and business industries in this country over 20 to 25 years, all of which our Government goes about doing very deliberately and then in the publication I have here from 1986 brags about it.

This is clearly an example of targetting which we think is appropriate. We undergird this with very substantial defense budget decisions. We make commitments far in advance to put billions of dollars worth of investment for defense into a program like this to make sure it works as well.

The Defense Science Task Force on the defense semiconductor dependency, which some of you may have looked at recently, recommended that in effect we target semiconductors over the next five years. Many of you are

co-sponsors with me of a piece of legislation which would create a presidential commission on commercial and military applications of superconductors.

And it strikes me that the time is coming when the United States ought to do some of its own targetting, if you will; in other words, do some things on purpose. And if we take the course that is suggested to us her by 490 and now supplemented by this amendment, in effect we are inviting our trading partners to create mirror image legislation and do more targetting on their own.

So, I just wonder if we might first get a little reaction from Ambassador Woods on the subject and then, if it is appropriate to Senator Chafee's amendment, I might suggest this as a second-degree amendment.

Mr. Woods. Senator, our concerns match yours in the targetting provisions of this bill. We are very concerned about targetting. We think we have the ability under Section 301 of the trade law to go after targetting as we find it. The problem with targetting is defining targetting today, defining targetting in the future, and defining it in such a way that we don't participate in it, in some way, given the acts of our Government, in some of the matters which you have just described.

We could find, for example, that there are a number of industries which other countries might consider that we have

targetted based upon the kinds of criteria that this bill uses; and if they chose to mirror that legislation in that way--in a precise way--we might find ourselves in trouble with a whole number of industries.

We could look at several industries specifically that come to mind--the timber industry, where we had the Timber Contract Relief Act of 1984. We had the Export Company Trading Act that relaxes the antitrust laws in the timber industry, and some might consider that to be targetting. We have the rice business, where USDA marketing loans in 1985--as part of the 1985 Farm Bill--basically said rice sales to the world shall be at world prices regardless of what it cost to produce that product.

Again, the Export Company Trading Act allows for specific benefits for that industry in their trading. The fact that we have targetted ourselves rice for special attention in the Uruguay Round, as we have, and made it clear publicly that this is an issue that we want to deal with might be considered.

Senator Moynihan. But Ambassador, if I could interrupt?

Mr. Woods. Sure.

Senator Moynihan. On the rice matter, in Texas last year the leading recipient or the leading beneficiary who picked up a cool $1.3 million was the Crown Prince of Lichtenstein. So, surely, this is strengthening our

relations with other countries --

(Laughter)

Senator Moynihan. And you know, you are supposed to be a diplomat. I think I should point that out.

(Laughter)

Mr. Woods. But he grew his rice here, sir.

(Laughter)

Senator Moynihan. Well, it is not clear whether he ever got his feet wet much in that --

(Laughter)

Mr. Woods. I am just suggesting that there are a whole number of industries and I could go through them; and they go from petroleum products to semiconductors to textiles to fish, that we might be viewed as being engaged in targetting. I don't believe that is targetting personally, but others might choose to do so; and they would be within some right to do so under the criteria that this bill sets up. So, I think we ought to exercise some caution when we get too specific in some of these areas.

We believe that Section 301 of the trade law allows us to deal with this issue as we think it did in combination with the antidumping law in the semiconductor case. Essentially, we felt we were going after a targetting circumstance in the Japanese market in regard to Japanese semiconductors, and hopefully at the end of the day, we will

have found resolution in that respect.

Senator Baucus. Mr. Chairman?

Senator Matsunaga. Senator Baucus?

Senator Baucus. Mr. Chairman, frankly, I think the point made by Senator Durenberger is almost the guts of this whole Section 301. It is a very basic question that we are now facing and we are going to have to resolve; and that is the degree to which we want to pursue trade policy based on some form of -- nationalism; or on the other hand, the degree to which you want to base a trade policy on open trading commercialism. I think that is a very basic question. The fact is that--at least as I understand it--about 75 percent of the goods and services traded in the world today are on some basis, to some degree, other than ours, that is, State trading, an export-driven economy, and fixed economies like EEC with Germany and France and so forth.

And the question is the degree to which we are going to go down that same road ourselves or, on the other hand, the degree to which we are going to try to influence those countries not to go down that road any further or perhaps even back off more so that we have a trading system that is based more on open and free trade and commercial arm's length negotiations.

The fact of the matter is that it is not an easy question

and there are no easy answers to this; but if we tend to go in one direction more than the other, it just seems to me we should tend to go more in the direction of commercialism because, otherwise, the degree to which we go down the road of economic nationalism or governments helping industries in targetting and so forth, the more we run the risk of distorting trade fundamentally.

And second, the more governments tend--particularly in representative democracies of short term subsidies and help to various industries and home subsidies--which just get us in deeper and deeper trouble and tend to cause us to have big, huge fiscal budget deficits, to say nothing else.

I think the EEC, for example, would love to get out from under the CAP--the Common Agricultural Plan--because European subsidies in agriculture amount to from $26 to, by some accounts, $100 billion a year; and here we in our country $28 billion in agricultural price supports.

So, I think that frankly we should make targetting an actionable unfair practice under 301; but the fact of the matter is that the USTR is going to have to exercise discretion, too, and we are going to have to experiment and see how far we can go. But the main point, I think, is to make it an unfair trade practice because it seems to me that, given the alternatives, it is better to work to get

countries to get theirs down, but to work to get ours down, too. Sure, there is a mirror legislation involved here, but the fact is that maybe this is one way we can help ourselves.

I think that it is an excellent point, and my final answer that I do think that if we are going to move in a direction, it should be down the road of trying to encourage ourselves and other countries to back off as much as we practically can.

Senator Chafee. Mr. Chairman?

Senator Matsunaga. Senator Chafee?

Senator Chafee. Mr. Chairman, what Senator Durenberger is proposing is that we get into a game that we are clearly going to lose. Here is a cable from Ambassador Mansfield dealing with the recent talk--this appeared in The Post, I think, Monday or yesterday--reporting on the market oriented--the so-called Moss Talks over there--with Ambassador Smith and Bruce Smart. And this is the end of Ambassador Mansfield's cable: "The exchange of views furnished persuasive evidence that the Japanese authorities and industry are engaged in the early stages of a comprehensive long-term program of industrial and technological targetting aimed toward dominance of the computer industry as part of the Japanese long-term industrial strategy through the aggressive tactics of their large-scale companies.

"This Japanese objective--namely the targetting--emerged

clearly and authoritatively." Now, we are going to say that is fine; they can do that; and we are going to get into it, too. That is a game we are going to lose because you know that, with the free market atmosphere in the country, we are not going go as hard at this as the Japanese are.

And to suggest removing this provision, which I was seeking to strengthen, Senator Durenberger's suggestion to remove it from an actionable complaint is, to me very, very harmful for our U.S. companies. And indeed, it is my belief that the United States does not engage in export targetting as defined in here.

Now, Mr. Woods ticked off some things that he thought might present problems; but I would ask Mr. Lang whether, in his judgment, any of those met the four criteria that are set forth: a Government plan aimed at enhancing export capabilities; coordinated actions under the plan; specificity test to ensure the actions under the plan; a design to assist a specific industry, and so forth.

Now, maybe they do; I don't know; but to say that this is a game that we want to get into and not make it actionable is doing great harm to our companies in this country, in my judgment, Mr. Chairman.

Senator Durenberger. Mr. Chairman?

The Chairman. Senator Durenberger?

Senator Durenberger. I would respond to the argument by

saying that, unless we get into the game, we can't control the rules by which the game is being played. I mean, the very fact that we could sit here and debate the rest of the day whether the Ambassador's list does or does not fall within this category means we really, as a nation, haven't spent a lot of time trying to figure out what targetting is all about, to say nothing of whether we should do it. I think Max makes a good point.

I mean, he said we shouldn't do it. We shouldn't play in this ball game. I don't know that by making targetting actionable here, we are going to eliminate it. We are going to spend all our time arguing over whether a specific course of action is targetting or is not; and in the meantime, it strikes me that we lose the advantage of turning our policy in this country into somewhat more deliberate policy.

This is the first time that I have heard that the current and future policy in this country is free trade. I haven't heard that term for at least four years around here. I thought we were now on fair trade, and we were in the process of defining what fair trade is and that maybe, for a change, we were going to start doing some things on purpose in this country.

The Chairman. Gentlemen, the Senator, when he said we could sit here and debate this the rest of the day, got my attention.

(Laughter)

Senator Durenberger. And mine, Mr. Chairman.

The Chairman. We have made remarkable progress this morning. I am wondering if, since it is now past 12:00, we couldn't continue this tomorrow morning. I want to say that I really do think we have made remarkable progress this morning. I am delighted with it.

On tomorrow's agenda, we will start with the question of targetting; and then we will move--if it isn't the rest of the day--we will move to discuss either 201 or consulting authority, depending on how much progress we can make.

Thank you very much for your attendance.

(Whereupon, at 12:05 p.m., the meeting was recessed, to be reconvened on Thursday, April 30, 1987 at 9:30 a.m.)

C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Session of the Committee on Finance, held on April 29, 1987, were held as appears herein and that this is the original transcript thereof.

William J. Moffitt

WILLIAM J. MOFFITT
Official Court Reporter

My Commission expires April 14, 1989.

April 29, 1987

PACKWOOD PROPOSAL ON SECTION 301

A. Initiation

Strike the provision in S. 490 directing the USTR to initiate cases against "significant" trade barriers. Replace with a provision directing the USTR to initiate cases, the pursuit of which under Section 301, is most likely to result in the greatest expansion of U.S. exports, either directly or through establishment of a beneficial precedent.

B. Retaliation

1. Retain provisions in S. 490 mandating retaliation in "unjustifiable" cases (trade agreement violations).

2. Where the trade agreement specifies a dispute-settlement procedure, retaliation would only be mandatory six months after a dispute-settlement (GATT panel) ruling in favor of the U.S.

3. If the dispute-settlement mechanism has not ruled within 18 months of initiation of the investigation -- and the delay has not been the responsibility or at the request of the complaining U.S. industry -- the U.S. is to

consider the case as having been favorably resolved for the U.S.

C. Exceptions to Retaliation

1. S. 490 provides two exceptions to mandatory retaliation:

   a. a GATT ruling against the U.S.; and

   b. a settlement, acceptable to the domestic industry, that offsets or eliminates the unfair practice.

2. To those two exceptions, add:

   a. USTR certifies that it was impossible for the foreign country to eliminate the practice complained about, but the foreign country enters into an agreement to provide fully compensatory trade benefits.

   b. The President certifies to Congress that retaliation would cause serious harm to the national security.

(J0521)

Riegle Amendment to S. 490

Government Toleration of Anti-competitive Practices

The definition of "unreasonable" practices in section 301 (e) (3) is amended by inserting after the word "opportunities" in the second sentence thereof the following additional language (new language underscored):

"The term includes, but is not limited to, any act, policy, or practice which denies fair and equitable --

(A) market opportunities, <u>including the toleration by a government of systematic anti-competitive activities by private firms or among private firms in that country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, acess of United States goods and services to purchasing by such firms;</u>

MITCHELL AMENDMENT

INTELLECTUAL PROPERTY PROTECTION AND MARKET ACCESS

amended 301

The amendment would establish a procedure whereby the USTR is to use the National Trade Estimates to identify a list of "priority foreign countries" which deny adequate and effective protection of intellectual property rights, or fair and equitable market access to US companies that rely on intellectual property protection. The "priority" countries would be selected according to those which have the most onerous and significant unfair acts and those which offer the greatest potential for increased US exports. The priority list would be selected and published in the Federal Register within 30 days of issuing the NTE.

After a country is identified as a priority foreign country, USTR would have 30 days to conduct an investigation under Section 302. Initiation of the investigation may be deferred if: a) the USTR determines that the foreign country in question has entered into good faith negotiations to remedy the acts that gave rise to the investigation, or b) if the USTR determines that the investigation would be detrimental to US national economic interests.

For investigations that are pursued, the USTR would have six months to make recommendations to the President for possible action. This time period could be extended another six months if the USTR determines the foreign country is making substantial progress in implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights and fair and equitable market access.

Following the USTR recommendation, the President would have 30 days to take the action in accordance with the restrictions established in S. 490 with respect to Section 301 cases involving "unreasonable practices". That is, action would not be mandatory and the President could decline to follow the USTR recommendation where it is not in the "national economic interest".

The language described above is identical to the provisions in the House bill except that "fair and equitable market access" is added as a condition under the bill in addition to House language that applies to "adequate and effective protection" of intellectual property.

The Caribbean Basin Initiative would be amended to permit the President to take proportional action against qualifying countries, according to the scope of their acts and policies that deny protection or market access to intellectual property. Currently, the President does not have authority to withdraw benefits from CBI countries on a basis equal to the scope of their offenses. He must completely disallow CBI benefits if he takes any action at all. The amendment permits proportionality, as is now provided under GSP, and thus greater flexibility in dealing with such situations.

MITCHELL INTELLECTUAL PROPERTY AMENDMENT

The Mitchell intellectual property amendment is supported by the following organizations and their member companies:

Computer Software and Services Industry Assoc. (ADAPSO)

Computer and Business Equipment Manufacturers Assoc. (CBEMA)

Motion Pictures Assoc. of America, Inc. (MPAA)

Assoc. of American Publishers (APA)

American Film Marketing Assoc. (AFMA)

National Music Publishers Assoc. (NMPA)

Council on Competitiveness

Corning Glass

Pharmaceutical Manufacturers Assoc. (PMA)