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STAFF DATA ON THE TRADE REFORM ACT

DELEGATION OF OTHER AUTHORITIES

(Chapter 2 of Title I
Sections 121–128 of House bill)

COMMITTEE ON FINANCE
UNITED STATES SENATE

RUSSELL B. LONG, *Chairman*

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GATT REFORM (SECTION 121 OF HOUSE BILL)

House Bill.—Section 121 of the House bill would direct the President to take steps, as soon as practicable, to bring trade agreements into conformity with principles promoting the development of an open, nondiscriminatory, and fair world economic system. The President would be directed to seek reform of the General Agreement on Tariffs and Trade (GATT) in the following areas: (1) the revision of decision-making machinery; (2) the revision of the safeguard provision (Article XIX) to take into account all forms of import restraints used in response to injurious competition; (3) the extension of the GATT articles to cover matters not presently covered in order to move toward more fair trade practices; (4) the adoption of international fair labor standards and of public petition and confrontation procedures in the GATT; (5) the revision of the GATT's treatment of direct and indirect taxes with specific reference to border tax adjustments; and (6) the revision of the balance-of-payments provision of the GATT so as to sanction the use of surcharges during periods of balance-of-payments difficulties.

Section 121(b) would authorize for the first time the appropriation of funds to pay the United States' share of the expenses of the contracting parties to the GATT. There is no provision requiring annual contributions to the GATT to be submitted to Congress for its authorization and approval.

Staff Suggestions

1. Negotiating fair international trade, monetary and investment rules.—Reform of the GATT is unquestionably a worthwhile objective. The staff concluded in its study of GATT back in December 1970: "In short, as presently constituted, the GATT is not a guide to fair trade. Its rules are often inequitable and outdated. . . ." However, there are practical difficulties in GATT reform, the most obvious being that the United States is one of the more than 80 members, and it is highly doubtful that under a one-country, one-vote system, we could renegotiate a new GATT establishing fair and equitable rules for trade within an old GATT framework.

Nevertheless, it would be useful to direct the President to negotiate with the key industrialized countries—perhaps through the high-level trade group established several years ago in the OECD—for fair and

equitable rules in international commerce which would include agreements in the following areas:

(*a*) procedures for consultation and adjudication of commercial disputes;

(*b*) reciprocity and nondiscrimination, including the elimination of special preferences and reverse preferences;

(*c*) international fair labor standards;

(*d*) safeguard procedures and criteria for dealing with trade-induced injury;

(*e*) fair access to raw materials and sanctions against countries which impose discriminatory or otherwise unreasonable export restraints on raw materials;

(*f*) recognition of need for continued international adjustment through flexible monetary mechanisms;

(*g*) definition of the range of permissible subsidies on exports and to attract investment;

(*h*) extra-territorial application of national laws, including anti-trust, trade and taxation laws.

The Committee might revise the House bill to leave out specific sections of GATT but to direct the President as a principal goal of these negotiations to establish fair international rules governing trade, monetary and investment transactions including the above-mentioned principles. Any Executive Agreements which affect areas in which the Constitution provides authority to the Congress should be submitted to the Congress for approval, either as a treaty or for implementing legislation.

2. Authority for GATT appropriations.—The U.S. belongs to GATT only by virtue of the Executive signing of the "Protocol of Provisional Application" in 1947. The House bill authorizes appropriations for the U.S. share of the expenses of GATT. The Administration has requested $1.4 million for fiscal year 1975. This would be the first time the U.S. Congress would explicitly authorize, and thereby recognize, the GATT—although the Congress has implicitly recognized GATT by directing in various legislation that the U.S. observe "international obligations" etc.

The Committee may wish to consider any of the following alternatives to the provision in the House bill:

(*a*) direct that Congress must approve any executive agreement which clearly falls within the realm of Congressional Constitutional authorities (this would include the existing GATT);

(*b*) require that any new agreements be submitted to the Congress for approval; or;

(*c*) delete the GATT authorization from the bill.

The staff feels that language expressing a combination of the principles in (a) and (b) would reflect Congressional concern over executive agreements and their influence over national policy.

BALANCE OF PAYMENTS AUTHORITY (SECTION 122 OF HOUSE BILL)

House Bill.—DEFICIT AUTHORITY. This section, new to the trade agreements program, would authorize the President to proclaim for no more than 150 days both a temporary surcharge not exceeding 15% ad valorem and temporary quotas on imported articles, if he determines that the U.S. is suffering from large and serious U.S. balance of payments deficits.

SURPLUS AUTHORITY. The President would also be authorized to proclaim for a period not exceeding 150 days both a temporary reduction in the rate of duty on any article (not to exceed 5% ad valorem) and a temporary increase in the value or quantity of an article which may be imported under any import restriction (or a temporary suspension of any import restriction), when he determines that the U.S. has a large and persistent balance of payments surplus.

LIMITATIONS. Limits are placed on the above grant of authority. Quotas may be imposed only if international agreements to which the United States is a party (the IMF and GATT) so permit, and then only if it is determined the temporary surcharge would prove ineffective in dealing with the fundamental imbalance. In the case of a balance of payments surplus the President would be directed not to take any action which would cause or contribute to material injury to firms or workers in a domestic industry or to the impairment of national security.

Any import restriction would have to be applied on a most-favored-nation basis, although the President may act against one or more countries separately if he determines that the purposes of this section would be best served by such action. Quotas should be applied in a way which will insure as much as possible the same distribution of trade among foreign countries as would exist without the quota.

Staff Suggestions.—The Executive has recently signed a "standstill agreement" with other OECD countries—i.e., a "gentlemen's agreement" not to impose import or export restrictions for one year. This agreement was precipitated by fear of a chain reaction to the effects of higher energy prices which could cause countries hard hit by the rising cost of fuel to take unilateral protective actions—such as Italy recently took. Since there is a pledge not to use this authority, the Committee may wish to delete it from the bill although the Executive still apparently wants it as a "club in the closet" in case other countries renege on the commitments.

Generally speaking, the staff feels that a flexible monetary system is the preferred way to deal with persistent balance-of-payments surpluses or deficits, and that the authorities contained in this section should be used only when a country refuses either to allow its currency to reach its true market value or imposes restrictions on trade and commerce which frustrate the international adjustment process. Therefore, the staff suggests that if the Committee wishes to retain this grant of authority, it consider language requiring that only when trade restrictions by surplus countries prevent the smooth functioning of the international monetary system should the authorities contained in this section be used. This should be a judgment of the Secretary of the Treasury based on an analysis of trade barriers, balance of trade and payments, international reserves and the state of the international exchange markets. Consistent with this, the staff would further suggest that this authority should be used selectively, i.e., in relation to those particular countries which have been identified as frustrating the international adjustment process; this would involve deletion of the language dealing with the application of remedies on a nondiscriminatory (MFN) basis. Abuse of such authority could be guarded against by making it subject to a Congressional veto procedure.

Furthermore, because the authority to reduce U.S. duties could have a serious impact on U.S. firms and workers, the Committee may wish to delete this authority and suggest either in the bill or committee report that if and when the day comes when the United States runs a large balance of payments surplus which causes international adjustment problems for other countries, the U.S. should let our currency appreciate and allow the international adjustment process to work. The Committee should be aware that if the President used the authority to reduce duties by 5 percentage points for 150 days on top of the full reduction already authorized in section 101 in the bill, about 90 percent of U.S. imports would be made duty free for the 150 day period compared with about 30 percent today.

ANTI-INFLATION AUTHORITY (SECTION 123 OF HOUSE BILL)

House Bill.—Section 123 would authorize the President to reduce or suspend duties when, during a period of sustained or rapid price increases, he determines that supplies of dutiable imports (or imports subject to any other restriction) are inadequate to meet domestic demand at reasonable prices. Actions taken under this authority could not be applied to more than 30 percent of the estimated total value of all articles and would be limited to 150 days.

Staff Suggestion.—This 30 percent limitation would be broad enough to permit the reduction or suspension of duties on about 80 percent of the dutiable imports remaining after the maximum section 101 concessions were implemented (assuming they were).

Actions taken under section 123 may be used by a President to remove any import protection which he feels causes inflationary price increases. But the relationship between import protection and inflation is not often that clear. At times, import protection may be needed to encourage domestic investment in expanded capacity which will be anti-inflationary. Removing protection could drive out investment and leave a market at the mercy of foreign suppliers who will sell at a much higher price than if the domestic industry were operating at a profit. Moreover, in a tight supply situation—which is usually a worldwide phenomenon—it is doubtful that a temporary reduction in duties would really alleviate inflation. It may simply increase the profits of importers. Finally, there are few standards, criteria or hearing procedures which would protect against the arbitrary use of this power.

Under these circumstances the staff suggests that this provision of the bill be deleted or that the President be required to submit a list of articles to the Congress on which he intends to use this authority. In this case a veto procedure may be helpful, but it should be shortened to 30 days because in this case we are dealing with "emergency inflationary" problems.

COMPENSATION AUTHORITY (SECTION 124 OF HOUSE BILL)

House Bill.—Section 124 of the bill has no analogue in present law, but compensation was provided under the Trade Expansion Act and previous legislation under the basic authority to proclaim duty decreases pursuant to a trade agreement. Compensation refers to the granting of additional tariff concessions to countries whose imports are directly adversely affected by import restrictive actions. Compensation is a normal practice under Article XIX of the GATT when import relief under the escape clause is taken. Otherwise, retaliation is possible. The major limitation on the exercise of the authority under this section is that no proclamation may decrease a rate of duty to more than 30 percent below the existing rate of duty.

Staff Suggestions—The compensation principle has been followed for many years. Recently, under Article XXIV:6 of the GATT agreement, the United States and other nations were compensated for the additional discrimination created by the enlargement of the European Community. When the European Community enlarged its membership from 6 to 9 countries it is estimated that the degree of injury to U.S. trade approximated $1 billion. Compensation has been agreed upon. Several members of this committee, including Chairman Long and Senators Talmadge and Fannin have issued statements indicating that a satisfactory payment of compensation should be made by the European Community before new authority is granted to enter into further trade negotiations. The staff believes that is a sound principle because if the United States cannot negotiate

a satisfactory solution with 9 countries on a specific issue, there is little hope of negotiating satisfactory agreements with 90 countries on a whole range of complex issues.

One example of what compensation is intended to avoid—sterile retaliation—involves the "chicken war". During the early 1960's the United States poultry industry developed a very lucrative market for exports of broilers to the European Market. The European Community systematically shut out American poultry exports from the Community and because compensation could not be agreed to, the U.S. imposed retaliatory duties affecting some $25 million worth of European Community trade. (The Committee has been advised that the potential size of the poultry market was far beyond the amount of retaliation exercised by the United States.) All that accomplished was to make imported Cognac a little more expensive; it did not result in the export of one more chicken to the European market. Had we threatened to retaliate massively before the Europeans imposed their variable levy on chickens—as we did when they threatened to put a protective device on soybeans—the outcome may have been different.

The Committee may wish to state explicitly that the compensatory authority granted under this section should not be used in trade with those countries which have not offered the United States adequate compensation for injury to U.S. trade resulting from a violation of past tariff concessions.

The Committee may also wish to provide that the compensatory tariff reductions provided under this authority be phased out as the protective relief, which triggers the compensation, is phased out.

The Committee may also wish to express its intent that the escape clause be fully utilized during these negotiations whenever serious injury has been found by the Tariff Commission. This appears desirable since the compensation authority is not available during the course of the negotiations.

AUTHORITY TO RENEGOTIATE DUTIES (SECTION 125 OF HOUSE BILL)

House Bill.—The authority in this section would permit the President, within the two year period following the lapse of the trade agreement authority, to enter into trade agreements affecting the reduction of duties or continuing duty-free treatment on not more than 2 percent of the value of U.S. imports in the most recent 12 month period for which import statistics are available and that no duty may be decreased to a rate more than 20 percent below the existing rate.

TERMINATION AND WITHDRAWAL AUTHORITY (SECTION 126 OF HOUSE BILL)

House Bill.—Subsection 126(a) and (b) of the bill are identical to present law. They provide that every trade agreement entered into under the bill is subject to termination or withdrawal, with due notice, at the end of a period specified in the agreement, but not later than 3 years from the effective date of the agreement. These provisions would also permit the President to terminate, in whole or in part, any proclamation made under the bill.

Paragraphs (c) and (d) of section 126 represent new law. Paragraph (c) would provide the President with authority to raise duties in order to exercise the rights or fulfill the obligations of the United States whenever it *withdraws* or *suspends* any obligation with respect to the trade of any foreign country pursuant to its rights under that trade agreement. Duties may not be increased to a level of 50 percent above 1934 duties or 20 percent ad valorem above 1973 duties, whichever is higher. It is not clear whether it is intended under the bill that the President have the authority to impose rates at any intermediate level between the concessionary level and the upper limits specified in paragraph (c).

Paragraph (d) would provide that upon the *termination* of any trade agreement, duties or other import restrictions proclaimed pursuant to that agreement shall remain in effect for a period of one year following such termination, unless the President specifically proclaims that such rates shall be restored to the level they would have reached were it not for such agreement (i.e., previously proclaimed levels or, where none, the statutory column 2 rate).

Within 60 days of any such termination, the President would be required to transmit to the Congress his recommendations for the establishment of new appropriate rates, which would then have to be established pursuant to legislation.

Staff Suggestions.—The staff has only minor technical amendments to suggest with regard to this section which will be dealt with in a separate pamphlet on technical amendments.

NONDISCRIMINATORY TREATMENT (SECTION 127 OF HOUSE BILL)

House Bill.—Section 127, which is substantially identical to present law (section 251 of the Trade Expansion Act and section 350(a)(5) of the Tariff Act of 1930 as amended), would continue as one of the basic principles of postwar foreign economic policy, the unconditional most-favored-nation principle, which has been eroded to the point where it is being observed more in the breach. It has been estimated that only about 25 percent of world trade is now on a most-favored-nation basis. The European Common Market, itself a discriminatory trade block, has negotiated or is in the process of negotiating "special commercial agreements" with over 80 countries. The House bill itself provides exceptions to the MFN principle:

(*a*) for trade preferences for less developed countries under Title V;

(*b*) for surcharges imposed under section 122 of the bill dealing with actions with regard to balance of payments surplus;

(*c*) for retaliation pursuant to section 301, against unreasonable or unjustifiable restraints maintained by foreign countries; and

(*d*) for countries which cannot qualify under an extension of MFT under Title IV.

Staff Suggestions.—Consistent with its other recommendations, the staff suggests the Committee may wish to consider a *conditional* most-favored-nation principle. Under this *conditional* most-favored-nation approach, the United States would grant full tariff concessions to countries which agree to offer fully reciprocal benefits to the United States trade. Under such an approach, the U.S. would not automatically grant such full concessions to countries which do not grant reciprocal benefits to United States trade.

RESERVATION OF ARTICLES FOR NATIONAL SECURITY OR OTHER REASONS (SECTION 128 OF HOUSE BILL)

House Bill.—Subsection (a) of this section of the House bill is substantially the same as section 232(a) of the Trade Expansion Act. The section provides that the President could make no proclamation pursuant to the provisions of this bill reducing or eliminating a duty or other import restriction if he determines that national security would be threatened by such action. Subsection (c) appears aimed at keeping Congress informed of any actions taken under the national security section of the Trade Expansion Act.

Staff Suggestions.—The national security section of the Trade Expansion Act itself seems defective in several points:

(*a*) It does not provide a time frame within which petitions must be acted upon;

(*b*) The old Office of Emergency Planning has been subsumed within the Treasury Department and it is not clear to whom the petitions would be addressed;

(*c*) The criteria for determining what is a threat to national security are too vague.

Consequently, the staff suggests that a provision be drafted under which petitions for import relief under the national security provision would be made to the Secretary of Treasury who would consult with the Secretary of Defense and the Secretary of Commerce with regard to the national security implications of the article concerned. The Secretary would issue, within 6 months of the petition, a determination as to whether or not a tariff concession in the article subject to the petition would endanger national security. He could also be given authority to issue findings that imports of articles beyond a peril point would endanger the national security. If the Committee wishes, the staff can develop a procedural mechanism, with time frames, hearing requirements etc., to the national security clause of the Trade Expansion Act.

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