

RICHARD  
5/12/88

1 EXECUTIVE COMMITTEE MEETING

2 THURSDAY, MAY 12, 1988

3 U.S. Senate

4 Committee on Finance

5 Washington, D.C.

6 The meeting was convened, pursuant to recess, at 10:05  
7 a.m. in Room SD-215, Dirksen Senate Office Building, the  
8 Honorable Lloyd Bentsen (chairman) presiding.

9 Present: Senators Bentsen, Moynihan, Baucus, Bradley,  
10 Mitchell, Packwood, Roth, Danforth, Chafee, Heinz, Wallop,  
11 and Durenberger.

12 Also present: Ambassador Alan Holmer, Deputy United  
13 States Trade Representative; Ms. Judy Bello, Deputy General  
14 Counsel, USTR.

15 Also present: Messrs. Jim Gould, Staff Director and  
16 Chief Counsel; Ed Mihalski, Staff Director, Minority;  
17 Jeff Lang, Trade Chief Counsel; Mike Mabile, Trade Counsel;  
18 and Josh Bolten, Chief Trade Counsel, Minority.

19

20

21

22

23

24

25

1           The Chairman. Please be seated and cease conversation,  
2 and we will get under way here.

3           Mr. Lang, we have had considerable work done amongst  
4 the staffs of the various members and the committee and the  
5 Administration; and I would like for you to walk us through  
6 those provisions where you think we have achieved concensus  
7 amongst the members as represented by their staffs.

8           Mr. Lang. Yes, sir. The document you have before you  
9 is a new spreadsheet. It is the same spreadsheet as you  
10 started with on Tuesday, except that the third column on  
11 the right hand has been added, called "Draft Implementing  
12 Proposals," which represents the staff discussion on these  
13 subjects.

14           On page 2, regarding the approval of the free trade  
15 area agreement, the language that is proposed in the column  
16 there is pretty standard stuff. The only thing to take note  
17 of is item 2 at the bottom; it is a little different than  
18 you have done in the past because in the past, particularly  
19 in 1979 in the Tokyo Round, you allowed changes in the  
20 annexes.

21           The Administration agrees that there should be no changes  
22 in the annexes, but there may be two technical changes in  
23 the rules of origin. They are tied to the harmonized system,  
24 which you will need to give them technical authority on.

25           So, the rest of this, about putting the agreement into

1 effect and approving it in the legislation, is exactly what  
2 you have done before.

3 That is, when the legislation itself approves both the  
4 agreement and the Statement of Administrative Action.

5 On page 3 at the top is an issue about the entry into  
6 force of the agreement. There, Senator Heinz and the  
7 Administration are working on some language which they  
8 believe they can work out if they have a little more time;  
9 and we would recommend that the committee pass over the  
10 issue temporarily until the Administration sees if it can  
11 work out its problems with Senator Heinz.

12 The Chairman. If we are making headway on that, let's  
13 do pass over it at this point. I would anticipate we would  
14 have a further meeting at 2:00 p.m. on Monday. So, if that  
15 can be resolved by that time, it would be helpful.

16 Mr. Lang. At the bottom of page 3 is an issue we are  
17 not able to work out. In 1979 and in the Israel implementing  
18 bill, the committee recommended and the Administrations at  
19 the time--one the Carter Administration, and the second the  
20 Reagan Administration--suggested a provision that provides  
21 neither the agreement nor the bill raises any private rights  
22 of action unless the bill does so explicitly.

23 The Chairman. I think strongly that we should not have  
24 the private rights of action. We ought to follow the action  
25 that was taken under the Tokyo Round and under the Israeli

1 Free Trade Agreement there.

2 So, we get to the point again where we would have Federal  
3 preemption when the Federal Government legislates an appeal  
4 and an inconsistent State law is overridden. So, I would  
5 strongly urge that we not have the private rights.

6 Mr. Lang. Very well.

7 The Chairman. All right.

8 Mr. Lang. On page 4, we have not set out purposes of  
9 because we thought the committee would probably want to  
10 just get through the whole process and do those at the end.  
11 I don't think they are a serious problem for anybody.

12 Everybody seems to think there will be concensus on  
13 those without any trouble.

14 The Chairman. All right.

15 Mr. Lang. At the top of page 5, --

16 The Chairman. Let me state further as I was stating  
17 earlier on the question of private rights that, unless we  
18 have objection, we will preclude the private rights.

19 Mr. Lang. Yes, sir.

20 Mr. Lang. On the top of page 5 is a somewhat similar  
21 issue. Again, in the 1979 Tokyo Round implementing bill and  
22 in the Israel implementing bill, you provided that in the  
23 event of a conflict between a U.S. statute and a provision  
24 of a trade agreement, U.S. law would prevail.

25 The Chairman. Oh, I would strongly urge in that that the

1 U.S. law prevail. We will go along with the same thing we  
2 did again in the Israeli Free Trade Agreement.

3 I don't think it is strictly necessary to implement  
4 the agreement to do otherwise, and say it has previously  
5 been done the way I am talking about with the Israel Free  
6 Trade Agreement.

7 So, unless there is objection, we will do that. Do you  
8 want to comment, Mr. Holmer?

9 Ambassador Holmer. If I could, Mr. Chairman. We  
10 understand the view that you have expressed, and we understand  
11 the historical precedents that are being followed, I believe,  
12 in the recommendation you are making.

13 The Chairman. Yes.

14 Ambassador Holmer. This is an issue that the Canadians  
15 do feel strongly about; and the language where you would  
16 have the FTA take precedence over prior Federal law, would  
17 that in case Mr. Lang and his staff or myself or Ms.  
18 Bello, the USTR staff, have forgotten some relatively minor  
19 statute, it would put us in a position where we would be  
20 able to make sure that we were able to fulfill our  
21 obligations.

22 That is why we would prefer the language that would have  
23 this override.

24 The Chairman. No, I don't want to do that because, in  
25 effect, I think we are forfeiting part of our right to

1 legislate. That leaves us somewhat in the dark as to all  
2 the specifics of that.

3 So, unless there is objection, I would oppose that.

4 Ambassador Holmer. I would assume, Mr. Chairman, that  
5 your principal concern there relates to the Federal law as  
6 opposed to the State law; and I think it may very well be  
7 advisable to have an override with respect to State laws  
8 in particular.

9 Senator Packwood. That we can do by statute, can we not,  
10 even prospectively? I mean, in this implementing  
11 legislation.

12 Ambassador Holmer. That is correct.

13 Senator Packwood. I mean, this doesn't have to give the  
14 Administration any discretion to decide whether or not to  
15 override State law; the statute will say so. You enforce  
16 it, but we can say so in the statute.

17 Ambassador Holmer. That is the principal problem. We  
18 just don't know what all of those State laws are out there.

19 The Chairman. Do you want to comment on that, Mr. Lang?

20 Mr. Lang. Mr. Chairman, I think if it were the  
21 implementing bill, that is, the bill that will eventually  
22 become the statute that overrides State law, you would be  
23 doing nothing more than stating what is the current practice  
24 of both State and Federal courts.

25 A closer question would arise if what you said in the

1 bill were that the agreement overrode State law because then  
2 you would be giving the agreement the dignity of a Federal  
3 law.

4 The Chairman. Yes.

5 Mr. Lang. And I think that can raise some problems and  
6 might not be a good precedent in the future.

7 The Chairman. I would share that, Mr. Lang, and I think  
8 that is a close question; but I don't want to get in a  
9 position where the agreement is overriding.

10 Senator Packwood. I want to ask the Administration: Are  
11 you suggesting the agreement override, Alan, or that the  
12 implementing legislation, which is a statute, say that the  
13 agreement overrides?

14 Ms. Bello. Senator Packwood, our suggestion is the  
15 latter, that the implementing bill expressly say that the  
16 agreement overrides any inconsistent existing or prospective  
17 State law. This is critically important because all of the  
18 chapters of the agreement, except for three, apply to the  
19 provinces and the States.

20 And just as we want to ensure that the Canadian  
21 Government, for example, is in a position for its provinces  
22 to comply, likewise we want to ensure that we are in a  
23 position for our States to comply, in particular in the area  
24 of services, which is prospective only, and investments.

25 The Chairman. I don't want the agreement to override, and

1 that is what you are finally saying. I want the current  
2 interpretation where you have got U.S. laws finally prevailing.

3 To say that the agreement itself overrides, I think that  
4 is the distinction; and that is what I want to avoid.

5 Senator Packwood. In that sense, though--and correct  
6 me if I am wrong on the law--how does that differ from a  
7 treaty, other than we ratify a treaty? But would not a  
8 treaty override conflicting State law if we ratified the  
9 treaty?

10 The Chairman. Oh, that is right, but this is not a  
11 treaty we are talking about.

12 Senator Packwood. No, I understand it is not a treaty;  
13 but we are talking about an extra legal document whereby,  
14 upon ratification, we say that whatever is in this document  
15 overrides State laws.

16 I think the only difference between this and a treaty  
17 is this is going to be ratified by a majority in both  
18 Houses; but in terms of it being an extra statutory document,  
19 they both are.

20 The Chairman. Yes, but certainly a treaty carries a  
21 lot more weight, it seems to me, and always has.

22 Mr. Lang. There may be a difference. I think there is  
23 a difference, Senator Packwood. The Constitution explicitly  
24 says that treaties are the supreme law of the land. So, it  
25 is obvious that they have the same dignity as a statute.

1       But an executive agreement has no constitutional dignity  
2 unless you give it to it. In the past, all you have done  
3 with executive agreements is either to approve them or  
4 implement them or do nothing with them.

5       You did nothing with the GATT, for example. It has  
6 never been approved by Congress. I guess it has been  
7 implemented by Congress.

8       The Auto Pact, for example, was not approved by Congress;  
9 it was implemented by Congress. The 1979 Act provisions--the  
10 Tokyo Round agreements--were both approved and implemented  
11 by Congress; and so were the Israel agreements; but none of  
12 those statutes incorporated the text of the agreement in  
13 Federal law, which it seems to me what the Administration  
14 is really --

15              Senator Packwood. Ms. Bello, you have a comment?

16              The Chairman. Yes, Ms. Bello?

17              Ms. Bello. Mr. Chairman, with all respect, we think  
18 we disagree on what the Hornbook law is. We think that  
19 while clearly there is a distinction in the Constitution  
20 references treaties but not executive agreements, that if  
21 the issue were to come to a court, a court would find that  
22 executive agreement, even if it were not expressly approved  
23 by the Congress--as this one will be if you enact this  
24 implementing bill--would override any inconsistent State law.

25              But more importantly, if I could just underscore our

1 concern here, --

2 The Chairman. Then, why do you need such a provision?

3 Ms. Bello. To err on the side of caution.

4 The Chairman. I am going to err on the side of caution  
5 in protecting the legislative authority of the Congress.

6 Ms. Bello. Mr. Chairman, could I give you just one  
7 specific example?

8 The Chairman. All right.

9 Ms. Bello. In the services area, we have grandfathered  
10 all existing practices, State or Federal, provincial or  
11 Canadian Federal Government. So, there is no provision in  
12 the implementing bill implementing the services provisions  
13 of the agreement.

14 But we have undertaken a very significant obligation  
15 here on behalf of our States, as well as the Federal  
16 Government, to provide national treatment, as construed in  
17 the agreement.

18 If we fail to include a provision in the implementing  
19 bill, that makes clear that the agreement overrides  
20 inconsistent State law, I would anticipate that there will  
21 be much more tendency for this issue to be litigated in the  
22 courts where we feel ultimately our position would be upheld,  
23 that the agreement does override inconsistent State law;  
24 and we think it would be a disservice to invite all that  
25 unnecessary litigation when the point can be so neatly

1 clarified in the implementing bill.

2 Senator Packwood. Let me ask a question also, if I  
3 may, of Mr. Lang.

4 Without getting into the argument of whether we are  
5 abdicating any of our statutory responsibility, shouldn't  
6 we as a goal of the Congress want to preempt and override  
7 present or conflicting State laws?

8 Mr. Lang. Yes.

9 Senator Packwood. And if necessary, shouldn't we say  
10 that in the implementing legislation?

11 Mr. Lang. I think you should, by using the provision  
12 you have used in the past. I think that will accomplish  
13 everything you need.

14 If there is something else that you are not putting in  
15 this bill, some specific provision of law that you are not  
16 overriding, it ought to be in the bill. That will preserve  
17 the legislation --

18 Senator Packwood. Let me ask once more because I don't  
19 think I am asking it right. It is in our interest, in  
20 Congress' interest, the President's interest, the country's  
21 interest, because we are asking Canada to override their  
22 provincial legislation. We do want to override conflicting  
23 State laws.

24 Now, if that is the goal that we all agree upon, then  
25 I think we ought to be able to draft the language in some

1 way that is acceptable to all of us.

2 I thought for a moment that we were disagreeing about  
3 the goals.

4 Mr. Lang. No, I don't think so. I think the provision  
5 you used in 1979 will accomplish that result; but if you go  
6 beyond it and actually say that the agreement preempts  
7 State law, you are doing something with these agreements  
8 that at least you have never done before.

9 The Chairman. That is a fine line, Bob.

10 Senator Packwood. I can see where I am making the  
11 mistake, so let me ask it again. Don't we want--Congress--the  
12 agreement to override conflicting State laws?

13 Mr. Lang. No.

14 Senator Packwood. We don't?

15 Mr. Lang. I don't think so. I think you want the laws  
16 that implement the agreement to override State law. You  
17 certainly don't want the States to do something that is  
18 inconsistent with the agreement. I thought that was what  
19 you were asking me.

20 Senator Packwood. I know I wasn't asking it right. Are  
21 you suggesting then that, if the States do something in  
22 conflict, either with present laws or in the future, that  
23 we then have to come back and legislate ad hoc each time  
24 that a State does something that is in conflict?

25 Mr. Lang. I don't think, in fact, you will have to do

1 that because I think probably the Administration will be  
2 able to demonstrate that, in approving this agreement, the  
3 States are preempted by your approving legislation.

4 But the short answer to your question is yes.

5 Senator Packwood. I make to make sure that I understood  
6 what you said and if the chairman understands the same thing.

7 Is he saying, Mr. Chairman, that by enacting the  
8 implementing legislation, we are de facto making the  
9 agreement preemptive of conflicting State laws without  
10 further action?

11 Mr. Lang. You are making this law preemptive.

12 Senator Packwood. What about the agreement if there  
13 is a conflicting State statute? What happens then?

14 Mr. Lang. There are two possibilities. One is that  
15 you will have to explicitly override the State statute by  
16 enactment; the other is that the Executive Branch will be  
17 able to convince the State, either through court action or  
18 diplomatically, not to legislate in contravention to the  
19 agreement because they would be able to take your approval  
20 of the agreement into court and use that to force the State  
21 not to act inconsistent with the agreement.

22 Senator Packwood. Do you think that simply the  
23 implementing legislation de facto makes any conflicting State  
24 law present or prospective null and void?

25 Mr. Lang. I believe Administrations have done that in

1 the past.

2 Senator Packwood. Do you think that is correct? We  
3 don't need anything further than that, and that would  
4 override conflicting State laws, present or prospective.  
5 So, it isn't so much a question of diplomacy. I am not  
6 sure I would trust diplomacy, if some State legislature has  
7 got in its mind to do something and in comes an Assistant  
8 Secretary of State to say, Governor, you can't do that.

9 Mr. Lang. I understand.

10 Senator Packwood. The court action obviously would  
11 solve it. Now, I am curious about what the Administration  
12 thinks.

13 Mr. Lang. No, ultimately legislation may be necessary.

14 Senator Packwood. All right.

15 Ms. Bello. Mr. Chairman, if I could just briefly make  
16 two more points? One is to be very concrete, take the  
17 McCarran-Ferguson Act, which is an Act of the Congress  
18 that cedes to the State governments the right to regulate  
19 insurance. I am concerned that if we don't have anything  
20 in the bill making the agreement override inconsistent State  
21 law, we will not be able to implement our obligations that  
22 include obligations of the States to provide national  
23 treatment in the insurance area.

24 And second, the approach that has been indicated is  
25 basically that the USTR's mighty force of eight lawyers

1 should ride herd on litigation in all of the 50 States and  
2 the District of Columbia that is much more likely to result  
3 if we don't clarify what we are doing in the implementing  
4 bill.

5 The Chairman. Let me ask you, Ms. Bello, what is so  
6 different about this and our Israeli Free Trade Agreement?  
7 We did not pursue what you are suggesting in it.

8 Ms. Bello. Mr. Chairman, the difference is that in  
9 this agreement, except for three limited chapters, we are  
10 undertaking obligations that apply to the States and the  
11 provinces as well as to the Federal Governments.

12 And therefore, we must be in a position to ensure --

13 The Chairman. Which we did not do in the Israeli Free  
14 Trade Agreement. Is that what you are saying?

15 Ms. Bello. That is correct, Mr. Chairman.

16 The Chairman. Let's defer this one. Let's move on.

17 Mr. Lang. On page 6, Mr. Chairman, in the rules of  
18 origin, here we have worked out a solution with the  
19 Administration to the problem of the harmonized system not  
20 being in effect and perhaps not being in effect even when  
21 the trade agreement goes into effect.

22 Essentially, what this proposal provides is that the  
23 specific provisions of the rules of origin in the agreement,  
24 which are set forth in an annex to one of the chapters of  
25 the agreement, and essentially work on the basis that when

1 you change from one chapter heading of the harmonized system  
2 to another, that confers origin on a product; that is, that  
3 is how it becomes Canadian, by being transformed from one  
4 chapter heading to another chapter heading.

5 That would be enacted as positive law. The  
6 Administration would not proclaim those changes. The only  
7 thing that they would be authorized to proclaim would be  
8 some minor technical issues and also to proclaim interim  
9 rules of origin if the harmonized system did not go into  
10 effect.

11 And the Administration has assured us that language  
12 which said that the harmonized system rules should be  
13 converted directly back to the tariff schedules would be  
14 something they could administer.

15 So, that is what this provision provides. Now, I  
16 should say that just before the meeting this morning, we  
17 received some information from industry groups that are  
18 interested in this subject with some thoughts that might  
19 affect this concensus, not by changing anything we have  
20 done so far, but by adding to it.

21 The basic problem these private interest groups are  
22 raising is how rules of origin apply when Canadian origin  
23 is not conferred by the agreement. I talked with Mr.  
24 Holmer just before the meeting about this; I have given  
25 them the private industry piece of paper. I don't know

1 whether we will need to come back to you on this.

2 So far, what we have done is what the House Ways and  
3 Means Trade Subcommittee has accepted as well. So, we  
4 think what we have done will stay where it is, but we may  
5 have some additions to make to it if the Administration finds  
6 that these private sector concerns have some merit.

7 The next provision on which we think we have reached  
8 what we think is a consensus at the staff level is on page  
9 10 of the spreadsheet concerning tariff elimination.

10 Essentially, here what we are recommending you do is  
11 authorize the President to proclaim the tariff reductions  
12 that occur in the agreement or greater or lesser tariff  
13 reductions against two standards.

14 The first standard would be that he could proclaim  
15 tariff changes that are provided for in the agreement.  
16 There is a schedule of tariff reductions in the agreement;  
17 he could match that schedule.

18 Second, he could go beyond that schedule to maintain  
19 what is called here the "general level of reciprocal and  
20 mutual advantageous concessions with Canada," meaning that  
21 if Canada agreed to move tariff rates down faster than the  
22 agreement provides for, the President would have authority  
23 to proclaim reductions at the same pace.

24 However, before he could do that, he would be required  
25 to go through the consultative mechanisms that applied in the

1 Tokyo Round and that would apply under the Trade Act that  
2 is currently on the President's desk.

3 That is, he would have to consult with the private  
4 sector, notify the cognizant Congressional committees, and  
5 run through what is called the 131 process at the ITC.

6 So, that is the basic format on tariff changes.

7 The Chairman. Are there questions?

8 (No response)

9 The Chairman. If not, we will proceed.

10 Mr. Lang. All right. The next changes are on page 12  
11 with respect to implementing the obligation to eliminate the  
12 Customs user fee. The provision is essentially to provide  
13 in Federal law that the user fee is eliminated at exactly  
14 the pace provided for in the agreement over five years  
15 beginning in 1990. That is Article 403.

16 Article 404 on drawback; essentially we have made just  
17 a straight implementation of the agreement provision. And we  
18 know of no controversy about these provisions on pages 12  
19 and 13.

20 The Chairman. All right. Let's move on.

21 Mr. Lang. The next provisions are on page 15 regarding  
22 Customs administration. There, the problem is to implement  
23 a requirement of the agreement that the United States  
24 establish record-keeping requirements and enforcement  
25 provisions to assure that the origin of a product claimed by

1 the importer can be audited, can be verified.

2 In other words, if an importer of a product from Canada  
3 wants to get a zero rate of duty, he has to prove that he  
4 comports with the agreement's rules of origin. This is a  
5 system of changing the current Customs laws of the United  
6 States to require those kind of certificates of U.S. persons,  
7 to establish the record-keeping requirements, and penalties  
8 for failure to meet those requirements.

9 As far as we know, again, it is noncontroversial.

10 The Chairman. Is there any objection?

11 (No response)

12 The Chairman. If not, let's proceed.

13 Mr. Lang. On page 16 at the bottom of the page is a  
14 simple provision to implement the agreement, a provision  
15 requiring the repeal of the lottery ticket embargo in the  
16 United States.

17 Again, we believe that provision is noncontroversial.

18 The Chairman. If there is no objection, we will move on.

19 Mr. Lang. We know of no other provisions requiring  
20 implementation in Chapter 4 or in Chapter 5, which begins  
21 on page 19, or in Chapter 6, which also begins on page 19.

22 And I am not aware of any member amendments in many of  
23 those chapters. I think Senator Mitchell may have something.

24 The Chairman. You say Senator Mitchell has an amendment  
25 on this chapter? Senator Mitchell?

1 Senator Mitchell. Mr. Chairman, just having from the  
2 other conference on catastrophic, could I have a few minutes  
3 to prepare?

4 The Chairman. All right. Mr. Lang, if you have  
5 knowledge as to what the amendment refers to, we will come  
6 back to that.

7 Mr. Lang. Yes, sir.

8 The Chairman. Let's move ahead then and give Senator  
9 Mitchell an opportunity to collect his notes.

10 Mr. Lang. I think it is in Chapter 12, Senator.

11 In Chapter 7, on agricultural provisions, --

12 The Chairman. What page is that?

13 Mr. Lang. On page 25. You need to change Federal law  
14 to implement this snapback provision.

15 The Chairman. I think that is one that Senator Mitchell  
16 had some interest in, as I recall.

17 Mr. Lang. Yes. Anyway, the language that is not in  
18 bold face simply authorizes the Secretary of Agriculture to  
19 implement Article 702, which is shown on the left side of  
20 the page.

21 And I believe Senator Mitchell's amendment relates to  
22 a monitoring requirement.

23 The Chairman. Yes, that is correct, as I recall.

24 Mr. Lang. Senator Mitchell has asked to defer the issue  
25 and get back to it.

1           The Chairman. All right.

2           Mr. Lang. The remainder of the implementation of this  
3 snapback provision is on page 26 and on to 27. These  
4 provisions are just a straight implementation of the  
5 agreement requirement. I don't think they are controversial.

6           Senator Mitchell. Mr. Chairman, if you would like,  
7 before he leaves that I will be able to make a brief comment.

8           The Chairman. That will be fine.

9           Senator Mitchell. Actually, what I am seeking merely is  
10 clarification to provide that the snapback provisions operate  
11 automatically as an administrative action, once the import  
12 price and acreage tests are met, without requiring the  
13 affected industry to file a petition.

14           It is simply to ensure that Customs and USDA maintain  
15 the appropriate records, have the resources to do so, and  
16 that the implementation is automatic, not requiring industry  
17 petition, and that the snapback provisions be applied to  
18 each specific Customs classification, not to broad  
19 categories.

20           The Chairman. Is the Administration prepared to comment  
21 on that?

22           Ambassador Holmer. I am sorry; I came in a little bit  
23 late on that, Senator. As I understand it, there are several  
24 issues here.

25           One is separating out the individual categories, and we

1 are hopeful that we can work that out in a way that is  
2 acceptable to all of us.

3 Senator Mitchell. Yes. Right.

4 Ambassador Holmer. Second is the data.

5 Senator Mitchell. Right.

6 Ambassador Holmer. And we are also hopeful that that  
7 can be worked out satisfactorily to all of us.

8 The third, though, is to make this thing work  
9 automatically.

10 Senator Mitchell. Yes.

11 Ambassador Holmer. It seems to us that that is  
12 inadvisable as far as overall U.S. interests are concerned  
13 because we have a very substantial surplus in trade with  
14 the Canadians in fruits and vegetables.

15 Indeed, in fruits, it is about an eight-to-one or  
16 nine-to-one ratio where our exports for fruits are \$657  
17 million. Our imports are only \$74 million.

18 And we also have a substantial surplus with respect to  
19 vegetables. We believe if it were to be made automatic,  
20 that would be negative as far as U.S. interests are concerned.

21 Senator Mitchell. I want to make clear that I am not  
22 asking that the tariff be automatically applied. It is merely  
23 that the test be conducted automatically.

24 Ambassador Holmer. As long as that is all we are  
25 talking about, just that the test be applied automatically,

1 not that the tariff automatically go into effect.

2 Senator Mitchell. That is right. Yes.

3 Ambassador Holmer. I believe that is not a problem, and  
4 we should be able to work that out, Senator.

5 Senator Mitchell. All right. Is that agreeable then,  
6 Mr. Chairman, those three provisions?

7 The Chairman. I understand that one is tentative, and  
8 that you are trying to work it out. Isn't that what you  
9 are saying? Or has it been worked out? What are you saying?

10 Ambassador Holmer. We have obviously language in the  
11 agreement with Canada. I haven't seen Senator Mitchell's  
12 language; but based on what he has just described, and our  
13 understanding, I am optimistic that we can work out that  
14 language in an acceptable way.

15 Senator Mitchell. All right.

16 The Chairman. Let's put it on that basis, Senator.

17 Senator Mitchell. Yes. Thank you, Mr. Chairman.

18 Mr. Lang. Mr. Chairman, the next provision concerns  
19 the Meat Import Act on page 28 of the spreadsheet. Here,  
20 all we have done is remove Canadian meat from the formula  
21 calculations and adjusted the trigger levels.

22 We didn't have the exact amounts of the trigger levels  
23 last night. I don't know if the Administration has them  
24 with them today. In other words, after the adjustment,  
25 Judy, can you tell us what the amounts go down to to take

1 account of not having --

2 Ms. Bello. Yes, Mr. Lang. Basically, you just subtract  
3 from the two amounts that are listed in the bill, 57 million  
4 pounds, which was the extent of the imports from Canada,  
5 over the base period that was used in calculating them in  
6 the 1979 Act.

7 Mr. Lang. Right, but do you have a number?

8 Ms. Bello. I do.

9 The Chairman. Senator Baucus, you had some concern  
10 over that?

11 Senator Baucus. Yes, Mr. Chairman. One was the  
12 difference, the amount she is now looking up.

13 Ms. Bello. The number in the bill that starts out  
14 1,204,600,000 would be changed to 1,147,600,000; and the  
15 other number would be, that currently is listed as  
16 1,250,000,000 would come down to 1,193,000,000.

17 Senator Baucus. I am sorry. Would you give the  
18 current figure, please, and then what the adjusted figure  
19 would be?

20 Ms. Bello. The current figure referred to in the  
21 bill--in the law--I am sorry, the Meat Import Act of 1979,  
22 is 1,204,600,000.

23 Senator Baucus. Right.

24 Ms. Bello. And we would amend that by subtracting  
25 57 million, to be 1,147,600,000.

1           And then later, where the number referred to in current  
2 law is 1,250,000,000, the adjusted figure by subtracting  
3 out 57 million pounds, would be 1,193,000,000.

4           The Chairman. That still takes care of a lot of  
5 McDonalds.

6           Senator Baucus. Mr. Chairman, that 57 million is  
7 significant, but it is not a major portion of the amount  
8 of beef that comes into the United States. I am wondering  
9 if the statement of intent could include a provision that  
10 the Administration will vigorously work to prevent  
11 transplants and the displacement that may occur with this  
12 agreement.

13          The concern is that some other countries will ship to  
14 Canada. It is the question we addressed a couple days ago,  
15 and I understand that the Administration intends to  
16 vigorously prevent transshipment and displacement; but it  
17 would help if the Administrative Statement of Intent would  
18 so state.

19          Ambassador Holmer. Yes. Senator Baucus, first from  
20 what you just described, I believe we agree with that; and  
21 we ought to be able to work out language.

22          There was a somewhat broader issue that came up  
23 yesterday before the House Trade Subcommittee, and there  
24 was language that they adopted. I would like to give that  
25 to you now so you can look at it. I believe that would

1 address your concern, and the proposal is that this would  
2 be in our Statement of Administrative Action.

3 Why don't I give that to you now?

4 Senator Baucus. Thank you.

5 Ambassador Holmer. And if it is acceptable to you,  
6 we would be happy to incorporate it.

7 Senator Baucus. Fine. Thank you.

8 The Chairman. Let's go ahead. What do you have, Mr.  
9 Lang?

10 Mr. Lang. The next subject that I should mention to  
11 the committee is on page 36. That is, I expect nothing  
12 else in Chapter 7 concerning agriculture and nothing in  
13 Chapter 8 concerning wine and distilled spirits.

14 Therefore, in Chapter 9, the only thing I wanted to  
15 mention is that Senator Moynihan's staff has passed around  
16 some language for changes to the Statement of Administrative  
17 Action and the committee report that would be issued some  
18 time after the implementing bill was actually sent up  
19 on the fast track.

20 We are informed that not all the offices have checked  
21 out Senator Moynihan's language, and we would like to pass  
22 over it.

23 The Chairman. Let's defer action on that, awaiting  
24 Senator Moynihan.

25 Mr. Lang. The next provision to look at, Mr. Chairman,

1 is in Chapter 10. There may be some suggestions members  
2 want to make. On page 44 of the spreadsheet, in Article  
3 1004, there is provided the establishment of a select panel  
4 to assess the state of the North American industry.

5 Our understanding is that Senator Riegle may have  
6 something to offer on this matter.

7 At the bottom on page 44 in Article 1005, there are  
8 some rules of origin provisions that are necessarily  
9 different for automobiles and parts and other related  
10 products, that for other products because there is a special  
11 rule of origin there; and in connection with that, at  
12 Senator Riegle's request, we believe it is acceptable to  
13 the Administration to include the little negotiating  
14 authority at the bottom of page 44.

15 The current rule of origin in the agreement is 50  
16 percent. This is a provision that would authorize the  
17 President to negotiate an increase in that rule of origin.  
18 He would have the authority through the transition period  
19 of the agreement, and he would have the authority to proclaim  
20 a new rule of origin in the event he was able to arrive at  
21 an agreement with Canada.

22 I understand the Administration doesn't object to the  
23 provision.

24 The Chairman. Are there questions concerning it?

25 Senator Chafee. Mr. Chairman, I would just like to

1 ask a question on that matter, if I might.

2 The Chairman. Senator Chafee?

3 Senator Chafee. Do you have to have in there that the  
4 President is authorized to negotiate? Couldn't he do that,  
5 anyway?

6 Mr. Lang. Yes.

7 Senator Chafee. Why do you need a special provision?

8 Mr. Lang. It is true that under the Constitution, the  
9 President can go out and negotiate executive agreements any  
10 time he wants; but in the past, when you have given the  
11 President authority to proclaim changes in U.S. law, you  
12 have also authorized him to negotiate so that you influenced  
13 the scope of that negotiation.

14 For example, when you authorized him to proclaim  
15 changes in rates of duty in 1974, you actually included  
16 language that authorized him to negotiate, as well as the  
17 language that authorized him to issue the proclamation.

18 So, it is a way of increasing Congressional influence  
19 over the negotiations, even though constitutionally the  
20 authority to negotiate isn't strictly necessary.

21 Senator Chafee. Thank you.

22 The Chairman. Are there further questions?

23 (No response)

24 The Chairman. All right.

25 Mr. Lang. I assume Senator Riegle at some point may

1 want to raise his issue with respect to the select panel,  
2 but I am not sure how that would come up.

3 The Chairman. We will not preclude him from doing that  
4 later. We will move along, if there are no further  
5 questions on this provision.

6 Mr. Lang. Oh, I should mention one thing that the  
7 Administration pointed out; and that is in the proclamation  
8 language, there is a technical error, and that is it should  
9 cover both vehicles and parts as automotive products.

10 It isn't clear in what we have drafted here, but the  
11 actual statutory text would cover both vehicles and parts.

12 The Chairman. All right.

13 Mr. Lang. On page 45 is the proposal we have made  
14 with regard to Section 201, the escape clause. This  
15 proposal, which is covered on pages 45 through 48, I  
16 think it would be better if I just summarized, rather than  
17 going through the technicalities.

18 There are two types of escape clause actions under the  
19 Canada agreement. First, in the transition period during  
20 which duties are going down to zero--a period of ten years  
21 --the United States can decide not to implement a staging  
22 down of a rate of duty, or even increase the duty back to  
23 the level duties are now at, that is, the most favored nation  
24 rate of duty that the tariff is now at with Canada, if a  
25 Canadian product imported into the United States is alone

1 the substantial cause of serious injury to a domestic  
2 industry.

3 So, this is for ten years, and you can only go back  
4 up to the MFN rate; that is the limit on that bilateral  
5 authority.

6 In addition, there is a global provision special for  
7 Canada --

8 The Chairman. Now, let me understand that.

9 Mr. Lang. Yes, sir.

10 The Chairman. You can go back up to the most favored  
11 nation rate for what period of time?

12 Mr. Lang. For three years.

13 The Chairman. I see.

14 Mr. Lang. On the global side, if the United States  
15 takes a regular escape clause action under current law, it  
16 is nondiscriminatory. The law requires that it apply to  
17 the whole rule, and that is the GATT rule.

18 However, under the FTA, if imports from Canada are  
19 substantial and are not contributing importantly to the  
20 injury involved, then they can be exempted from the global  
21 action; and if they do contribute importantly, they can be  
22 included in the global action.

23 So, you have to provide for both things because the  
24 global escape clause action, of course, can raise a duty  
25 above the MFN rate and for longer than three years. Under

1 current U.S. law, it is up to eight years.

2 Now, what we suggest is that you simply create a  
3 second channel under 201 for these bilateral actions, and  
4 allow parties to file cases in the normal way in which they  
5 invoke one or the other or both at the same time any time  
6 they want.

7 The problem we were trying to solve is this. In the  
8 trade bill, you put a new 201 provision in that would  
9 change the way global 201 is done. And our thought was  
10 to disturb that as little as possible because you don't  
11 know whether current law is going to be in effect when the  
12 FTA implementing bill takes effect or whether the trade  
13 bill is going to be in effect.

14 So, what we would suggest is the material we proposed  
15 on the bilateral action be a separate 201(a) or something,  
16 off to the side, in which you prove the elements necessary  
17 to get the bilateral relief, that is the three years only  
18 up to the MFN rate; and that would sunset --

19 Well, I guess it wouldn't sunset, but the right to do  
20 that would sunset at the end of ten years unless Canada  
21 agreed to extend it.

22 And regular 201 would be amended to reflect this  
23 deregulation from 201 for Canada that doesn't contribute  
24 importantly.

25 Now, there is a problem with it; and basically, we

1 think, an insoluble problem. The global 201 amendment has  
2 to be made to current law; and if you enact the trade bill,  
3 you are just going to have to come back or something and  
4 amend global 201 at that point.

5 We can't think of any way to solve that; but at least,  
6 we can minimize the problem by moving this bilateral issue  
7 into a separate enactment, and it would stand, whether you  
8 put the trade bill into effect or not.

9 If you put the trade bill into effect, the little  
10 bilateral track would be available.

11 Now, one thing we have done to the bilateral track --

12 The Chairman. You mean if the President did not veto  
13 the bill this week, we wouldn't have this problem. Is  
14 that what you are saying?

15 Mr. Lang. If the President did not veto the bill, you  
16 would not have this problem. You would make the amendment  
17 to the global track in the 201 provision in the bill.

18 The Chairman. Mr. Ambassador, do you concur with this  
19 makeshift approach? I withdraw that description.

20 Do you concur with this approach?

21 Ambassador Holmer. Yes, Mr. Chairman.

22 The Chairman. All right.

23 Mr. Lang. Mr. Chairman, there is one other thing I  
24 wanted to mention, which was important to some officers; and  
25 that is we think that the bilateral investigations could be

1 done in less time than the global actions; and so, we  
2 specified that the serious injury determination would be  
3 made in four months and that the remedy recommendation--a  
4 relatively small range of remedy recommendations--the ITC  
5 can make under the FTA be made a month later.

6 Under current law, these recommendations are made  
7 in six months; so we would knock a month off the process.

8 The Chairman. Are there further comments on it?

9 Senator Heinz?

10 Senator Heinz. Mr. Chairman, in the event of a surge,  
11 which we have here, what is our definition of a "surge"?

12 Mr. Lang. All you have is the agreement provision.

13 The problem is: How do you deal with a situation  
14 in which you have exempted Canada from a global action and  
15 Canadian imports surge?

16 The agreement provides that a surge means a significant  
17 increase in imports over the trend for a reasonable base  
18 period for which data are available. This statutory  
19 provision just says--and you can see it on the top of  
20 page 48:

21 "If the President thereafter determines that a surge  
22 from Canada of such article undermines the effectiveness  
23 of import relief, he may apply the relief to Canada."

24 So, in this proposal, we haven't defined "surge."  
25 I suppose we could take the agreement definition into the

1 law. You may not have the agreement in front of you. I  
2 will read it again.

3 "Surge means a significant increase in imports over  
4 the trend for a reasonable base period for which data are  
5 available."

6 Senator Heinz. That is a definition I am going to  
7 have to think about, Jeff.

8 Mr. Lang. Yes, sir.

9 Senator Heinz. One other suggestion. To put undermining  
10 in the present tense might not get at a situation where  
11 there is a threat to undermine the agreement. And I would  
12 feel more comfortable if we could include the words "or  
13 threat to undermine."

14 Mr. Lang. Yes.

15 The Chairman. Mr. Ambassador, do you have a comment  
16 on that?

17 Senator Heinz. This is not exactly an academic  
18 exercise because we have had this very problem on the  
19 President's steel import restraint program, as Alan knows.

20 Mr. Lang. And current law, I should say for the  
21 benefit of the committee, applies to both the threat as  
22 well as an actual serious injury to a domestic industry.

23 The Chairman. Mr. Ambassador?

24 Ambassador Holmer. I would think, Senator Heinz, that  
25 that language would probably be agreeable. I think the

1 committee should note that, if the Canadians mirror this  
2 language on their side, it will also apply to our exports  
3 as well as to their imports to us; and you ought to be  
4 cognizant of that.

5 But I would think we ought to be able to work out  
6 language like that, Senator.

7 Senator Heinz. All right. Thank you, Mr. Chairman.

8 The Chairman. All right. We are at the point of  
9 trying to work out the language.

10 Mr. Lang. Yes, and on the surge issue, you may want  
11 to come back to it.

12 The Chairman. Yes.

13 Mr. Lang. That completes what we think is necessary to  
14 implement Article 10.

15 Senator Baucus. Mr. Chairman?

16 The Chairman. Yes, Senator Baucus?

17 Senator Baucus. I wonder if we could just go back to  
18 the article concerning the Meat Import Act. I have read  
19 the language that Ambassador Holmer gave me on  
20 transshipment. I think that is good language. I am  
21 wondering, though, if we could also address displacement.  
22 That is, could the Statement of Administrative Action also  
23 include a statement that the Administration will vigorously  
24 pursue any actions that may work to frustrate the intent  
25 of the provisions here insofar as Canada or some third party

1 might, through a displacement, frustrate the intent?

2 Ambassador Holmer. I think that is reasonable, Senator  
3 Baucus, and I think we can work out language that  
4 accomplishes that.

5 Senator Baucus. Thank you.

6 Ambassador Holmer. Thank you.

7 The Chairman. All right.

8 Mr. Lang. Mr. Chairman, we are now on page 49. Our  
9 understanding is that Senator Mitchell may have a suggestion  
10 to make with respect to Article 1201.

11 The Chairman. Senator Mitchell?

12 Senator Mitchell. Mr. Chairman, I have one proposal  
13 that is in two parts; and if I could give just a brief  
14 background of it?

15 Last year, a GATT panel ruled that a British Columbia  
16 provincial law which requires fish caught in Canadian waters  
17 to be processed in Canada was in violation of GATT.

18 There are similar East Coast Canadian provincial laws  
19 banning exports of fish, or authorizing the banning of  
20 exports of fish; and unfortunately, the free trade agreement  
21 specifically exempts them from the agreement, even though  
22 they are trade-restricting provisions.

23 These could have a severe effect on fish processors  
24 in New England because, at certain times of the year, there  
25 is an exchange of raw fish; and they depend upon Canadian

1 fish for processing.

2 Now, in response to the GATT ruling on the British  
3 Columbia fish export ban law, Canada announced a new landing  
4 policy; and they have said that all fish caught in Canadian  
5 waters will be required to be landed in Canada for purposes  
6 of measurement, quality monitoring, and so forth.

7 It is presented as though it were a conservation  
8 mechanism when, in reality, it is a transparent effort to  
9 restrict raw fish exports; and when implemented--this has  
10 not been implemented; this was just announced a couple of  
11 weeks ago--would have a severe adverse effect on the entire  
12 fishing industry in New England for the same reason I  
13 suggested earlier.

14 And it is particularly devastating to the New England  
15 sardine and herring industry, and there the Canadian action  
16 is transparently an effort to restrict exports because no  
17 one measures sardines.

18 And so, I originally proposed to the Administration--and  
19 they are aware of this and have indicated they will resist  
20 the Canadian measures, but they are still on the books.

21 I originally proposed that the U.S. file a GATT case  
22 within 10 days of Canadian action. The Administration  
23 response was that that is too restrictive; we need more  
24 latitude than that.

25 So, I have proposed a provision that would require within

1       30 days of Canadian action implementing their new landing  
2       policy, or exercising their rights under provincial laws  
3       to ban the export of raw fish, that our government take  
4       action under Article 1205 to enforce our GATT rights.

5             This gives the Administration considerable discretion  
6       in filing a case, to retaliate directly against Canada,  
7       have the issue heard before the binational commission, or  
8       take other steps to reserve our rights under Article 1205;  
9       but these are actions that the Canadians have taken that  
10      are trade-restricting, that directly violate the spirit  
11      of the free trade agreement and which, if implemented,  
12      would have a devastating adverse effect upon a significant  
13      industry in New England.

14             So, I think this is a reasonable version; I have modified  
15      it somewhat to accommodate the Administration's concerns,  
16      and I hope that they will find this acceptable.

17             The Chairman. Would the Administration speak to that?

18             Ambassador Holmer. Yes, thank you, Mr. Chairman; and  
19      thank you, Senator Mitchell, for the modification.

20             I think Senator Mitchell has accurately outlined the  
21      situation. Canada has announced that they are going to  
22      replace this regime with landing requirements. We have been  
23      assured by Canada that it will be implemented consistent with  
24      their GATT obligations.

25             We greet that with some skepticism, and we will monitor

1 things very closely. And if it is not GATT-consistent, we  
2 are going to act to protect U.S. interests.

3 I think, Senator Mitchell, we are all going in the same  
4 direction. We were very concerned about having a GATT  
5 case.

6 I guess the only thing I would like to reserve is to  
7 have a chance to look carefully at the language. We may  
8 have some relatively minor suggestions to make, but I do  
9 think that, in general, it is language that we can probably  
10 accept.

11 Senator Mitchell. All right. Thank you.

12 The Chairman. All right. We have an agreement then.

13 Senator Chafee. Mr. Chairman?

14 The Chairman. Yes, Senator Chafee?

15 Senator Chafee. Senator Mitchell and I were working  
16 on a matter dealing with the size of lobsters that could  
17 be caught. Were you going to pursue that, Senator, or  
18 postpone that?

19 Senator Mitchell. I was going to ask the chairman if  
20 we could defer on that until Monday, that and one other  
21 item affecting woolen fabrics. We are still working with  
22 the Administration on that.

23 Second, that is fairly complex, and both of us have been  
24 tied up in this other conference on drugs. I would prefer,  
25 if it is agreeable with Senator Chafee, to take that up on

1 Monday when we resume.

2 Senator Chafee. Sure, we can come back to this then?

3 The Chairman. Yes, we can.

4 Senator Chafee. Fine, thank you.

5 The Chairman. The lobsters will have grown a little  
6 by then --

7 (Laughter)

8 The Chairman. Mr. Lang, go ahead.

9 Do we have any other members' amendments that are  
10 pertinent at this time?

11 Mr. Lang. I am not aware of any others, Mr. Chairman.

12 The Chairman. We had deferred on one for Senator  
13 Moynihan, as I recall.

14 Mr. Lang. Yes. On page 54, it is not an amendment;  
15 it is just a provision included at Senator Bradley's staff's  
16 request on pursuing negotiations on services trade. And  
17 there is an authorization for the negotiations there, and  
18 then over to page 55 for some objectives for the  
19 negotiations.

20 I understand those are acceptable to the Administration.

21 And we know of no changes necessary in Chapter 15, or  
22 at least none that are within the jurisdiction of this  
23 committee.

24 The Chairman. So, what do we have--about six chapters  
25 left?

1           Mr. Lang. The agreement consists of 21 chapters, and  
2 you have now completed 15, except for nine or ten issues  
3 that you have reserved and carried over.

4           The Chairman. Gentlemen, we are ready to listen to  
5 any amendments here that the members might want to propose.

6           We have deferred some of them until Monday. For those  
7 of you who weren't here earlier, we will be meeting at  
8 2:00 p.m. on Monday afternoon.

9           Are there other members' amendments to be brought up?

10          Senator Moynihan. We are in good shape, but Mr. Lang  
11 would like just a little time. Isn't that right, sir?

12          Mr. Lang. Yes, sir.

13          Senator Moynihan. And he would like to bring it up on  
14 Monday.

15          The Chairman. All right.

16          Senator Heinz. Mr. Chairman, on page 48, the second  
17 paragraph, the sixth line after the word "undermine" --

18          The Chairman. Threat; the question of threat?

19          Senator Heinz. That is the issue of surge threat.

20          The Chairman. I think the Administration had talked  
21 about being in a position to accept that. Are you prepared  
22 to resolve that one?

23          Did you have a comment on that, Senator Bradley?

24          Senator Bradley. Yes, Mr. Chairman. I wondered where  
25 Senator Heinz wanted to put the word "threat."

1 Senator Heinz. On page 48, the second paragraph in  
2 the right-hand column, after the word "undermine" in the  
3 sixth line, insert "or threat."

4 Senator Bradley. You want to put "from Canada of such  
5 articles undermines the effectiveness or threatens --

6 Senator Heinz. "Imports from Canada undermines or  
7 threatens to undermine" be inserted.

8 Senator Bradley. What would be the purpose of saying  
9 "threaten to undermine"?

10 Senator Heinz. To conform it to current statute.

11 Senator Bradley. In what areas?

12 Senator Heinz. Jeff, do you want to explain that?

13 Mr. Lang. Current law, Senator Bradley, provides that  
14 you can take an escape clause action in the United States  
15 for imports which are substantial cause of serious injury  
16 to the domestic industry or threaten to be a substantial  
17 cause of serious injury to the domestic industry.

18 Both threat and actual injury are covered by current  
19 law, and would be covered by the trade bill.

20 Senator Bradley. What is the difference?

21 Mr. Lang. The difference is between injury that has  
22 actually occurred and injury which the ITC determines is  
23 likely to occur.

24 Senator Bradley. And what kind of evidence usually do  
25 they look at to say it is likely to occur?

1       Mr. Lang. It is pretty specifically specified in the  
2 law. Let me see if I can get the provisions for you quickly.

3       Senator Heinz. Bill, why would you want to treat them  
4 differently?

5       Senator Bradley. I am not sure I do. I just wanted a  
6 clarification.

7       Mr. Lang. The law currently provides: "In making its  
8 determinations, the Commission shall take into account all  
9 economic factors which it considers relevant including, but  
10 not limited to, ..." And then you skip a paragraph to get  
11 to threat, "with respect to threat of serious injury, a  
12 decline in sales, a higher and growing inventory (whether  
13 maintained by domestic producers, importers, wholesalers,  
14 or retailers) and a downward trend in production, profits,  
15 wages, or employment, or increasing underemployment in  
16 the domestic industry concerned."

17       So, that is the current law now. I think we carried  
18 the same language over into the trade bill.

19       Senator Bradley. Has any action been taken under the  
20 "threatened to undermine"?

21       Mr. Lang. The heavyweight motorcycle case in 1980.

22       Senator Bradley. It was a threat that didn't materialize?

23       Mr. Lang. Well, they put the highest duties they have  
24 ever put into effect on motorcycles. So, of course, it did.

25       Senator Bradley. What does the Administration think

1 of this?

2 Ambassador Holmer. I hate to be unhelpful to your line  
3 of questioning, Senator Bradley, but we believe that this  
4 is consistent with what current law provides; and we have  
5 no objection to the Heinz amendment.

6 Senator Bradley. All right.

7 Senator Durenberger. Mr. Chairman?

8 The Chairman. Yes. If there is no objection to that,  
9 then we will put that provision in.

10 Senator Durenberger. Mr. Chairman, just a comment.  
11 I don't have an amendment, but I have been discussing with  
12 the Ambassador a couple of issues that may be principally  
13 by way of clarification.

14 One deals with the issue of blending on blending sugar  
15 into other products that come into this country, which has  
16 been a long-time concern of the sugar industry.

17 And the Administration's basic response on it is that  
18 their 10 percent limitation is in there; and there is no  
19 incentive to go beyond 10 percent. And I am not sure that  
20 that is the case, and we are trying to work something out  
21 on that.

22 The second is with regard to taking down the tariff  
23 barriers on ethanol and methanol. We have a 60 cent tariff,  
24 as we all know; and they have agreed to phase that out over  
25 10 years, which is one of the longest, if not the longest,

1 phase-out period. But my concern goes to the kind of product  
2 that the Canadians can import from other countries--in other  
3 words, set up their own ethanol industry.

4 And I need some clarification as to what degree imports  
5 can be incorporated into Canadian production and be brought  
6 into this country.

7 I would like to work on an amendment in each of those  
8 areas, if I might.

9 The Chairman. Obviously, you are talking about deferring  
10 the consideration of hat until Monday?

11 Senator Durenberger. Yes, I am.

12 Senator Wallop. Mr. Chairman?

13 The Chairman. Senator Wallop?

14 Senator Wallop. I believe that I have had the answer  
15 to this question given to me in a satisfactory way, but I  
16 have also had a long and rather testy conversation with a  
17 natural gas producer from my State this morning, who tells  
18 me that the Canadian natural gas is not subject to any of  
19 the requirements or the administrative standards of FERC.

20 I had understood that they were, that FERC rulings  
21 applied in both directions.

22 Ambassador Holmer. Yes, my understanding is that  
23 FERC Ruling 256 continues to apply in both directions.

24 Senator Wallop. In both directions? Yes. Other than  
25 that, can anybody tell me where natural gas is mentioned in

1 the free trade agreement?

2 I think that it is not; and I think that is all right.

3 Ambassador Holmer. We are checking, Senator Wallop.

4 We believe it is included within the definitional aspects  
5 of the energy chapter, but essentially we have a situation  
6 currently in the energy chapter where, generally, with  
7 respect to natural gas and oil, where trade is free today  
8 between the United States and Canada--and that situation  
9 has not changed by the agreement.

10 Senator Wallop. That is what I understand. And,  
11 therefore, the only thing that is changed by the agreement  
12 is that a country cannot arbitrarily curtail exports or  
13 contracts that are in place, as they did in the gas crisis  
14 in 1979.

15 Ambassador Holmer. That is right. It locks in the  
16 present free trade situation. We believe that the energy  
17 agreement as a whole is going to increase use of natural  
18 gas in North America, as opposed to Middle Eastern oil; and  
19 we think that is going to be of benefit to U.S. natural  
20 gas producers.

21 Senator Wallop. Ambassador Holmer, I thank you. That  
22 reflects principally what I thought.

23 Mr. Lang. Senator, I just should mention to you that  
24 I think that natural gas is specifically referred to in an  
25 annex that deals with the question of origin.

1 Senator Wallop. A question of what?

2 Mr. Lang. Origin. That is, what confers Canadian  
3 origin on a product so it can get zero duty treatment.

4 I don't know if your constituent would want to look at  
5 those rules of origin, which would be positively implemented  
6 in the law.

7 Senator Wallop. But those would be principally designed  
8 to say that whatever natural gas came in under the agreement  
9 would be natural gas from the resources of Canada --

10 Mr. Lang. I think it is not a problem, but that is  
11 the only thing I am aware of.

12 Senator Wallop. I don't think that is what they were  
13 troubled on.

14 Mr. Lang. Yes, sir.

15 Senator Wallop. At any rate, Ambassador, thank you.  
16 very much.

17 Ambassador Holmer. Thank you, Senator.

18 The Chairman. All right, gentlemen. I believe that  
19 concludes it for the day. We will meet again on Monday at  
20 2:00 p.m.

21 (Whereupon, at 11:15 a.m., the hearing was recessed,  
22 to be reconvened on Monday, May 16, 1988 at 2:00 p.m.)

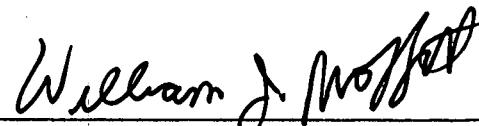
23

24

25

1                   C E R T I F I C A T E

2                   This is to certify that the foregoing proceedings of a  
3 meeting of the Executive Committee of the Committee on  
4 Finance, held on Thursday, May 12, 1988, were held as  
5 appears herein and that this is the original transcript  
6 thereof.

7  
8  
9  
10                  

11                  WILLIAM J. MOFFITT  
12                  Official Court Reporter

13  
14  
15                  My Commission expires April 14, 1989.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25