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10

STAFF DATA ON THE TRADE REFORM ACT

ADDITIONAL ISSUES FOR COMMITTEE CONSIDERATION

COMMITTEE ON FINANCE
UNITED STATES SENATE

RUSSELL B. LONG, *Chairman*

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I. REMAINING ISSUES TO BE CONSIDERED BY THE COMMITTEE

A. Statement of Purpose

Issue.—Earlier in its consideration of the House bill, the Committee decided to postpone any decisions on the statement of purposes of the Trade Reform Act until the Committee had completed its decisions on the House bill. The Committee has now completed many of its basic decisions on the bill. It is therefore appropriate to reconsider the question of whether to adopt a limited number of general purposes related to the general goals as in the House bill or to adopt a greater number of detailed purposes which parallel the structure of the trade bill as amended by the Committee.

Staff Recommendation.—The staff recommends that the Committee adopt a detailed statement of purposes reflecting the structure of the Committee bill.

B. Positive Congressional Approval Procedure for NTB Agreements (Talmadge Amendment)

Issue.—The Committee has agreed that nontariff barrier trade agreements negotiated pursuant to section 102 of the bill must be submitted to Congress for its positive approval before such agreements will enter into effect with respect to the United States. The Committee has also agreed to establish a procedure which would expedite the consideration of each agreement submitted to the Congress and would establish time limits within which such agreement would have to be acted on by both houses of Congress. However, there are a number of loose ends which should be tied up.

1. Should Any Trade Agreement Which Changes U.S. Laws Be Subject to Amendment?

The Administration argues that neither House should have the authority to amend the trade agreement package submitted to the Congress since it would require complicated, if not impossible renegotiation of the agreement with all of the other foreign countries which had participated in its negotiation.

On the other hand, if Congress is to effectively carry out its constitutional mandate to approve and adopt legislation affecting U.S. trade and other laws, it should have the power to amend those parts of

an agreement or the suggested implementing legislation with which it disagrees. In fact, it may facilitate Congressional approval of agreements negotiated under section 102, if Congress has the ability to amend those portions of an agreement or suggested legislation with which it disagrees. Otherwise, the entire trade agreement would have to be rejected.

Note.—In the long run, the Congressional approval procedure will only work if the Congress is kept fully informed by the Administration of the status and direction of the trade negotiations and if the Administration is sufficiently responsive to the views and opinions of Congress throughout the period of trade negotiations. Such coordination should reduce the need to amend trade agreement packages submitted to Congress.

2. Should There Be Any Direction To Provide Distinct Separate Packages for Approval Rather Than Allowing a Conglomerate Package?

Issue.—As the House bill is currently drafted, the Administration has full discretion to combine trade agreements affecting various sectors or nontariff barriers for submission to the Congress in any manner it chooses. Organizations in certain sectors of the economy have expressed a fear that Congress might be compelled to accept an agreement adversely affecting one sector if it were combined in one large package with several other agreements which were of general economic benefit to the United States. Thus, Congress might often have to choose between accepting or rejecting one large agreement with both good and bad features. It would be an all or nothing choice.

Staff Recommendations.—The staff suggests that the Committee report indicate that the Congress intends there be separate and distinct packages, wherever feasible, so that each may be considered on its merits.

3. Should the Time for a Conference Come Out of Either House's Time, or Should Additional Time be Provided, and Could the Executive Resubmit Agreements Which Are Not Acted Upon Within the Given Time Period?

Issue.—The Committee agreed that both Houses of Congress would be given 90 days to consider non-revenue trade agreements and 120 days (60 days for each House) in the case of revenue-affecting trade agreements which must originate in the House of Representatives. However, the Committee did not take into consideration the time which would be involved to hold conferences on any particular trade agreement package which had been approved in a different form in each House. (The authority to amend such trade agreement packages could lead to the approval of different packages in each House.)

Moreover, the Committee did not specifically consider the possibility of reviving a trade agreement if either House did not finish consideration of the agreement within the required 60 or 90-day period.

Staff Recommendation.—The staff recommends that the positive Congressional veto procedure provide for an additional 30 days for consideration in conference if required. The staff also suggests that the Administration would be free to resubmit any trade agreement for consideration of either House if one or both Houses fail to complete its consideration of the trade agreement within the required time period.

C. Sectorial Issue

Issue.—The Committee instructed the staff to work with the Administration as well as with representatives from the private sectors in order to come up with language relating to the negotiation of NTB agreements on a sectorial basis which would satisfy all parties concerned. Proposal No. 1 was agreed upon by the Special Trade Representative, representatives of the industrial sector and the staff of the Agriculture Department. Proposal No. 2 is Secretary Butz' version supported by the Farm Bureau.

SECTOR AMENDMENT—PROPOSAL NO. 1

SEC. 104(a). A principal United States negotiating objective under sections 101 and 102 shall be to obtain, to the maximum extent feasible, with respect to each product sector of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in the United States markets to the importation of like or similar products, taking into account all barriers (including tariffs) to and other distortions of international trade affecting that sector.

(b) As a means of achieving the negotiating objective set forth in paragraph (a), to the extent consistent with the objective of maximizing overall economic benefit to the United States (through maintaining and enlarging foreign markets for products of U.S. agriculture, industry, mining and commerce, through the development of fair and equitable market opportunities, and through open and nondiscriminatory world trade), negotiations shall, to the extent feasible, be conducted on the basis of each product sector of manufacturing.

(c) For purposes of this section and of section 135, the Special Representative for Trade Negotiations together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade Negotiations established by section 135 and after consultation with interested private organizations, identify appropriate product sectors of manufacturing.

(d) Whenever the President determines that competitive opportunities in one or more product sectors will be significantly affected by a trade agreement concluded under sections 101 and 102 he shall submit to the Congress with each such agreement an analysis of the extent to which the negotiating objective set forth in paragraph (a) is achieved by such agreement in each such product sector or product sectors.

(e) As a means of achieving the negotiating objectives set forth in paragraph (a), negotiations which affect agricultural products shall be directed at obtaining more open and equitable market access for agricultural products and eliminating or reducing the use of devices which distort trade in such products.

(f) The use of the sector negotiating technique shall not prevent the coordinated reduction or elimination of barriers to trade in agriculture and industry.

The proposal above was rejected by Agriculture Secretary Butz, who felt that the language in paragraphs (e) and (f) was not strong enough to prevent the application of the sector negotiation provision to agriculture and to assure that agriculture could be negotiated in combination with the industrial sector. Secretary Butz has suggested an alternative sector proposal. Paragraphs (a) and (b) of the proposal below would be substituted for paragraphs (e) and (f) in proposal No. 1 above, and placed at the beginning of the Sector amendment. The Butz proposal would not make any major changes in the remainder of the proposal set out above. The two substitute paragraphs in the Butz proposal read as follows:

SECTOR AMENDMENT—PROPOSAL NO. 2

(Overall Negotiating Objective)

(a) The overall United States negotiating objective under sections 101 and 102 shall be to obtain more open and equitable market access and the elimination and reduction of devices which distort trade.

(b) As a means of achieving the negotiating objective set forth in paragraph (a), to the maximum extent feasible, negotiations shall be conducted on a basis which leads to an integrated elimination and reduction of agricultural and industrial trade barriers and distortions.

Paragraphs (c) through (f) of Proposal No. 2 are the same as paragraphs (a) through (d) in Proposal No. 1, with one minor change.

Staff Recommendation.—It would appear that the Committee must decide: (a) whether or not to include any sector provision in the trade bill and, (b) if so, which of the two proposals, or variations thereon it wishes to adopt.

D. Harmonization of Non-Tariff Barriers

Issue.—Section 102 of the House bill as currently drafted would authorize the President to enter into trade agreements with foreign countries providing for the reduction or elimination of non-tariff barriers or other distortions of trade. However, in the case of certain non-tariff barriers, effective negotiations would require the harmonization, rather than the reduction or elimination of such barriers to trade. This would be true, for example, in negotiating an agreement to establish a common international customs form. This authority could also be used in a more significant sense by the President to *increase* the restrictive effect of a U.S. NTB to the level of the restrictive effect of a similar NTB imposed by one or more other countries.

Staff Recommendation.—The staff recommends that Section 102 be amended to provide for the harmonization, as well as for the reduction or elimination of non-tariff barriers in trade.

E. Countervailing Duties—Section 331

Issue.—The tentative decision of the Senate Finance Committee with respect to modification of the countervailing duty law.

The Committee discussed the following:

(a) Deletion of the discretion in the House bill to avoid countervailing where quantitative restrictions are an adequate substitute for countervailing duties.

(b) Deletion of the provisions of the TRA, as passed by the House, with respect to full discretion to apply countervailing duties during the negotiations.

(c) The Treasury Department was directed to reach and publish within six months after the filing of a petition a tentative decision as to whether a bounty or grant exists.

(d) Treasury was directed, within 12 months after the filing of a petition, to issue a final decision on whether a bounty or grant exists.

(e) Upon an affirmative preliminary decision under (c) above, the Treasury Department could enter into negotiations on the reduction or elimination of the adverse effect on the U.S. of the bounty or grant.

(f) If Treasury makes a final determination that there exists a bounty or grant, *but*, (1) as a result of negotiations adequate steps are taken to reduce or eliminate the adverse effect of the bounty or grant in the U.S., and (2) there is reasonable expectation that agreements will be entered into under Section 102 to reduce or eliminate foreign trade barriers, the successful negotiation of which would be seriously jeopardized by the imposition of a countervailing duty, the imposition of the countervailing duty could be suspended during the period of such negotiations.

(g) The suspension must be ended if the conditions in (f) above do not continue, and may be ended at any time.

(h) The suspension is subject to veto by either House of Congress by a majority vote, resulting in the mandatory imposition of countervailing duties.

(i) The determination by the Secretary of Treasury that no bounty or grant exists is subject to judicial review.

Staff Recommendation.—The Committee attempted to adopt a tighter countervailing provision but still left a 5 year discretionary period, as in the House bill, with the requirement that the "adverse effect" of the subsidy be eliminated. If this provision reaches conference, we will be back to 5 years of discretion in the final bill. The staff suggests that subsection (e) on p. 123 of the bill be deleted and that the injury test (b) on p. 121 be extended to all imports, dutiable and nondutiable.

F. Congressional Approval Procedures

Issue.—The Committee has agreed to provide the Congress with the authority to override certain Presidential actions. Examples of this Congressional override procedure include:

1. Decisions by the President to provide import relief other than that recommended by the Tariff Commission (two House approval of resolution; no procedures specified)
2. Decisions by the President to retaliate against foreign countries discriminating against U.S. commerce on a MFN basis rather than against the specific offending country (two House approval; no procedures specified)
3. Decisions by the President in non-patent cases under Section 337 (unfair import practices) to impose a measure other than that recommended by the Tariff Commission (two House approval; committee must report favorably)

The Committee has agreed to provide for positive Congressional approval of non-tariff barrier trade agreements negotiated under Title I of the bill as well as of bilateral commercial agreements with Communist countries under Title IV of the bill. (The Committee may wish to conform the latter provision to the language of section 402.)

In connection with both the Congressional override and approval procedures, the Committee should consider: (1) whether there should be procedural rules under the veto and positive approval approaches which would guarantee consideration of the issue (Such procedures would include, for example, Committee consideration of a resolution, discharge petitions, time frames, rules on germaneness or amendments) and (2) whether, except for the implementation of nontariff barrier

agreements requiring positive approval, the Committee wishes a one House veto, as in the Jackson-Vanik amendment or a two House veto.

Staff Recommendations.—The staff suggests that (1) there should be procedural rules on all veto methods and (2) that the Committee determine whether it wishes a one House or two House override on all matters.

G. Market Disruption—Poland and Yugoslavia

Issue.—In order to protect the U.S. economy from disruptive imports from Communist countries, the Committee agreed to amend the market disruption provision in Title IV of the House bill to provide liberalized criteria, consultation procedures, and a petition procedure. The Committee agreed to adopt this approach as an alternative to certain amendments introduced or supported by Senators Curtis, Talmadge and Fannin which would have provided relief for U.S. industries injured by disruptive imports from Communist countries within the context of the Antidumping Act. These latter bills would have applied to Poland and Yugoslavia, which currently receive MFN treatment, as well as to all of the other Communist countries which do not currently receive MFN treatment. It is clear, therefore, that the Committee wished to apply the liberalized market disruption provisions in Title IV of the bill to all Communist countries, whether or not they currently receive MFN. However, Title IV of the bill as currently drafted does not apply to countries now currently receiving MFN treatment, i.e., Poland and Yugoslavia.

Staff Recommendations.—The staff recommends that Section 405 be amended to apply to all Communist countries whether or not they are currently receiving MFN treatment.

II. MINOR AND TECHNICAL ISSUES FOR CONSIDERATION BY THE COMMITTEE (STR AMENDMENTS)

Title I—Negotiating and Other Authority

Section 102.—Nontariff Barriers to and Other Distortions of Trade

A. SUBSECTIONS 102 (a) AND (b)—FOREIGN SUBSIDIES HARMONIZATION AND IMPOSITION OF FUTURE NTB's

Problem

(a) Section 102(b) as currently drafted focuses on the reduction or elimination of barriers which restrict the foreign trade of the United States. But the section is also designed to authorize the conclusion of an agreement on subsidies. Subsidies abroad affect trade within the United States as well as our exports. The proposed amendment would

clarify the coverage by this section of subsidies by referring to the reduction of trade barriers which restrict the economic growth of the U.S.

(b) In the tariff area, the absence of a binding agreement preventing a country from increasing a rate of duty is clearly a barrier to trade even if the country does not currently impose any duty. The country would be free at any time to increase its rate of duty to a prohibitive level. This acts as a barrier to trade. Similarly in the nontariff area, the absence of any obligation by a country to refrain from imposing a nontariff barrier can act as a barrier to trade. Thus it is important that the nontariff barrier authority in the trade bill clearly extend to agreements binding the parties to refrain from the use of nontariff barriers of particular types in cases where they do not currently impose such barriers.

Proposal

(a) To include in those NTBs which may be subject to the authority of Section 102 those which inhibit the economic growth of the U.S., e.g. foreign subsidies.

(b) To provide explicitly that section 102 includes authority to enter into agreements to refrain from the imposition of barriers to or other distortions of trade in cases where such barriers are not currently imposed.

B. NEW SUBSECTION—NON-MFN APPLICATION

Problem

Many nontariff barrier agreements are not by their nature capable of being applied to all countries. For example, an agreement which provided that health inspections of animals would not be required at the border given an adequate foreign inspection pursuant to internationally agreed rules, might apply only to countries able to meet the agreed international standard; an agreement on subsidies might provide for stricter rules for developed countries than less developed countries. In such cases the sanctions for violating the agreement would be applied solely to signatory countries.

In order to induce other countries to sign NTB agreements, it will often be necessary in this new round of negotiations to apply the benefits of an NTB agreement only to signatories. Currently, for example, the principle subsidies obligation of the GATT is adhered to by only 17 countries, but the obligation not to subsidize under that provision is extended by signatories to all GATT members. There is little incentive for other countries to become signatories if they can receive all the benefits without incuring any of the obligations, merely by failing to adhere to the obligation themselves.

Proposal

To provide expressly that an NTB agreement could be entered into on other than an MFN basis in order to insure that a foreign country which receives benefits under a trade agreement entered into under section 102 is subject to the obligations imposed by such agreement.

Section 104.—Staging

Problem

Under TRA section 104, staging is tolled during any period in which a tariff reduction is not in effect. In prior law this was used to prevent an accumulation of stages during a period when an escape clause action was in effect so that upon the termination of that action there was not a sharp decrease in the tariff. This is still a useful provision. However, this bill includes tariff reduction authorities, e.g., the compensation authority. It would not be useful to require the interruption of staging of the tariff reductions on an item during the period in which the duty has already been temporarily reduced under section 124. For these items, the staging should be deemed to have continued uninterrupted without reference to the fact that there might have been a temporary reduction. This same reasoning applies to items whose duty is suspended by Act of Congress.

Proposal

To provide that tariff reductions are not tolled during a period when a particular stage is not in effect due to a temporary reduction in the rate due to proper administrative action or Act of Congress.

Section 122.—Balance-of-Payments Authority

Problem

Trade restricting measures under section 122 are required to be taken on a broad product basis, and not just with respect to a particular item. This requirement does not apply to trade liberalizing measures under section 122.

This amendment is designed to assure that import liberalizing measures taken when the United States is in a surplus position are also designed for a general impact on the trade account rather than to change import barriers on individual items selectively. This requirement is symmetrical with the requirement on import restricting actions contained in section 102(d).

Proposal

To provide that surplus actions be of broad product coverage.

Section 124.—Compensation Authority

Problem

Section 124 does not take into account the problem of the staging of concessions. After a major round of trade negotiations, most tariffs will be in the process of being reduced in stages. Compensation which

is paid in the form of a reduction of an intermediate stage would not necessarily be reflected in subsequent stages unless the above amendment is made. The rounding authority is identical to that contained in section 103 and is designed to avoid encumbering the Tariff Schedules with fractional rates.

Proposal

To clarify the application of the compensation authority where the article upon which a new concession is to be granted has been subject to a duty reduction under Sec. 101 which is in the process of being staged; and to provide authority to round tariff rates where this would simplify computations.

Section 125.—Two Year Residual Authority to Negotiate Duties

Problem

This amendment, which relates to the effect of this authority on staging, cures the same problem that was present in section 124. This amendment makes it possible to reflect the concession granted under this section in full in the final concession rate imposed after the authority of Sec. 101 and this section have been utilized, within, however, the overall limits of section 101. The amendment also grants rounding authority to simplify computation. There is no staging requirement in Sec. 124 or Sec. 125 because of the small amount of duty reductions that are allowed under these two sections.

Proposal

To clarify the relationship between the application of the residual negotiation authority and the staged reduction of rates under section 102, and to permit rounding of tariff rates where this would simplify computations. This amendment is identical to that proposed in connection with section 124.

Section 131.—Tariff Commission Advice

Problem

Six months is required for the Tariff Commission to respond with respect to the lengthy list of articles provided to it with respect to the typical Sec. 101 agreement. However, Sec. 124 contemplates agreements having a very limited coverage. There is no need for a 6-month period before advice can be rendered. Ninety days would be more appropriate.

Proposal

To reduce from six months to 90 days the time within which the Tariff Commission must give advice to the President with respect to items subject to compensation agreements.

Title II—Relief From Injury Caused by Import Competition

Section 201.—Investigation by International Trade Commission

Problem

It makes little sense to require the Commission to examine entire multi-product firms in order to determine whether they are being injured by imports of articles competitive with only one product line handled by firms in the industry. Accordingly, the product segmentation provision in section 201(b) (3) should be made mandatory, except where not practicable because of accounting or similar difficulties.

Proposal

To require the International Trade Commission to focus on the particular product line of an industry when making its investigation as to whether increased imports of that product were causing injury to that industry.

Section 203.—Import Relief

Problem

Upon the adoption of the Trade Reform Act, outstanding import relief actions could not be extended either under the Trade Expansion Act or the Trade Reform Act. This is true despite the fact that both permit the extension of import relief actions proclaimed pursuant to their own provisions. Thus, without the suggested amendment, industries benefitting from current import relief would have to petition for new relief following the expiration of their current relief. This would require a showing of injury caused by increased imports. However, where imports have been restricted by an outstanding import relief action, this showing could be difficult if not impossible to establish. Thus, Section 203 should be amended to permit the extension of current import relief actions under the TRA, subject to the criteria and limitations contained in the TRA.

Proposal

To permit the extension of import relief actions in effect on the date of enactment of the Trade Reform Act under the provisions of the Trade Reform Act.

Title III—Unfair Trade Practices

Section 341—Amendments to Section 337 of the Tariff Act of 1930

Problem

The Committee has agreed that all cases pending under section 337 be completed by the Tariff Commission within 1 year after the date of enactment of this bill. (This time period could be extended by 180 days in the case of complicated new cases under section 337.) This

means that the Commission would have very little time to develop the new regulations and procedures to be applied to cases under section 337, as amended by the Committee.

Proposal

To provide the Commission with an additional 90 days to adopt rules and procedures to apply to all section 337 cases whether pending at the date of enactment or initiated after that date.

III. PRINTED AMENDMENTS TO H.R. 10710 NOT OTHERWISE CONSIDERED

AMENDMENT NO. 1203—SENATOR BENTSEN—APRIL 23, 1974—TITLE VI

Import Information.—This proposal would amend Title VI of the trade bill to require the Secretary of Commerce to determine whenever commodities and goods are in short supply. Following such determination the Secretary would investigate potential foreign sources of supply and make the results of any investigation available to the public. The President would be authorized to make an agreement with appropriate international organizations and foreign governments to provide the Secretary of Commerce with continuous supply of such information.

AMENDMENTS NOS. 1389 AND 1403 (IDENTICAL)—SENATOR MONDALE—JUNE 5, 1974 AND JUNE 6, 1974—TITLE VI

Elimination of Foreign Tax Credits to Firms Operating in Namibia.—The proposals by Senator Mondale would deny foreign tax credits to American firms operating in territories deemed by the International Court of Justice to be under illegal occcupation, if such determination had been accepted by the United States Government. Accordingly, the amendments would have the effect of eliminating foreign tax credits for American firms operating in Namibia and paying taxes to the South African Government.

AMENDMENT NO. 1761—SENATOR HARTKE—JULY 31, 1974—TITLE VI

Economic Community of North America.—Senator Hartke's amendment would add a new section to Title VI of the bill declaring the sense of the Congress that the United States should enter into an agreement with other North American countries which would guarantee continued stability to each country's economy. In order to promote such economic stability, the President would be directed to enter into negotiations aimed at establishing an Economic Community of North America.

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