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STAFF DATA ON THE TRADE REFORM ACT

RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

(Title II of House bill)

COMMITTEE ON FINANCE
UNITED STATES SENATE

RUSSELL B. LONG, *Chairman*

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Title II. Relief From Injury Caused by Import Competition

IMPORT RELIEF (CHAPTER 1)

House Bill.—The House bill would make major changes in the import relief measures provided in the Trade Expansion Act of 1962. Under the TEA, increased imports have to be in major part the result of trade agreement concessions. Under the provided Trade Reform Act, no link to concessions is required. Furthermore, under the proposed bill increased imports would have to be a substantial cause of serious injury or the threat thereof ("substantial cause" is defined to mean a cause which is "important" and not less than any other cause) and no longer *the major cause* (generally assumed to mean a cause greater than all other causes combined) of such injury, as currently required by the Trade Expansion Act.

1. Investigation by Tariff Commission (Section 201)

The House bill parallels existing language with respect to the initiation of Tariff Commission investigations. The Tariff Commission would undertake such investigations following receipt of import relief petitions by industry and labor groups representative of an industry, or requests by the Committee on Finance or the Ways and Means Committees as well as the President, the Special Representative for Trade Negotiations (new provision) or the Tariff Commission itself. Specific economic factors would be taken into account by the Tariff Commission in making its determination as to whether increased imports are a substantial cause of serious injury or the threat of serious injury to domestic industries producing like or directly competitive articles. With respect to serious injury these factors would include:

(a) significant idling of productive facilities;

(b) inability of a significant number of firms to operate at a reasonable level of profit; *and*

(c) significant unemployment or underemployment within the industry.

With respect to the *threat* of serious injury the Commission would consider whether there has been:

(a) a decline in sales;

(b) a higher and growing inventory; *and*

(c) a downward trend in production, profits, wages, or employment in the domestic industry conceived.

With respect to substantial cause, the Tariff Commission would take into account whether there has been:

(a) an increase in imports (either absolute or relative to domestic production); *and*

(b) a decline in the proportion of the domestic market supplied by domestic producers.

New provisions in the "escape clause" section of the bill would require the Tariff Commission to investigate and report on efforts by firms and workers in the industry to compete more effectively with imports and to determine whether or not increased imports may be attributable to circumstances under the Antidumping Act of 1921, the countervailing duty law, or under other remedial provisions dealing with unfair trade practices. In the latter case the appropriate agencies which administered the relevant provisions would be notified. If the Tariff Commission does find injury, it shall include in its report the amount of duty increase on imposition of other import restrictions necessary to prevent or remedy such injury.

2. Presidential Action After Investigation (Section 202)

After receiving an affirmative finding from the Tariff Commission, the President (1) *must* consider the extent to which adjustment assistance has been or could be made available and (2) *may* decide to provide import relief. He would be required to make this decision within 60 days after receiving the Tariff Commission report. In deciding whether or not to provide import relief, the President would be required to take into consideration many factors, including the possible effectiveness of import relief as a means to promote adjustment, the effect of import relief on consumers, the impact of such relief on industries which might be affected as a result of international obligations to provide compensation, and the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

Once the President determines to provide import relief, he would be required to proclaim such relief within 15 days after the date of his determination. The nature of the relief would be at his discretion. If within that period the President announces his intention to negotiate one or more orderly marketing agreements, the taking effect of any other import relief measures would be withheld for a period of 180 days or until the entering into effect of such orderly marketing agreement. While such agreement is in effect, the other proclaimed import relief measures may remain in a suspended status.

Unlike current law, the Congress would have no authority to override a Presidential determination *not* to provide import relief in the face of an affirmative determination by the Tariff Commission. In such cases, the present bill would require the President only to submit a report to both Houses of Congress stating the conclusions on which his decision was based.

3. Import Relief (Section 203)

The bill would authorize the President to impose one or more of the following import relief measures in a preferred order of preference as follows:

(a) duty increases;
(b) tariff-rate quotas;
(c) quantitative restrictions; and
(d) orderly marketing agreements.

The authority to impose duty increases would include the authority to suspend items 806.30 and 807.00 of the Tariff Schedules of the United States. The President could also exclude articles from receiving preferential treatment granted under Title V of the bill to imports of less-developed countries. These latter two measures could only be used to provide import relief when the Tariff Commission specifically recommends such action.

Whenever the President selected a method or methods of import relief, he would be required to report his action to the Congress. The report would include a statement as to why he selected a particular method of import relief rather than adjustment assistance and rather than each method of import relief which ranked higher in preference.

Duty increases under this section could be imposed up to 50% ad valorem above the existing rate, a higher ceiling than under existing law. Quotas and orderly marketing agreements would have to allow the importation of a quantity or value of the article not less than that imported into the United States during the most recent period which the President determines is representative of imports of such article.

4. Congressional Veto of Quotas (Section 204)

The imposition of orderly marketing agreements and quantitative restrictions (quotas) would be made subject to the Congressional veto procedure. Thus, either measure would cease to be effective, if within 90 days from the submission of the proclamation of such measure to the Congress, either House adopts a resolution of disapproval. No such procedure exists if the President decides to do nothing after a Tariff Commission finding of serious injury.

5. Limits on Import Relief

The bill would provide a 5-year time limit on the duration of such relief on the theory that import relief should be a temporary measure aimed at providing time to adjust to increased imports. Import relief measures shall normally terminate after 5 years, but could be extended for one 2-year period. Under present law, import relief measures remain in effect for 4 years, but may be re-extended for any number of additional 4-year periods. Provision would also be made for the phasing down of import relief measures which are initially proclaimed for a period longer than 3 years.

Staff Suggestions.—The main area where the staff feels the House bill is inadequate deals with Presidential actions after the investigations. Under Section 202 of the House bill, even if the Tariff Commission voted 6 to 0 that there was serious injury, the President would still have the discretion to do absolutely nothing about it. The staff would recommend that in any case where the Tariff Commission finds serious injury, the President be required to provide some form of import relief. The staff also feels that it is a mistake to establish a hierarchy of preferred kinds of relief since in each individual case the least preferred method of relief under Section 203 of the House bill may actually be the most preferred method to provide real relief from injury. The staff recommends deleting the order of preference in Section 203.

The Committee may wish to establish the principle that the import relief provided by the President should be commensurate with the finding of injury by the Tariff Commission, and the Commission's recommendations for relief. The staff is not suggesting that the Congress mandate exactly what kind of relief should be provided in individual cases involving serious injury. The Committee could give the President discretionary authority to provide a range of relief options which he deems is consistent with the injury findings and recommendations of the Commission.

Since it may not be feasible to "force" the President to do something he does not want to do, the Committee may wish to give the Congress an override (Congressional veto) if the President does nothing. For example, Congress, by a majority vote of both Houses, could override a failure of the President to provide any import relief, within 90 days after the President sends a report to the Congress stating his reasons for not providing the relief recommended by the Tariff Commission. If the resolution approving such relief was approved by both Houses, the form of relief recommended by a majority of the Commission would go automatically into effect within 30 days. However, it does not seem appropriate to provide a veto procedure in the case of an action by the President to grant relief under the statute. Once the

Congress determines that an industry should petition an independent body to find out whether there is injury, it does not seem proper for the Congress to say that even though that independent body has found injury, we the Congress may reserve the right to determine that relief in a particular case is not justified. Thus the staff recommends deleting Section 204 of the House bill.

Geographic Segmentation

During the Committee hearings it was pointed out that given the continental character of our economy and the importance of transportation costs in many instances, the impact of imports can be serious in certain regions without the industry "as a whole" necessarily being seriously injured. Imports of steel into the West coast from Japan are an example. The staff suggests an amendment which would give the Tariff Commission discretion, where the circumstances warranted it, to make a determination of injury to a major geographic segment of the industry. The Commission has used this geographic segmentation principle in dumping cases. The principle is the same for the escape clause.

Discretionary MFN

If the Committee adopts the geographic segmentation principle, it may wish to consider giving the President discretionary authority to impose import relief measures only on those imports from the major supplying country in the major geographic area without the necessity for imposing higher duties on all imports irrespective of this country of origin. Thus, if specific imports from one identifiable country are causing the injury to the industry in the major geographic area, only those imports from that country would be subject to the provisions of import relief by the President without the necessity of affecting all other imports.

STAFF NOTE.—Although the GATT appears to require that escape clause actions should be subject to the MFN provision, there is now serious discussion in the GATT of the need to negotiate a multilateral safeguard code as part of the proposed trade negotiations. Discussions to date have indicated the desirability of permitting non-MFN application of import relief under such a code. This proposal would conform U.S. law to this approach and make it possible for the President, at his discretion, to apply import relief on a non-MFN basis as the multilateral safeguard code is expected to provide. In discussing his views on the need for trade legislation, Mr. Mills, Chairman of the Committee on Ways and Means, pointed out on March 21, 1973:

> Safeguard measures by the United States normally have been employed on a most-favored-nation basis. Flexibility should be provided to apply them against specific countries where only one or a few countries are a source of the problem. Such an approach is employed by every other major trading nation.

Orderly Marketing

In the proposed 1970 Trade Act, the Committee provided that the President may negotiate orderly marketing agreements at any time after an affirmative injury determination. The Committee provided that such agreements may replace, in whole or in part, tariff adjustment actions. The provision was viewed as a means for the President to avoid imposing mandatory quotas, if a suitable voluntary agreement was reached. This kind of provision would be particularly useful if the injury to an industry were mainly the result of imports from a particular country.

Section 204 of the Agricultural Act of 1956 (as amended) permits the President to negotiate orderly marketing agreements with foreign countries on "any agricultural commodity or product manufactured therefrom or textiles or textile products". In addition, the President is given authority to enforce such a multilateral agreement by imposing restrictions on the same articles from countries not party to such an agreement.

The Committee may wish to give similar authority to the President on any article in which the Tariff Commission has found injury or threat of injury under the escape clause statute. On such orderly marketing agreements as are negotiated, the President could be required to issue an annual report to the Congress, as he is required to do under the House bill, including in that report the impact of such agreement on employment, production, the consumer and on our trade relations.

International Safeguard Mechanism

The Committee may also wish to direct the President to negotiate an internationally agreed-upon procedure, modifying article XIX of GATT, to permit countries to provide temporary import relief, without payment of compensation or retaliation, if certain procedures were followed.

These procedures could include:

1. Internal public hearings in which interested parties (both domestic and foreign) could participate and which result in a public determination of whether serious injury exists;
2. Modification to the GATT of any decision to take remedial action; and
3. Multilateral consultations in a specially created group of supplying countries on the remedial actions of the importing country, including plans for adjustment for assistance wherever appropriate.

Such a procedure and direction would make the negotiation of such a safeguard system an important part of the negotiations and would help remove the *irritation* caused by abrupt *multilateral* action to provide relief.

Time Limits

In lieu of the House bill provision providing declining relief over a 5-year period, renewable for one 2-year period, the Committee may wish to provide relief for one 5-year period, renewable for one 5-year period. The renewal of relief could be conditioned on a Tariff Commission finding (after a petition for renewal has been made by the industry) that:

(a) the continued relief is needed to assure growth and employment in the industry; and

(b) that during the initial period of relief the industry has taken reasonable self-help steps to maintain or improve its competive position in the market through investment in modern machinery, research and development, and such other measures as are necessary to improve productivity.

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