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DISAPPROVING THE REQUEST OF THE PRESIDENT FOR EXTENSION OF THE FAST TRACK PROCEDURES UNDER THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988 AND THE TRADE ACT OF 1974

MAY 14 (legislative day, APRIL 25), 1991.—Ordered to be printed

Mr. BENTSEN, from the Committee on Finance, submitted the following

REPORT

[To accompany S. Res. 78]

The Committee on Finance, to which was referred the resolution (S. Res. 78) disapproving the request of the President for extension of the fast track procedures under the Omnibus Trade and Competitiveness Act of 1988 and the Trade Act of 1974, having considered the same, reports unfavorably thereon and recommends that the resolution do not pass.

I. SUMMARY

The Omnibus Trade and Competitiveness Act of 1988 ("the 1988 Trade Act") authorizes the President to enter into bilateral and multilateral trade agreements with foreign countries before June 1, 1991 and to submit such agreements to the Congress, together with implementing legislation, for approval under expedited legislative procedures. The 1988 Trade Act further provides that such procedures may be extended for the approval and implementation of trade agreements entered into after May 31, 1991 and before June 1, 1993, if the President requests such an extension and if neither House of Congress disapproves the extension before June 1, 1991.

On March 1, 1991, pursuant to the 1988 Trade Act, the President submitted to the Congress a report and supporting materials requesting the two-year extension. On March 13, 1991, Senate Resolution 78 was introduced in accordance with the disapproval procedures set forth in the 1988 Trade Act. The resolution disapproves

the request of the President because sufficient tangible progress has not been made in trade negotiations.

The Committee recommends that the Senate not approve S. Res. 78.

II. GENERAL STATEMENT

A. Background

Since the enactment of the Reciprocal Trade Agreements Act of 1934, the Congress has periodically granted the President specific and limited authority to negotiate and implement reciprocal trade agreements with foreign countries. While Article I, Section 8 of the Constitution clearly vests in the Congress authority to regulate commerce with foreign nations, Congress decided in 1934 that it was necessary to provide some degree of authority to the President to negotiate trade agreements if the United States was to bargain successfully for its fair share of foreign trade. In a world characterized by prohibitive trade barriers, Congress concluded that "to meet an international condition where foreign executives are being clothed with ever greater and greater power to effectuate speedy trade agreements, the United States, if it is to regain its lost proportion of world trade, must repose similar confidence in its President." [1]

Prior to 1974, trade agreements focused primarily on tariffs. Accordingly, Congress granted the President authority to implement a trade agreement by proclaiming reductions in U.S. tariffs, without returning to Congress for approval of the agreement itself. Over time and due in large part to the success of the reciprocal trade agreements program, tariff barriers were lowered and trade negotiations focused increasingly on non-tariff barriers. The first effort to address non-tariff barriers was in the Kennedy Round of Multilateral Trade Negotiations (1964–1967) under the auspices of the General Agreement on Tariffs and Trade (GATT). However, after the agreement was signed, Congress refused to implement certain provisions relating to customs valuation and antidumping procedures because U.S. negotiators had exceeded the limits of the authority granted to the President in advance of the negotiations.

The experience of the Kennedy Round demonstrated the need for the Congress and the President to find a new basis for grants of authority to negotiate trade agreements before proceeding with the next round of GATT talks in 1974, particularly since the next round, the Tokyo Round, was intended to focus primarily on non-tariff barriers. In addition to the climate of distrust between the Congress and the President created by the Kennedy Round, the European Community was demanding that the United States have clear negotiating authority before substantive bargaining could begin.

Thus, in the Trade Act of 1974 ("the 1974 Act"), an agreement was struck between the Executive and the Congress aimed at preserving the constitutional powers vested in the Congress, while providing our trading partners some assurance that any trade agreement would be considered in a timely fashion.

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[1] H. Rept. 1000, 73d Cong., 2d Sess., p. 14 (1934).

The 1974 Act provides that a non-tariff barrier trade agreement must be submitted to Congress for positive approval. Under its provisions, such an agreement cannot enter into force until both Houses of Congress (1) approve the agreement; (2) make necessary changes to domestic law to implement the agreement; and (3) approve a statement describing changes in administrative action necessary to implement the agreement. To assure that Congress would consider such legislation in a timely fashion, section 151 of the 1974 Act provides special expedited legislative procedures, commonly known as the "fast-track," for considering implementing legislation. The procedures provide for final Congressional action on an implementing bill within 90 legislative days after its introduction.

Congress also recognized that U.S. negotiators could not be expected to accomplish U.S. objectives if there were no reasonable assurances that the negotiated agreements would be voted up-or-down on their merits. Thus, the 1974 Act provides that an implementing bill cannot be amended. Finally, the 1974 Act includes elaborate procedural and consultation requirements to assure that the Congress and the private sector are well informed regarding trade negotiations and that U.S. negotiators take their views into account.

Since 1974, Congress has twice extended the President's negotiating authority as well as fast-track legislative procedures. The authority was extended for an additional eight years in the Trade Agreements Act of 1979 and, after a lapse of eight months, it was extended again with enactment of the 1988 Trade Act. The authority has been used to approve and implement three trade agreements: the Tokyo Round Trade Agreements in 1979, the U.S.-Israel Free Trade Area Agreement in 1985, and the U.S.-Canada Free-Trade Agreement in 1988. In each case, the Congress overwhelmingly approved the agreement.

B. The Mid-Term Review

As previously stated, current authority for the President to enter into bilateral and multilateral trade agreements rests in the 1988 Trade Act. Section 1103(b) of the 1988 Trade Act also extends fast-track legislative procedures for such agreements entered into before June 1, 1991. Section 1103(b) further provides that fast-track legislative procedures may be extended to trade agreements entered into after May 31, 1991, and before June 1, 1993, if (1) the President submits to the Congress by March 1, 1991, a report and supporting materials requesting the two-year extension; (2) the Advisory Committee for Trade Policy and Negotiations ("ACTPN"), established under section 135 of the 1974 Act, submits to the Congress, by March 1, 1991, a report regarding its views on the negotiations and whether the extension should be disapproved; and (3) neither House of Congress adopts a resolution disapproving the extension before June 1, 1991.

Pursuant to the 1988 Trade Act, the President submitted to Congress on March 1, 1991 a request for an extension of fast-track legislative procedures for trade agreements. The President's request states that, if extended, such procedures would be used to implement trade initiatives such as completing the Uruguay Round, negotiating a North America Free Trade Agreement with Mexico and

Canada, and could be used to pursue the trade objectives of the President's Enterprise for the Americas Initiative.

The ACTPN also submitted its report on March 1, 1991. The ACTPN, with the exception of its labor representatives, strongly recommends that the Congress grant the President's request for the extension.

On March 13, 1991, pursuant to section 1103(b)(5) of the 1988 Trade Act, S. Res. 78, a resolution disapproving the request of the President, was introduced. S. Res. 78 provides that the Senate disapproves the request of the President for the extension of the provisions of section 151 of the 1974 Act to any implementing bill submitted with respect to any bilateral or multilateral trade agreement entered into after May 31, 1991, because sufficient tangible progress has not been made in trade negotiations. S. Res. 78 was referred to the Committee on Finance. The Committee held five hearings in connection with S. Res. 78 on March 14, April 17, 18, and 24, and May 7, 1991. The Committee also held hearings specifically on the President's proposal to begin negotiations on a North American Free Trade Agreement on February 6 and 20, 1991.

C. Reasons for Committee Recommendation

The Committee recommends that the Senate not approve S. Res. 78. The Committee has carefully reviewed the request of the President, including the substance of each trade negotiation that the President has indicated he would pursue, if the extension is granted. After thorough review, the Committee has concluded that sufficient tangible progress has been made in trade negotiations since 1988 and that further negotiations are necessary to accomplish the objectives for trade negotiations set forth in the 1988 Trade Act.

In the 1988 Trade Act, the Congress set forth an ambitious agenda for U.S. negotiators. They were directed to pursue more open and reciprocal market access, eliminate trade barriers, and establish a more effective system of international trading disciplines and procedures. While the grant of negotiating authority in the 1988 Trade Act was for a period of five years, a mid-term report, and the possibility of removing fast-track legislative procedures for the final two years, were included as an incentive to negotiate seriously and make timely progress.

The Committee believed in 1988, and continues to believe today, that multilateral trade negotiations can be an effective method of opening foreign markets to American exporters and expanding world trade, to the betterment of American citizens. The Committee is disappointed that the current Uruguay Round of Multilateral Trade Negotiations under the GATT did not conclude successfully in December 1990, as was anticipated. However, the Committee believes it was preferable to reach no agreement in December 1990 than to reach a bad agreement, particularly one that failed to reform world agricultural trade to the benefit of American farmers. Thus, the Committee concludes that the United States should continue to exercise its leadership in the Uruguay Round in pursuit of U.S. objectives in trade negotiations.

The Committee has long recognized that U.S. objectives in world trade may also be pursued successfully through bilateral trade negotiations. The President has proposed the negotiation of a North

American Free Trade Agreement with Mexico and Canada, expanding on the free trade agreement already in place between the United States and Canada. The Committee recognizes the potential benefits of such an agreement, properly negotiated, for American workers and industries. Mexico is the United States' third largest trading partner, yet its barriers to American products are still substantial, while American barriers to Mexican products are low. Removing these barriers will provide substantial new opportunities for American exporters.

At the same time, the Committee recognizes the challenges of negotiating a free trade agreement with Mexico. Concerns have been raised in the course of the Committee's consideration of this resolution regarding issues not typically addressed in trade negotiations, such as environmental regulation and health and safety standards. In response, the President, in a May 1, 1991 letter to the Chairman of the Committee, has set forth an action plan intended to address these issues. Recognizing its right to accept or reject any trade agreement that is ultimately negotiated, and based on the President's commitment to work closely with the Congress in the negotiations, the Committee believes that a North American Free Trade Agreement should be pursued.

However, neither the Uruguay Round nor the North American Free Trade Agreement may be pursued if the Senate adopts S. Res. 78. For over 50 years, the Congress has recognized that, to negotiate successfully, the President must enter trade negotiations with express Congressional authority, no matter what the President's constitutional prerogatives. The Committee concludes that the international environment is no different today. The procedures set forth in the 1988 Trade Act and the 1974 Act provide the greatest likelihood of achieving trade agreements that meet ambitious U.S. objectives and will be approved by the Congress. Thus, the Committee strongly recommends that the resolution not be approved.

III. REGULATORY IMPACT OF THE RESOLUTION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee states that the resolution will not significantly regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no significant additional paperwork.

IV. BUDGETARY IMPACT OF THE RESOLUTION

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office regarding the budgetary impact of the resolution:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 14, 1991.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. Res. 78, to disapprove the request of the President for extension of the fast track procedures under the Omnibus Trade and Competitiveness Act of 1988 and the Trade Act of 1974, as ordered reported on May 14, 1991 by the Senate Finance Committee. The CBO estimates that this bill would have no effect on federal government revenues in fiscal years 1991–1996.

Title I of the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418) amended the rules for considering legislation on trade agreements first established in the Trade Act of 1974 (P.L. 93–618). Under current rules, Congress cannot amend implementing legislation for trade agreements negotiated between the United States and a foreign country. Furthermore, Congress must act on that legislation following a strict timetable as long as the President has met prescribed requirements concerning Congressional notification and consultation during the negotiation process. These are known as "fast track" procedures.

The fast track procedures are scheduled to expire on May 31, 1991. On March 1, 1991, President Bush requested an extension of the procedures for two more years, until June 1, 1993. Unless either the House or the Senate passes a disapproval resolution by June 1, 1991, the procedures will be extended.

S. Res. 78 is a disapproval resolution. Because its passage would change only the process by which implementing legislation for trade agreements is considered, the resolution would cause no change in federal revenues for fiscal years 1991–1996.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Change in revenues	0	0	0	0	0
Change in outlays	0	0	0	0	0

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. This resolution has no pay-as-you-go implications.

If you wish further details, please feel free to contact me or your staff may wish to contact John Stell at 226–2720.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

V. VOTE OF THE COMMITTEE IN REPORTING THE RESOLUTION

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that the resolution was ordered reported unfavorably by a vote of 15-to-3.

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee states that no changes in existing law are made by this resolution.

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