wanted to know if they had any data to see what was happening.

They did. They have the data from October, November and December of this fiscal year, the first quarter, compared to last year. It is really shocking what is happening because they do not have adequate funding to recoup money for taxpayers.

I am going on what the inspector general said in her letter. I just indicate to the Senator from Oregon, that was the only reason I had not raised it before, because I had no idea it was as bad as it is. That is why I sent the letter. Now is the time to get the money in to stop this bleeding of the Medicare money.

Lastly, I inquire of the Chair, the Senator from Oregon has stated that this is in violation of the Budget Act and it goes over the allocation. It is this Senator's understanding that the whole CR, the whole continuing resolution, is in violation of the Budget Act. I have a parliamentary inquiry: Is the underlying continuing resolution in violation of the Budget Act?

The PRESIDING OFFICER. The Chair will need some time to make that determination and will give an answer to the Senator in due course.

Mr. HARKIN. Might the Senator inquire as to how long? I do not want to tie this up.

In conversations with the Parliamentarian of the Senate earlier this afternoon, I asked the Parliamentarian that question: If, in fact, the CR was subject to a point of order and if it violated the Budget Act. I was told it was, unless I misunderstood the Parliamentarian.

The PRESIDING OFFICER. The Chair is prepared to rule on the bill. In its current form, it is in violation of the Budget Act.

Mr. HARKIN. I wonder how many Senators know that the underlying continuing resolution is, itself, in violation of the Budget Act. I do not intend to raise a point of order. I could, within my legitimate rights, raise a point of order against the entire continuing resolution. I do not want to do that.

I also do not want to be told that this amendment that I am offering, which by any accounting will save the taxpayers hundreds of millions of dollars, cannot be accepted because it is in violation of the Budget Act, when the entire continuing resolution is in violation of the Budget Act.

I do not see my distinguished chairman on the floor. Again, with all due respect, I do not know how one can argue that my amendment should not be adopted because it violates—and a point of order raised against it, when it truly saves the taxpayers a lot of money, but then go right ahead and vote for the continuing resolution which also is in violation of the Budget Act. I want the RECORD to show that.

Again, I am not here to throw a bomb or a handgrenade or to blow this thing up. If I was, I could raise a point of order against the continuing resolution and there would have to be 60 votes to pass it. Maybe there is, maybe there is not. That is not my object. My object is to try to save the taxpayers some money, to make sure that the Office of Inspector General is funded, not at any increased level, just at last year's level.

There is a bleeding going on every day, I tell my colleagues. There is a bleeding going on every day in Medicare. Millions of dollars are lost every day. It is the inspector general that is out there on the front lines stopping it and recouping real dollars for our taxpayers. We can close our eyes if we want. We can say it does not amount to a heck of a lot of money. As I pointed out, the inspector general said up to maybe $1 billion will be lost if they are not at least funded at last year's level. We are talking about $5 million to keep the Office of Inspector General going.

I say again, Mr. President, I am not here to disrupt, but I am here trying my level best, as I have for a long time, to cut at the waste, fraud, and abuse in Medicare. The main agent we have to do that is the inspector general's office. I do not cast any aspersions on what the House did. I do not accuse them of anything other than perhaps oversight. I cannot believe they would not accept this. I think it was simply an oversight.

Because of that, I believe if the Senate were to adopt this, send it back to the House—as I said, they are in session subject to the call of the Chair—I bet there would not be a House Member object to it. How could they possibly object to something like this? And then send it to the President and save our taxpayers some of their money.

I yield the floor.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDING THE TRADE ACT OF 1974 TO CLARIFY THE DEFINITIONS OF DOMESTIC INDUSTRY AND LIKE ARTICLES IN CERTAIN INVESTIGATIONS INVOLVING PERISHABLE AGRICULTURAL PRODUCTS

Mr. GRAHAM. Mr. President, earlier this afternoon on behalf of my colleague Senator MACK and myself, the Senate was asked to consider, by unanimous consent, S. 1463. It is my understanding that unanimous consent has now been granted.

Mr. President, I rise to urge the immediate adoption of S. 1463, a bill that advances fairness for American farmers in crisis.

The bill, which I introduced last December on behalf of myself and Senator MACK of Florida, would make it easier for seasonal industries, such as winter vegetable growers, to seek relief under section 202 of the Trade Act of 1974.

Sections 201–204 of the Trade Act of 1974 authorizes the President, after an investigation and determination by the International Trade Commission, to withdraw or modify concessions or impose duties for a limited period of time on imports of like or directly competitive articles.

Section 202(c)(6) defines ''domestic industry'' as the producers as a whole of the article or those producers whose collective production of the article constitutes a major portion of the total domestic industry, including flexibility to define the industry as a limited geographic area.

During early 1995, the domestic winter tomato industry sought relief for injury resulting from surges of imports of Mexican tomatoes. The International Trade Commission, viewing the domestic industry as nationwide and year-round, denied relief.

In its opinion, the ITC recognized that perishable agricultural products have limited marketability. Page I–12 of the opinion states:

> The perishable nature of fresh-market tomatoes precludes the interchangeability of tomatoes harvested and marketed at different times of the year. Given that a fresh-market mature-green or vine-ripe tomato harvested in any month would not be suitable for consumption after about three weeks, arguably a tomato harvested in one month could not be substituted for a tomato harvested a month later.

Nonetheless, the ITC determined that, under the statutory definition, the appropriate domestic industry included all growers and packers of fresh tomatoes during the entire calendar year.

This legislation is intended to facilitate a different result by the ITC in cases with facts similar to those presented in the case filed by the winter tomato growers. If this legislation is enacted, industries such as the winter tomato industry would be deemed to be a separate industry under the modified definition of a domestic industry.

Currently, seasonal growers may be considered to be part of an industry that grows, ships, and sells during an entirely different time during the year. For example, fresh tomato growers in California grow, harvest, and sell during the late spring, summer, and fall, while those in Florida do the same thing in the late fall, winter, and early spring. Quite literally, while one group is in business, the other is not. While the product may be the same, it is a fact that the market, the competition, and the trade involved are totally separate.

S. 1463 would modify the definition of domestic industry in section 202 cases involving perishable agricultural products. In those cases, the ITC would be authorized to define the industry to include only domestic producers who produce the product during a particular growing season if two things are proven.

First, the domestic producers must sell all or almost all of the production during that growing season. Under this requirement, however, sales of a perishable agricultural product during the weeks immediately following the end of the growing season would not disqualify a seasonal industry.

Second, during the growing season, other domestic producers of the article who produce in a different growing season must not supply, to any substantial degree, demand for the article. Again, this would not preclude the other industry from selling any produce during the growing season.

Instead, the purpose of these two limitations is to preclude arbitrary season cutoffs from meeting the standard. The scope of the modified definition is limited to situations where international producers compete directly with domestic producers of the same like product during the same growing season.

This does not mean that there cannot be any overlap between the partial-year growing season in which the domestic industry alleges injury and another growing season. Various factors such as weather conditions may cause one growing season to begin early or end late and yet not affect a separate growing season.

While this change will allow the ITC to conclude that a partial-year industry constitutes a domestic industry under section 202, I believe that it is consistent with the NAFTA and other international obligations.

This amendment, by itself, will not solve the myriad post-NAFTA challenges facing America's winter vegetable industry. Domestic winter growers are suffering from dramatic increases in imports of Mexican squash, eggplant, sweet corn, beans, bell peppers, tomatoes, and other vegetables. These crops are seasonal and perishable.

Without prompt legislative reform, the domestic winter vegetable industry will soon end its second post-NAFTA growing season with unfair rules and hampered ability to redress harm. In human terms, too many farm families have bankrupted, stopped production, and lost confidence in their Government to assure fairness.

In addition to S. 1463, we should enact and implement additional legislative and administrative measures to make NAFTA work as it was designed.

But today, we do have a chance to take a positive step toward fairness for American farmers. Let us not forfeit that chance as we contemplate adjournment until next month. On behalf of fundamental fairness for farm families, I urge you to support this bipartisan reform.

I would like at this time, therefore, to ask unanimous consent that the Finance Committee be discharged from further consideration of S. 1463, a bill to clarify the definitions of domestic industry and like articles in certain trade actions involving perishable agricultural products, that the Senate then proceed to its immediate consideration, that the bill be read three times, passed, and the motion to reconsider be laid upon the table; further, that any statements relating thereto be placed in the RECORD at the appropriate place as if read; provided further that the above occur without intervening action or debate.

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

The bill was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

S. 1463

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS OF DOMESTIC INDUSTRY AND LIKE OR DIRECTLY COMPETITIVE ARTICLES.

(a) DEFINITION OF DOMESTIC INDUSTRY.—Section 202(c)(4) of the Trade Act of 1974 (19 U.S.C. 2252(c)(4)) is amended—

(1) by striking ''and'' at the end of subparagraph (B),

(2) by striking the period at the end of subparagraph (C) and inserting ''; and'', and

(3) by adding at the end the following new subparagraph:

''(D) may, in the case of one or more domestic producers who produce a like or directly competitive perishable agricultural product during a particular growing season, limit the domestic industry to those producers if the producers sell all or almost all of their production of the article in that growing season and the demand for the article is not supplied, to any substantial degree, by other domestic producers of the article who produce the article in a different growing season.''.

(b) DEFINITION OF LIKE OR DIRECTLY COMPETITIVE ARTICLE; CONSIDERATION OF IMPORTED ARTICLE.—Section 202(c)(6) of such Act is amended by adding at the end the following new subparagraphs:

''(E) In the case of a perishable agricultural product produced by a domestic industry described in paragraph (4)(D), the term 'like or directly competitive article' means only the articles produced by the industry during the applicable growing season.

''(F) In the case of a perishable agricultural product, the Commission may limit its consideration to imported articles that are entered, or withdrawn from warehouse for consumption, during the same growing season as the like or directly competitive product.''.

(c) RELIEF LIMITED TO CERTAIN IMPORTED PRODUCTS.—Section 202(d)(4) of the Trade Act of 1974 (19 U.S.C. 2252(d)(4) is amended by adding at the end the following new subparagraph:

''(E) The Commission may, in the case of a perishable agricultural product, limit provisional relief to imported articles that are entered, or withdrawn from warehouse for consumption, during the same growing season as the like or directly competitive product.''.

(d) CONFORMING AMENDMENT.—Section 202(d)(5) of the Trade Act of 1974 (19 U.S.C. 2252(d)(5)) is amended in the matter preceding subparagraph (A), by striking ''subsection'' and inserting ''section''.

(e) EFFECTIVE DATE.—The amendments made by this Act apply with respect to investigations initiated pursuant to section 202(b) of the Trade Act of 1974 (19 U.S.C. 2252(d)) and requests for provisional relief initiated pursuant to section 202(d) of such Act (19 U.S.C. 2252(d)) after the date of the enactment of this Act.

BALANCED BUDGET DOWNPAYMENT ACT, I

The Senate continued with the consideration of the bill.

Mr. LAUTENBERG. Mr. President, I ask the Chair if there is an opportunity to make a statement without interrupting the discussion on the amendment of the Senator from Iowa?

Mr. President, clearly, since there is a moment of time, I just wanted to make a point about an amendment that I was going to offer. I have decided not to do so, not because I do not think it is warranted and justified and ought to be presented, but it is very obvious to me, after having seen the vote that was taken on the amendment offered by the Senator from Massachusetts to increase education funding substantially so we can meet our needs for our young people and to provide the kind of education that is essential if the United States is going to maintain or improve its leadership in global affairs, economics, science, et cetera—I saw what happened with that vote. We did not get 60 votes in favor of it, whatever the technicality was, to waive the budget, et cetera.

So, when I look at an amendment I was going to offer on environmental protection, it seemed to me that the handwriting was on the wall or that the toxics were in the ground or in the air, and that we were not going to get anywhere with a vote.

Mr. President, the American people clearly want to see an end to the partisan bickering, and it seems we are making some progress in that direction.

At the same time, Mr. President, I do want to register my concern about the stop-start way we are now financing much of the Government.

Continuing resolutions and shutdowns are no way to run a Government. The resulting uncertainty and chaos has a serious impact on States and local governments, on Federal employees, and on Americans throughout the country.

I also want to take a few moments to discuss the impact of the current CR on an area of particular concern to me: the environment.

Mr. President, I had planned to offer an amendment to protect environmental programs during the life of this short-term spending measure. My amendment would have frozen EPA's funding at last year's levels, as opposed to the roughly 14-percent cut called for in this bill.

However, I recognize that my amendment would be subject to the same point of order that was raised on Senator KENNEDY's amendment. As with his amendment, I am confident this amendment would receive a majority of votes, but not enough to overcome the parliamentary objection.

I also am concerned that, if my amendment were adopted in the Senate, the House leadership would refuse to put such a CR up to a vote, and the result would be another Government