Whereas Taiwan is the seventh largest trading partner of the United States and imports more than twice as much annually from the United States as does the People's Republic of China; and

Whereas no treaties exist between the People's Republic of China and Taiwan that determine the future status of Taiwan: Now therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) affirms its longstanding commitment to Taiwan and the people of Taiwan in accordance with the Taiwan Relations Act (Public Law 96–8);

(2) affirms its expectation, consistent with the Taiwan Relations Act, that the future of Taiwan will be determined by peaceful means, and considers any effort to determine the future of Taiwan by other than peaceful means a threat to the peace and security of the Western Pacific and of grave concern to the United States;

(3) affirms its commitment, consistent with the Taiwan Relations Act, to make available to Taiwan such defense articles and defense services in such quantities as may be necessary to enable Taiwan to maintain a sufficient self-defense capability;

(4) affirms its commitment, consistent with the Taiwan Relations Act, that only the President and Congress shall determine the nature and quantity of defense articles and services for Taiwan based solely upon their judgment of the needs of Taiwan; and

(5) urges the President of the United States to seek a public renunciation by the People's Republic of China of any use of force, or threat to use force, against democratic Taiwan.

The title was amended so as to read: ''Affirming U.S. Commitments Under the Taiwan Relations Act''.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. The Senate has no order at this time.

Mr. HATCH. Will the Senator yield so I can put us in morning business?

Mr. DODD. I will be happy to.

MORNING BUSINESS

Mr. HATCH. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. I thank my colleague.

Mr. DODD. Mr. President, I ask unanimous consent to proceed in morning business.

The PRESIDING OFFICER. That is the present order. The Senator has 10 minutes to speak.

(The remarks of Mr. DODD and Mr. MOYNIHAN pertaining to the introduction of S. 2285 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Colorado is recognized for up to 10 minutes.

CAPITAL GAINS

Mr. ALLARD. Mr. President, I wish to speak about capital gains and the way that we look at the estimates that come from a reduction in taxes such as capital gains.

Earlier this year, I introduced legislation to reduce the capital gains tax to 14 percent and to provide indexing of the capital gains tax from that point out. This legislation builds on last year's tax bill which moved the capital gains rate down from 28 percent to 20 percent.

I rise today to commend both the Senate majority leader and the Speaker of the House for their recent calls for a reduction in the top capital gains rate to 15 percent. Both of our leaders have indicated they are introducing legislation to cut the rate. This could be accomplished as early as this year. Again, I commend them for their leadership.

I also wish to express my support for a provision in the IRS reform bill that returns the holding period for long-term capital gains treatment to 12 months. Last year, the administration unwisely insisted on extending this out to 18 months. This added complexity to the code and represented another attempt by Government to micromanage investment decisions.

There is a great deal of interest in the tax treatment of capital gains due to mounting evidence that capital gains tax rate reductions not only benefit taxpayers and the economy but also increase revenues.

Last month, the Joint Tax Committee released new estimates of the revenue resulting in the 1997 reduction of the top capital gains rate from 28 percent to 20 percent. The Joint Tax Committee apparently underestimated the revenue gain in 1998 by $13 billion and in 1999 by $12 billion. In fact, the latest estimates are that over the first 5 years revenue could be as much as $58 billion greater than previously forecast.

Now, this does not surprise me. In fact, there are a number of us in Congress who have been making this very point for years. The capital gains tax rate cut will increase revenue, not reduce it. There are two principal reasons for this increase in revenue. First, there is the short-term incentive to sell more capital assets; second is the long-term progrowth benefit from a capital-friendly tax policy.

The capital gains tax is largely a voluntary tax. The tax is only paid if the investor chooses to sell the asset.

If taxes are high, an investor can hold on to the asset for years. But when taxes are low, investors will often decide to sell the assets and ''realize'' the capital gain.

History confirms this pattern. In 1978, when the capital gains tax rate was reduced from 40 percent to 28 percent, capital realizations increased by 50 percent, and tax receipts increased.

In 1981, Congress and President Reagan further reduced the capital gains tax rate to 20 percent. Once again, capital gain realizations increased dramatically and by 1983 were again up by 50 percent.

By contrast, tax revenues actually dropped for a number of years following the capital gains tax rate hike in 1986.

Mr. President, last year, when Congress proposed to cut the capital gains tax rate from 28 percent to 20 percent, the Joint Tax Committee submitted its revenue estimate.

The Joint Tax Committee forecast a 10-year revenue loss from the rate cut of $21 billion.

Mr. President, it is clear that the Joint Tax Committee and Congressional Budget Office estimates dramatically underestimated both the strength of the economy and the positive response to the tax rate cut.

The Joint Tax Committee now concedes that there will be a significant revenue gain from capital gains realizations.

In my view, a review of the last twenty years of capital gains tax rates and the associated revenues suggests that the model used by the Joint Tax Committee and the Congressional Budget Office to estimate capital gains revenues is flawed.

The Congressional Budget Office argues that government revenue estimates adequately account for behavioral changes that occur as a result of tax changes.

Despite this claim, it would appear that when tax rates are lowered the revenue estimating model significantly exaggerates the revenue losses.

In fact, in no single year after a rate cut has there ever been a loss of revenue.

Conversely, when tax rates are increased, the model significantly exaggerates the level of revenue gains.

Not only do the Congressional models fail to accurately measure the response of taxpayers to changes in tax rates, they exclude an estimate of the impact of tax changes on economic performance.

Congress is largely in the dark when it comes to any estimates of the economic benefit of tax rate reductions.

It is logical to assume that a lower tax rate on capital lowers the cost of capital. This clearly benefits the economy. As a consequence the Federal Government will realize greater income, payroll, and excise taxes. In addition, State and local tax revenues will also rise.

Admittedly, all of this is difficult to measure. However, I would like to see some attempt made to include these factors in revenue models.

At a minimum they should always be appended to the official revenue estimates. This would give Congress a more complete picture of the impact of tax changes on revenues.

Mr. President, I will note that a recent addition to the rules of the House permits the Joint Committee on Taxation to append dynamic estimates to tax legislation when requested to do so by the Chairman of the Ways and Means Committee.

This dynamic estimate is to reflect the anticipated macroeconomic effects

of tax legislation, and is to be used solely for informational purposes.

It is time for Congress to build on this process. Dynamic estimates should be routinely requested in both the House and Senate.

Congress should also make greater use of the work of a multitude of economists. I would note for example that in 1997 the Joint Economic Committee published a study by two Florida State University economics professors; James Gwartney and Randall Holcombe that argued that the optimal capital gains rate is 15 percent or less.

These economists predicted accurately prior to last year's rate cut that a reduction in the rate would increase revenues.

While improvements in the revenue estimating process are certainly desirable, the fact remains that estimates are just ''estimates'', and Congress should recognize that those estimates will often turn out to be way off the mark.

That is why Congress should place greater emphasis on the impact that changes in the taxation will have on the private economy, and less emphasis on projections of government revenue.

Economic growth, job creation, and international competitiveness should be our focus.

Mr. President, when it comes to capital gains taxes I suggest that Congress spend less time gazing into the crystal ball of revenue forecasting, and more time focusing on the real world impact of taxes on capital formation, job creation, and economic growth.

I think it will then be abundantly clear that we should continue to reduce the tax on capital to 14 percent. This will continue the good work that we began last year.

Mr. President, the U.S. level of tax on capital has been among the highest in the world, I am dedicated to seeing that it becomes one of the lowest in the world.

A low rate of tax will encourage capital investment, economic growth and job creation.

This is no time for the United States to sit on its lead; we must continue to ensure that America is the premier location in the world to do business.

A low capital gains tax will help our economy, but it will also help America's families by reducing their tax burden.

I look forward to working with Majority Leader LOTT and with Speaker GINGRICH as we continue to cut the rate of taxation on capital gains.

I yield the balance of my time.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, I ask that I be granted 10 minutes to speak in morning business.

The PRESIDING OFFICER. The Senator has 10 minutes under the previous order.

NOMINATION OF SONIA SOTOMAYOR TO BE A JUDGE ON THE SECOND CIRCUIT COURT OF APPEALS

Mr. MOYNIHAN. Mr. President, there has been some discussion in the press of late concerning a ruling in Federal District Court of the Southern District of New York involving a business coalition in Manhattan called the Grand Central Partnership. In this case, *Archie* v. *Grand Central Partnership, Inc.* (1998 WL 122589, 1998 U.S. Dist. Lexis 3599, S.D.N.Y. 1998), the judge agreed with the plaintiffs who had brought suit against the partnership demanding to be paid at minimum wage rates pursuant to the provisions of the Fair Labor Standards Act and the New York State Minimum Wage Act. The language of the decision reads as follows:

> Despite the attractive nature of the defendants' program in serving the needs of the homeless, the question of whether such a program should be exempted from the minimum wage laws is a policy decision either Congress or the Executive Branch should make. . . . The Court, however, cannot grant an exemption where one does not exist in law.

Setting aside any personal bias, the judge ruled solely on the basis of law.

In *Bartlett* v. *New York State Board of Law Examiners* (970 F. Supp. 1094, S.D.N.Y. 1997), this same judge ruled in favor of one Marilyn Bartlett, an applicant with a learning disability similar to dyslexia, who sought admission to the State bar. The Board of Law Examiners had denied Bartlett's special accommodation—in this case, an extension of time limitations in which to take the bar examination. The judge found that the Americans With Disabilities Act clearly required the board to provide the accommodation. Again, this decision was made—as it ought to have been made—on the basis of law. Nothing more.

The district court judge in both of these matters was the Honorable Sonia Sotomayor of the Southern District of New York, who now seeks confirmation from this body for appointment to the Second Circuit of the United States Court of Appeals.

May I take just a moment to thank the distinguished chairman, Senator HATCH, and ranking member, Senator LEAHY, and the members of the Committee on the Judiciary.

With confirmation earlier this year of Robert Sack, Chester Straub, and Rosemary Pooler, the judicial emergency in the Second Circuit declared by Chief Judge Ralph K. Winter on March 23 will soon be over.

It will be over, Mr. President, when Judge Sotomayor is confirmed by the Senate. She has been reported by the Judiciary Committee.

A little over one year ago, President Clinton nominated Judge Sotomayor to fill a vacancy on the Second Circuit Court of Appeals. The Committee on the Judiciary held a hearing on September 30, 1997 and she was reported out by a vote of 16 to 2 on March 5 of this year.

Seven years ago, in March 1991, it was my honor to recommend Sonia Sotomayor to serve on the Southern District Court of New York. President Bush placed her name in nomination shortly thereafter and she was sworn in on October 2, 1992.

The distinguished members of the Committee on the Judiciary were surely impressed with the background and accomplishments of this extraordinary woman. Sonia Sotomayor was raised in the projects of the South Bronx. Her father, Juan Luis, worked in a tool and die factory while her mother, Celina, worked as a nurse. Through discipline and hard work she was graduated summa cum laude from Princeton University in 1976, receiving the university's highest distinction, the M. Taylor Pyne Honor Prize. She went on to graduate from Yale Law School in 1979 where she served as editor of the Yale Law Journal.

After law school, Ms. Sotomayor joined the New York County District Attorney's office. After more than five years there she moved to the firm of Pavia & Harcourt, attaining the position of partner. She is a former member of the New York City Campaign Finance Board and the New York State Mortgage Agency. All of these achievements are detailed in Ms. Sotomayor's résumé which I ask, without objection, be incorporated into my remarks.

Her service on the Southern District Court has been exemplary. In 5½ years, having presided over 500 cases, she has been overturned only six times. Her decisions are scholarly, well-researched, and well-reasoned. She has presided over cases of enormous complexity with skill and confidence.

My colleagues will likely recall that it was Judge Sotomayor who put an end to the baseball strike in 1995. Her ruling in *Silverman* v. *Major League Baseball Player Relations Committee, Inc.*, 880 F. Supp. 246 (S.D.N.Y. 1995) was upheld by the very court she now seeks to join.

During the course of her confirmation hearing before the Judiciary Committee, some questions were introduced regarding Judge Sotomayor's position on mandatory sentencing and Federal sentencing guidelines. As of October 1997, in the 217 criminal cases over which she presided, she departed downward a total of 58 times. Forty-four of those departures were at the Government's specific request, because of the defendant's substantial assistance. Excluding such departures, the Judge has departed downward in only 6.5 percent of her criminal cases. The judge has upwardly departed in 6 of her 217 criminal cases, an average of 2.7 percent.

A recent New York Law Journal article reports on the 1996 sentencing practices of Federal district judges. Comparing Judge Sotomayor's sentencing record to these statistics, it is apparent that Judge Sotomayor is more conservative in sentencing than many of her colleagues on the Federal bench.