EXECUTIVE COMMITTEE SESSION

THURSDAY, APRIL 23, 1987

Senate Finance Committee

Washington, D.C.

The session was convened, pursuant to recess, at 10:06 a.m. in Room SD-215, Dirksen Senate Office Building, the Honorable Lloyd Bentsen, (Chairman) presiding.

Present: Senators Bentsen, Baucus, Bradley, Riegle, Rockefeller, Daschle, Packwood, Chafee, Heinz and Durenberger.

Also present: Bill Wilkins, Staff Director; Jeff Lang, Chief, International Trade Counsel, Marcia Miller, Trade Staff, Majority; Josh Bolten, Trade Counsel, Minority, Karen Phillips, Trade Staff, Minority.

Also present: Alan Woods, Deputy U.S.T.R.; Alan Holmer, Chief Counsel, U.S.T.R.; and Patricia McNeil, Administrator, Office of Strategic Planning and Policy, Employment and Training Administration, U.S. Department of Labor.

The Chairman. Let me have your attention for a moment. We have delayed, perhaps momentarily, while we checked again on the membership. We have a conflict this morning with Secretary Shulz doing a briefing on the arms agreement, and quite a number of our members are attending that. So we are making some calls to see if we have enough to proceed over the next hour. Otherwise, we would delay it until about 11:00.

So if you will hang in there, we ought to have a feel for this in about five minutes.

(Whereupon, at 10:07 a.m., the meeting was recessed.)

AFTER RECESS

(10:15 1.m.)

The Chairman. If I may have your attention, it is obvious that the concern over the arms agreement is such that Mr. Shulz has a very good attendance. We will return here at 11:00.

(Whereupon, at 10:16 a.m., the meeting was recessed.)

AFTER RECESS

(11:02 a.m.)

The Chairman. If you will cease conversation and please take your seats, we will get underway here.

It is my understanding that the meeting with Secretary Shulz is not quite over; but, because of the severe limitations of time that we have, we are going to get underway.

As I recall, yesterday we had not completed the comments on the negotiating authority.

Mr. Lang. Yes, Mr. Chairman. You had worked through to the middle of page 20 of the spreadsheet. In the middle of the page are a series of negotiating objectives. The overall objectives on page 20 are essentially the same in S. 490 as in both current law and in the house bill.

Following on page 20 for several pages are the description of negotiating objectives in various categories of S. 490 compared with similar objectives in current law and under H.R. 3.

I would suggest that I just point out some of those that have some specific interest about them, unless members want to ask me a question.

The Chairman. All right, if you would point out those.

Mr. Lang. On page 25, reform of the GATT is an important issue to members, and S. 490 contains the provisions listed in the middle of page 25 relating to revising GATT decisionmaking procedures.

On page 26, in connection with reform of the GATT are some subjects, new subjects, that S. 490 would instruct the Administration to take up in the new round a provision that encourages countries with persistent current-account surpluses to be urged to agree to accelerate their concessions. And the reference to transparency is the desire of some members to

have an objective in the bill that other countries open their domestic procedures relating to trade to public review and scrutiny.

The Chairman. How would that relate to how we do it here, for example?

Mr. Lang. Almost all American trade procedures are subject to public scrutiny. Usually there is a public hearing required, public notices in the Federal Register. For the most part American trade procedures operate in the sunlight by comparison to foreign procedures.

Senator Heinz. Mr. Chairman?

The Chairman. Yes, Senator Heinz.

Senator Heinz. Mr. Chairman, on the issue of transparency, we want to improve it particularly for our trading partners where it is excrutiatingly obscure to most of us what they are actually doing to us.

You indicate in the print that a relatively high priority would be substituting tariffs or or auction quotas for quotas, and using tariffs as opposed to nontariff barriers. But wouldn't the first step be to bring about the identification of nontariff barriers, not just trying to convert them? Shouldn't that be the very first objective?

Mr. Lang. Yes, I understand.

Senator Heinz. And the structuring of some kind of a system which hopefully is self-enforcing; that if you don't

identify or cooperate in the identification of nontariff barriers, that that might be a violation of the GATT, just in not identifying them?

Mr. Lang. There is, of course, the American system that does that, the Annual National Trade Estimates.

Senator Heinz. The American system is wonderfully transparent, hopelessly legalistic, and quite unique.

Mr. Lang. Yes.

Senator Heinz. Mr. Chairman, the second item is: In all of these objectives -- unless I have missed something -- there is no discussion of whether our trade policy should include reducing the trade deficit. Should our negotiators have, as part of their negotiating mandate, changes in the world trading system that will bring about greater equilibrium?

Mr. Lang. I think you are right, Senator Heinz. I am not aware of any objective in any of the pending bills or in current law for the Administration to reduce the U.S. trade deficit.

The Chairman. Well, I think what you are talking about -- first, I think it is inherent in what you are trying to do. But I would assume that what you are talking about is that as an objective rather than some mandate.

Senator Heinz. As an objective.

The Chairman. As an objective, certainly that ought to

be compatible with whatever we are trying to do.

Mr. Woods, do you have a comment?

Mr. Woods. A couple. First of all, that is an objective; but remember that these negotiating objectives, as I understand them, are not objectives of U.S. trade policy, per se, but U.S. objectives in the GATT negotiations in the Uruguay Round. That being the case, it is very hard to negotiate away a trade deficit, because of the macroeconomic forces that come into play that have a far greater effect than trading practices.

Certainly to the degree that trading practices affect the trade deficit, that is our objective in any round of the GATT negotiations.

The Chairman. Mr. Lang, do you have any further comment on that?

Mr. Lang. No, sir.

The Chairman. Senator?

Senator Heinz. No, thank you, Mr. Chairman.

Mr. Lang. On page 28 are listed some negotiating objectives in S. 490 that have no counterpart in current law; they are new matter. The first one concerns worker rights. S. 490 would have an objective of establishing minimum standards applicable to the workplace and providing greater international discipline over the abuses of human rights of workers. The House provision has a somewhat more detailed

statement of the same subject.

With regard to developing countries, there is an objective of revising existing GATT rules, which give special and differential treatment to developing countries, for establishing procedures to gradually reduce nonreciprocal benefits. In U.S. terms, that would mean a generalized system of preference benefits for the more advanced developing countries.

Third, on page 28 is an objective in S. 490 of revising the GATT balance-of-payments rules, to address persistent and excessive current-account surpluses, including imbalances that threaten the stability of the trading system.

The Chairman. Well, does that get to the point that Senator Heinz was talking bout?

Mr. Lang. Well, it does in the sense that it would attempt to reduce the current-account surpluses of other countries; but I understood his question to me to be, is there an objective of reducing the U.S. trade deficit. And that I am not aware of.

Senator Heinz. I think, Mr. Chairman, this is somewhat responsive to my overall concern.

The Chairman. Yes.

Mr. Lang. Fourth on that page is an objective of coordination with monetary authorities. Although the GATT and various international monetary authorities were created

in the same era, the level of coordination among them is not great, and this objective would attempt to ensure GATT participation in IMF stabilization programs and World Bank structural adjustment loans, which have an impact on the trade regimes of countries who are aided by those programs.

Finally, there is an objective which has no counterpart even in the House bill concerning State trading and unfair trade concessions requirements. These are ideas that originated in the Finance Committee, and the objective is simply to improve the enforcement of existing rules on these subjects.

The Chairman. Mr. Woods, let me ask you: On the coordination with the monetary authorities, increasing GATT coordination with the IMF, the World Bank, et cetera, what kind of reaction are you getting out of the Administration on that?

Mr. Woods. Well, actually the coordination between the GATT and the international monetary authorities has been a goal of the Administration and of the GATT itself for some years, and there is evolving greater participation between the GATT and international monetary authorities. It might not be as hardy as this would suggest that you would like it to be or that we would like it to be, but there is an evolving relationship between the GATT and the IMF and the World Bank, and so forth, that has taken on greater emphasis over recent

years.

The Chairman. Did you get any reaction out of the Federal Reserve on that?

Mr. Woods. I am not aware of any, sir.

The Chairman. Do you know of any, Mr. Lang?

Mr. Lang. No, sir, I am not aware of any.

I might mention, with regard to the objectives on page 28, that the Administration's bill also contains an objective with regard to worker rights. It is listed at the top of page 5 of the supplement, where in preceding pages you can also read other negotiating objectives in the Administration's bill, and it is not unlike the provision in S. 490.

Mr. Woods. If I may, Senator?

The Chairman. Yes.

Mr. Woods. Let me say that, with regard to the objectives which are contained in S. 490, as a general matter we have no problems with those objectives as a whole. We would be concerned that when drafting of legislative language comes about, that we remember that we have to negotiate, that we are going to be engaged in a negotiation. So we don't want to be too specific in the drafting of that language so that we tie the hands of our negotiators and make them pay for something that they must bring back to you.

The Chairman. Right. All right.

Mr. Lang. Mr. Chairman, that completes the spreadsheet

on negotiating authority. The next subject would be the escape clause.

The Chairman. That would be 201? Section 201?

Mr. Lang. Yes.

The Chairman. Let me say, on section 201, Senator Heinz, that there are some rough spots in 201 that concern some of us. My understanding is that the staffs of the Senators have been working to try to see if we can change to some kind of a consensus there, which would mean some modification of 201. They went to eleven last night, I think, and I would suggest that we pass over 201 with the idea that some of that we may agree to change anyway, and that what would we would have is we would achieve a consensus at least insofar as staff, and then we would send that to the members for their consideration, and have that before us. And that we move on, then, and leave this for the moment, if there is no objection.

What would be the next subject?

Mr. Lang. In that event, the next subject would be trade adjustment assistance. It begins on page 47 of the spreadsheet.

Trade adjustment assistance contains two parts: A program for workers and a program for firms. The spreadsheet begins with the program for workers.

Under current law, there are basically two parts to this

program, a cash benefit and a training benefit.

Beginning with the spreadsheet on page 47 concerning the eligibility of a worker, current law is shown in the left-hand column. A significant change in S. 490 is that it expands the class of workers who are eligible for the benefit to include workers indirectly impacted by imports, or so-called "secondary workers" -- that is, workers in firms which provide an essential part or service to the industry producing the article in which there has been an increase in imports.

The second important change in S. 490 is a training requirement. Under current law, the Secretary may require TAA-eligible workers for whom the payment of training costs has been approved to accept approved training, but the worker receives his cash benefit independently from his training benefit. Under S. 490, a worker would be required to be enrolled or to have participated in an approved training program in order to receive the benefit, any benefit, even the cash benefit. And the only exception to this under the Senate bill would be if the Secretary certifies that the training is neither feasible nor appropriate.

No TRA benefit can be paid to the worker if the Secretary determines that he has failed to begin the program or has dropped out of the program for no justifiable reason, until he resumes the program.

There is a similar but slightly different provision in

the House bill. There, the worker is required to be enrolled or to have participated in the training program if there is no reasonable prospect that he will be reemployed by the firm that laid him off.

The Chairman. Let me understand that. If there is no reasonable prospect that he would be employed by the firm that laid him off, he would then be eligible?

Mr. Lang. He would then be required to take training in order to receive the benefit.

The Chairman. I see. All right.

Mr. Lang. On page 48 are provisions relating first to the number of weeks for which a worker is eligible. Under current law, as changed in the early-1980's, the Trade Adjustment Assistance benefit does not run in parallel with the unemployment insurance benefit; a worker has first to exhaust his UI benefit, and then the Trade Adjustment Assistance benefit picks up. The combination of the two is limited to a maximum of 52 weeks combined. An additional 26 weeks is available under current law, if a worker enrolls in an approved training program.

So, the change in S. 490 is simply the corresponding change. Since everybody is required to take the training, it extends the maximum number of weekly payments from 52 to 78.

I might say with regard to the column reflecting

current law, the Administration position with respect to Trade Adjustment Assistance is that it should be repealed, and the President has proposed a broader program relating to displaced workers. So, for the most part, I will not refer to the Administration supplement; it just isn't a provision.

With regard to training costs, under current law the Secretary pays the cost of the training if he makes certain determinations, which are shown on the left-hand side of page 48 near the bottom, to the extent appropriated funds are available. Since training becomes a requirement under S. 490, the Senate bill requires the Secretary to approve training which meets the five criteria, and then to provide up to $4000 either directly or through a voucher system to pay for the costs of such training. In effect, the training becomes an entitlement.

The Chairman. How does that differ from the House bill?

Mr. Lang. Under the House bill, the Secretary has essentially the same system. If the training benefit is less than $4000, then the relocation allowance for the worker -- there is both a job search and a relocation allowance provided for under current law that are affected. And there are also some specific social objectives in the House bill. It specifies that remedial education is among the options for approved training, and it also requires the cost of on-the-job training to be paid in monthly installments so that it is

available as the benefit is made available.

But essentially, it seems to us it is the same provision.

Senator Heinz. Mr. Chairman?

The Chairman. Yes, Senator Heinz.

Senator Heinz. If a worker was laid off and needed some remedial education as well as training, could he get it under the Senate provisions?

Mr. Lang. Perhaps I ought to ask the Labor Department how they would interpret the Senate provision.

Ms. McNeil. Yes. I think, clearly, within the broad definition of training, remedial education would be excluded.

Senator Heinz. But we are not precluding that as a requirement?

Ms. McNeil. I would not think so.

The Chairman. Mr. Woods, do you have any comment on this?

Mr. Woods. Yes, if I may, on the provisions generally.

Mr. Lang did appropriately note that we did not have TAA provisions in the Administration's bill. We don't. And the reason is because we have been concerned, in treating trade-impacted workers as a separate class of workers from other workers who are undergoing adjustment requirements, that we are not dealing with the problem in a comprehensive way, and we propose to deal with that in the proposal that

I believe is contained in S. 539 in a more comprehensive manner, dealing with all workers and not just workers affected by imports.

I am sure that Mrs. Hoag can provide greater details about that aspect of the legislation, if you want to go into it.

I would make two other comments that are somewhat trade-related. The Trust Fund, which Mr. Lang did indicate would provide virtually a new entitlement program, we feel quite strongly about, that if we are going to have a program like this, it ought to be subject to appropriation, that the creation of the Trust Fund is not a good idea.

And finally, that we should be aware that a surcharge under the GATT would present us some difficulties under the GATT which does not provide for surcharges for this purpose. So we would be in violation of the GATT if we enacted a surcharge of this type with this legislation.

The Chairman. Mr. Lang, would you respond to that?

Mr. Lang. Mr. Chairman, I will get to the financing arrangements in another page.

The Chairman. And then I would ask you to comment on what Mr. Woods said.

Mr. Lang. Yes, sir.

Senator Daschle. Mr. Chairman, I would like to ask, if I could --

The Chairman. Yes.

Senator Daschle. If we are talking here about a new entitlement, what besides the fact that the jobs affected here are no longer there are the criteria by which eligibility for this entitlement is decided?

Mr. Lang. The eligibility criteria, Senator, are shown on page 48. But first you would want to know who is eligible for the benefit itself.

To learn how a worker becomes eligible for the program under current law, which would be extended in S. 490, look at page 47. There you can see that the Secretary certifies a group of workers as eligible for Adjustment Assistance if he determines that a significant number of the workers have been or are threatened to be totally or partially separated, sales of that firm or a subdivision of it have decreased absolutely, and the increases of imports contributed importantly to the separation or the threat -- in other words, a causal link.

Senator Daschle. How is the term "worker" defined? Is it management and the workforce?

Mr. Lang. Every worker.

Senator Daschle. Management and labor?

Mr. Lang. Yes.

Then, with regard to the training benefit, the Secretary approves worker training if he determines that there is no

suitable employment for the worker, the worker would benefit from the training, there is a reasonable expectation of employment following the training, approved training is available, and the worker is qualified to undertake and complete the training.

We have with us this morning a CBO estimate, which is that requiring training as part of a condition for getting Trade Adjustment Assistance benefits may reduce the class of workers who are eligible for the entitlement rather than increase the class of workers who are eligible for the entitlement.

Senator Daschle. Without belaboring it, I am just thinking of a hypothetical situation, where you have the president of a company who may be receiving let's say a half a million dollars in compensation, and it is determined that his industry has been wiped out by some problem here. As I understand it, he is qualified as a "worker," is defined as such. He would then be qualified as well for Trade Adjustment Assistance. And if this is an entitlement program, it would give me pause to consider him in the same way that I would consider someone who may be at the lowest end of that job and wage spectrum. Maybe that is accounted for.

Mr. Lang. Well, he would have to be unemployed, and he would have to wait out the unemployment insurance benefits for 26 weeks.

Senator Daschle. Let us say that the business is closed,

as a result of whatever. And as a result of no longer having his business, he is qualified. Is that a correct understanding of that?

Mr. Lang. That is my understanding. He would be eligible for his unemployment benefit for 26 weeks, and --

The Chairman. And his golden parachute.

(Laughter)

The Chairman. It doesn't mean he has to go back to Harvard Business School.

I understand your concern, Senator.

Senator Daschle. Thank you, Mr. Chairman.

Mr. Lang. Mr. Chairman, there is an administrative point in S. 490 at the top of spreadsheet page 49. This retains current law about the administration of the program, and it requires the State agencies to engage in kind of an outreach program, advising each worker of the availability of training, and interviewing him to determine and review suitable training opportunities.

The Adjustment Assistance Program for firms is not greatly changed by S. 490. That program consists of a technical assistance program mainly available to small businesses; however, S. 490 does expand the eligibility for Trade Adjustment Assistance for firms to the employers of the secondary workers -- in effect, the secondary firms -- that provide essential parts or services to the industry directly

affected by imports.

The funding and financial provisions of the bill are described beginning at the bottom of --

Senator Heinz. Mr. Chairman?

The Chairman. Yes, Senator Heinz.

Senator Heinz. Before we go into the funding part, can I deal with essentially an eligibility issue? There has been a problem with the way eligibility, the pulative eligibility, runs and expires; the problem being that the law has been interpreted to mean that if you are separated and start collecting unemployment compensation, let us say, arguably, two years ago, and it is for a temporary period -- a week, six weeks, eight weeks and then you go back to work. And then, a year or so later, you become permanently unemployed; the plant does not reopen. And you then apply for Trade Adjustment Assistance. The way the rules have worked is that you have exhausted the weeks of unemployment, the weeks of Adjustment Assistance, that you are eligible for, beginning with your first separation. That is, the window for getting into the program may be closed on you because of the timing.

Senator Mitchell and I have two bills aimed at correcting this problem. Senator Mitchell's bill corrects it, prospectively -- that is S. 749. Mine corrects it retroactively, S. 1053.

Would anybody care to address the issue of the way the eligibility window can be closed and has been closed on a lot of workers in my State? Indeed, that was the subject of testimony here in the Committee about three or four weeks ago when, Mr. Chairman, we had the steelworkers testifying as part of a labor panel.

Mr. Lang. Our understanding of the problem as you describe it -- and maybe the Labor Department would want to comment -- is that apparently there is a problem with the window closing on workers who are reemployed.

The Chairman. Ms. McNeil?

Ms. McNeil. Unfortunately, Senator, I am not totally familiar with the problem. I would like to go back and take a look at it.

One aspect of it may be that different States -- the States themselves control the amount of benefits and the duration of time people can be on UI, and the eligibility criteria for being on Unemployment Insurance. One of the problems may be that different States set different requirements, and that, then, affects the Federal requirements for TAA.

Senator Heinz. Well, I am advised -- and maybe you can confirm this, or not -- that it is the Department of Labor that instructs the States to use the date of first separation as the date to start the clock running.

The reality, of course, is that when a firm begins to lose ground, they don't just up and close the entire plant for good; you encounter a series of what could be increasingly long layoffs. And then, at long last, the shoe falls. As a result, it seems to me, whether or not I am correct that it is DOL policy -- and I am almost 99.9 percent sure that I am right -- nonetheless, it seems to me that we should be explicit about the fact that you should not deny workers their Adjustment Assistance just because they have had a more lingering form of getting themselves unemployed.

Ms. McNeil. I believe there may be some issue that needs to be looked at with regard to laying people off, calling them back so that they can reestablish their eligibility for UI for a certain period of time, and then laying them off again. That may be behind the decision to start the TAA eligibility from the time the original layoff occurred. It is something that I would have to go back and take a look at and provide you some additional information on, if I could.

The Chairman. All right.

Mr. Lang?

Senator Bradley. Mr. Chairman?

The Chairman. Yes, Senator Bradley.

Senator Bradley. I have a question related to this section. As I understand S. 490, the benefit is divisible; in other words, you can use a little bit of the voucher money

for training, get your unemployment additional benefit, but save the bulk of the voucher to be used as a kind of bargain with a new employer in terms of new training dollars. Is that correct?

Mr. Lang. Yes, I believe it is.

Senator Bradley. It is divisible. In other words, you can use a part of it and not use all of it at the same time. You can use a part of it, wait a little bit, and then move to another entity to receive training. In other words, say you are going to go to the local community college, or whatever. You use a little bit. But then, let's say you want to look around and find a job, and a firm says, "Well, we will hire you, but we don't have the means to train." If that firm got enough of displaced workers, they could indeed have a training program that was in part subsidized by Trade Adjustment Assistance.

Mr. Lang. That is true, it does; so long as the worker uses the benfit for training, that is right. That is our understanding of S. 490.

Senator Heinz. Bill, you are thinking of the OJT program, which is an eligible activity right now.

Senator Bradley. No, no. I am talking about how you would use the voucher. You could use it, divisible.

Senator Heinz. For two different types of training experiences.

Senator Bradley. At least. You could use it for more.

Senator Heinz. But the latter one that you just described is what is normally referred to as "OJT," I think, where a worker ends up employed with an employee and receives on-the-job training.

Senator Bradley. Yes. And the problem is, who pays for the on-the-job training? Employers are less likely to pay for on-the-job training if they have to pay the full cost; and therefore they are less likely to employ these workers who have been displaced. What this does is allow you to go and basically make the best deal with the firm that is seriously interested in finding new labor talent.

Senator Heinz. Following up from Senator Bradley, the only question I would have is, is divisibility permitted in current law?

Mr. Lang. I don't know the answer, Senator Heinz. I will look it up.

Ms. McNeil. I believe under current law the OJT's are arranged --

Senator Heinz. The OJT is permitted under current law.

Ms. McNeil. Yes, but OJT's are arranged by a service provider. I think the issue here is whether a worker could take the voucher and use it for an OJT.

Senator Bradley. That's right.

Senator Heinz. Thank you.

The Chairman. All right. If you will proceed, Mr. Lang.

Mr. Lang. With regard to funding -- this begins at the bottom of page 50 -- under current law the Trade Adjustment Assistance, and particularly Trade adjustment Assistance for workers in this case, is funded in two ways: The cash benefit is an entitlement, and the training costs are subject to appropriation.

Under the Senate bill, the program would be funded from a trust fund which would be financed by general revenues for a period of time and after that funded by a small import fee. The import fee would be capped at a 1-percent ad valorem fee.

We have received a CBO estimate on the cost of the program, which suggests that the fee would have to raise annual revenues by roughly $300 million in the years in which the program begins in order to cover the costs of the expanded program.

Now, the way it works is this: All the changes that I have described to the worker program do not take effect until roughly three years after the date of enactment. The fee begins two years after the date of enactment. The purpose of the delay was to allow the Administration to attempt to get agreement at the international level that the fee would be consistent with U.S. international obligations. And then the fee would go into effect, build the fund up for a year, and the fund would begin to pay the benefit rather than general

revenues.

At a cost of $300 million, the fee could probably be set at less than a tenth of a percent ad valorem, because of the value of imports in this country, even with a few necessary exclusions.

That summarizes the rather technical material that appears on page 50 and page 51.

Senator Bradley. So, the idea is that in passing this funding mechanism the Congress is essentially making the argument that we believe it is consistent under GATT, and that we are going to take it to GATT in order to get a ruling as to whether a small import fee that is used for adjustment purposes is consistent with the overall objective of GATT in an open trading system. Is that correct?

Mr. Lang. I would assume so; or, in the alternative, get GATT to agree that it is.

Senator Bradley. I see some heads shaking there at the USTR.

(Laughter)

The Chairman. Well, Mr. Woods testified on this point earlier, that they do not consider it -- as I understand him to state -- GATT-compatible and therefore have some concern about it.

Senator Heinz. Mr. Chairman, I have a concern, which is that if we do pass this, and our negotiators have said to us

that it is not GATT-compatible, and they to to the GATT, how are they going to be able to do a good job netotiating for us?

Mr. Lang. The bill, Senator, actually says that the President must seek GATT agreement to permit imposition of the fund. So, they don't need necessarily to argue that it is consistent with the GATT; they can also seek an agreement amending the GATT to make it GATT-acceptable.

The Chairman. I see.

Senator Heinz. I would hope they wouldn't, however, retreat before they even got to the field of battle on the first possibility, which is that it could really be quite GATT-consistent. It may not even be significant at one-tenth of one percent.

The Chairman. Mr. Woods, if you will raise the level of enthusiasm in your comments, please.

(Laughter)

Mr. Woods. First of all, my understanding would be what Mr. Lang has said, and that is the way I understood the spreadsheet, was that we would be required to go and not get GATT acquiescence but change the GATT or make the GATT operate in a way, negotiate in the GATT in such a way, which would make this proposal consistent with the GATT -- that actually it is not really saying here that it is now consistent with the GATT. The Committee isn't saying that, as

I understand it.

Second, the thing we must remember, however, is, if we go negotiate in the GATT on the basis of the principle of having a surcharge to fund Trade Adjustment Assistance in the United States, such a principle would apply to other countries as well. Then the question becomes: At what level? We may say, "Well, we need a surcharge of one-tenth of one percent, or one percent, in order to provide such a program." Other countries which have different economic circumstances than our own might feel that a 10-percent surcharge, for example, is more appropriate.

It seems to me that that is our concern in negotiating such a thing, that it tends to open up a can of worms that gets pretty difficult to control.

Senator Bradley. Mr. Chairman?

The Chairman. Senator Bradley.

Senator Bradley. So you are charged with going to GATT and seeking action. So, what is the rationale for your action? What is your argument for changing the GATT? If it is now not consistent with your reading of it, what is your argument for changing GATT?

Mr. Woods. It seems to me the argument for changing GATT would have to be that we all seek to relieve the pressures of adjustment on the international economic system consistent with the principles of free and open trade.

And therefore, such a change in the GATT would be helpful in doing that, or words to that effect. Frankly, I haven't thought about it very much, so I am --

Senator Bradley. In other words, you would be seeking a ruling, though, that would be generic?

Mr. Woods. That is correct. As I understand it, it would have to be.

Mr. Holmer. Essentially, Senator Bradley, we are trying to get the GATT to rewrite the GATT. And the problem is, if we don't get the GATT to rewrite the GATT, and we go ahead and impose this fee unilaterally as the bill requires, we believe, in deference to Senator Heinz, that that would cause significant problems.

In private session we can be more direct in terms of talking about whether it is GATT-legal or not.

Senator Bradley. But the problem is indeed a general problem. The problem is, if you are going to stop barriers from being imposed, then you have to find a means to have a more mobile and upgraded and upskilled work force; adjustment is fundamental to an open-trading system. So, how do you finance adjustment? The argument made is, this is perfectly compatible in the world in which we live with an open-trading system; in fact, it is more likely that you will have an open-trading system if you have this kind of program in place and financed in this way than if you simply had

barriers in place.

Mr. Woods. Certainly, it seems to me it is acceptable to argue that with a program in place that takes care of the adjustment problem -- and that is what the Administration's bill does as well -- you are going to be more likely and it is going to be easier to ease the pressures caused by adjustment generally in the world. This is really just a question of financing; it is not a question of whether or not such a program is a positive thing.

The Chairman. Senator Daschle?

Senator Daschle. Mr. Chairman, once Senator Bradley's compelling arguments are overwhelmingly endorsed at GATT, I have a problem with the way in which these funds are distributed.

If this is an entitlement program and if we are dealing with a trust fund, what happens if the level of entitlement exceeds the amount within the trust fund?

The Chairman. Well, as I understand it, you have a cap of one, and your estimate is one-tenth of one percent, and your argument is that you have substantial latitude at the present time. Is that the argument?

Mr. Lang. What would happen is that it would be just like any other entitlement. If the cost of the entitlement exceeds the amount of the fund that is available for it, the additional money would have to be appropriated to make up the

needs of the fund.

The Chairman. Well, you also have the latitude of going up to the full one percent, don't you?

Mr. Lang. Yes. The Administration would adjust the fee annually, based on an estimate of what total imports would be subject to the fee.

The Chairman. But if you hit the cap of the full one percent, then you would have a problem of general revenue.

Mr. Lang. No. I think Senator Daschle's question was probably whether, if the funds currently in the fund were not adequate, you couldn't catch up fast enough.

Senator Bradley. No.

Was that your question?

Senator Daschle. Well, that was part of the question. I mean, what happens let's say in an immediate fiscal year, whereby you have completed the funding available, and the impact --

Mr. Lang. It would just be a supplemental.

Senator Daschle. -- felt through entitlement would be in the general revenue.

The Chairman. All right. Mr. Lang?

Mr. Lang. Mr. Chairman, there is one last item in Trade Adjustment Assistance, and that is the effective date. Under current law, the program expires September 30, 1991. The

House retained that date. The Senate bill as introduced contains that date, but it should have contained the date September 30, 1993; it was a technical error in the preparation of the bill.

The Chairman. Which page are you on?

Mr. Lang. I am on page 51, in the middle of the page.

The Chairman. All right.

Mr. Lang. This is the one subject on which the Administration bill has a provision at the top of page 9, on the supplement of course, that says that the program would be terminated at the end of the current fiscal year.

That is the end of the spreadsheet on Trade Adjustment Assistance.

Ms. McNeil. Mr. Chairman, I think Ambassador Woods has talked about the fact that the Administration's position on TAA, as you well know, has been that it ought to be repealed in favor of a more comprehensive approach to worker adjustment, and we have proposed a $980 million piece of legislation which is moving separately through the House and Senate committees at this time.

In the event that the Committee decides to retain a separate program, there are several points that we would like you to consider in your deliberations:

One would be some language in your bill that would make a closer link between TAA and the new comprehensive worker

adjustment program. We feel that it is particularly difficult now -- and I think that Senator Heinz has brought this up in previous discussions with Secretary Brock. Where there is an amount of money available for a very small group of workers for training and services, we think it is important that that money and those services be linked closely to the more comprehensive readjustment program -- for efficiency of delivery, to get over some of the problems with the certification time that it takes to get people involved in TAA.

So, we would like to see a much closer link between the two delivery systems.

Senator Bradley. Mr. Chairman, do you mind if I interrupt?

The Chairman. Oh, sure.

Senator Bradley. You would like to see this program linked to the proposed program?

Ms. McNeil. Yes.

Senator Bradley. The proposed program is funded at what level?

Ms. McNeil. The proposed program will be funded at $980 million.

Senator Bradley. Okay.

The Chairman. And that is out of general revenue by appropriation.

Ms. NcNeil. Out of general revenue, right.

The Chairman. I can understand trying to get some kind of a link here. Of course, it also dilutes the argument that Senator Bradley and others were talking about, in trying to get the tax on imports to try to relieve the workers' loss because of trade coming in.

Go ahead. I'm sorry.

Ms. McNeil. The second point I think we would like to have you consider is the issue of secondary suppliers. We believe that, if we are going to put in place a comprehensive system of worker adjustment, to go through this cumbersome certification process for the secondary suppliers is unnecessary, and that these people would be much better served through the comprehensive approach.

The third issue which Ambassador Woods has raised is the matter of an entitlement. When you entitle a relatively small group of displaced workers to services, it means that a whole group of other workers are not entitled and have to, then, just compete for the funds that Congress makes available. It does create some inequities, which has been one of our concerns all along with TAA.

Finally, I would say you made some considerable strides in your legislation in encouraging workers to get into training in order to receive TAA.

One of the things that all of our studies have shown

about worker readjustment is that the earlier workers get linked into adjustment assistance and training programs the better.

In our proposal, our comprehensive proposal, we are requiring that in order to get extended benefits beyond the regular UI period, workers be enrolled in training by the tenth week of their regular UI period. We think this early enrollment is important, and we would like to urge you to consider similar language in your bill -- that is, moving up the time in which a worker has to be enrolled in Adjustment Assistance in order to receive additional benefits after the regular UI benefits have been exhausted.

The Chairman. Most of the studies I have looked at say that, too, that the early enrollment certainly helps to have a much higher degree of success. I was looking at some of them, some eight of them throughout the country, and that correlated very well.

Ms. McNeil. Right.

Senator Bradley. Mr. Chairman, if I could, I find all four of these suggestions helpful; but your last point was that you thought that the program that is embodied in the bill actually makes a major improvement over the present system, in that it insists on training?

Ms. McNeil. Right.

Senator Bradley. You are simploy saying, make sure

they get into training as early as possible?

Ms. McNeil. That's right. We would like you to move on that.

Senator Bradley. And you are also saying, make sure they get into training that actually gives them skills, not that gives them just a pretext to draw down more, right?

Ms. McNeil. Yes.

Senator Bradley. And this $980 million program that is moving separately and is financed out of the general revenues, that is financed out of general revenues as envisioned in the President's budget, right?

Ms. McNeil. Yes.

Senator Bradley. So, when we come to the question of how to finance it, if you had your program in place and it cost $980 million, and you see this program that costs $300 million with a tenth of a percent, if you went to three-tenths of a percent you would fund your whole program, is that correct?

(No response)

Senator Bradley. I think it is.

(Laughter)

The Chairman. All right.

Mr. Woods. Was the tenth of a percent for $300 million?

Mr. Lang. It is probably less than that.

Mr. Woods. The $980 million, for budgetary reasons I

want to make sure you understand, includes the savings that would occur by the ending of the TAA program. So, that $980 million is offset to some degree by the ending of the TAA program and by the ending of some titles of the JTEPA program, and some new money. So, there are three elements in that $980 million.

I guess I should also add, in that regard, that one of the reasons that we worked very hard on the Administration's new program over the Summer and Fall of last year was that we felt it was important to look at the issue more comprehensively, is because of the numbers of workers that are being displaced by technological improvements, which keep American industry competitive and therefore not impacted by imports, and that those people in a sense have a trade impact as well, and we didn't feel like there was a differentiation that one could really make between those kinds of workers and people affected by trade.

I might also add that the Administration's program includes agricultural workers for the first time, who have not been previously included in such programs.

So, I commend it to your reading. We have worked hard on it, and it does deal quite comprehensively with the issue. I understand, obviously, the committee jurisdiction problems that are involved; but if there are two programs, one of the things they are considering in the House is making

them look very much alike so that they can be operated in tandem with one another.

The Chairman. Mr. Lang, I think that finishes that section on negotiations.

Mr. Lang. Yes, sir.

The Chairman. I would say to those who were not here earlier, we have moved past 201 because, as we presented this piece of legislation and met with various groups, we saw some rough edges on 201 that we are trying to see if we can't reconcile. We have had staff working on it and the staffs of the various Senators. They worked until some 11:00 last night, and we are making some headway there, I think. If we can achieve something that resembles a consensus, we will be putting that information out to the members for their consideration before we get back to 201.

Are you ready to move to 301?

Mr. Lang. Yes, sir. It begins on spreadsheet page 52.

(Continued on next page.)

The Chairman. Let me state that I really want to keep us on schedule so that we can finish in the next two weeks; and if that means coming in early or staying late, we will be doing that. Yes?

Senator Bradley. Mr. Chairman, are you counting this week as the first week?

The Chairman. No, no, no. I am talking about two more weeks--two more.

Senator Bradley. Oh.

The Chairman. I would like to, but --

(Laughter)

Mr. Lang. The first subject in Section 301 is actually not statutorily in Section 301. It concerns amendments to the National Trade Estimate. The National Trade Estimate is a report required under the Omnibus Trade and Tariff Act of 1984 on significant foreign barriers to U.S. exports, which is issued each year at the end of October.

Under the bill, the Office of the U.S. Trade Representative would be required to enhance the report by making an estimate of the value of additional goods and services and the value of additional foreign direct investment that could be exported to or invested in each foreign country duirng the calendar year.

The S. 490 provision would also require the Trade Representative to take into account the actual increase in

the value of goods exported and the value of increased investment and to submit the report on March 31st of each year to the President, as well as to the cognizant Congressional committees.

By the way, on these subjects, unless I say otherwise, there is no Administration provision in the supplement; but if you want to follow the Administration bill in the supplement, it is on supplement page 9.

On page 53 of the spreadsheet concerning initiation of SEction 301 investigations, under current law, Section 301 investigations can be self-initiated by the USTR as well as being initiated on petition of an interested person.

Under the bill, the USTR would be required after receiving the National Trade Estimate to initiate certain investigations. Those would be investigations of foreign barriers which constitute significant barriers to or distortions of trade and which are likely to be unjustifiable in terms of Section 301 or are likely to be other acts under Section 301 which would result in the greatest expansion of U.S. exports.

In other words, not every matter listed in the National Trade Estimate would be the subject of mandatory initiation.

There is an exception to mandatory initiation with regard to acts, practices, or policies that are not unjustifiable; and that is if the Administration determines

through consultations with the domestic industries that initiation would be detrimental to other efforts being made to eliminate those acts, then the Administration would not be required to initiate those cases involving unreasonable or --

Senator Bradley. Mr. Lang, could you maybe give us an example where this provision might come into play?

Mr. Lang. Yes. If the government of Korea, for example, did not allow an American company to sell insurance in Korea--and insurance is a service and is not covered by the GATT--it would therefore not be a trade agreement violation or in any sense unjustifiable, but it might be unreasonable or discriminatory.

It might also be a significant barrier, but if the industry felt that the Administration's negotiations with the government of Korea were more likely to improve the situation than a 301 investigation, the Administration would be justified in not initiating the investigation under this provision.

Senator Bradley. So, the determination of whether or not initiate a 301 investigation is left essentially with the Administration in consultation with the respective industry?

Mr. Lang. Yes. And of course, to be subject to mandatory initiation in any of these provisions, the barrier

would have to be significant.

Senator Bradley. And what is the general definition of "significant"?

Mr. Lang. "Significant" is defined at the bottom of the spreadsheet on page 53. It is two things: either the reduction or elimination of the barrier would establish a precedent that would be of major benefit to U.S. exports, or the foreign barrier distortion itself affects the significant value of U.S. exports.

Senator Bradley. It is flexible.

Mr. Lang. It is a flexible idea.

On page 54 of the spreadsheet --

Mr. Woods. If I may comment on that subject?

The Chairman. Yes. Mr. Woods?

Mr. Woods. Let me say generically that, as I kind of approach the issue of Section 301 of the Trade Law, I look at the dumping and countervailing sections of the Trade Law to be sort of lawyers and economists sections of the Trade Law. When you look at Section 301 of the Trade Law, it is a trade negotiator's section of the Trade Law, in a sense, because we are dealing with ideas and concepts that are not nearly so precisely defined, as we defined in our law dumping and countervailing duties.

Self-initiation of a 301 action had never been done before 1985, that is when this Administration self-initiated

a number of 301 cases. It is an unusual act, and part of its value is in its unusualness. It makes a point about something about which we feel very strongly.

That having been said, we solve a lot of trade problems without ever initiating any kinds of trade cases. We are constantly having bilateral consultations and meetings and trade negotiations outside the context of Section 301 with our trading partners.

One of the things that I would be concerned about--and I know Ambassador Yeutter would be concerned about--is that, to the degree you don't self-initiate a 301 case, it sends a signal that these are items that are somehow less important to you, if you have a mandatory initiation provision in the law.

So, we would caution the committee to be very careful about thinking through mandatory self-initiation. It has its purpose; I don't want to suggest otherwise. We think it is a good idea to occasionally self-initiate 301 cases, but the mandatory self-initiation concept if it is embodied in the law would tend to suggest to our trading partners that, to the degree we are not self-initiating, it is a matter about which we are less concerned. And that is not a signal we would like to send.

Senator Bradley. Could you give an example of that, of the difference in your view between self-initiation and

mandatory self-initiation?

Mr. Woods. If you have mandatory self-initiation in law, it seems to us that you take away to some degree--as I said--the unusualness of just simply self-initating the case on the decision of the President or the U.S. Trade Representative.

Senator Bradley. You mean that it becomes commonplace for the USTR to self-initiate as opposed to through some form of complaint?

Mr. Woods. It would seem as if that would be more of a routine act, and I would prefer that it seem to be more of an exceptional act.

Senator Bradley. As I read this section that Mr. Lang explained where there is consultation with the industry in question, it seems to imply that you would still have a great number of areas where you would choose not to self-initiate, even though it would be mandatory.

Mr. Woods. Under the act as proposed, that is only for one class of cases, where for unreasonable or unjustifiable we would be required to self-initiate, as I understand it.

Senator Bradley. So, you would have the National Trade Estimate, and you would do a National Trade Estimate, and it would spew out 85 countries; and you would, under this provision, have to self-initiate all 85 countries in the areas in question. Is that right?

Mr. Woods. If it were unjustifiable, or even if the industry were opposed.

Senator Bradley. Can you tell me, in the last National Trade Estimate, how many countries would have been self-initiated mandatorily?

Mr. Woods. I would have to get back to you on that, Senator. I don't believe I have that number off the top of my head.

Mr. Lang. Page 54 of the spreadsheet concerns two subjects: first, with regard to the transfer of authority to the USTR. I would just mention that under current law, the Trade Representative conducts an investigation and makes a recommendation to the President.

The President has the authority to take the action.

Under the House bill, generally speaking--not just with regard to Section 301, but with regard to most trade laws--authority to take action is transferred to the Office of the U.S. Trade Representative.

Under S. 490, the USTR gets the authority to determine whether the practice is within the scope of Section 301, but the President still retains the authority to decide what action to take or whether to take any action.

Also on page 54, I want to point out--even though there is no provision on the subject in S. 490--that if a matter arising under Section 301 involves a trade agreement, then

if the Section 301 investigation is initiated by the U.S. Trade Representative, he must take the matter to formal dispute settlement under whatever trade agreement applies; in general it is the GATT.

So, he has to begin the GATT process, and that is just current law.

At the bottom of spreadsheet page 55 begins a discussion of timeliness in the various bills. Current law is subject to time limits on investigations but not on Presidential action. When a matter is referred to the President, he has a period of time in which to determine what action he will take; but if his action is to continue negotiating or to continue the GATT process, the case can go on for a long time.

Many Senators have been concerned that, even though time limits apply to the USTR investigation and to the President's decision on whether to continue doing as he is or take some more aggressive action, the cases can drag on.

So, under S. 490, the Trade Representative is required to make his determination not later than nine months after the investigation is initiated, except in a case involving export targetting--which I will discuss in a moment--and then the determination is to be made no later than six months after initiation.

As I will show in a moment, there is also a limitation

on the overall time for action in Section 301 investigations under S. 490 which becomes effectively a limit on the time for which the President can simply extend current efforts. At some point he has to take an action under S. 490.

And I might say that, even under the Administration's bill, there is a similar arrangement. That is, the Administration's bill amends time limits for the Trade Representative's recommendations to 30 days after dispute settlement procedures are concluded, or two years after initiation of the investigation.

Now, that doesn't limit the President as much as S. 490 does with the time limit, but it at least puts an outside time limit, to some extent, on the GATT process. That is our reading of the Administration's bill.

Senator Bradley. So, under S. 490, the maximum time taken from initiation of an investigation until a conclusion of the investigation is how long?

Mr. Lang. Fifteen months, plus two extensions of 60 days each.

Senator Bradley. So, the maximum you would have would be 19 months?

Mr. Lang. Right.

Senator Bradley. Right. And then, after determination is made, the President has how long to --

Mr. Lang. I am sorry. That is the whole thing.

Senator Bradley. Oh, that is the whole thing. So, the investigation and determination: maximum 19 months?

Mr. Lang. And action.

Mr. Woods. If I may comment, first of all I would like to say something about the transfer of authority for the determination on these questions that were in the previous section. It seems to me--and it is one of the arguments that we have made again and again in the House as they have looked at this issue, that the President ought to be more, not less, involved in trade matters and that removing Presidential power and discretion in making decisions tends to place him in a less involved mode.

The Chairman. Now, you are relating to the House provision?

Mr. Woods. But also the Senate provision in 490 with regard to the unfairness determination.

The Chairman. Oh, all right.

Mr. Woods. That is the reason I was making that comment. This removes from the President and places with the U.S. Trade Representative the authority to make the unfairness determination. We think first of all that the President ought to make that determination, that the issue ought to go to him. It ought to be something he should decide upon.

And second, when the President rather than the U.S. Trade Representative makes such a determination, it is a

more powerful decision and has a greater impact on the people with whom we are negotiating, than if that is a decision made by the U.S. Trade Representative.

Second, with regard to the timing questions--particularly as it relates to the unfairness determination and the requirement to make an unfairness determination, which is, as I understand it, the provision at the bottom of page 55 --which requires that the USTR make the determination in no longer than nine months--we have trading partners who, in a sense, will pay us not to make a determination at all.

They would like not to be judged to be unfair. And so, to the degree that a determination is actually required, we would be better off not to have to make a determination because we have the ability to negotiate--we can get something--for not having made an unfairness determination on a procedure that they will have done away with.

Senator Bradley. But doesn't that erode the whole rules system, the basis for it? I mean, if you say we know you have been unfair, and here is the evidence you have been unfair, but we are not going to state that, in exchange for X, Y, and Z?

Mr. Woods. The exchange would be to get rid of the things that were causing the unfairness.

Senator Bradley. Can you give us a couple of examples of where that was done?

Mr. Woods. The most notable recent one was the Japanese semiconductor case, I think. We never did issue an unfairness determination in that case, but we --

Until indeed, they violated the agreement; and at that time, an unfairness determination was issued.

The Chairman. We got the agreement by not coming to the decision of unfairness.

Senator Bradley. If you get an agreement that they don't abide by, then they have bought another year or two.

Mr. Woods. Unless, of course, they don't abide by the agreement, then we have authority under 301 to take action, which we did, as in the case of the Japanese semiconductors.

Senator Bradley. But if they were violating the rules, before you got them into an agreement, and then you said, well, you know, you are unfair but we are not going to say it unless you make an agreement. So, you make an agreement, and two years later you find they have been doing the same thing for two years. That is a way for them to buy two more years of being unfair.

Mr. Woods. I hope, as in the case with the Japanese semiconductors, we would be more vigilant than to let that go on for that kind of period.

The Chairman. Mr. Lang?

Mr. Lang. Mr. Chairman, on page 57 --

Senator Baucus. Could I ask a question, please?

The Chairman. Yes, of course. Senator Baucus?

Senator Baucus. I would like to ask what the difference is on page 55. It says nine months the USTR is required to make a determination after investigation is initiated; generally, on the other hand, six months in the case of export targetting. What is the difference? Why is it nine and six months? Can you explain that?

Mr. Lang. Yes. The export targetting provisions, which we will get to in a minute, under the various bases for Section 301 action, were determined by the Senators who sponsored that legislation to be a subject that required earlier action because a long period of time had preceded the time when the targetting became known, and an infrastructure was developing; and it was felt that you should get at that at an earlier date.

I think that was the argument of the sponsors.

Senator Baucus. Thank you.

Senator Chafee. Mr. Chairman?

The Chairman. Yes, Senator Chafee?

Senator Chaffe. Could I ask Mr. Woods and Mr. Holmer a quick question in connection with the USTR making the decision as opposed to the President? As a practical matter, I presume the President will make it anyway, wouldn't he? The USTR isn't going to plunge into any dramatic action

regarding a major trading partner of ours without clearly consulting the Administration for which he works and at whose sufferance he serves.

Mr. Woods. That is correct, Senator. That is one of two points I made. One is that the President ought to be more involved, rather than less involved in the process; but certainly, as a practical matter, I don't think any U.S. Trade Representative is likely to make a decision that the President for whom he works doesn't want him to make.

The second, however, is that the Presidential determination which, if you follow your line of logic there, I believe, would be the same as the USTR's determination.

It is a more powerful determination because it is made by the President and not by a cabinet officer.

Senator Chafee. I guess the point I am making is that, if the objective is to move along swifter--and this is probably addressed to Mr. Lang--if the objective is to move along swiftly and thus not clutter up the President's time with these decisions, as a practical matter the President is going to be making the final decision, anyway, on these major elements, isn't he?

Mr. Lang. Under the Senate bill, Senator Chafee, the only thing that is delegated to USTR is the determination of whether the practice falls afoul of Section 301.

The USTR, under S. 490, is not making the decision as to

what to do about the practice. That is still left to the President. Probably those decisions today are now written in the U.S. Trade Representative's office, anyway.

So, I am not sure that answers your question, but maybe that helps you a little bit. Under the House bill, for example, both matters are delegated to USTR. They both determine whether the practice is unfair and take the action.

Under S. 490, only the first is delegated to USTR.

Senator Chafee. What do you say to that, Mr. Woods? That is in S. 490; why doesn't that make sense?

Mr. Woods. I will come back and say what I said before. The unfairness determination is much more powerful if that determination is made by the President than if it is made by a cabinet officer. It has greater influence.

I should say the unfairness determination isn't a determination as to whether a case is initiated or not. That power already lies with the U.S. Trade Representative. He decides whether or not to accept a 301 case initiated by industry. An investigation then takes place; and then, as that investigation takes place, the U.S. Trade Representative makes a recommendation to the President, as it operates under current law, as to whether or not we believe that there has been unfairness in the case; and then the President has the opportunity to make a determination whether or not to seek a redress of retaliation on that matter.

Senator Chafee. Thank you.

Senator Heinz. Mr. Chairman, on that same subject?

The Chairman. Go ahead.

Senator Heinz. Mr. Woods, correct me if this distinction is an improper one. Then, you would not have any objection to having the President make a determination of an unfair practice and then have the USTR decide what remedial action should be taken and then it implemented?

(Laughter)

Mr. Woods. I don't think I said that, Senator.

(Laughter)

Mr. Woods. If I did, I would certainly apologize --

Senator Heinz. No, you didn't say it; but it seems to me, based on what you said, that you wouldn't have a problem with that.

Mr. Woods. I am sorry to have been misunderstood.

Senator Heinz. So, why would you have a problem with that?

Mr. Woods. All right. The determination of unfairness is one level of determination. What the impact of action might be is another set of considerations which must be undertaken. Such considerations would be what U.S. industries are going to be affected by possible retaliation against actions we might take. You know, this is the provision that, as I said, when you start retaliating, you have the potential

for declaring a trade war. And it kind of goes to the question: Does the Secretary of Defense have the power to declare war? Well, he doesn't obviously; and I don't think many U.S. Trade Representatives would be very comfortable with the power to declare a trade war. I don't think that is the point.

Senator Heinz. Procedurally, after a determination is made, then there is the decision-making process during which actions are considered and during which negotiations are supposed to take place. Isn't that the way it usually works?

Mr. Woods. After the --

Senator Heinz. You mentioned and put great emphasis on the fact that a Presidential determination is very powerful; and power, I suspect, is only meaningful if it sets something in motion. Does the power of a Presidential determination set anything in motion?

Mr. Woods. What frequently occurs is that, after the unfairness determination has been made, and before any decision has been made as to what action takes place, additional negotiations occur which sometimes results in the settlement of cases.

Senator Heinz. That is the nature of the application of the power. Thank you.

The Chairman. It seems that we are splitting hairs on this. Under our version of it, we cloak it with the

authority of the President finally. He retains the authority on the action.

Mr. Woods. That is right, and we think that that is appropriate.

The Chairman. Right.

Let me say to the members here that we are continuing just for a very few minutes here. We lost some time this morning, and once again, I want very much to see that we get through the reading of the bill--walk through this thing--and finish it up tomorrow.

So, we will come in at 9:30 tomorrow morning, and we will continue until whatever time it takes to get through this. Mr. Lang?

Mr. Lang. On page 57 of the spreadsheet begins a description in technical terms of mandatory and discretionary action. This refers to the action the President takes under 490 in response to the USTR's determination. Under S. 490, if the USTR makes an affirmative determination, the bill says the President shall take whatever actions are authorized under current law to enforce the rights of the United States or eliminate the foreign practice.

The Chairman. Let me ask you this, Mr. Lang: This may bring about some rather extensive questioning and debate, I would think, would it not?

Mr. Lang. This is an interesting one.

The Chairman. This is a big one. All right.

(Laughter)

The Chairman. With that, we will stand in recess until tomorrow morning at 9:30 a.m.

(Laughter)

(Whereupon, at 12:28 p.m., the hearing was recessed, to be reconvened on Friday, April 24, 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 23, 1987, were transcribed as appears herein and that this is the original transcript thereof.

WILLIAM J. MOFFITT
Official Court Reporter

My Commission expires April 14, 1989.