601

93d Congress
2d Session

CONFIDENTIAL COMMITTEE PRINT

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STAFF DATA ON THE TRADE REFORM ACT

TARIFF AND NONTARIFF NEGOTIATING AUTHORITIES

(Chapter 1 of Title I
Sections 101–103 of House bill)

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

JUNE 1974

Prepared by the staff and printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1974

33-879 O

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Tariff and Nontariff Negotiating Authorities (Chapter 1 of Title I of H.R. 10710)

The Trade Reform Act of 1973 would delegate to the President greater tariff and trade authorities than the Congress has ever delegated before to any President. Certain of these authorities are needed if the United States is to participate in another round of tariff and trade negotiations to which the U.S. Executive and over 100 other countries committed themselves in Tokyo last fall. However, because the bill does involve a broad delegation of authority, the Committee may wish to consider a reasonably detailed and specific direction of policy as well as standards and appropriate checks and balances on the use of these authorities.

This first paper will provide staff suggestions on a statement of policy and the authorities delegated to the President under Chapter 1 of Title I of the House bill which deal with tariff and nontariff barriers. The tariff authorities suggested assume the Committee may wish to provide a broad delegation to the President for trade negotiation purposes. However, if the Committee would prefer a reduced delegation of such authority, the staff will suggest alternatives. The staff pamphlets will generally follow the order of subjects in the House bill:

Title I—Negotiating and other authority.
Title II—Import relief and adjustment assistance.
Title III—Unfair trade practices.
Title IV—East-West trade.
Title V—Trade preferences for developing countries.

STATEMENT OF PURPOSES

House bill.—The House bill provides a vague and general statement of policy as follows:

"The purposes of this Act are, through trade agreements affording mutual trade benefits—

(1) to stimulate the economic growth of the United States and to maintain and enlarge foreign markets for the products of United States agriculture, industry, mining, and commerce; and

(2) to strengthen economic relations with foreign countries through the development of fair and equitable market opportunities and through open and nondiscriminatory world trade."

Staff Suggestions.—If the Committee wishes a more detailed statement of purposes on the bill, the staff suggests the following:

"The purposes of this Act are:

(a) to provide negotiating authority to the President to reform international trading rules and to achieve fair and reciprocal conditions for United States and world trade;

(b) to provide prompt and effective means for dealing with unfair foreign competition;

(c) to assure that United States industrial and agricultural products are afforded open and fair access to foreign markets;

(d) to safeguard domestic industries and labor which are threatened by severe import competition;

(e) to provide timely and adequate trade adjustment assistance to workers adversely affected by imports;

(f) to encourage the maintenance and expansion of a diversified industrial base in the United States capable of assimiliating the expansion of the labor force into lucrative employment opportunities;

(g) to encourage international standards for foreign investment and to adjust tax laws that artificially encourage the transfer of productive facilities across national frontiers;

(h) to promote fair and equitable access to supplies of vital raw materials needed for orderly economic growth and development;

(i) to provide flexible mechanisms for coping with severe inflationary pressures and to protect the consumer;

(j) to improve the international balance of payments adjustment process;

(k) to encourage U.S. market opportunities with all countries that respect fundamental human rights;

(l) to coordinate U.S. trade and aid policies toward developing countries;

(m) to encourage new mechanisms for sharing the defense, trade and aid burdens of the free world."

Some of these are quite specific and their adoption would depend on the final actions taken by the Committee on the overall bill. The "access to supply" purpose has been endorsed by the STR and is embodied in amendments introduced by Senators Mondale and Ribicoff. When the Committee has finished its deliberations on the substance of the bill, the staff will recommend specific language for the list of purposes.

A. TARIFF REDUCTION AUTHORITY (SECTION 101 OF HOUSE BILL)

House Bill.—Section 101 would authorize the President to enter into trade agreements with foreign countries and to proclaim modifications in duties pursuant to such agreements whenever he determines that existing duties or other restrictions of any foreign country, or of the United States, are burdening and restricting U.S. foreign trade.

The President would be authorized to negotiate and proclaim *decreases* in rates of duty below the July 1973 level, within the following limitations:

If existing duties are:

(i) 5% ad valorem or below—no limitations;

(ii) between 5% and 25% ad valorem—60% reduction;

(iii) more than 25% ad valorem—75% reduction, except that no duty currently above 25% ad valorem could be reduced to rates below 10% ad valorem.

Staff Suggestions.—There is no assurance that under the linear, across-the-board tariff cutting authority and procedures all or even a majority of major trading nations would agree to reduce and harmonize their tariffs in a reciprocal manner. Nor is there any directive in the House bill that tariffs within each sector should be harmonized among industrialized countries. In order to insure the maximum degree of reciprocity and equity within each broadly defined sector of our economy and at the same time extend to the President sufficiently flexible authority to enter into trade negotiations involving cross-sectorial trade offs, the Committee may wish to consider the following suggestions:

1. Tariffs—Sectorial Reciprocity

The President could be empowered to enter into trade agreements to reduce U.S. duties on any article of commerce in any sector by up to 50% below *the lowest existing duty* imposed on the importation of such article of commerce by the United States, the European Community, members of the European Free Trade Association, Japan or Canada, *provided* that other industrialized countries (members of the Organization for Economic Cooperation and Development—OECD) also agree to reduce their duties to comparable levels. If that duty is less than five percent ad valorem, the President could be given authority to eliminate such duties for the products of those countries who are willing to do the same. The Committee could provide that no trade agreement could enter into effect in any sector unless countries accounting for 50 percent of world trade in that sector agree to harmonize tariff rates at comparable levels. This is an attempt to encourage comparable tariffs on products among major industrial nations. Those countries which agree to reduce duties on articles of commerce within a sector to the same levels could all benefit from the trade agreement. For those countries which do not agree to such a reduction, the Committee could provide that the sector trade agreement could not enter into effect with respect to such countries and that the

President would be empowered to raise U.S. duties in that sector against such countries to the average levels of protection afforded by such countries against U.S. products in such sector. This approach would, in effect, provide *conditional* MFN treatment. Those countries which agree to eliminate or harmonize tariffs at a low rate would benefit from a trade agreement; those which do not would suffer higher barriers on their exports within those sectors. A comparison of existing rates of duty on industrial products, is shown below, including an estimate of how the tariff structure might look if the maximum authorities were used:

INDUSTRIAL SECTORS: OWN TRADE WEIGHTED MFN RATES OF DUTY, DUTIABLE IMPORT ONLY, FOR THE UNITED STATES, CANADA, JAPAN, AND THE EUROPEAN COMMUNITY

[Percent ad valorem equivalent]

	Sector	United States	Canada	Japan	EC	Harmonized rate (Rate 50 percent below lowest rate)[1]	Country with lowest rate[2]
I- 1	Nonelectrical machinery	5.7	11.2	12.0	6.6	(2.9)	United States.
I- 2	Transportation equipment	4.1	12.5	12.8	7.9	(2.1)	Do.
I- 3	Ores, metals and metal manufacturers	6.3	12.4	6.7	7.0	(3.2)	Do.
I- 4	Chemicals	9.1	13.9	10.3	11.3	(4.6)	Do.
I- 5	Textiles	25.0	23.8	12.7	13.2	6.4	Japan.
I- 6	Electrical machines and apparatus	7.2	15.5	11.7	9.3	(3.6)	United States.
I- 7	Pulp, paper and paperboard, and manufacturers	5.0	15.5	5.6	8.5	(2.5)	Do.
I- 8	Coal, petroleum, natural gas	4.1	7.6	14.1	4.6	(2.1)	Do.
I- 9	Mineral products and fertilizers, ceramic products and glass	16.6	14.8	9.6	8.3	(4.2)	EC.
I-10	Professional, scientific and controlling instruments, photographic apparatus, clocks and watches	12.1	13.5	9.7	10.4	(4.9)	Japan.
I-11	Wood and cork manufacturers	12.1	13.4	15.4	9.6	(4.8)	EC.
I-12	Precious stones, precious metals and manufacturers	7.4	22.0	5.5	6.7	(2.3)	Japan.
I-13	Rubber and rubber manufacturers	4.4	13.7	8.6	8.0	(2.2)	United States.
I-14	Raw hides and skins, leather and furskins and manufacturers	8.8	14.6	10.8	6.6	(3.3)	EC.
I-15	Footwear and travel goods	11.2	23.5	14.9	12.0	5.6	United States.
I-16	Musical instruments, sound recording or reproduction apparatus	6.7	12.9	10.0	8.3	(3.4)	Do.
I-17	Firearms, ammunition, tanks and other armored fighting vehicles	9.4	16.6	20.9	9.0	(4.5)	EC.
I-18	Furniture	7.6	19.0	10.7	8.4	(3.8)	United States.
I-19	Toys and sporting goods	13.9	18.3	13.3	12.8	6.4	EC.
I-20	Photographic and cinematographic supplies	3.5	16.2	22.4	7.8	(1.8)	United States.
I-21	Work of art and collectors' pieces	7.5	21.3	N.A.	N.A.	(3.8)	Do.
I-22	Office stationery supplies	11.9	17.7	16.3	9.2	(4.6)	EC.
I-23	Manufactured articles not elsewhere specified	9.9	17.5	12.2	8.5	(4.3)	EC.

Source: Trade Barriers, vol. 2, pt. 1, ch. IV, p. 47–49.

[1] Note: If full authority is used and rate is less than 5 percent, then tariffs would be eliminated in all but three sectors.
[2] The U.S. has the lowest average level of duties in 13 of the 23 categories; the EC has the lowest in 7 and Japan in 3. Canada has highest in 15 sectors.
N.A. Not available.

2. Nontariff Barriers—Sectorial and Overall Reciprocity

Since tariffs are often not the most significant barrier to trade, it would be necessary to take several further steps to insure sectorial and overall reciprocity. In order for any trade agreement within each sector to enter into effect, the Committee could require that the President make a finding that there are no significant nontariff barriers in such sector which distort trading patterns in any commodity or discriminate against U.S. trade. For U.S. and foreign nontariff barriers which apply only to a sector, the President could be encouraged to negotiate the reduction or harmonization of such barriers as part of the overall sector negotiation. However, if the nontariff barrier cut across several sectors, the President could be encouraged to deal with them in their own right without regard to the sector reciprocity. He would thus be encouraged to utilize several negotiating techniques—an overall approach to more general problems and a specific approach to specific problems.

3. Private Sector Advisory Opinion

It will be necessary to insure greater participation by the private sector than has occurred in the past if these negotiations are to be successfully concluded. The House bill would establish a private advisory body of no more than 45 members with provision for private sector advisory bodies. The chemical sector has already established such a body and other sectors are in the process of being organized. The private sector advisory bodies established under this bill could be required at the conclusion of tariff and trade agreements directly affecting their sectors to issue an advisory opinion as to whether the agreement reached has achieved equity and reciprocity for U.S. trade relations within the broadly defined sectors.

4. Protection Against Future Withdrawals

There should also be a provision to the effect that if a foreign trading nation which enters into a trade agreement with the U.S. subsequently erects a barrier to trade affecting any sector(s), the United States will automatically withdraw its concessions to that country in the sector(s) in which the trade agreement was concluded and subsequently vitiated.

B. AUTHORITY TO INCREASE TARIFFS (SECTION 101 OF HOUSE BILL)

House Bill.—Pursuant to negotiated trade agreements, the House bill would permit the President to *increase* rates of duty to a level 50% above the rates existing on July 1, 1934 (50% above the column

2 rate) or 20% ad valorem above the rate existing on July 1, 1973, whichever is higher. Section 101 would provide the President with similar but broader authority than he had under the Trade Expansion Act of 1962, where both duty increases and decreases were generally limited to 50% above 1934 rates and 50% below 1962 rates, respectively.

Staff Suggestions.—The Committee may wish to provide that the authority to increase tariffs under section 101 could only be used in those situations in which a trade agreement had been concluded under section 101 with countries accounting for 50 percent of world trade in any sector and such increases were necessary in order to harmonize tariff rates on any articles of commerce between the United States, and those members of the European Community, the European Free Trade Association, and other industrial countries such as Japan or Canada which were not willing to reduce duties according to the sector agreement. Thus, for example, if the European Community, Japan or Canada did not come down to the low U.S. rate on auto or electronics imports, we could raise our duties against such countries in order to achieve tariff harmonization. This would be consistent with the suggestion on sectorial reciprocity in the section dealing with tariff reductions.

C. STAGING AUTHORITY (SECTION 103 OF HOUSE BILL)

House Bill.—Under H.R. 10710 as it passed the House, negotiated duty reductions could not be implemented at a rate exceeding the greater of 3% ad valorem or 1/15th of the total reduction per year, except that no staging would be required in cases of total reductions amounting to less than 10%. Furthermore, no reduction would take effect more than 15 years after the date of the first proclaimed duty reduction.

Staff Suggestions.—As an alternative to the staging requirements of the House bill, the Committee may wish to consider this approach:

1. Whenever a duty is reduced by more than 20 percentage points, the reduction is to be staged in equal installments over a period of 10 years.
2. In cases in which the duty reductions are less than 20 percentage points, the duties may be reduced by a maximum of 2 percent ad valorem per year.

The same staging requirements could be required whenever there are duty increases established on the products of any country or countries under section 101 authority.

D. NONTARIFF BARRIERS (SECTION 102 OF HOUSE BILL)

House Bill.—Section 102 of the House bill would authorize the President, during the five-year period beginning on the date of enactment of the bill, to negotiate trade agreements with other countries providing for the reduction or elimination of nontariff barriers and other distortions of international trade. The President would be urged to achieve equivalent reductions in each product sector for manufactured goods and within the agricultural sector as a whole. The President would be required to report to the Congress on the extent to which the objective is achieved.

Staff Suggestions.—As an alternative to the House language in section 102(c) the Committee may wish to consider language stating that the primary U.S. negotiating objective should be to obtain both overall equity for U.S. trade as well as equity within sectors. In order to accomplish the latter U.S. nontariff barriers which are confined to specific sectors should be reduced with foreign nontariff barriers within such sectors to achieve reciprocity within those sectors. If there are no significant foreign or domestic nontariff barriers within a sector the aim should still be to achieve equitable access in trade within such sectors. Nontariff barriers which are general in nature and affect many sectors of trade (such as border taxes or government procurement practices) should be reduced and harmonized on a general basis.

1. Conversion of Nontariff Barriers to "Equivalent" Tariffs

House Bill.—Under the House bill, it is contemplated that in most cases the nontariff barrier agreements would directly reduce or modify the nontariff barriers concerned. However, section 102 of the House bill would also authorize the President to convert nontariff barriers into rates of duty which provide substantially "equivalent" tariff protection and to negotiate the reduction of these "converted" rates of duties independently from the reduction limits and staging requirements applied to tariff agreements under section 101. The Tariff Commission would be vested with the responsibility for determining the rate of duty which affords "substantially equivalent protection" to the barrier being converted.

Staff Suggestions.—Many U.S. nontariff barriers may not easily be converted into tariffs. Nevertheless, section 102 of the House bill would authorize the President not only to convert "nontariff barriers" into rates of duty providing substantially "equivalent protection"—

according to a Tariff Commission finding—but also would enable the President to reduce or eliminate such converted rates of duties without regard to the staging requirements specified under Section 101. This is very broad authority and it is not clear how it would be used. The staff suggests that in lieu of the House language the Committee consider an amendment requiring the Tariff Commission to advise the Congress whether the nontariff barriers in question can, in fact, be converted into equivalent tariff protection. If the Tariff Commission reports that such conversions are feasible, the converted rates of duty should be submitted to Congress and be subject to the same staging requirements as other duties subject to trade agreement concessions. If the Commission determined that the nontariff barrier was of such a nature that it could not be feasibly converted into a tariff equivalent, it would not be made, although the Executive could still conclude trade agreements affecting such barriers.

2. Consultation Procedures

House Bill.—The President would be directed to consult with the Senate Finance Committee and the House Ways and Means Committee before entering into any trade agreement for the reduction or elimination of a nontariff barrier. According to the House report, the purpose of the consultation would be to determine whether or not legislation would be necessary to implement the reduction of the nontariff barrier. However, the bill would leave the final authority to determine whether legislation is required with the President. In cases where legislation is required or in cases where the President decides to submit the agreement before the Congress even when not required, the bill would establish a specific procedure which must be followed if such agreement and implementing orders are to take effect.

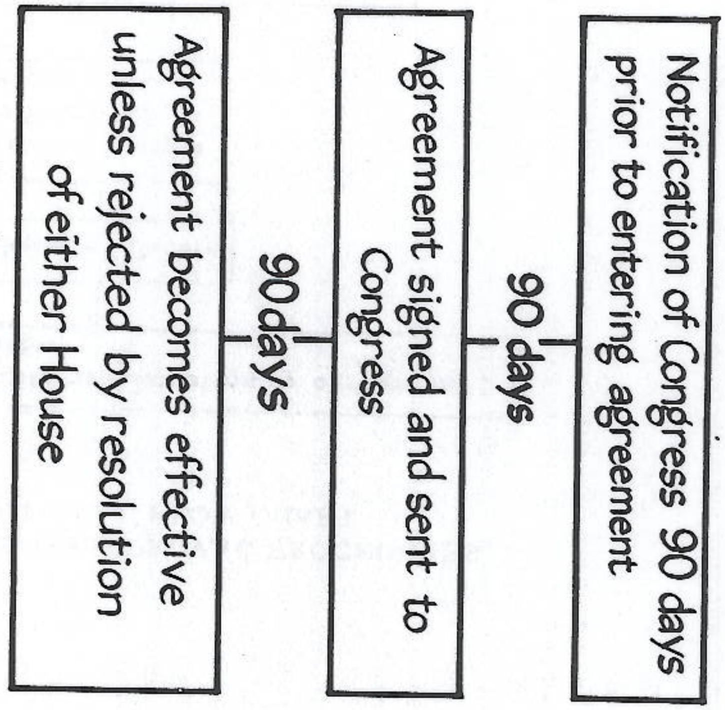
Staff Suggestions.—The House bill would leave it to the President to determine whether a change in U.S. law is required to implement trade agreements affecting nontariff barriers. There will undoubtedly be cases when this decision will not be clear cut, (e.g., a change in a regulation effectively changing the operation of a domestic law without changing the language of the law). The Committee may therefore wish to require the Special Trade Representative to consult formally with the Finance and Ways and Means Committees if the matter is within our jurisdiction or with other committees if it falls within theirs, not less than 90 days before entering into new trade agreements involving U.S. nontariff barriers to determine whether or not legislation would be necessary to implement such agreement.

3. Veto Procedure

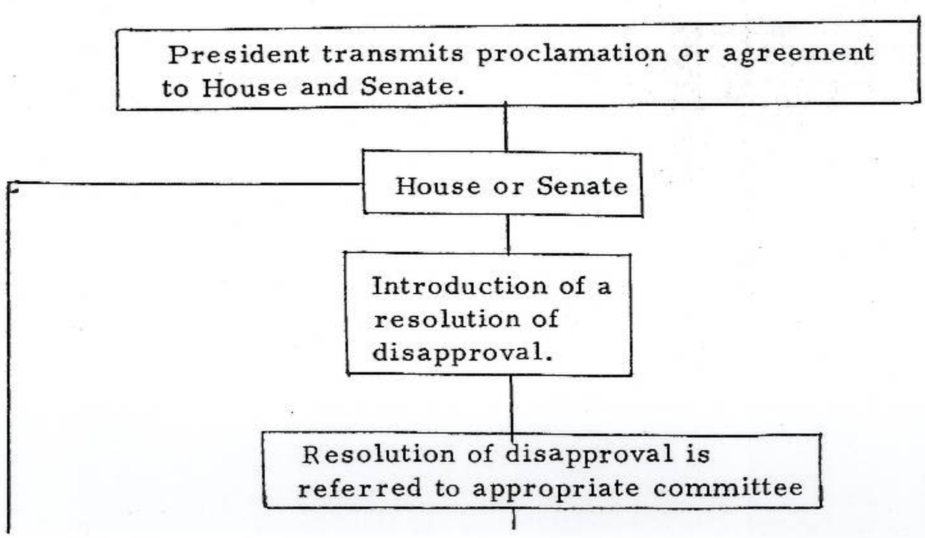
House Bill.—The President would be required to submit, not less than 90 days before the day on which he enters into any such trade agreement affecting nontariff barriers, notification to the Senate and House of Representatives of his intention to enter into such an agreement. There is no requirement in the bill that the notice include a substantial description of the proposed agreement itself. After he enters into the agreement, the President would be required to deliver to the Congress for appropriate referral, a copy of the agreement, a copy of the implementing proclamations and orders with an explanation of how they would affect existing law, and a statement as to how the agreement serves the interests of the United States and why each implementing order is required to carry out the agreement.

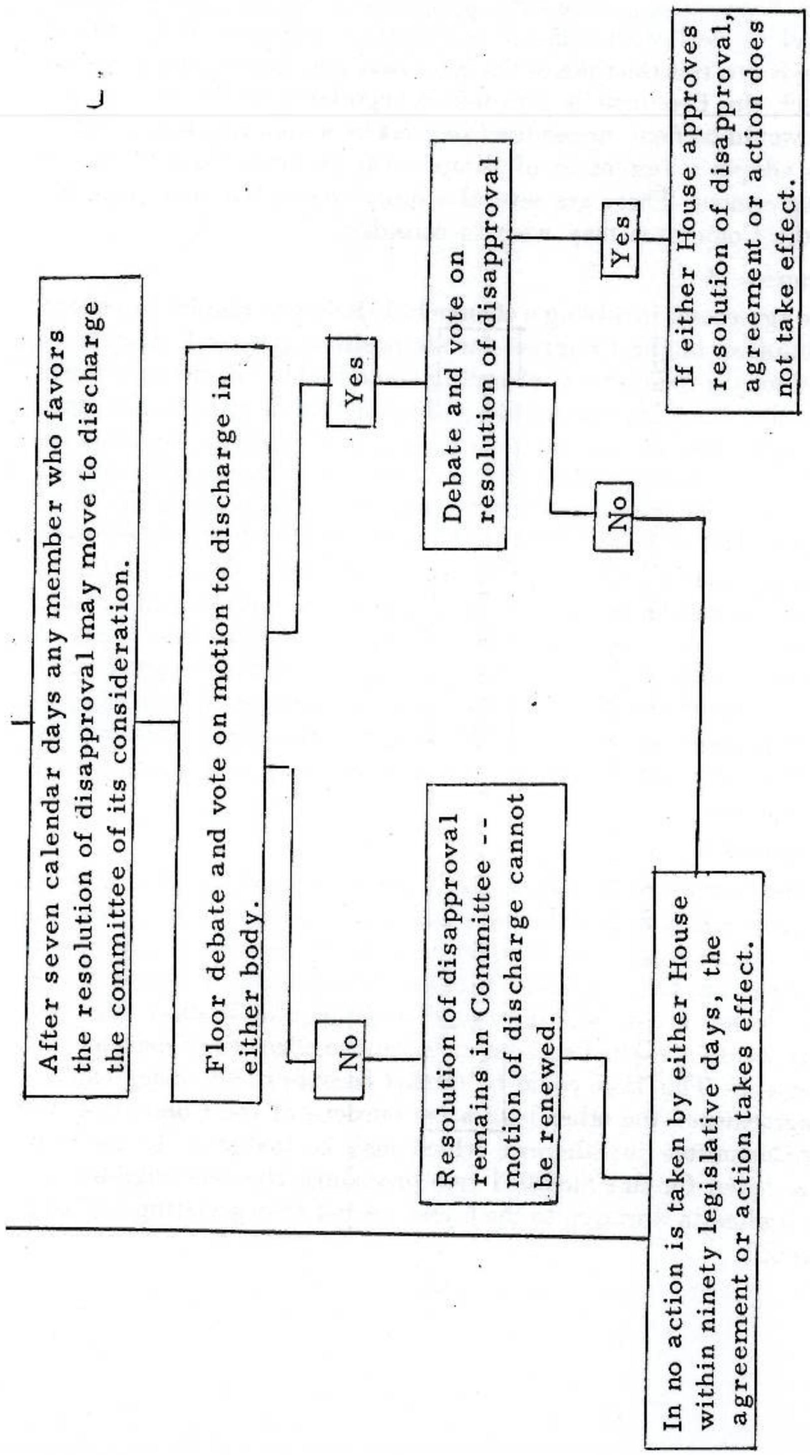
The agreement, along with any implementing orders, would enter into full effect, with respect to U.S. domestic law as well as internationally, 90 days after submission to Congress, *unless* within the 90 day period either House adopts by an affirmative vote of the majority of those present and voting, a resolution of disapproval with respect to the agreement. Sections 151 and 152 stipulate the procedural rules according to which such resolution would be introduced and dealt with in each House of Congress. The rules would be quite strict. If the committee to which the resolution had been referred has not reported it at the end of 7 days, it could be discharged of the resolution or of any other resolution which has been referred to the committee. There would also be strict limits on debate and amendments to the resolution. The following charts illustrate how the veto procedure is intended to work.

Congressional Veto Procedure



CONGRESSIONAL DISAPPROVAL PROCEDURES
OPERATIONAL FLOW CHART





Staff Suggestions.—The veto procedure is an unusual procedure intended to deal with difficult negotiating problems. It is unusual because it reverses the roles of the Executive and Legislative Branches. In effect, the President is directed to negotiate changes in U.S. law which would be final, unless the Congress by a majority vote of either House adopts a resolution of disapproval (a veto) with respect to such agreement. There are several alternatives to the veto procedure with the Committee may wish to consider.

Alternative A

Any agreement involving a change in U.S. law or regulations should be submitted to the Congress for its positive approval. This is the conventional procedure for changing domestic law. However, the concern is that the Congress simply will not act at all and the agreement will simply die, as was the case in the ASP package negotiated in the Kennedy Round. While it is not possible to insure that the Congress would act in each and every case, it may be possible to write a strong legislative history that the Congress shall act upon such agreements, perhaps within a specified period of time (such as 180 days) after an agreement is received by Congress. If the Committee opted for this approach, the delegation of authority could be made a permanent part of our tariff laws. Under this approach the Congress would have to approve (not disapprove) of any changes in domestic law including those which involve altering the American Selling Price (ASP) system of valuation, the wine-gallon-proof gallon tax or dairy quotas.

Alternative B

If the Committee wishes to retain the veto procedure contained in the House bill, it may wish to consider amendments to extend the time for a Congressional veto from 90 days to 180 legislative days and to also lengthen the discharge petition procedure established in the House-passed bill from 7 days to 30 or 60 legislative days. This procedure would give the Congress more time to adequately consider such agreements. This time could be needed because of the complexity of the agreements, the other legislative burdens of the Committee, and cross-Committee jurisdictions which may be involved. If the Committee opted for this modified veto procedure, the staff suggests that it be limited in duration to the 5 year period of negotiating authority in the bill.