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THE OMINOUS OMNIBUS TRADE BILL

INTRODUCTION

At the Tokyo economic summit, Ronald Reagan won agreement from the other industrial nations to consider major, market opening trade reforms during the next round of the General Agreement on Tariff and Trade (GATT) talks. In further support of free trade, Reagan last year vetoed the only protectionist trade bill to reach his desk, a bill to limit textile imports. He soon may have to grab his veto pen again, for while Reagan is acting to make world trade freer, Congress is still up to old protectionist tricks. This week the House of Representatives is expected to take action on a major trade bill, with Senate action likely to follow soon.

While some of this trade legislation is not so harsh as last year's model, much of it would do more harm than good. And as usual, it will be the American consumer who gets socked. A major danger is the omnibus trade bill (S. 1860), sponsored by Senators John Danforth (R-MO), Robert Dole (R-KS) and 31 other Senators, and a similar House bill (H.R. 4750), which recently passed the Ways and Means Committee. Amendments are likely to be attached to these measures during floor debate. The bills' goals are to help U.S. industries which face competition from imports and to strengthen the President's power to mount countermeasures against countries engaging in unfair trade practices. Specifically, they are intended to change certain provisions of the 1974 Trade Act.

The General Agreement on Tariffs and Trade (GATT), the world's principal multilateral trade agreement, allows countries to raise tariffs or impose quotas to help their domestic industries adjust to foreign competition. But such measures are permitted only in emergencies and only on a temporary basis.

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It is questionable whether the omnibus trade bill meets GATT criteria. As such, the bill would invite costly retaliation from other countries. To make matters worse, the measure calls for "plan development groups" to formulate strategies that supposedly would make industries receiving trade relief more efficient. This would amount to national industrial planning, something Congress and the Reagan Administration repeatedly have rejected as economic nonsense.

There is no question that some U.S. industries are being hit hard by imports. Even the falling dollar is unlikely to give sufficient relief. But neither will the omnibus trade bill. Yet there are policies that could enable U.S. businesses to compete more successfully with foreigners. Exemption from antitrust laws, for instance, would allow U.S. businesses to cooperate and become more competitive in the world market. When trade relief is justified, using tariffs instead of quotas is more equitable. Further, the President should be allowed, at his discretion, to revoke special trade privileges granted to developing countries under the Generalized System of Preferences from those countries that engage in unfair trade practices. Currently some U.S. companies that face competition from counterfeit goods made from their own patents stolen by foreign companies must prove that the sale of the counterfeit goods has injured their own sales. Removal of this injury test would allow better protection of U.S. property rights. Finally, authorizing a new round of GATT trade liberalization talks is crucial if the root causes of U.S. trade problems are to be adequately addressed.

IMPORT INJURY RELIEF: SECTION 201 OF THE 1974 TRADE ACT

The GATT treaty of 1947 does not permit countries to increase tariffs above existing levels or to impose quotas, except under special situations. Section 201 of the U.S. Trade Act of 1974 states that, when such a special situation exists, an industry that believes it is suffering damages from foreign imports can ask for trade restrictions. This supposedly is to facilitate an orderly adjustment to the new market situation and to allow the industry to regain its competitive status. Such cases are handled primarily by the International Trade Commission (ITC), which is an independent, quasi-judicial body dealing with these matters. The ITC determines whether injury has occurred primarily as the result of imports and what, if any, trade remedy is appropriate. The President can accept or reject the ITC recommendation, or advance his own adjustment plan. If the President takes no action, Congress can act.

Proponents of this system maintain that temporary trade restrictions allow the market to adjust more smoothly. But it is questionable whether this is effective. Behind a wall of trade protection, industries have less incentive to modernize and become

more competitive. They often avoid making hard business decisions. Example: periodic protection since the late 1960s has enabled American steel producers to boost salaries for their workers faster than their productivity increased, while they devoted insufficient funds to capital improvements. The predictable result: American steel is more expensive than most foreign steel.

Temporary protection can also fail to distinguish between industries that may become competitive and those inefficient industries that would decline without trade protection. Protection allows inefficient businesses to avoid painful reorganization or contraction. Not surprisingly, industries that fear foreign competition are quick to claim that they are victims of import practices and to press for ITC intervention.

In light of these problems, if Section 201 of the Trade Act is to be revised, it should be done not so as to hinder the market adjustment process but to make it smoother. Reform also should limit trade protection to industries likely to become competitive. Most of the trade reforms now before Congress fail to meet these criteria.

Therefore, in reforming Section 201:

1) Do not tie injury rulings to other unfair trade practices.

One recommended change in Section 201 would consider assistance by a foreign government to its exporters as clear evidence of injury to a U.S. industry. Imposition of U.S. anti-dumping or countervailing duties, and even the diversion of exports to the U.S. from a third country would be considered *prima facie* proof of injury, according to some proposals.

Enactment of this would only confuse the purpose of Section 201, which clearly is to provide trade adjustment relief, if appropriate, for U.S. industries injured by legal imports. There are other statutes to deal with a broad range of unfair trade practices. Quota restrictions on imports meant to aid U.S. industries in the adjustment process are not the appropriate remedy for unfair trade practices.

2) Do not narrow the definition of an "industry" suffering injury.

Attempts to narrow the definition of an "industry" that might suffer injury are contrary to the goal of Section 201, which is to aid trade adjustment. For example, if a U.S. industry both imports and exports, one proposal would require that only the health of the domestic side of the industry be considered in an injury case--even if exports by the industry were skyrocketing. For example, a healthy electronics firm, with weak domestic facilities but strong overseas branches could receive protection. Another proposed change would

require that injury determinations should consider only individual product lines of an industry.

Such measures would discourage adjustment, rather than making it smoother. The U.S. auto industry, for example, has grown more competitive by importing certain automobile models as well as parts for its domestic production lines. Other industries diversify product lines as a way to remain competitive. To narrow the definition of an "industry," to ignore imports or entire product lines when determining the health of an industry, would designate as part of the "problem" major components of the adjustment process that are in fact the solution to changing markets.

3) Do not weaken the criteria for determining whether imports are the cause of industry troubles.

The ITC now can find an industry to be injured by imports only if import pressures are as important a cause of problems as any other single factor. Thus if decline in domestic demand is a more important cause of the domestic industry's difficulties, for instance, import relief cannot be granted.

Some proposals would reduce the number of factors that could "compete" with imports under this process. One, for instance, excludes a general business cycle downturn as a cause to be considered by the ITC when seeking the origin of a U.S. industry's troubles, even if this accounts for most of them. This would mean that, during a recession, many industries that are not suffering primarily because of imports could nevertheless receive import relief. Even worse, there are attempts to grant trade protection if imports are simply one cause, no matter how small, of an industry's decline. Such proposals are undisguised attempts to transform Section 201 into a vehicle for trade protection at the expense of the goal of market adjustment.

4) Reject the use of "plan development groups" to formulate strategies to make injured industries more competitive.

Proposals in the House and Senate would allow industries seeking import relief to request the establishment of a "plan development group" (PDG). This would consist of representatives of the industry's management and labor unions, officials from the U.S. Trade Representative's office, the Departments of Commerce and Labor, and from any other relevant department. The PDG would be charged with formulating a strategy to make the industry competitive and could recommend policies to the industry and the federal government--under either existing rules or new legislation. This plan would be submitted to the ITC and could be recommended as part of import relief.

Plan Development Groups would be national industrial planning in disguise. Establishment of such groups is perhaps the most dangerous

economic proposal circulating in Washington. Rather than encouraging competitiveness, the PDG plans would allow the various vested interests involved to seek the same narrow favors and government handouts that already plague federal efforts to "help" economic system industries become more competitive. Industries would come to rely more on such favors and to have less incentive to improve.

The nature of the "group" producing such plans would assure that hard decisions would be avoided. For example, even if wage cuts were necessary for industrial competitiveness, labor representatives on a PDG would rarely sign on to such a recommendation. The compromise plans emerging from PDGs would probably harm rather than help industry competitiveness.

PDGs would be no more competent at developing plans for industrial competitiveness than are protected industries themselves. Quite the contrary. All indications are that government planning would be less effective, at best protecting declining industries with government subsidies and trade protection at the expense of more dynamic, expanding industries, and the U.S. consumer and taxpayer.

The U.S. economic system is based on private entrepreneurial initiative, not on state planning. PDGs would be a dangerous first step toward the kind of intervention that has suffocated European economic growth for decades. Any legislation containing such proposals should be vetoed by the President.

5) Do not weaken or remove the President's right to accept or reject ITC relief recommendations.

Some proposals would abolish the President's right to accept or reject recommendations for trade relief. In some situations, in fact, the President would be required to adopt "plan development group" recommendations unless Congress specifically allowed him to act differently. It is wise, however, to allow the President to retain final say in such trade matters, unless explicitly overridden by Congress. He is in the best position in such trade decisions to balance the interests of injured industries and groups, consumers, and U.S. foreign policy.

RELIEF FROM UNFAIR TRADE PRACTICES: SECTION 301 OF THE 1974 TRADE ACT

Section 301 of the 1974 Trade Act gives the President a tool to deal with other countries' unfair practices and to secure their adherence to international trade agreements. If these countries deny U.S. exporters or businesses their rights under such agreements, or otherwise discriminate against American businesses, the affected businesses can file a complaint with the U.S. Trade Representative.

The USTR, with Presidential approval, then decides whether to conduct an investigation and negotiate with the country in question.

Should unfair trade practices be identified, Section 301 allows the President to act against specific foreign industries. Section 301 also requires the U.S. to attempt to negotiate a resolution to each dispute. In some 40 percent of these cases over the past decade, the dispute was settled diplomatically, without the imposition of sanctions. The threat of sanctions apparently was enough. If action is necessary, the President can impose added duties or import restrictions or remove other trade privileges extended by the U.S. to the offending country.

Section 301 is an important and critical part of U.S. trade law. It generally has worked in a reasonable and balanced manner. The Administration, moreover, has begun to initiate investigations on its own rather than wait for petitions from U.S. industries, an active approach welcomed by those concerned about unfair trade practices.

Changes in Section 301 now under discussion add little to the President's power. In some cases they would tie his hands, making him less able to deal with trade problems. Lawmakers should avoid revisions that weaken, not strengthen, the effectiveness of the President's Section 301 powers. Among the guidelines for making such revisions are:

1) Do not mandate automatic retaliation against unfair trade practices.

Various proposals before Congress would specify exactly the type of retaliation to be applied in certain situations and make retaliation mandatory in certain cases. This would undermine the President's and the U.S. Trade Representative's ability to eliminate though negotiation and threats unfair practices and restrictions against U.S. businesses. For Section 301 to be effective, it must allow the President negotiation flexibility. To limit his discretion would weaken his ability to eliminate unfair practices and might well trigger retaliation against U.S. goods.

2) Do not transfer the President's authority in 301 cases to the U.S. Trade Representative.

Some proposed revisions of Section 301 would transfer the President's power to the USTR. This, however, would not strengthen the Administration's ability to eliminate unfair practices against U.S. businesses. In fact, it could weaken the Administration's hand. First, the President is in a better position than the USTR to judge when action under Section 301 is appropriate, since he sees the broader economic and foreign policy implications of such actions. Second, the impact of 301 action on foreign governments is magnified when it is seen as coming directly from the President. Third, since

the USTR is a cabinet level officer, chosen by and serving at the pleasure of the President, the President could simply dismiss a USTR who failed to do his bidding. Confusion over where power ultimately lay would create tension and division between the USTR and the President. This would hardly make the U.S. better able to eliminate unfair practices by others.

Section 301 is an important weapon in the President's arsenal to combat such practices. It should not be weakened by unwise "reform."

ANTIDUMPING AND COUNTERVAILING DUTY CASES

If a foreign industry dumps goods on the U.S. market--that is, persistently sells them at a price below the cost of production--or if a foreign country subsidizes its exports, U.S. businesses can complain to the ITC. If the ITC determines that dumping or illegal subsidies have occurred, countervailing duties can be imposed on the offending country to deny it the advantage gained by such practices.

Dumping is not easy to prove, however, and in many cases is not even a problem. Often it is a legitimate and acceptable business practice to sell below the cost of production, such as, for example, in launching a new product line. Sometimes, if the price of a good drops rapidly, businesses have little choice but to sell below production costs. Private business cannot, of course, continue to sell goods below the cost of production indefinitely.

If dumping depends on a government subsidy, then the case is viable under U.S. law. While subsidies to foreign goods imported by the U.S. give the U.S. consumer a bonus, they do distort the market. As such, it is reasonable for the U.S. government to counter such practices. Efficiency requires businesses to sell the goods and services that they can produce at competitive costs without government assistance. Subsidies by foreign governments to their businesses penalize otherwise competitive U.S. industries. But countermeasures to dumping and foreign subsidies must observe certain precautions:

1) Avoid reforms that violate GATT and other international trade agreements.

One proposed reform would allow for penalties to be made 90 days retroactive from a preliminary determination of dumping in the case of "critical circumstances." Another reform would eliminate the need for even a preliminary determination of injury if in the previous year an injury determination had been made against the same products entering from another country. Another proposal would eliminate the need for an injury test entirely under certain circumstances.

Aside from their dubious nature, these reforms probably would violate GATT rules, which require certain procedures to be followed in such cases. Violating the rules of international trading would make it difficult for the U.S. to take the high ground in promoting freer, more open markets. The U.S. hardly could complain about illegal or unfair trade practices by other countries if it flouted international law and engaged in illegal and unfair practices.

2) <u>Do not at this time define as a subsidy the below market pricing of resources owned by a foreign government</u>.

Foreign governments often own various resources, such as oil or timber, and sell them to their own producers at a price below the actual market rate. A foreign company purchasing the same resource from such a government would pay a higher price. Representative Sam Gibbons (D-FL) argues that such pricing be declared a subsidy and subject to countervailing duties. He argues that, whether a foreign government hands its businesses cash or a valuable resource, a subsidy is still involved.

Gibbons has a point. Such pricing practices give foreign businesses an advantage, resulting in government-created market distortions. Yet designating such practices a subsidy at this time, through new trade legislation, would not be the best way to correct the problem. Subsidies are carefully defined in the GATT. For the U.S. unilaterally to modify this definition would invite other countries to take action against various American practices deemed to be subsidies. For example, U.S. Export-Import Bank loan guarantees easily could invite foreign countermeasures. And the $50 billion in price supports for U.S. agricultural products also might invite counter actions.

Rather than inviting retaliation by acting unilaterally, the U.S. should push for a general discussion of the definition of subsidy at a new GATT round.

RECOMMENDATIONS

Many of the trade law proposals before Congress are inappropriate or are prompted by protectionist sentiments. Rather than solving problems, they would lead to market restrictions at the expense of the U.S. consumer and reduce the international competitiveness of many of America's most dynamic industries. Some trade measures, however, would help keep markets open, keep U.S. industries competitive, and lead to a fairer trading system. Among them:

1) Allowing an exemption from most antitrust laws as a form of trade relief.

The Reagan Administration and some lawmakers have suggested that, as a form of trade relief under Section 201, industries be granted exemptions from all antitrust laws--except for the basic prohibition under Section 1 of the Sherman Act against restraint of market entry. Companies harmed by imports then would be able to merge, operate joint ventures, and coordinate activities to remain competitive. Current antitrust laws prohibit many types of business cooperation and thus put U.S. firms at a disadvantage when faced with foreign competition.

2) Tightening the definition of injury caused by imports under Section 201 of the Trade Act of 1974.

The definition of "import injury" under Section 201 should not be relaxed. For example, attempts to prohibit consideration of business cycle slumps as a cause of injury to an industry seek to use this law as a vehicle for trade protection. Even the current law, which allows an injury finding if imports are a cause with no other cause greater, is too loose. If Section 201 is to be revised, the definition of a "cause" of injury should be tightened. Import relief should be granted only if imports result in greater injury than all other causes combined.

3) Using tariffs instead of quotas as a form of trade relief.

Of the various forms of temporary trade protection, quotas are by far the worst. Not only do quotas increase prices paid by the consumer, but they reduce the foreign competition for U.S. companies, who thus have less incentive to become competitive. The profits from higher prices on the limited supplies, meanwhile, go in large part to foreign companies. For example, Japanese auto makers continue to rake in billions of dollars in windfall profits due to "voluntary" restraints on their exports. Further, the foreign companies with the highest quotas actually have an incentive to support limits on the entry of goods into the U.S. One way to deal with this problem of quotas would be by auctioning off quotas to the highest bidder. But this would create enormous business and market uncertainties.

Tariffs, on the other hand, have several advantages over quotas as a form of trade relief. First, they create the least amount of market distortion; foreign goods are still available in quantity, though at higher prices. This keeps up the pressure on U.S. industries to become more efficient, while at least allowing them some relief from lower cost foreign goods. Second, the receipts from tariffs would go to the U.S. government, not to foreign countries. Such funds then could be earmarked for trade relief to the industries involved. Perhaps workers in industries that had to reduce manpower could be given a special severance pay, or "golden parachute."

Finally, tariffs are much more in keeping with the rules of the GATT, thereby strengthening America's moral position when pressing other countries to adhere more strictly to GATT principles.

4) Allowing the President to revoke special trade privileges granted under the Generalized System of Preferences from developing countries that engage in unfair trade practices.

Developing countries are afforded special trade privileges by the U.S. under the Generalized System of Preferences (GSP) in order to encourage economic development via trade, not aid. Attempts by some Congressmen to change the qualifications for such benefits are nothing more than protectionist attacks against several of America's Asian friends.

However, the President should be allowed, at his discretion, to suspend some or all GSP privileges, as he sees fit, to deal with unfair trade practices by such countries. Section 301 of the Trade Act should be amended to give the President this additional weapon against those who would discriminate against American businesses.

5) Not requiring U.S. patent holders to prove economic injury to secure relief in cases where U.S. patents are stolen and illegally used.

An important function of the ITC is to protect the property rights of U.S. companies against patent and trademark violations by foreign concerns. In some cases, however, the principle of property rights is not adequately applied. Sometimes the ITC, for example, requires that a U.S. company not merely prove that its patent has been stolen, but also that its business is adversely affected by the importation of the illegally produced goods. Such an "injury test" is inappropriate. At issue is property rights. If an unscrupulous author took another man's published work, replaced the true author's name with his own, published it, and tried to market it as his own work, the case clearly would be one of theft--no one asks about the impact on sales of the original work. The Tariff Act of 1930 (19 U.S.C. Sec. 1337), which deals with this issue, should be amended to make clear that an injury test is not necessary in the case of a stolen patent.

6) Authorizing a new round of GATT trade liberalization talks.

The world's major trading countries have agreed to the need for a new GATT round. At the Tokyo economc summit, the U.S., along with the other leading industrial nations, agreed that the new round should deal with such issues as trade in services, intellectual property rights, and foreign direct investment. The U.S. will also seek consideration of the problem of government subsidies. It would be wise for Congress to authorize the President to enter these much-needed negotiations. Only under the wide umbrella of a new GATT

round, with all the major trading countries taking part, will it be possible to solve the many complex and politically sensitive issues that interfere with world trade.

CONCLUSION

The purpose of U.S. trade laws is to promote freer world trade, open foreign markets to U.S. goods, oppose unfair trade practices, and facilitate U.S. companies' market adjustment to changing import patterns. Unfortunately, many of the proposed trade reforms before Congress would do little to further these ends. Many are simply trade protectionism in disguise.

The dangers of protectionism should not be underestimated. Trade restrictions are costly to American consumers. And while some U.S. businesses might gain temporarily from such policies, U.S. industrial competitiveness overall will suffer.

The advantages of free markets and free trade are rarely overestimated. The resulting economic efficiency and growth raise the standards of living for all countries involved. U.S. trade laws should promote freer and fairer trade, not special protection and closed markets.

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