

STATEMENT OF SENATOR MORGAN

CONFERENCE REPORT ON THE CUSTOMS PROCEDURAL REFORM ACT

AUGUST 21, 1978

A DISTURBING INFRINGEMENT

Mr. President, when I returned from Japan last spring, I was very disturbed by the impact that the dumping of Japanese television sets has had on the American industry. I had advised officials of the Japanese government that such tactics could only undermine relations between our countries. The matter was serious. Thousands of jobs had been lost in the U.S. television industry, which essentially lay in ruins.

By chance, upon my return, I met an attorney I knew, who shares my interest in antitrust law. I raised the issue of television dumping with him, and discovered that

he himself was representing an American manufacturer of television sets, and was concerned about the problem. In our discussion the matter of the Customs Procedural Reform Act came up.

The act as drafted would have retroactively lowered the penalties for the false filing of customs documents, which I believe to have been part and parcel of the dumping scheme. It would have increased and shifted the burden of proof, and it may well have allowed those responsible for the dumping to escape all penalty, or at the very least to suffer only a very reduced penalty.

I asked the attorney to inform me fully of the situation, and he complied.

Disturbed by the prospects offered by H.R. 8149,

Senator Curtis and I offered an amendment to make certain that the law on the books when the violations occurred would apply to the filing of false customs documents, and not the provisions of H.R. 8149 as drafted. Senator Curtis and I were successful, and I am very glad to see that appropriate handling of the issue is reflected in the language of the conference version of the bill.

But I think the Senate should know of one other result of our efforts which ought to be of great concern to all my colleagues, for it involves an infringement of any Senator's right to investigate and to legislate.

A little background is in order. One very disturbing fact about the Customs Procedural Reform Act is that attorneys representing Japanese television manufacturers had a hand in

its drafting.

It is perhaps less disturbing that a highly active lobbying campaign was carried on to get the Curtis-Morgan amendment dropped in Conference. That is to be expected.

But it is positively outrageous that in the middle of our attempts to make sure the amendment stayed in the bill, attorneys representing the Japanese subpoenaed all the documents sent to me by the attorney from whom I had requested information, and who had petitioned me for redress.

Mind you, they did not subpoena my own files. They subpoenaed from the attorney copies of everything he had sent me. They subpoenaed every communication between him and every member of the Senate or House. They subpoenaed his correspondence with his client. They subpoenaed his

communications with public officials in the Executive Branch.

Mr. President, I ask that copies of the subpoenas be included at the end of my remarks.

The subpoenas were issued in a case, pending in the Eastern District of Pennsylvania, and the taking of depositions was scheduled for the very day the Conference Committee was to take up the issue in question. I might add that the attorney who cooperated with me in my legislative activity was not a party to that suit. But his client was, and the Japanese television manufacturers and American importers, on whose behalf the subpoenas were issued, were parties. The case is an antitrust suit growing out of the dumping, and has no direct connection with the Customs Procedural Reform Act, save for a similar cast of characters.

I have informed the court that I intend to file an intervention in the matter of the subpoenas. I am doing so because such harassment is of concern to me and to every member of this Senate. I am not doing it to hide anything. There is absolutely nothing in my files which would embarrass me or the Senate or the attorney with whom I corresponded. The only people who might be embarrassed are those involved in television dumping or violation of the customs laws.

But two points need to be made loud and clear.

First, I have a privilege, as does every member of this Senate, to investigate, coterminous with my legislative intent. Unless we are going to start issuing Congressional subpoenas every whip-stitch, we must be able to depend on

the willingness of interested parties to supply information to us.

In the second place, every citizen has the absolute right under the First Amendment to petition members of the Senate for redress of grievances. And he ought to be able to exercise that right without the threat of having lobbyists on the other side of a question haul him into court.

I ask my colleagues in the Senate to consider the relationship between these two facts.

How can we obtain information voluntarily from those who have it, if giving that information might subject a citizen to harassment, including the subpoenaing of his files wholesale? Who would want to cooperate if he knew he might have to defend himself in a court in a distant city?

What attorney would want to risk his attorney-client relationship by having companies, in direct competition with his clients in the marketplace and in court, have access to his files? In this case, a cartel of Japanese firms might have a good look at inside information on one of the few remaining American manufacturers, if there is anything there. It might even be possible for secret information relating to the competitive strength of American industry to become known to foreign competitors and governments, so close is their relationship in foreign countries, and especially in Japan. Yet, we would have no information showing the lobbying, and other activities between foreign companies and their attorneys, on the one hand, and the Government of Japan, on the other.



If subpoenas of this kind become a successful tactic, then American citizens would be penalized for exercising their First Amendment rights, or for cooperating with the Congress in its investigations.

We don't want the First Amendment to become a risky proposition for our citizens. We do not want our ability to investigate and legislate infringed. But the use of American legal process, by foreign interests or any other interests, to undermine that process of communication, can only have a chilling effect, both on exercise of the First Amendment, and on Congressional investigations. The two are very closely related, and both must be preserved.