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STAFF DATA ON THE TRADE REFORM ACT

THE TARIFF COMMISSION

COMMITTEE ON FINANCE
UNITED STATES SENATE

RUSSELL B. LONG, *Chairman*

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THE TARIFF COMMISSION

The Tariff Commission was created by Congress in 1916 to assist Congress in its constitutional power to levy import duties and to regulate commerce with foreign nations. It was created to be a strictly independent, nonpartisan, fact-finding body to help the Congress and the Executive carry out a trade program. By and large it has performed its functions well. However, every institution must evolve with the changing times and the Commission is no exception. The Staff suggests that the Committee may wish to consider changes in the Commission's functions to make it a more effective instrument in today's international trade world. These suggested changes are, we believe, consonant with the following principles:

1. The Commission must be truly independent, both from pressures from the Executive Branch or any partisan or special interest group.
2. The Commissioners must be men and women with sufficient knowledge and professional experience in international trade matters to make difficult decisions in the many injury determination and unfair trade practice cases which come to the Commission. They must be objective and not representatives of special interest groups.
3. It should be a Commission of equals, not dominated by any individual or faction.
4. The Commission should maintain a high level staff of economists, lawyers and commodity analysts capable of responding quickly to requests from Congress and the Executive.
5. The Commission should be granted powers and authorities commensurate with the responsibilities granted to it by Congress.

With these principles in mind, the Staff makes the following suggestions:

I. Change in Title to U.S. International Trade Commission

When the Commission was originally created, its primary role was to provide expert advice and information on tariff matters. However over the years the functions of the Commission have of necessity been enlarged so as to include many matters not strictly associated with tariffs, but rather with the multiple and varied aspects of international trade relations. Moreover, tariffs have been reduced substantially and for most sectors and commodities they no longer provide significant protection. Accordingly, the Committee may wish to consider changing the name of the Tariff Commission to that of the "United States International Trade Commission", as a means of better reflecting the changed nature of the functions and role of the Commission.

II. Qualifications of Commissioners

The activities of the Commission affect a growing range of economic factors which directly influence U.S. trade with other foreign nations. Such activities include investigations and recommendations relating to injury to domestic firms or workers found in the import relief and antidumping provisions of U.S. law, analyzing complex array of facts, understanding legislative language and intent and writing clear decisions.

To insure that future Commissioners will have a high degree of expertise in the trade and commercial area the Committee may wish to adopt certain basic standards relating to background and expertise in the general trade areas in which the Commission is involved. For example, the Committee may wish to provide a section establishing qualifications for Commissioners which would include the following:

> The nominee for the position of Commissioner must have substantial knowledge and experience in international trade and commercial matters. The nominee must possess the requisite intellectual and analytical skills to make independent judgments involving complex matters of fact and law.

The Committee may wish to consider raising the pay of Commissioners which are currently at the bottom of the executive appointee scale.

III. Expanding the Number of Commissioners: Majority Voting

The Committee may wish to consider that the number of the Commissioners be increased from 6 to 7. The seventh Commissioner could be required to be an independent to preserve the political independence of the Commission. Thus, it would not affect the current requirement in the law that no more than 3 members of the Commission should be of any one political party.

In addition, the Committee may wish to require that all statutory decisions be made by the Tariff Commission on the basis of an absolute

majority with at least 5 of the Commissioners voting. In recent years there has been a tendency of split 2–2 decisions. In some cases this forces the President to make a positive finding (dumping); in others it gives the President the tie breaking vote. In either case, it is an unhappy result.

IV. Independence of the Commission

In order to help assure independence from undue pressures from the Executive Branch or others, the Committee may wish to make the Chairmanship and Vice Chairman of the Commission determined by the majority vote of the Commissioners themselves rather than by the President as is currently the case. They could be required to be of different political persuasions. Each Chairman so chosen could hold that office for a term of two years. This would guarantee a degree of continuity in the leadership of the Commission while providing sufficient flexibility to enable the Commission to adapt to changing circumstances and membership. Furthermore, Commissioners could stay in office until successor is approved, but not for over 6 months after their term expires. As an alternative, the Committee may wish to consider increasing the terms of each Commissioner to a longer period of ten years or more, and for one term only.

The Committee may wish to provide that the budget of the Commission be submitted directly to the Congress and not through the Office of Management and Budget as is presently the case. Providing the Executive Branch with the power to formulate the budget of the Tariff Commision provides the Executive with too powerful a potential tool by which to control and limit the operations of the Tariff Commission.

Finally, in order to be able to effectively carry out its mandate of providing advice and information to the President and the Congress, the Commission must be able to obtain the information relevant and necessary to its decisionmaking process. Under law, the Commission is authorized to issue subpoenas for the purpose of requiring that personnel and/or documented information be made available to the Commission. However, in order to effectively enforce such subpoenas, the Commission must presently rely upon the Department of Justice in the Executive Branch. In certain cases, several of which have occurred only recently, the Justice Department has been reluctant to enforce the subpoenas of the Commission because of differences of opinion between the Department and the Tariff Commission. In other cases, not involving subpoenas the Department of Justice has agreed to act on behalf of the Commission only on the basis of guidelines mandated by the Department of Justice itself. If the Commission is

not able to enforce its subpoena power and defend its actions on the terms which it deems to be necessary, its ability to perform its statutory functions under the Tariff Act of 1930 is greatly impaired. Accordingly, the Committee may wish to consider providing the Commission with explicit authority to issue and *enforce* subpoenas necessary to enable it to obtain witnesses and information relevant to its functions and purposes and to represent itself in judicial proceedings.

V. Increased Flexibility in the Commission's Operating Authority

There may be also other areas where the authority of the Tariff Commission to make decisions and take action should also be made more flexible. One such example concerns section 337 of the 1930 Tariff Act which provides for the complete exclusion of articles found to involve unfair trade practices in their importation. Given the extreme nature of this remedy of total exclusion particularly in cases of unfair trade practices not involving patents, the Staff suggests that the Tariff Commission be given the authority to provide on its own authority, more moderate remedies, including the issuance of cease and desist orders in appropriate cases. These suggestions will be presented in greater detail in a later Staff bluebook on Title III of the trade bill.

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