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STAFF DATA ON THE TRADE REFORM ACT

TRADE RELATIONS WITH COUNTRIES NOT ENJOYING NONDISCRIMINATORY TREATMENT

(Title IV)

COMMITTEE ON FINANCE
UNITED STATES SENATE
RUSSELL B. LONG, *Chairman*

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Trade Relations With Countries Not Enjoying Nondiscriminatory Treatment

(TITLE IV)

Title IV of the House bill would authorize the President to extend most-favored-nation (nondiscriminatory) trade tariff concessions to countries which do not currently receive such treatment. The only countries not now enjoying nondiscriminatory treatment in the U.S. market are the communist nations with the exception of Poland and Yugoslavia whose products do receive such treatment.

1. Authority To Extend Nondiscriminatory Treatment

Under section 231(a) of the Trade Expansion Act, the President is precluded from extending nondiscriminatory or column 1 treatment to communist countries not currently enjoying such treatment. The House bill would authorize the President to extend this treatment to any such country which enters into a bilateral or multilateral trade agreement (the GATT) with the United States. Czechoslovakia, Romania, and Hungary are already members of the GATT, and would be automatically eligible for column 1 treatment under this provision. Nondiscriminatory treatment would remain in effect only so long as a trade agreement remained in force between the United States and the country concerned. The President, however, would have the authority to suspend or withdraw column 1 treatment to any country at any time.

If the President chooses to enter into a bilateral agreement he would be required to determine that the agreement would promote the purposes of the bill and be in the national interest. Any bilateral agreement would be limited to an initial period not exceeding three years. Thereafter, an agreement could be renewed for additional periods, each of not more than three years, providing that a satisfactory trade balance had been maintained and that U.S. reductions in trade barriers had been reciprocated by the other party.

Bilateral agreements would be required to include provisions for: (1) suspension or termination for reasons of national security, (2) safeguards against disruption of domestic markets, (3) protection of patents if the other party is not a member of the Paris Convention for the Protection of Industrial Property, (4) settlement of commercial disputes, and (5) consultations for reviewing the operation

of the agreement and relevant aspects of relations between the United States and the other party. Bilateral agreements could also include arrangements for the protection of industrial rights such as copyrights, promotion of trade, and other commercial arrangements promoting the purposes of the bill.

Staff Recommendations

The staff believes that nondiscriminatory treatment should be provided only in bilateral trade agreements negotiated by the Executive Branch, signed by the President, and approved by the Congress under the positive approval procedure agreed to by the Committee. The staff does not feel that the United States should afford a country MFN treatment simply because that country becomes a member of the GATT. The staff also believes that bilateral commercial agreements should contain provisions calling for reciprocal and equitable conditions for expansion of trade in goods and services, including insurance, shipping etc. The staff further suggests that section 404 require a satisfactory balance of concessions *in trade and services* be maintained during the life of each agreement (as opposed to trade only) and that section 404(c) provisions relating to protection of industrial rights and processes, trademarks, and copyrights, etc. be made mandatory rather than permissive.

2. Freedom of Emigration in East-West Trade

Title IV would lay down several conditions with regard to the extension of nondiscriminatory treatment. Section 402 would provide that no country shall be eligible to receive nondiscriminatory tariff treatment or U.S. Government credits, credit guarantees or investment guarantees if the President determines such country:

(1) denies its citizens the right or opportunity to emigrate,

(2) imposes more than a nominal tax for emigration or on visas on other documents required for emigration, for any purpose or cause whatsoever,

or

(3) otherwise imposes more than a nominal tax, levy, fine, fee or other charge on any citizen as a result of his or her desire to emigrate.

A country would become eligible for nondiscriminatory treatment under this title only after the President determined that it was not violating any of the above conditions and submitted a report to that effect to the Congress. Any country which was found to be denying its citizens the right to emigrate would also be prohibited from receiving any U.S. government credits, credit guarantees, or investment guarantees.

Under section 403 the application of nondiscriminatory treatment with respect to any country which had entered into an agreement

with the United States concerning the settlement of lend-lease debts would be limited to periods in which the country was not in arrears on its obligations under the agreement. The Soviet-American lend-lease settlement agreement, on the other hand, conditions the Soviet Union's fourth and all subsequent lend-lease settlement payments upon the extension of MFN treatment by the United States.

3. Market Disruption (Section 405)

Section 405 applies the concept of market disruption to imported articles receiving column 1 treatment under this Title. Under this provision, the President could impose import relief measures if the Tariff Commission determined that imports from a communist nation were causing market disruption *and* material injury to industries producing like or directly competitive articles. Market disruption would be deemed to exist whenever such imports were (1) substantial; (2) increasing rapidly, absolutely and relative to domestic consumption, *and* (3) were being offered at prices substantially below those of comparable domestic articles. If the Tariff Commission finds in the affirmative, the President could impose any import measures under section 203 (duty increases, quotas, etc.) upon those products coming from the country in question. The President could also impose import relief measures with respect to the products of all countries under the market disruption formula.

Staff Comments

Section 405 attempts to establish safeguards against disruptive imports from nonmarket economies, but does not do so adequately. Essentially, Section 405 provides an escape clause procedure comparable to that in Title II, but with different criteria. One difficulty with this mechanism is that it would not deal adequately with sales taking place substantially below prevailing U.S. market prices. In such situations the adverse impact occurs when the offers are first made. Injury would be inflicted on the domestic industry long before the Tariff Commission could complete its investigation. Section 405 moreover does not stipulate how long the Tariff Commission would be allowed to reach a determination, although it can be inferred that this would be six months, as in the case of the normal escape clause procedure.

Section 405(c) defines market disruption as occurring whenever imports of a like or directly competitive article (i) are substantial, (ii) are increasing rapidly both absolutely and as a proportion of total domestic consumption, and (iii) are offered at prices substantially below those of comparable *domestic* articles. These three criteria raise

a number of problems. By the time imports from a state trading country have become substantial, market disruption could already have occurred. The same is true with respect to the second criterion above. Further, in the case of homogeneous commodities traded in the world market, exports by state trading countries aimed at third countries can result in disruption of U.S. markets to the extent the third country finds it expedient to divert its own displaced production to our market. The third criterion above does give recognition to the factor of price disparity, but the requirement of a substantial disparity is not helpful for products where a small price difference can mean the loss of orders by one supplier to another.

It is implicit in both Subsection 404(b)(3) and Section 405 that the unique problems attendant on the possibility of market disruption in trade with a state trading economy warrant more lenient and flexible safeguards than normally would be the case. The fault with these provisions of the House-passed bill is that they do not go far enough in providing for specific safeguard arrangements and adequate procedures to avoid market disruption.

An analysis of the October 18, 1972 U.S.-U.S.S.R. Trade Agreement is instructive in this regard. Article 3 of that agreement provides: "Each Government may take such measures as it deems appropriate to ensure that the importation of products originating in the other country does not take place in such quantities or under such conditions as to cause, threaten or contribute to disruption of its domestic market. The procedures under which both Governments shall cooperate in carrying out the objectives of this Article are set forth in Annex I, which constitutes an integral part of this Agreement." In Annex I, both countries agreed to consult promptly at the request of either government whenever such government determines that "actual or *prospective* imports of a product originating in the other country under certain conditions or in certain quantities *could cause, threaten or contribute to disruption of the market of the requesting country*" (emphasis added). The consultation procedure established by Annex I provides for such consultation to be concluded in sixty days (unless some other period of time is agreed to during the course of the consultation). Further, if the importing country determines that an emergency situation exists, it may place into effect quantitative import limitations or other conditions prior to the conclusion of the consultation. (Annex I 2(c)).

There is some indication that Section 405 of H.R. 10710 was intended to make statutory the procedures and rules set forth in Article 3 and Annex I of the U.S.-U.S.S.R. Trade Agreement. However, there appears to be very little similarity between the two. Section 405 provides an escape clause procedure whereunder an

aggrieved domestic entity may seek relief upon a showing of actual or likely market disruption and material injury to a domestic industry. At best, therefore, Section 405 appears to delineate a mechanism under which the U.S. Government can determine whether consultation is required. By contrast, Article 3 and Annex I of the U.S.-U.S.S.R. Trade Agreement give either government much greater flexibility in taking quick action when it determines this is required to avoid market disruption. It can be safely assumed the Soviets would not hesitate to use the latter without going through the kind of procedure envisioned by Section 405. The enactment of Section 405 thus would result in placing the U.S. Government in a less advantageous position for quick action than would be the case with the U.S.S.R.

As noted previously under Section 403, products of a nonmarket economy may become eligible to receive MFN treatment if such country either has concluded a bilateral commercial agreement with the U.S. pursuant to Section 404, or has become a party to an appropriate multilateral trade agreement to which the U.S. is also a party. This establishes a dichotomy in terms of safeguards against market disruption. On the one hand, as recognized by subsection 404(b)(3), commercial agreements thus entered into must provide safeguard arrangements against market disruption. On the other hand, similar safeguard arrangements should be provided in those situations where MFN treatment is extended to a state trading country under a multilateral trade agreement. With respect to the former, revisions to Title IV are suggested below.

Proposed Revisions

1. *Safeguard Provisions in Commercial Agreements*

First, Subsection 404(b)(3) could be revised to spell out the general safeguard arrangements to be included in commercial agreements entered into pursuant to Subsection 404(a). It is suggested that the consultation procedure and rules of Article 3 and Annex I of the U.S.-U.S.S.R. Trade Agreement referred to above be used as a model for this. In this regard, it should be noted that such consultation provisions provide for due regard to be taken of any contracts concluded prior to the request for consultation between natural and legal persons of the U.S. and foreign trade organizations of the U.S.S.R. engaged in trade between the two countries. Subsection 404(b)(3) also should provide for the inclusion of whatever additional safeguard arrangements may be necessary in a given instance in order to prevent disruption of domestic markets.

2. *Consultation Procedures*

Second, Section 405 could be revised to include a new subsection permitting for an entity (trade association, firm or union) to petition

the U.S. Government to initiate such consultation procedures upon a showing of the likelihood of market disruption as a result of imports entering pursuant to a commercial agreement with a state trading economy. This would be in addition to the existing escape clause provisions of Section 405. The market disruption test could be modified along the lines of the U.S.-Soviet agreement, under which imports are threatening or contributing to the disruption of a market. The injury determination should be made in a maximum timeframe of 6 months.

3. *Fast Track*

Third, Section 405 could also be revised to authorize the President to take immediate action when he determines that a condition exists requiring emergency treatment. This "fast track" authority should be applicable both to the consultation procedures recommended in *Second* above and to the escape clause action provided for in Section 405 of the House-passed bill. There is precedent for such a "fast track" both in Annex I of the U.S.-U.S.S.R. Trade Agreement and in Section 22 of the Agricultural Adjustment Act of 1933, as amended.

4. *Selective Application*

Fourth, the Committee may wish to make it clear, that if injury is caused or threatened by imports from communist countries, the President shall act to impose restrictions only against imports from such countries. This suggestion was made by the STR.

4. Procedure for Congressional Disapproval of Extension or Continuance of Nondiscriminatory Treatment

Under section 406, before a proclamation extending nondiscriminatory treatment to any country could enter into effect, the President would be required to submit to the Congress the proclamation along with the agreement pursuant to which such treatment is to be extended, as well as his report stating that the country does not restrict emigration in violation of section 402. The proclamation would not enter into effect if, within 90 days from the receipt of the proclamation, either House of Congress votes to disapprove it by the affirmative vote of a majority of those present and voting.

The President is required to report semiannually concerning the emigration policies of any country receiving nondiscriminatory treatment pursuant to this Title. Congress, following receipt of the report, could apply the congressional veto procedure to discontinue nondiscriminatory treatment for any country receiving such treatment pursuant to this act.

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