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SUMMARY AND ANALYSIS OF H.R. 10710—THE TRADE REFORM ACT OF 1973

COMMITTEE ON FINANCE
UNITED STATES SENATE

RUSSELL B. LONG, *Chairman*

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



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CONTENTS

	Page
Introduction	1
Structural changes in world economy	3
Interrelationships: Trade, aid, investment, military	4
Differing perceptions of United States and world economic structure	6
General description of the House bill	9
Title I. Negotiating and other authority	9
A. Trade agreement authority (ch. 1)	9
1. Tariff authority (secs. 101 and 103)	9
Staging requirements	9
2. Authority with respect to nontariff barriers (sec. 102)	12
General authority	12
Conversion authority	12
Consultation procedures	12
Veto procedure	14
3. Other authority (ch. 2 of title I)	15
GATT reform (sec. 121)	15
Balance-of-payments authority (sec. 122)	16
Authority to suspend import barriers to restrain inflation (sec. 123)	18
Compensation authority (sec. 124)	20
Renegotiation authority (sec. 125)	20
Termination and withdrawal authority (sec. 126)	21
Nondiscriminatory trade (sec. 127)	24
Reservation of articles for national security and other reasons (sec. 128)	24
4. Hearings and advice concerning negotiations—Chapter 3 (secs. 131–135)	25
Tariff Commission advice	25
Executive Department advice	25
Public hearings	25
Prerequisite for officers	25
Advisory committee (private sector advice)	25
5. Office of the Special Representative for Trade Negotiations—Chapter 4 (sec. 141)	26
6. Congressional veto procedure—Chapter 5 (secs. 151–152)	26
7. Congressional liaison and reports—Chapter 6 (secs. 161–163)	30
Congressional advisers	30
Transmission of agreements and reports	30
Title II. Relief from injury caused by import competition	31
A. Import relief (ch. I)	31
1. Investigation by Tariff Commission (sec. 201)	31
2. Presidential action after investigation (sec. 202)	33
3. Import relief (sec. 203)	36
4. Congressional veto of quotas (sec. 204)	37
5. Limits on import relief	37
B. Adjustment assistance for workers (ch. 2 of title II) (secs. 221–250)	37
1. Determination by Secretary of Labor	37
2. Secretary of Labor study on adjustment assistance in relation to escape clause cases (sec. 224)	38
3. Subchapter B program benefits (secs. 231–238)	38
4. Subchapter C general provisions, cooperation with State agencies, establishment of a trust fund	39

Title II. Relief from injury caused by import competition—Continued
C. Adjustment assistance for firms (ch. 3 of title II) (secs. 251–264) — Page 39
1. Determination by Secretary of Commerce — 39
2. Approvement of adjustment proposals (sec. 253) — 43
3. Technical and financial assistance (secs. 253–255) — 43
Title III. Relief from unfair trade practices — 45
A. Foreign import restrictions and export subsidies, chapter I of title III (secs. 301–302) — 45
1. Retaliation authority — 45
2. Congressional veto procedure — 46
B. Antidumping duties, chapter 2 of title III (sec. 321) — 46
1. Time limits and procedures — 46
2. Definitional changes — 47
C. Countervailing duties, chapter 3 of title III (sec. 331) — 48
1. Time limits — 48
2. Extention to nondutiable items — 50
3. Articles subject to quotas — 50
4. Discretionary moritorium while negotiations are in process — 50
5. Judicial review rights — 51
D. Unfair import practices, Chapter 4 of title III (sec. 341) — 51
1. Tariff Commission authority to exclude articles in patent infringement cases — 52
2. Hearings and judicial review — 52
Title IV. Trade relations with countries not enjoying nondiscriminatory treatment (secs. 401–407) — 53
1. Authority to extend nondiscriminatory treatment — 53
2. Freedom of emigration in East-West trade — 54
3. Market disruption (sec. 405) — 55
4. Procedure for congressional disapproval of extension or continuance of nondiscriminatory treatment — 55
Title V. Generalized system of preference BF (secs. 501-505) — 59
1. Beneficiary developing country (sec. 502) — 59
2. Eligible articles (sec. 503) — 61
3. Time limit; comprehensive review — 61
Title VI. General provisions — 63

APPENDIX A

Comparison of tariff levels among major industrial countries: A review of the problems of comparison and of recent data on tariff averages — 65

APPENDIX B

A summary of the principal trade barriers — 77

APPENDIX C

The General Agreement on Tariffs and Trade (GATT) — 99

SUMMARY AND ANALYSIS OF H.R. 10710—THE TRADE REFORM ACT OF 1973

Introduction

The Trade Reform Act of 1973, passed by the House of Representatives by a vote of 272 to 140 on December 11, 1973, would delegate to the President greater tariff and trade authorities than the Congress has ever delegated before to any President. Under Article I, Section 8 of the Constitution, the Congress has the plenary constitutional authority to "lay and collect taxes, duties, imposts," etc., and to "regulate trade with foreign nations." Since 1934 Congress has periodically delegated specific and limited trade agreement authority to the President for the purpose of negotiating reciprocal tariff and trade concessions with foreign nations. The last major delegation of authority to the President to negotiate trade agreements was contained in the Trade Expansion Act of 1962.

Six long rounds of multinational negotiations have taken place in the post World War II era. Without question, these negotiations have whittled down tariff barriers to the point where, in most commodities and for most countries, tariffs are not considered to be the most significant form of protection. A comparison of tariff levels among major industrial countries is provided in Appendix A.

Since the end of the Kennedy Round the term "nontariff barrier" has been very much in vogue. A "nontariff barrier" or "distortion," as the more sophisticated experts term it, literally refers to any trade barrier or trade distorting device other than a tariff. Thus a quota would be a nontariff barrier (NTB). But the term is so broad, it can be construed to include automobile emission standards, health and safety codes, licensing and distribution systems, investment restrictions, competitive bidding procedures and restrictions, discriminatory taxes and a whole host of government or private actions which affect trade and investment. Each nation literally has thousands of practices which other nations consider "nontariff barriers." A summary of major tariff and nontariff barriers appears in Appendix B.

The Subcommittee on International Trade, following the lead of the full Committee in the stillborn Trade Act of 1970, requested the Tariff Commission to do a complete study on nontariff barriers by sector. That study is now available. It appears to be the most thorough study of its kind ever undertaken in this country.

The next round of multinational GATT negotiations are intended to attack nontariff trade barriers. Unquestionably, this is an ambitious undertaking as the negotiations are bound to get into the domestic laws and regulations of major nations which bear little or no relation to international trade. Any law or regulation which may affect trade (even though they might deal with an environmental or health

matter) could be an object for negotiation. Thus the House bill grants authority to the President to modify U.S. laws and regulations as part of any trade agreement, subject to a congressional veto procedure.

As of this date, there seems to be little consensus among the major trading nations as to what the major nontariff barriers are or how they should be negotiated. The GATT secretariat has completed an inventory of nontariff barriers based on each member country's submission of complaints against other members. There was an attempt to categorize the complaints into five broad areas—(1) government participation in trade; (2) customs and administrative entry precedents; (3) standards; (4) specific limitations on trade; and (5) charges on imports. Each category is so broad it covers a multitude of practices deemed to be non-tariff barriers. Negotiating in sensitive areas will be slow and difficult.

The European Community still seems preoccupied with internal problems and has not shown much enthusiasm for the GATT talks. The French have suggested that the trade negotiations should await a satisfactory renegotiation of the IMF rules, a twist on the U.S. position that a change in the monetary rules would be incomplete without a change in the trading rules. Thus, the negotiations may be very slow in getting off the ground. Based on previous rounds, one can expect a long period of jockeying for positions in the inner councils of governments with the critical tradeoffs coming in the last hours of the negotiations. There was an original hope that the round may finish by 1975 but few feel this is still possible.

In the two or more years that have transpired since the Trade Reform Act was conceived by the Executive and considered, amended, and passed by the House of Representatives, the world economy has suffered severe shocks. There have been two official devaluations of the American dollar, a new international monetary system (or nonsystem) of fluctuating exchange rates and an energy crisis that threatens the economies of the western world as well as the political cohesion of the major nations.

Traditional trade problems have usually been associated with rising imports and their effect on industries, firms and jobs. Such "traditional" problems often were caused by oversupply. Current trade problems are more typically due to shortages—food and fiber, energy, metals and many others. We have moved into an era of resource scarcity and accelerated inflation—an era in which producing countries are increasingly tempted to withhold supplies for economic or political reasons. It's a totally new ball game, which was not envisaged in the planning and conception of the Trade Reform Act.

STRUCTURAL CHANGES IN WORLD ECONOMY

The U.S. and world economies have passed through several phases since the last large grant of trade negotiating authority was delegated to the Executive in the Trade Expansion Act of 1962. During the early 1960's the U.S. economy moved from stagnation to respectable growth without significant inflation. Beginning in 1965 a deep rooted inflationary trend developed which has not abated. Indeed inflation in the United States has reached unprecedented proportions in peacetime. Underlying this inflation have been the largest budget deficits since World War II. The endemic inflation led to extraordinary balance of trade and payments deficits between 1970 and 1972 which in turn created massive runs against the dollar. After the U.S. could no longer maintain a fixed parity between the dollar and gold, the fixed exchange rate structure collapsed on August 15, 1971. Several dollar devaluations have occurred since that date. By making imports more expensive and exports relatively less expensive, the dollar devaluations probably added significantly to the inflationary pressures in the economy, creating shortages of raw materials and leading to the imposition of export controls on those products for which we had the largest comparative advantage (e.g. soybeans). Unquestionably, the imposition of such controls complicates the U.S. negotiating position in the forthcoming round of trade negotiations. While the last returns on the effects of the dollar devaluations are not yet in, there are some signs that the U.S. trade performance is improving. In 1973, U.S. exports buoyed by large agricultural sales reached $70.8 billion while U.S. imports (f.o.b.) were $69.1 billion. Since the second quarter of 1973, the dollar has gained strength in the foreign exchange market in relation to the yen, the deutche mark, the French franc, and the British pound. It is now valued at close to the parities established at the Smithsonian agreement. A historical statistical overview of the U.S. trade and balance of payments performance is provided in another staff briefing document.

As the U.S. economy underwent significant internal changes during the 1960's and early 1970's, the U.S. economic position in the world economy declined vis-a-vis Western Europe and Japan. The European Community, born in 1958 under the Treaty of Rome, has become the world's most important trading bloc, with exports and imports exceeding $300 billion. The Community's share of world GNP, world trade and world reserve assets has grown markedly since the 1960's and this trend has accelerated in the 1970's.

Japan's growth on all fronts has even outstripped that of the European Community. Real growth in Japan grew at the phenomenal rate of 10.5 percent a year for the period of 1960 through 1972, as compared with 5.0 percent in Italy, 4.5 percent in West Germany, 4.1 percent in the U.S. and 2.7 percent in the United Kingdom. In almost every international economic indicator of growth, Japan has been the leader. In terms of military or tax burden, however, Japan is at the bottom of the list. Yet the achilles heel of the Japanese economy—its overwhelming dependence on foreign oil—may rupture the record of remarkable growth of the Japanese economy. Japanese economic planners are now forecasting a real economic growth rate of only 2.5 percent for the coming year.

Less developed countries as a whole have done fairly well in terms of economic growth, and trade and balance of payments performance. Between 1960 and 1972 real economic growth in the "LDC's" averaged over the 5 percent target set for the "decade of development." By the fall of 1973, these countries had accumulated $40.6 billion in international reserve assets compared to $10 billion in 1960. Of course, these overall figures mask wide divergence in performance. Some so-called LDC's—the Arab oil producing nations—are now in effect holding the Western economies at bay through selective boycotts and massive price increases. One of the most serious and challenging facts facing the world is that at present consumption levels, world imports of petroleum will jump from $45 billion in 1973 to about $115 billion in 1974, or by about $70 billion. Oil exporting countries' revenues will increase in 1974 to nearly $100 billion or three-and-a-half times the 1973 levels. Other LDC's sitting on other important mineral resources, may be tempted to form their own producers' cartel to seek a maximum rate of return on their assets. This bill does not deal with the problem of raw material shortages, export embargoes and price gouging by producer cartels. Rather, it grants LDC's "general tariff concessions" to improve their competitive position in manufactured goods.

INTERRELATIONSHIPS: TRADE, AID, INVESTMENT, MILITARY

There is a large body of opinion in this country, as well as abroad, that trade issues cannot be divorced from monetary, energy, and investment issues which have been considered by various subcommittees of the Senate Committee on Finance. For example, "multinational corporations" are the largest and most powerful force in the international movement of goods, services, money, technology. In short, they generate national wealth. Each nation seeks to maximize the advantages of having these corporations operate within its borders and mini-

mize any dislocations created by the shifts of capital, goods and technology or the alleged disadvantages of foreign ownership and control. Such corporations are both coveted and condemned according to whether they meet the goals and rising expectations of the multiple nations in which they operate.

National conflicts have occurred and are likely to continue to occur when the multinational corporation satisfies the demands of one nation at the expense of another, or when the national policies of the sovereign nations themselves are at variance. For example, the United States forbids any of its citizens—including U.S. corporations operating from a U.S. base or a foreign subsidiary—from trading with certain nations, such as Cuba. We also have certain restrictions over the exportation of technology which is considered important for our national security. A conflict will develop when a U.S. foreign subsidiary, which may be jointly owned by a foreign person or state, has to satisfy U.S. laws and foreign laws when the laws themselves are in conflict. This is but one of the many issues raised by multinational corporations operating in a nation-state system. This document does not pretend to describe the other complex issues arising out of multinational corporations. That has been done in other documents published by the Senate Finance Committee and its subcommittees.[1] The salient point raised by H.R. 10710 is that the ground rules established as a result of a new multinational trade negotiation will determine how the players of the game will operate, and that means jobs, money flows, balances of trade and payments *et al.* for all countries.

Trade flows cannot be realistically divorced from money flows and investment. Nor can they be totally separated from military and aid burdens. Some would suggest that the assymetry between economic and trade growth on the one hand, and military and aid burdens on the other has been fundamentally responsible for the persistent structural imbalance in the world's monetary and trading system. The *net* government account deficit in the U.S. balance of payments since 1950 has been $135 billion, about equal to the growth in foreign country monetary reserve assets over this period. Thus, trade reform, monetary reform and burden sharing of aid and defense costs are interrelated issues which must be dealt with in a coordinated and comprehensive manner. The Trade Reform Act is intended to give the Executive authority to negotiate structural changes in the world trading system, which will be related to negotiated changes in the international monetary system. Presumably, there is, or will be, high-level planning within the Administration on the coordination of trade, monetary aid, investment and military goals.

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[1] U.S. Senate Finance Committee, Subcommittee on International Trade, "The Multinational Corporation and the World Economy", Washington, D.C., February 26, 1973.

DIFFERING PERCEPTIONS OF U.S. AND WORLD ECONOMIC STRUCTURE

At the heart of the disagreement between the Administration and large segments of organized labor concerning the nature of trade legislation is a fundamental divergence of views as to what changes are needed in the present structure of world trade and investment.

The views of the Administration and of organized labor, respectively, are best characterized by the Trade Reform Act on the one hand and the Foreign Trade and Investment Act (Hartke-Burke) on the other.

The Administration's view, which is by and large reflected in the House bill, is that the President needs broad-scale authority in the trade field to negotiate for an "open and equitable" world economic order. This view recognizes that major structural changes have taken place in the world economy which have made existing institutions somewhat inequitable and outmoded, but is optimistic in its outlook that trade and monetary negotiations can right the inequities that exist.

Organized labor's view, as reflected in the Hartke-Burke proposal, appears to be that, through the encouragement of a transfer of capital and technology by multinational corporations and through erroneous trade policies, we are responsible for the structural distortions in the world economy as well as for our own domestic employment and inflation problems. Since we are responsible for our own problems, their solutions, according to this view, lies in changes in our own trade and tax laws. Thus, this view is pessimistic in its assessment as to whether trade negotiations, without changes in U.S. laws governing trade and investment, can right inequities that exist in the world economy.

Before analyzing this bill, it may be useful to consider what the goals of a new round of trade negotiations should be.

Should it be simply another tariff cutting exercise like the Kennedy Round? If not, what should be the objectives of the new negotiation?

Has the time come to negotiate a reform of the GATT—the institutional framework for trade relations which many feel is outdated and ineffective? [2] ***If so, how should institutional reforms be negotiated?***

How should non-tariff barriers or "distortions" be dealt with in a trade negotiation? Is the sector approach to negotiations feasible?

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[2] The subject of GATT reform was discussed in a Finance Committee staff document published in December 1970, and reproduced as Appendix C.

Should the Congress grant the Executive authority to negotiate changes in U.S. law, subject only to a Congressional veto procedure?

Should there be changes in U.S. tax laws governing trade and investment? If so, what changes and how can they be brought about without placing U.S. interests at a competitive disadvantage vis-a-vis their foreign competitors?

How should the Congress provide temporary protective relief to those industries, firms and workers which are injured or threatened by rising imports? Who should decide these questions and under what criteria? Should such decisions be solely up to the discretion of the President even after a fact finding agency has determined that serious injury exists?

What constitutes "unfair" foreign trade practices and how should they be dealt with?

Should the Congress extend most favored nation treatment to goods of nonmarket economies (the new phrase for communist nations), and if so, under what conditions?

Should the United States continue to adhere to an "unconditional" most favored nation principle in the face of gross violations of that principle by other nations? Under what circumstances should deviations from this principle be permitted? How can the U.S. persuade other nations, particularly those of the EC, to eliminate discriminatory preferential trade arrangements and reverse preferences?

Should the United States provide tariff preferences to the goods of less developed countries and, if so, under what safeguards?

How should the Congress oversee these negotiations?

What role should business, labor and consumer organizations have in the negotiations?

How should the current problems of raw material shortages and export controls be dealt with in a trade negotiation?

Should there be international sanctions against countries which use their economic wealth as a political weapon against other countries?

Does the United States itself have a consistent policy in this regard?

Answers to these questions will enable members of the Committee on Finance to make their own judgments on H.R. 10710.

General Description of the Bill

TITLE I. NEGOTIATING AND OTHER AUTHORITY

A. Trade Agreement Authority (Chapter 1)

The bill would provide the President with five year authority to enter into trade agreements with foreign countries for the purpose of modifying tariffs and nontariff barriers, within specified limits and subject to Congressional veto in the case of changes in nontariff trade barriers requiring legislation.

1. Tariff Authority (Sections 101 and 103)

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;

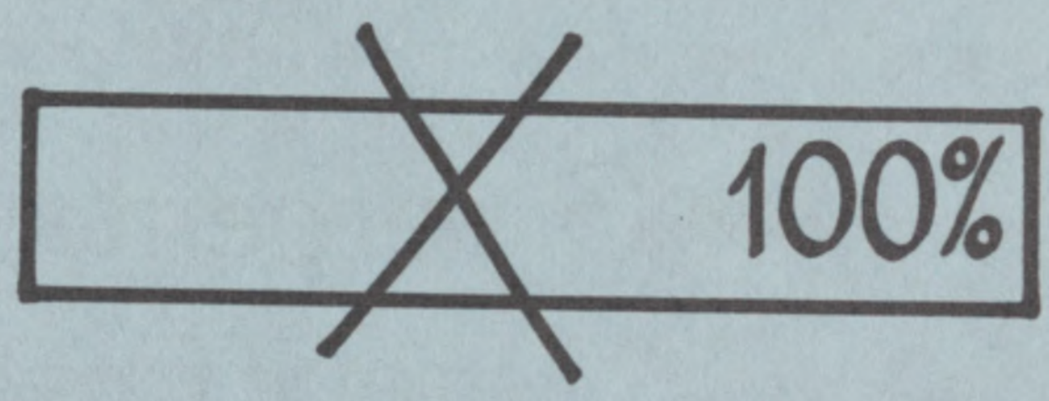
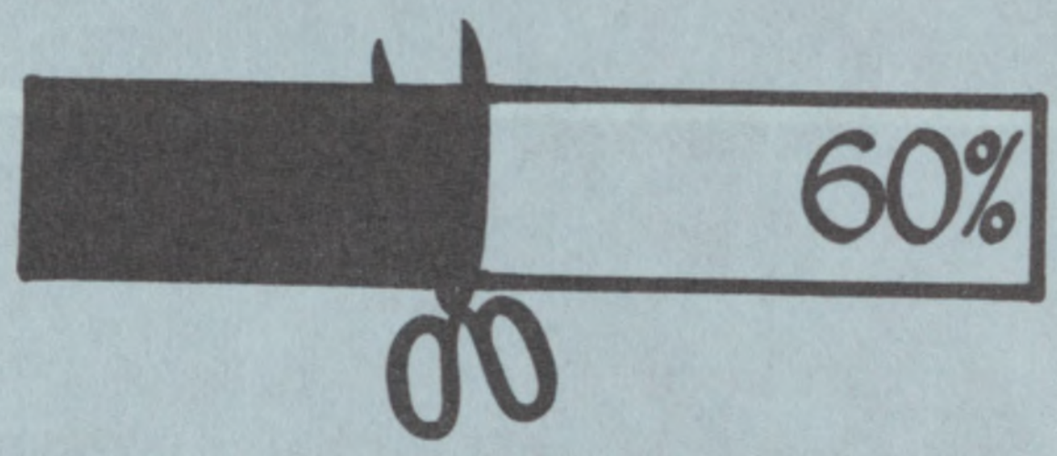
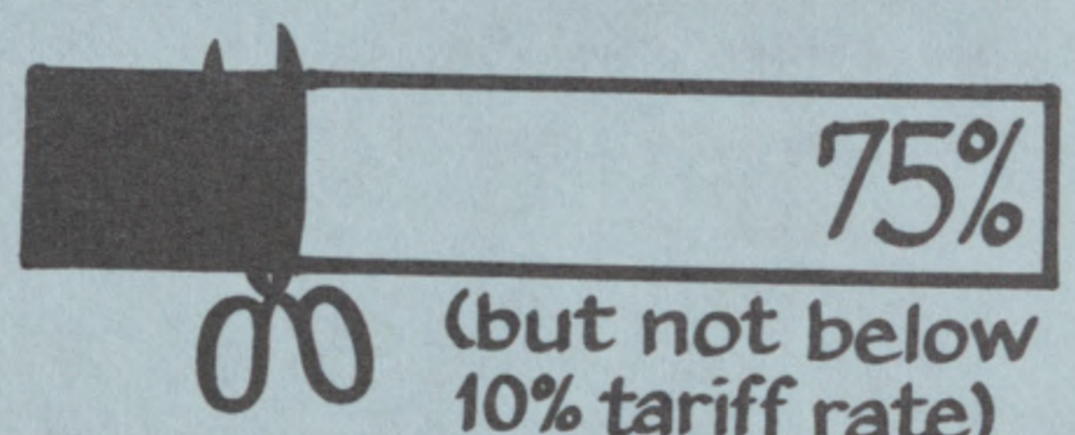
(iii) more than 25% ad valorem—75% reduction, except that no duty currently above 25% ad valorem could be reduced to rates below 10% ad valorem.

Pursuant to negotiated trade agreements, the 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, where both duty increases and decreases were generally limited to 50% above 1934 rates and 50% below 1962 rates, respectively.

Staging Requirements.—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.

Negotiating Agreement Authority

1. Limits on tariff decreases

If existing duty is—	Tariff may be cut up to—
5% or less	
between 6 - 25%	
25% or more	 (but not below 10% tariff rate)

2. Limits on tariff increases

Tariffs may be increased to the higher of—

- 150% of 1934 rates, or
- 20 percentage points above 1973 rates

Staging Requirements

Annual tariff reductions may not exceed the greater of—

- 3 percentage points in the tariff rate, or
- 1/15 of the total reduction

No staging requirement where existing tariff is reduced 10% or less

2. Authority With Respect to Nontariff Barriers (Section 102)

General Authority.—Section 102 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.

No specific limits would be placed upon the President's authority to negotiate modifications in nontariff barriers and, in fact, no such barriers are delineated anywhere in the bill. It is understood that, except in those areas where the President has inherent international as well as domestic authority to negotiate and implement changes in nontariff barriers without legislation, any trade agreements negotiated under this section would be submitted to Congress along with any implementing proclamations and orders. What is not clear is precisely which alleged U.S. nontariff barriers would the President feel he has authority to change without submitting any agreement to Congress. Most alleged U.S. nontariff barriers are laws or regulations drawn to implement congressional intent. Under this bill, the President could negotiate changes in these laws and regulations subject to a congressional veto procedure described below.

Conversion Authority.—It is contemplated that in most cases the nontariff barrier agreements would directly reduce or modify the nontariff barriers concerned. However, section 102 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 on 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.

Consultation Procedures.—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.

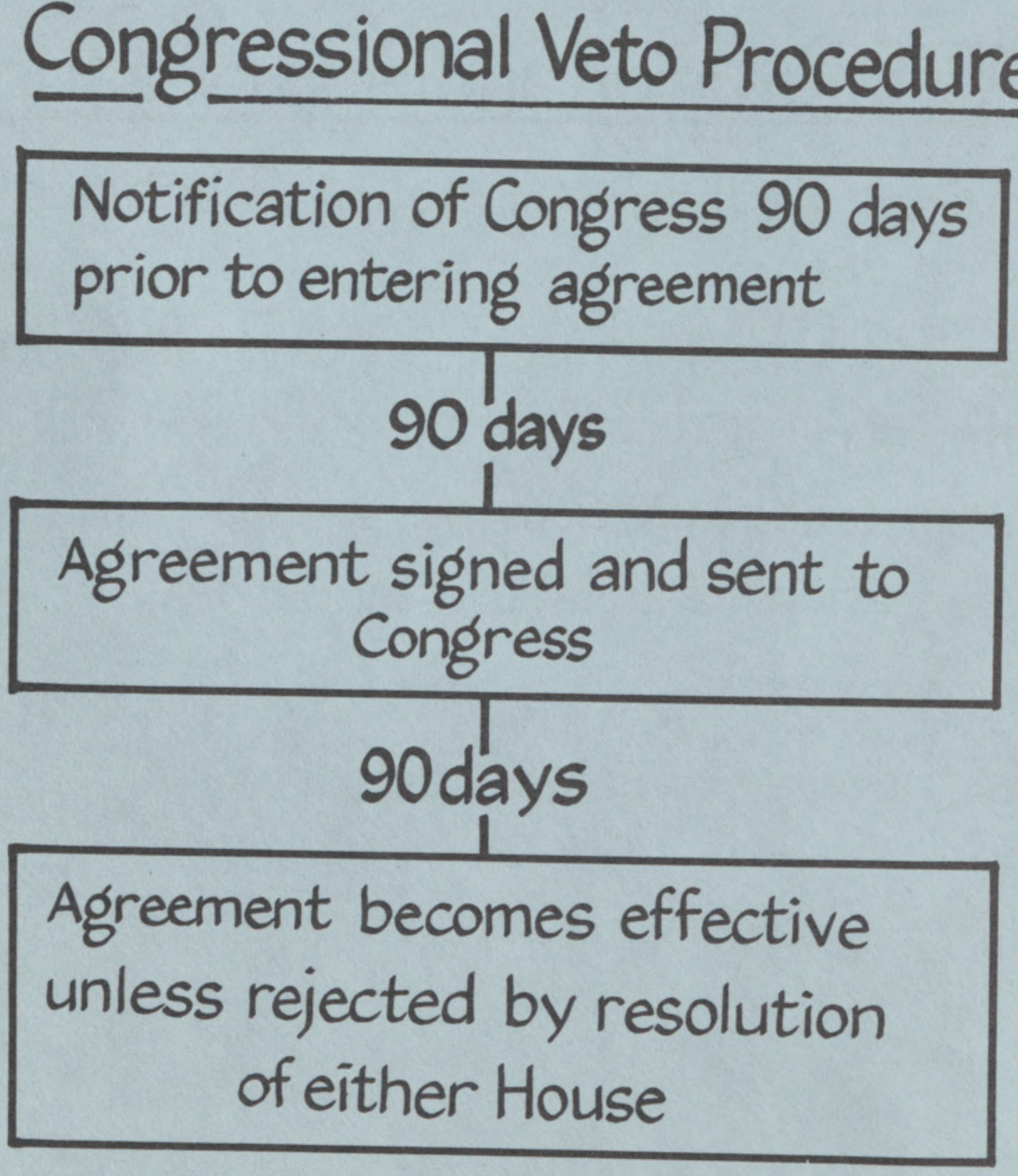
Nontariff Barriers

- Congressional intent:
  - President should take all steps to reduce or eliminate trade barriers
  - To extent feasible, balance should be sought for major product sectors within industry and mining
- Where no change in U.S. law is required (as determined by President), President could negotiate and implement nontariff trade agreement
- Where change in U.S. law is required (as determined by President), Congressional veto procedure followed

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Veto Procedure.—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 authority to negotiate and implement agreements on nontariff barriers would be by far the greatest delegation of authority which the Congress has ever made to any President in the trade area. Although the President did have the authority to negotiate agreements on import restrictions other than duties under section 201 of the Trade Expansion Act, it was never utilized, nor intended to be utilized, to the extent contemplated under section 102 of the proposed bill. Under this section, the President could negotiate agreements with respect to any and all nonduty measures affecting trade. Such measures could include, for example: (1) ASP; (2) marking provisions; (3) standards codes; (4) wine gallon/proof gallon; (5) final list; (6) health and sanitary requirements; and (7) customs classifications, etc.

3. Other Authority—Chapter 2 (Sections 121–128)

GATT Reform (section 121).—Section 121 of the bill provides that the President would, as soon as practicable, take action necessary to bring trade agreements into conformity with principles promoting the development of an open, nondiscriminatory, and fair world economic system. Specific reference is made to reform of the General Agreement on Tariffs and Trade (GATT) in the following areas: (1) the revision of decision-making machinery; (2) the revision of the safeguard

GATT Revision and Authorization

President shall renegotiate GATT articles dealing with:

- decision-making machinery (weighted voting)
- import relief
- unfair trade practices
- international fair labor standards
- border taxes
- balance of payments measures

Authorizes appropriations for existing GATT

provision, Article XIX to take into account all forms of import restraints used in response to injurious competition; (3) extending the articles to cover matters not presently covered in order to move toward more fair trade practices; (4) the adoption of international fair labor standards; (5) revision of the GATT's treatment of direct and indirect taxes with specific reference to border tax adjustments; and (6) revision of the balance-of-payments provision of the GATT so as to sanction the use of surcharges, during periods of balance-of-payments difficulties.

Section 121(b) would authorize for the first time the appropriation of funds to pay the United States share of the expenses of the contracting parties to the GATT. There is no provision requiring annual contributions to the GATT to be submitted to Congress for its authorization and approval.

Balance-of-Payments Authority (section 122).—This section would authorize the President to impose temporary surcharges (*not exceeding 15% ad valorem*) or quotas on imports in order: (i) to deal with large and serious United States balance-of-payments deficits; (ii) to prevent imminent and significant depreciation of the dollar in foreign exchange markets, or (iii) to cooperate with other countries in correcting international balance of payments disequilibria. In the latter case, such measures could only be taken when allowed or recommended by the IMF. It is contemplated that joint actions against noncooperating countries maintaining unreasonably large or persistent surpluses would be sanctioned by the IMF in the latter cases.

Quotas would be imposed *only* where permitted pursuant to international trade or monetary agreements (e.g., Article XII of the GATT) and only to the extent that the fundamental imbalance cannot be dealt with effectively by a surcharge. In other words surcharges would have to be used first, and only if other nations agreed formally under GATT proceedings, would quotas be used for balance-of-payments purposes.

Import restricting actions would be applied on a nondiscriminatory basis (MFN), *except* where the President determines that the purpose of this section would be best served by selected action against one or more countries having large and persistent surpluses. Quotas would be applied on a basis which aims at a distribution of trade with the United States approaching that which foreign countries could have expected in the absence of such restrictions. Under section 122, the President would be urged to seek modification in international agreements providing for the use of surcharges instead of quotas as a balance-of-payments adjustments measure.

Balance of Payments Authority

1. When U.S. has large deficit:
   - Impose import surcharge of up to 15% and/or impose temporary quotas (only with IMF approval)
   - 150 day limit

2. When U.S. has large surplus:
   - Reduce duties by not more than 5 percentage points
   - Reduce or suspend other import restrictions
   - 150 day limit

Import restricting actions would also be required to be applied on a broad and uniform basis with respect to product coverage except where the President determines that certain articles or groups of articles should be exempted due to the needs of the U.S. economy. Quotas would have to permit the importation of a quantity of articles equal to that imported during the most recent period which the President determines to be representative of such imports, taking into account any increase in domestic consumption since the end of the representative period.

The bill would also authorize the President to reduce duties (by not more than 5% ad valorem) or to increase quotas on imported articles in order: (i) to deal with large and persistent United States balance of payments surpluses or (ii) to prevent significant appreciations of the dollar in foreign exchange markets. Whenever the President determines that such measures could cause injury to firms and workers in a domestic industry he would be given authority to exclude articles of commerce from actions under section 122.

Balance of payments measures implemented by the President could not remain in effect longer than a period of 150 days unless such measures were extended by an Act of Congress. The President would have the authority to suspend, modify or terminate any balance of payment measure in effect during the initial 150-day period or during any subsequent period when extended by Congress.

Section 122 would prohibit the President from using his authority to terminate trade agreement proclamations in order to impose surcharges. The President, in the proclamation imposing the 1971 surcharge, relied in part on the termination provision of the Trade Expansion Act of 1962 as authority to impose the surcharge.

Authority to Suspend Import Barriers to Restrain Inflation (section 123).—The bill would provide the President with authority to reduce duties and increase quota restrictions when he determines that supplies of articles subject to such import measures are inadequate to meet domestic demand at reasonable prices. Measures taken under this section could not affect more than 30% of United States imports during any one period. No limits on duty reductions or quota increases are provided. Provision is made to exclude the application of measures taken under this section to any articles where such action could result in injury to firms or workers or to any articles subject to proclamations under section 22 of the Agricultural Adjustment Act. (The President currently has authority under section 22 to modify import restrictions imposed thereunder, but according to standards different than those specified in section 123 of the bill.) Actions taken under this section with respect to any article could not remain in effect longer than 150 days, unless a longer period is specifically authorized by an Act of Congress. Articles subject to such action could not be made the subject of subsequent action under this act until one year has expired after the termination of the last prior action.

Anti-Inflation Authority

- Authorizes President to reduce or suspend duties and/or increase level of imports subject to quotas

- Coverage limited to 30% of U.S. imports during any 150-day period

- Excludes articles subject to sec. 22 of the Agricultural Adjustment Act (agricultural relief provision) or subject to import restrictions under national security provisions or subject to import relief actions

Compensation Authority (section 124).—The President would be authorized to enter into compensation agreements with foreign countries whose imports to the United States are restricted by import relief measures taken pursuant to section 203(b) of this bill. This authority could not be utilized until after the expiration of the five-year period provided for the negotiation of trade agreements. Nor could any rate of duty be decreased to a level lower than 30% below existing rates when such authority becomes exercisable. No provision is made for reversing compensatory duty reductions once the import relief measures—which cannot remain in effect more than 7 years—are terminated.

Countries imposing import relief measures are required under Article XIX of the GATT to offer compensation in the form of tariff concessions to countries whose exports are adversely affected by the import relief measure. Such foreign countries are authorized to take retaliatory measures of their own if the country imposing import relief measures was not able to, or did not, offer concessions to balance out any injury caused by the increase in tariff or nontariff restrictions made for the purpose of import relief.

The practical effect of section 124 is to give statutory recognition to a procedure which has existed for many years under GATT, i.e., whenever import relief is granted any industry threatened or injured by increased imports on a product bound by a negotiated agreement, the country must offer compensatory tariff reductions of roughly equivalent value to the countries whose products are affected. In other words, any action increasing duties or other import barriers on behalf of one industry might require the lowering of such barriers on products affecting other industries.

Renegotiation Authority (section 125).—This provision of the bill would provide the President with limited, "clean-up" authority to negotiate and implement trade agreements for a two-year period following the termination of the primary five-year period during which agreements may be entered into under section 101. Agreements negotiated under this section could not affect items amounting to more than 2% of United States imports in either of the two one-year periods during which it will be in effect. No duties could be decreased more than 20% under this section, nor could they be reduced to a rate lower or higher than that which could have been accomplished through the use of the maximum authority granted under section 101 of the bill.

Termination and Withdrawal Authority (*section 126*).—Paragraphs (a) and (b) of this provision are identical to section 255 of the Trade Expansion Act. Paragraph (a) would provide that trade agreements entered into under this Title shall be subject to termination or withdrawal upon due notice at the end of a period (not longer than three years from the date on which the agreement becomes effective) specified in the agreement. Following the end of this initial period, any such agreement shall be subject to withdrawal or termination upon not more than six months' notice. Paragraph (b) would authorize the President to terminate, in whole or in part, any proclamation made under this Title.

Paragraphs (c) and (d) of section 126 represent new law. Paragraph (c) would provide the President with authority to raise duties in order to exercise the rights or fulfill the obligations of the United States whenever it *withdraws* or *suspends* any obligation with respect to the trade of any foreign country pursuant to its rights under that trade agreement. Duties may not be increased to a level of 50 percent above 1934 duties or 20 percent ad valorem above 1973 duties, whichever is higher. It is not clear whether it is intended under the bill that the President have the authority to impose rates at any intermediate level between the concessionary level and the upper limits specified in paragraph (d).

Paragraph (d) would provide that upon the *termination* of any trade agreement, duties or other import restrictions proclaimed pursuant to that agreement shall remain in effect for a period of one year following such termination, unless the President specifically proclaims that such rates shall be restored to the level they would have reached were it not for such agreement (i.e. the statutory column 2 rate).

Within 60 days of any such termination, the President would be required to transmit to the Congress his recommendations for the establishment of new appropriate rates, which would then have to be established pursuant to legislation.

Actions taken to terminate trade agreements rates under paragraph (b) or to increase duties in connection with the exercise of United States rights under any trade agreement under paragraph (c), could only be taken after public hearings had been provided.

The withdrawal authority provided under paragraph (c) is intended to give the United States leverage to persuade contracting parties to the GATT to modify or eliminate practices which the United States felt violated our rights under this agreement.

Other Authorities Delegated to President

Compensation for import relief measures

- Authority available after 5 years
- Tariffs may be cut up to 30%
- No provision for increasing tariffs once import relief measures are terminated

Renegotiation of duties ("clean-up" authority)

- 2-year authority after 5-year trade agreement authority expires
- 20% tariff reduction permitted, subject to general trade agreement limits
- Coverage limited to 2% of U.S. imports

National security provisions

- Articles excluded from any action reducing duties or other import restrictions where such action would threaten national security
- Articles subject to national security or import relief actions excluded from negotiations, and anti-inflation and compensation actions

Termination and Withdrawal

- Trade agreements must include provision permitting termination or withdrawal within 3 years, and thereafter upon 6 months' notice
- President may at any time terminate tariff reductions proclaimed pursuant to negotiated trade agreement
- In order to exercise rights and obligations under any trade agreement, President given specific authority to suspend application of trade agreement and proclaim duty increases
- Trade agreement tariff rate may remain in effect 1 year following termination of trade agreement; President submits recommendation for new tariff rates to Congress within 60 days after termination

Nondiscriminatory Trade (section 127).—This section of the bill is essentially identical to the MFN provision contained in section 251 of the Trade Expansion Act. It would provide that, except as otherwise provided, all actions taken under Title I of the bill would have to be applied to the products of all countries, i.e., on a MFN basis. The term "nondiscriminatory" trade has been used synonymously with the term most favored nation ("MFN") treatment. The United States extends MFN treatment (i.e., column 1 or concessionary rates negotiated pursuant to trade agreements) to all of its trading partners, other than most communist countries (Poland and Yugoslavia do receive nondiscriminatory treatment). Thus, MFN treatment is presently the norm for the United States and does not constitute preferential tariff treatment. It is not, however, the norm for common markets, free trade areas and other regional trade-bloc arrangements. Specific exceptions from the nondiscriminatory treatment requirement would be provided at the discretion of the President in the bill in such areas as: nontariff barrier agreements negotiated under section 102, balance of payments measures, retaliation against unreasonable and unjustified foreign trade restrictions, and for countries which might qualify for preferential tariff treatment under Title V.

Reservation of Articles for National Security and Other Reasons (section 128).—Paragraph (a), which is equivalent to existing language in section 232 of the Trade Expansion Act, would provide that no proclamations may be made pursuant to the provisions of this Act, reducing or eliminating the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair national security.

Paragraph (b) of section 128 is also comparable with existing law and would provide that articles subject to national security or import restrictions shall be reserved from negotiations contemplating the reduction or elimination of any duty or other import restriction. The President is also authorized to reserve any other articles which he determines to be appropriate after taking into account information and advice made available by the Tariff Commission, Executive Departments, and through public hearings.

Paragraph (c) would require the President to submit to the Congress an annual report on section 232 of the Trade Expansion Act (import actions to safeguard national security) and to notify Congress within 60 days of the taking of any action under that section. No complaint procedure or time frame for a decision on a petition made under the national security program are provided.

4. Hearings and Advice Concerning Negotiations—Chapter 3 (Sections 131–135)

Tariff Commission Advice.—Section 131 of the bill would require the President to publish and submit to the Tariff Commission a list of articles for which duty modifications may be put into effect pursuant to his authority to negotiate trade agreements, as well as under his compensation and renegotiation authorities. Articles to be made the subject of nontariff barrier negotiations would only be submitted to the Tariff Commission where the particular NTB was to be converted into a rate of duty affording substantially equivalent tariff protection. The Tariff Commission would be required to submit to the President within 6 months its advice as to the effect of such duty modifications on the major U.S. economic sectors, including consumers. The Tariff Commission is directed to study specified foreign and domestic factors influencing the effect of duty modifications on the U.S. economic sectors and to hold public hearings. The President, *if he chooses*, could also request the Tariff Commission to investigate and report on the effects of modification of nontariff barriers (not involving conversion to rates of duty) on domestic manufacturers and purchasers.

Executive Department Advice.—Section 132 is comparable to existing law and would provide that the President shall seek advice from appropriate executive agencies and other sources before entering into any trade agreement. The Special Representative for Trade Negotiations is included in the list of agencies for the first time.

Public Hearings.—Section 133 would require the President, through public hearings, to provide an opportunity for the presentation of views by any interested parties concerning any matters relating to proposed trade negotiations or compensation agreements.

Prerequisite for Officers.—Under section 134, the President would be prohibited from entering into any trade agreement or making a compensation offer affecting duties until after he has received the Tariff Commission report under section 131 and a summary of the public hearings under section 133. These prerequisites would not apply with respect to offers in nontariff agreements not affecting duties.

Advisory Committee (Private Sector Advice).—Section 135 would provide for the establishment of various private advisory groups representing labor, industry, agriculture, consumers and the public, which are to provide policy and technical advice on the trade negotiations. Specific provision is made for the creation of an overall Advisory

Committee, appointed by the President and chaired by the Special Trade Representative, composed of not more than 45 individuals representing the Government, labor, industry, agriculture, consumer interests and "the general public". Technical advisory groups in particular sector areas would also be established upon the President's initiative or upon that of representatives of the various sectors themselves. Informal opportunities for the submission of views from any other private organizations or groups would also be provided.

5. Office of the Special Representative for Trade Negotiations—Chapter 4 (Section 141)

The bill would continue the existence of the Special Representative for Trade Negotiations, and two Deputies, all of whom would be given the rank of Ambassador. The bill would provide a statutory listing of responsibilities for the office of the Special Trade Representative, and would guarantee the existence of this office as a focal point for the planning and implementation of trade policy. It does not deal specifically with the relationship between the office of Special Trade Representative and the Council on International Economic Policy which also has statutory authority and recognition.

6. Congressional Veto Procedure—Chapter 5 (Sections 151–152)

The bill would provide rules governing the consideration of resolutions disapproving the entering into force of trade agreements on non-tariff barriers negotiated pursuant to section 102. The 90-day Congressional veto procedure would also be made applicable to:

(1) the imposition of quotas and orderly marketing agreements to provide import relief (section 203),

(2) the imposition of tariff increases or quotas in response to unfair trade practices restricting U.S. exports (section 301), and

(3) the initiation or continuation of nondiscriminatory treatment to countries not currently enjoying such tariff status (section 403).

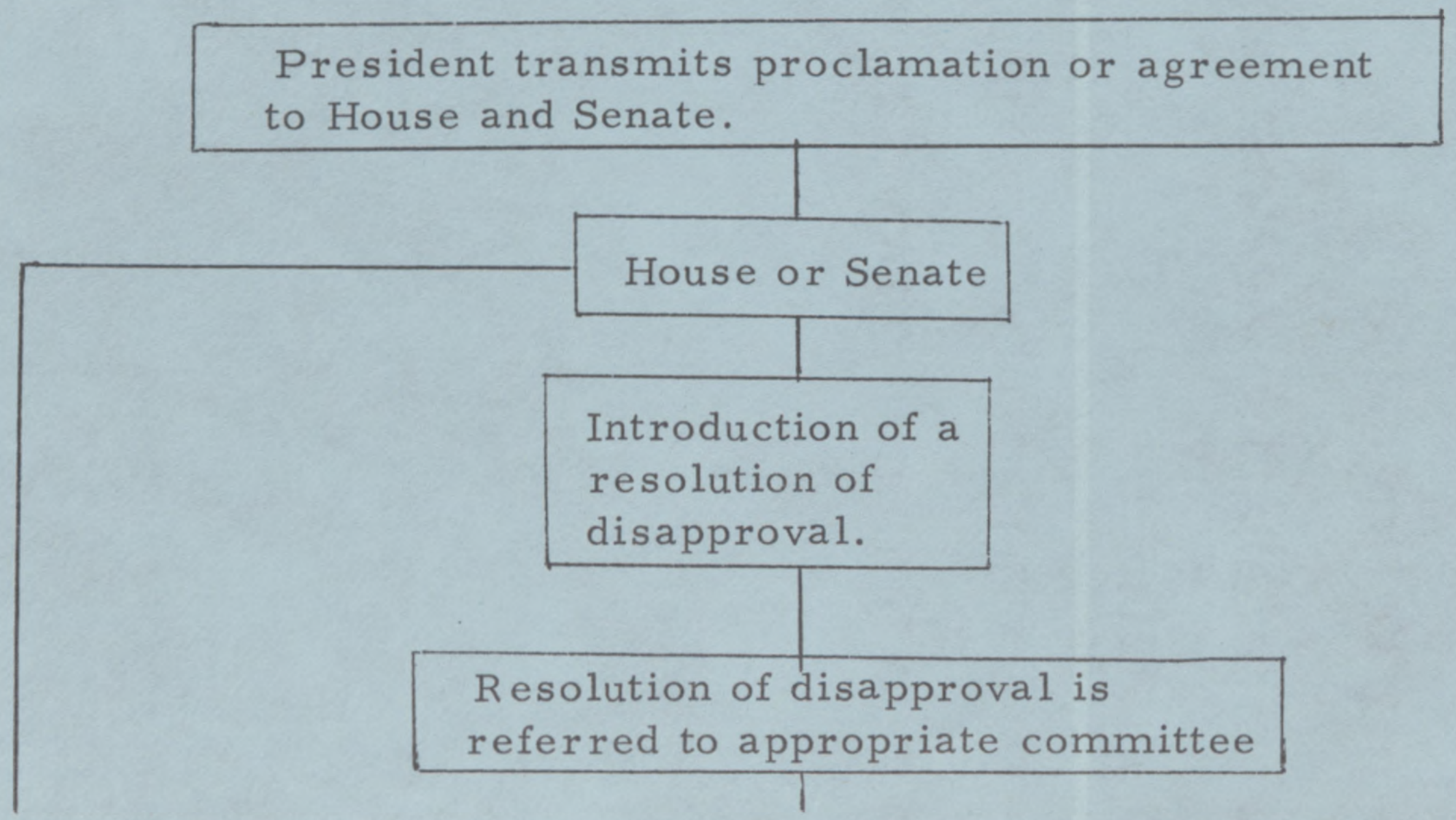
There are no Congressional overrides when the President refuses to grant any import relief after an industry has been found to be seriously injured by imports.

Sections 151 and 152 stipulate the procedures which would be used for Committee referral, consideration, and discharge, as well as Floor consideration of the resolutions of disapproval. The bill would put severe time limits on Committee consideration of a resolution (7 days) and on debate (10 hours), and would establish a closed rule (no amendments) on the resolutions after Committee consideration.

Congressional Veto Procedure Applies:

- to non tariff barrier trade agreement submitted to Congress
- to escape clause, quota, or orderly marketing relief
- to retaliation against unfair trade practices
- to extension or continuation of nondiscriminatory tariff treatment

CONGRESSIONAL DISAPPROVAL PROCEDURES
OPERATIONAL FLOW CHART



After seven calendar days any member who favors the resolution of disapproval may move to discharge the committee of its consideration.

Floor debate and vote on motion to discharge in either body.

No

Resolution of disapproval remains in Committee -- motion of discharge cannot be renewed.

In no action is taken by either House within ninety legislative days, the agreement or action takes effect.

Yes

Debate and vote on resolution of disapproval

No

Yes

If either House approves resolution of disapproval, agreement or action does not take effect.

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7. Congressional Liaison and Reports—Chapter 6 (Sections 161–163)

Congressional Advisors.—Section 161 provide that 10 members of Congress (five members from the Finance Committee and 5 from the Ways and Means Committee) would be accredited as "official advisors" to the United States delegation to international conferences and negotiations with respect to trade agreements. The delegates would be selected by the President of the Senate and the Speaker of the House of Representatives. Since the President of the Senate is actually the Vice President of the United States, the bill would have a member of the Executive branch choosing the Senate delegates to the trade negotiations.

Delegate would be chosen to serve during each regular session of Congress, and individuals could be reselected to serve for more than one session. No provision is made for Committee staff oversight of the negotiations or their accreditation to the negotiations.

Transmission of Agreements and Reports.—Section 162 would require the President to transmit trade agreements to Congress as soon as practical after they have entered into force with respect to the United States. The President would also be required under section 163 to submit annual reports to the Congress on the Trade Agreements Program, covering essentially all major actions taken under the authority of the bill. The Tariff Commission would also continue to submit annual reports to the Congress giving a factual account of the operation of the Trade Agreements Program.

TITLE II. RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

A. Import Relief (Chapter 1)

The bill would make major changes in the import relief measures provided in the Trade Expansion Act of 1962. Under the TEA, increased imports have to be in major part the result of trade agreement concessions. Under the Trade Reform Act, no link to concessions is required. Furthermore, under the Trade Reform Act increased imports would have to be a substantial cause of serious injury or the threat thereof ("substantial cause" is defined to mean a cause which is "important" and not less than any other cause) and no longer *the major cause* (generally assumed to mean a cause greater than all other causes combined) of such injury, as currently required by the Trade Expansion Act.

1. Investigation by Tariff Commission (Section 201)

The bill parallels existing language with respect to the initiation of Tariff Commission investigations. The Tariff Commission would undertake such investigations following receipt of import relief petitions by industry and labor groups representative of an industry, or requests by the Committee on Finance or the Ways and Means Committees as well as the President, the Special Representative for Trade Negotiations (new provision) or the Tariff Commission itself. Specific economic factors would be taken into account by the Tariff Commission in making its determination as to whether increased imports are a substantial cause of serious injury or the threat of serious injury to domestic industries producing like or directly competitive articles. With respect to serious injury these factors would include:

(a) significant idling of productive facilities;

(b) inability of a significant number of firms to operate at a reasonable level of profit; *and*

(c) significant unemployment or underemployment within the industry.

Import Relief: Criteria for Finding of Injury

Current law

Tariff Commission finding within 6 months; increased imports must be the major cause of serious injury and must result in major part from tariff concessions

Trade Reform Act

Industry.—Tariff Commission finding within 6 months; increased imports must a substantial cause of serious injury (i.e. not less than any other cause)

Workers.—Secretary of Labor determination in 60 days that:

- a significant number or proportion of workers have become totally or partially separated,
- sales or production have decreased, and
- increased imports contributed to decline in sales or production and to separation of workers

Firms.—Secretary of Commerce determination in 60 days; same criteria as worker injury

With respect to the *threat* of serious injury the Commission would consider whether there has been:

(a) a decline in sales;

(b) a higher and growing in inventory; *and*

(c) a downward trend in production, profits, wages, or employment in the domestic industry conceived.

With respect to substantial cause, the Tariff Commission would take into account whether there has been:

(a) an increase in imports (either absolute or relative to domestic production); *and*

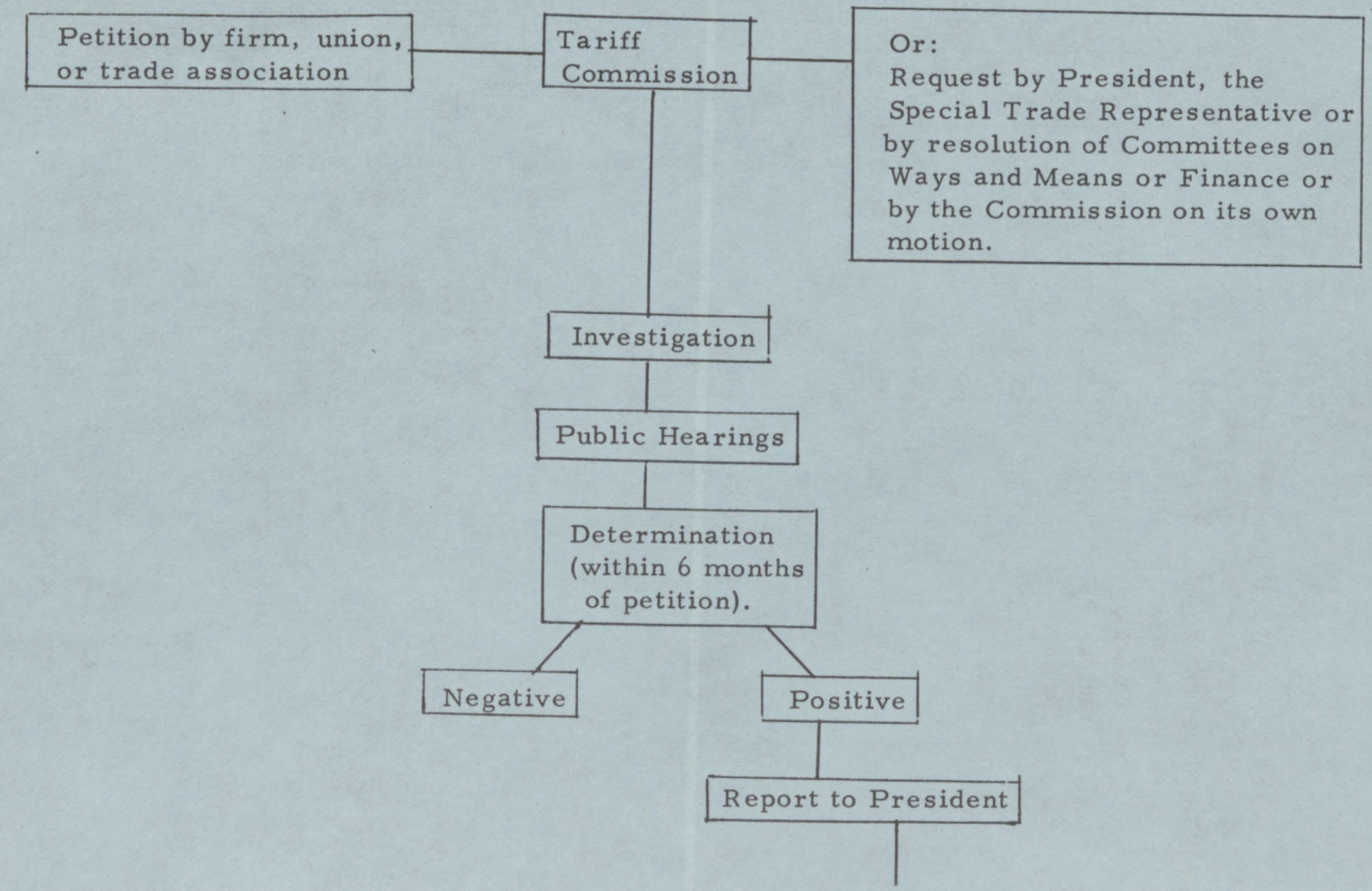
(b) a decline in the proportion of the domestic market supplied by domestic producers.

New provisions in the "escape clause" section of the bill would require the Tariff Commission to investigate and report on efforts by firms and workers in the industry to compete more effectively with imports and to determine whether or not increased imports may be attributable to circumstances under the Antidumping Act of 1921, the countervailing duty law, or under other remedial provisions dealing with unfair trade practices. In the latter case the appropriate agencies which administered the relevant provisions would be notified. If the Tariff Commission does find injury, it shall include in its report the amount of duty increase on imposition of other import restrictions necessary to prevent or remedy such injury.

2. Presidential Action After Investigation (Section 202)

After receiving an affirmative finding from the Tariff Commission, the President (1) *must* consider the extent to which adjustment assistance has been or could be made available and (2) *may* decide to provide import relief. He would be required to make this decision within 60 days after receiving the Tariff Commission report. In deciding whether or not to provide import relief, the President would be required to take into consideration many factors, including the possible effectiveness of import relief as a means to promote adjustment, the effect of import relief on consumers, the impact of such relief on industries which might be affected as a result of international obligations to provide compensation, and the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

ESCAPE CLAUSE -- IMPORT RELIEF PROCEDURES



President decides whether to grant import relief (within 60 days of T. C. Report).

- Yes
  - Notice and opportunity to be heard for adversely affected persons.
    - Relief: (in order of preference)
      1. duties
      2. tariff rate quotas
      3. quantitative restrictions
      4. orderly marketing agreements
      5. any combination of above

      Subject to disapproval by either House or Senate.
      - Report to Congress
- No
  - Report to Congress

(Reduction, termination or extension of relief)

- Review by Tariff Commission
  - Petition for extension by interested party
  - Investigation and public hearing
    - Advice to President
      - Decision by President

Once the President determines to provide import relief, he would be required to proclaim such relief within 15 days after the date of his determination. The nature of the relief would be at his discretion. If within that period the President announces his intention to negotiate one or more orderly marketing agreements, the taking effect of any other import relief measures would be withheld for a period of 180 days or until the entering into effect of such orderly marketing agreement. While such agreement is in effect, the other proclaimed import relief measures may remain in a suspended status.

Unlike current law, the Congress would have no authority to override a Presidential determination *not* to provide import relief in the face of an affirmative determination by the Tariff Commission. In such cases, the present bill would require the President only to submit a report to both Houses of Congress stating the conclusions on which his decision was based.

3. Import Relief (Section 203)

The bill would authorize the President to impose one or more of the following import relief measures in a preferred order of preference as follows:

(a) duty increases;
(b) tariff-rate quotas;
(c) quantitative restrictions, and
(d) orderly marketing agreements.

The authority to impose duty increases would include the authority to suspend items 806.30 and 807.00 of the Tariff Schedules of the United States. The President could also exclude articles from receiving preferential treatment granted under Title V of the bill to imports of less-developed countries. These latter two measures could only be used to provide import relief when the Tariff Commission specifically recommends such action.

Whenever the President selected a method or methods of import relief, he would be required to report his action to the Congress. The report would include a statement as to why he selected a particular method of import relief rather than adjustment assistance and rather than each method of import relief which ranked higher in preference.

Duty increases under this section could be imposed up to 50% ad valorem above the existing rate, a higher ceiling than under existing law. Quotas and orderly marketing agreements would have to allow the importation of a quantity or value of the article not less than that imported into the United States during the most recent period which the President determines is representative of imports of such article.

4. Congressional Veto of Quotas (Section 204)

The imposition of orderly marketing agreements and quantitative restrictions (quotas) would be made subject to the Congressional veto procedure. Thus, either measure would cease to be effective, if within 90 days from the submission of the proclamation of such measure to the Congress, either House adopts a resolution of disapproval. No such procedure exists if the President decides to do nothing after a Tariff Commission finding of serious injury.

5. Limits on Import Relief

The bill would provide a 5-year time limit on the duration of such relief on the theory that import relief should be a temporary measure aimed at providing time to adjust to increased imports. Import relief measures shall normally terminate after 5 years, but could be extended for one 2-year period. Under present law, import relief measures remain in effect for 4 years, but may be re-extended for any number of additional 4-year periods. Provision would also be made for the phasing down of import relief measures which are initially proclaimed for a period longer than 3 years.

B. Adjustment Assistance for Workers (Chapter 2 of Title II) (Sections 221–250)

1. Determination by Secretary of Labor

The bill would simplify the procedures for applying for worker adjustment assistance and would also apparently liberalize the criteria conditioning the provision of such assistance. Under section 221, petitions for worker adjustment assistance shall be filed directly with the Secretary of Labor, who has full authority to determine whether or not such assistance should be extended. The Tariff Commission would no longer be directly involved in adjustment assistance determinations.

Under section 222 a group of workers would be certified as eligible to apply for adjustment assistance if the Secretary of Labor determines:

(1) that a significant number or proportion of workers in an affected firm have been or threaten to become totally or partially separated,

(2) that sales or production or both of such firm have decreased absolutely, *and*

(3) that increased imports have contributed *importantly* to such total or partial separation or threat thereof and to such decline in sales or production.

These tests, particularly, paragraph 2, may not be as easily met as its drafters may have intended. However, unlike the Trade Expansion Act, the separations and the decrease in sales or production would not have to result from increased imports caused in major part by trade agreement concessions. The present bill would eliminate the requirement that there be any causal link between tariff concessions and increased impacts. Increased imports would only have to "contribute importantly" to any separation or decline in sales or production. Under present law, increased imports must be the major cause of unemployment or underemployment of the workers.

Section 223 of the bill would require the Secretary of Labor to reach the decision on eligibility not later than 60 days after the date the petition is filed.

2. Secretary of Labor Study on Adjustment Assistance in Relation to Escape Clause Cases (Section 224)

The general preference for adjustment assistance as opposed to import relief consistently maintained in the bill is reinforced by the provision in section 224 which would require the Tariff Commission to notify the Secretary of Labor any time it begins an investigation under the import relief sections of the bill. Whenever the Secretary is so notified, he would immediately begin a study of employment conditions in the industry and the extent to which such import competition may be facilitated through the use of existing programs. The Secretary would be required to report his findings to the President not later than 15 days after the Tariff Commission reports its import relief determination under section 201 of the bill.

3. Subchapter B Program Benefits (Section 231–238)

The bill generally follows the framework for worker adjustment assistance contained in the Trade Expansion Act of 1962. However, qualifying requirements for workers would be slightly liberalized and the weekly trade readjustment allowances would be increased from 65 to 70 percent of the worker's average weekly wage for the first 26 weeks of assistance. The percentage would be reduced to 65 percent, as under existing law, for the subsequent weeks (generally 26) of entitlement of trade readjustment allowance. Provision would also be made for employment services, training, and health insurance, as currently pro-

vided by existing legislation. New provision would be made for job search and relocation allowances to facilitate efforts made by workers to obtain new employment within the United States when such opportunity did not exist within their commuting areas.

4. Subchapter C General Provisions, Cooperation With State Agencies, Establishment of a Trust Fund

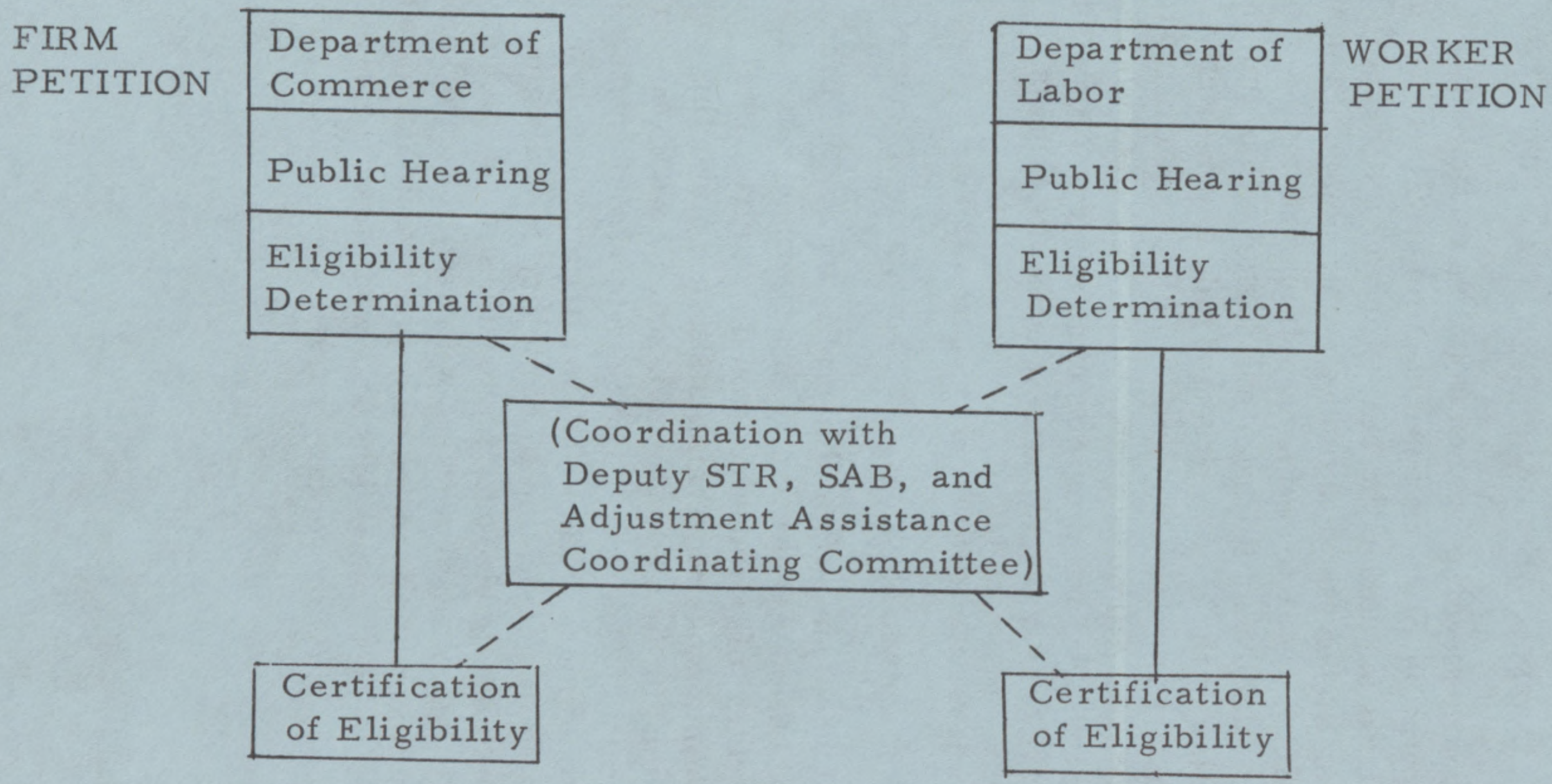
Worker adjustment assistance would be carried out where possible with cooperating State agencies, as provided in existing law. Programs carried out under the bill, either on the Federal level or by cooperating States, would be funded from a new adjustment assistance trust fund (sec. 245) to be financed from customs revenues. The bill would also establish an Adjustment Assistance Coordinating Committee consisting of the Deputy Special Trade Representative and appropriate officials from the Departments of Labor, Commerce, and the Small Business Administration. This Committee would coordinate adjustment policies and programs in an effort to promote the efficient and effective delivery of adjustment assistance benefits.

C. Adjustment Assistance for Firms (Chapter 3 of Title II) (Sections 251–264)

1. Determination by Secretary of Commerce

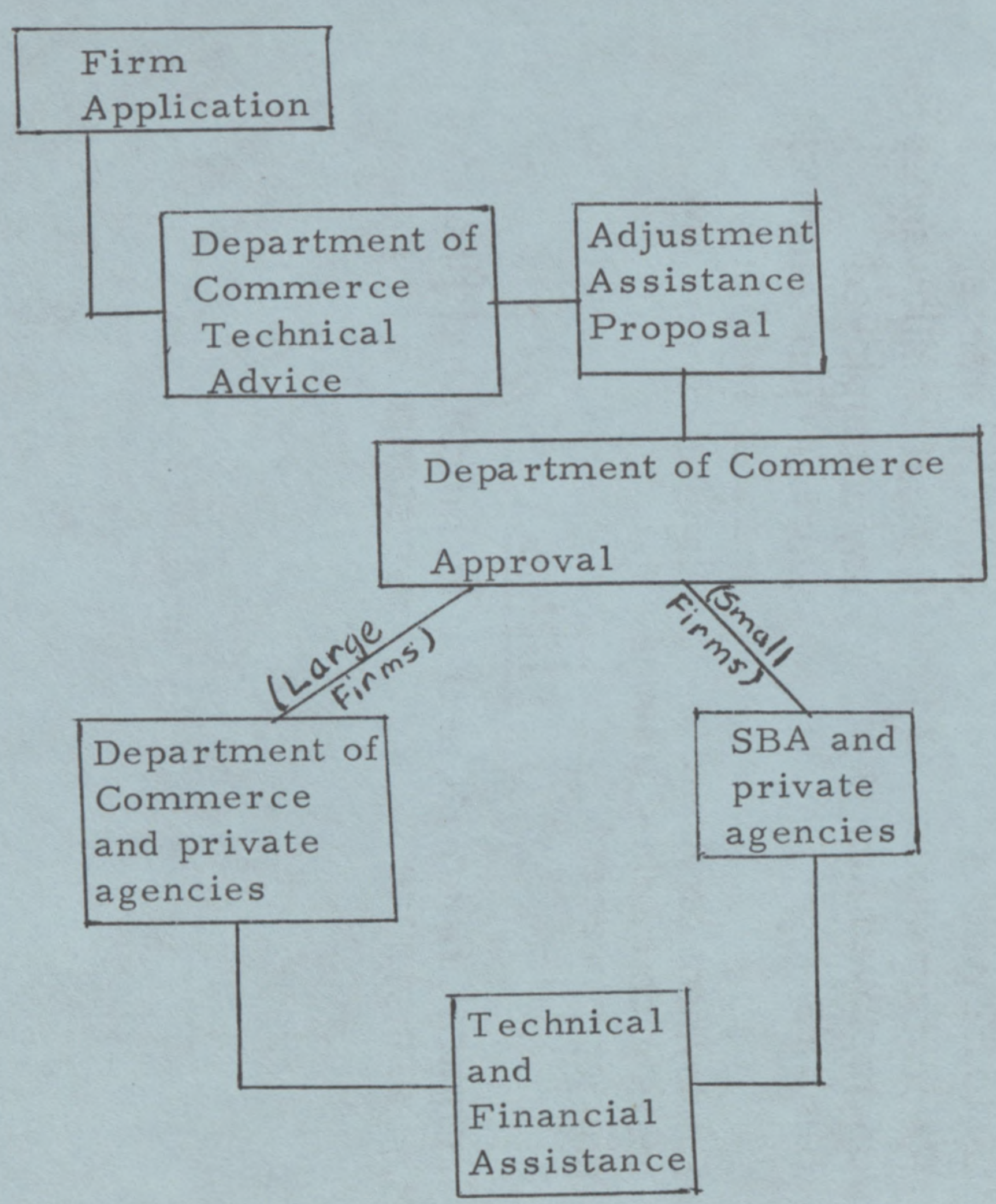
The bill would simplify and liberalize the current provisions of the Trade Expansion Act dealing with adjustment assistance for firms. The Secretary of Commerce would be given total authority to make determinations concerning assistance under this chapter of the bill. Petitions for firm adjustment assistance would be sent directly to the Secretary of Commerce. The Secretary, and not the Tariff Commission would make, within 60 days after a petition is received, determinations as to certification of eligibility for adjustment assistance. Firms would be eligible for adjustment assistance, under the same criteria as that applied to workers with respect to worker adjustment assistance. Accordingly, increased imports would not have to be linked to trade agreement concessions and would only be required to *contribute importantly* to worker separation and decline in sales or production.

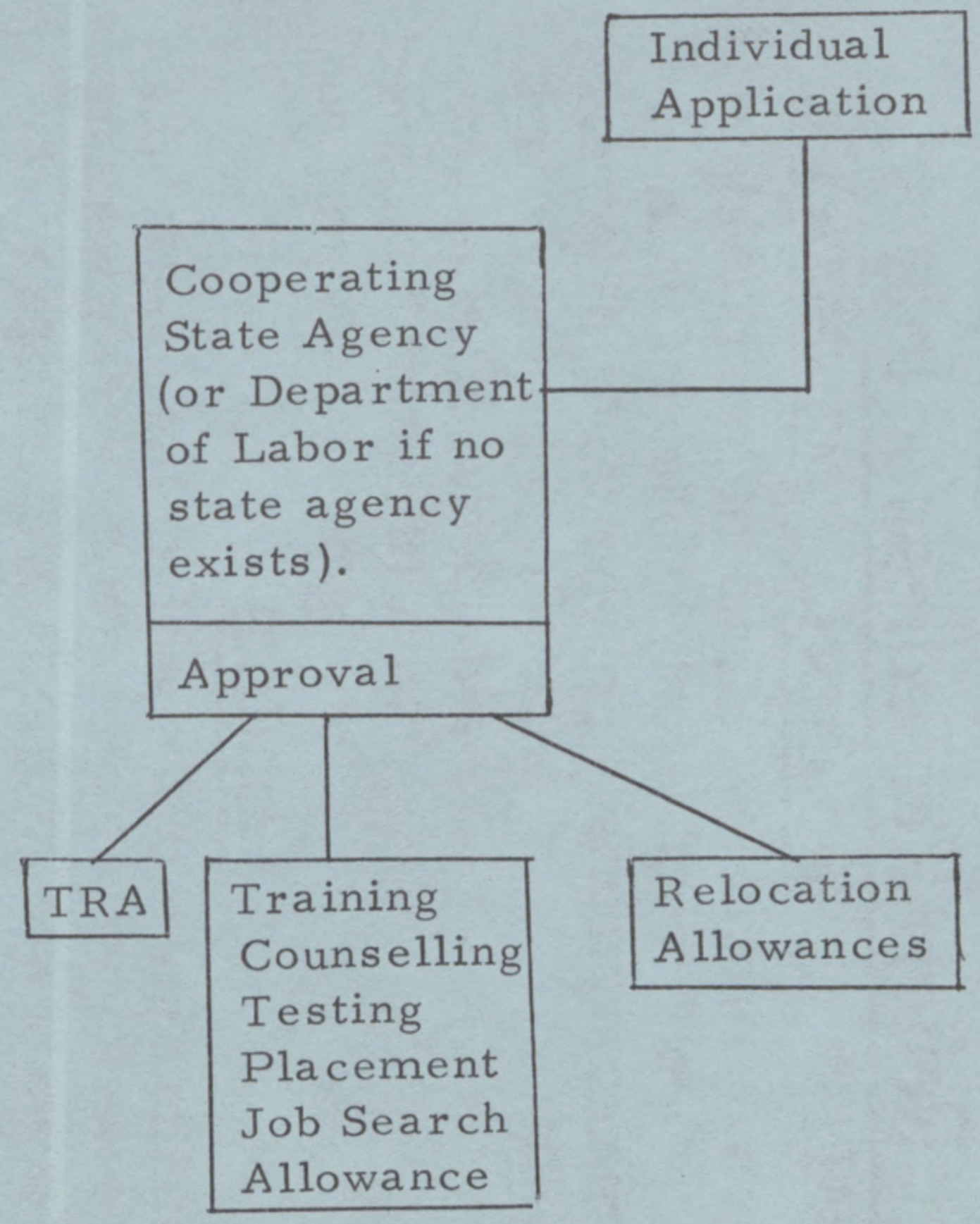
TRADE ADJUSTMENT ASSISTANCE PROGRAMS PROPOSED UNDER TRADE REFORM ACT -- OPERATIONAL FLOW CHART



FIRM IMPLEMENTATION

WORKER IMPLEMENTATION


Firm Application
Department of Commerce Technical Advice
Adjustment Assistance Proposal
Department of Commerce
Approval
(Large Firms)
(Small Firms)
Department of Commerce and private agencies
SBA and private agencies
Technical and Financial Assistance


Individual Application
Cooperating State Agency (or Department of Labor if no state agency exists).
Approval
TRA
Training
Counselling
Testing
Placement
Job Search Allowance
Relocation Allowances

Import Relief: Remedies for Injury

CURRENT LAW	INDUSTRY	TRADE REFORM ACT
PRESIDENT	President may provide whatever import relief he determines appropriate, or do nothing	President may provide relief only in following order of preference: tariff increase; tariff-rate quotas; quotas; and orderly marketing agreements (the latter 2 are subject to Congressional veto procedure)
WORKERS		
	• Cash benefits equal to 65% of average weekly wage (up to 65% of average weekly manufacturing wage), for up to 52 weeks • Relocation allowances for unemployed heads of families • Employment services: testing, counseling, training, and job placement	• Cash benefits equal to 70% of average weekly wage (up to 100% of average weekly manufacturing wage), for up to 52 weeks • Relocation allowances for any unemployed worker; job search allowances up to $500 • Same as current law
FIRMS		
	Technical, financial, and tax assistance	Technical and financial assistance

2. Approvement of Adjustment Proposals (Section 253)

After a firm is certified eligible for adjustment assistance, it would have two years in which to file an application for adjustment assistance. Thus, even if certified, a firm would not automatically receive adjustment assistance. The firm must submit an application containing a viable adjustment proposal. Furthermore, a firm's application would only be approved if the Secretary of Commerce determines that the firm has no reasonable access to financing through the private capital market and that the firm's adjustment proposal is reasonably calculated to contribute to the economic adjustment of the firm, provides adequate consideration to the interests of the workers in such firm, and demonstrates that the firm will make all reasonable efforts to use its own resources for economic development. The Secretary of Commerce would be authorized to terminate a firm's certification of eligibility for adjustment assistance whenever he determines that the firm no longer requires assistance under the bill.

3. Technical and Financial Assistance (Sections 253, 254, 255)

Adjustment assistance for firms would include technical assistance in developing and implementing proposals for economic adjustment, as well as financial assistance, subject to limitations somewhat more liberal than those in existing law. Financial assistance would be extended in the form of loans and guarantees, for acquisition and modernization of plants, equipment and facilities and for such working capital as may be necessary. As indicated earlier, no *adjustment assistance* of any kind would be provided unless the Secretary of Commerce determines that a firm does not have reasonable access to private financing. Furthermore, no *financial assistance* of any kind would be provided unless the Secretary determines that the funds required are not available from the firm's own resources and that there is reasonable assurance of repayment. In other words, the firm would have to be nearly broke but with a reasonable chance of recovery if the loan is to be made, a difficult combination. The Trade Expansion Act provisions for tax assistance in the form of extended loss carrybacks have been eliminated since they were found to be of little value to the types of firms applying for adjustment assistance.

The Secretary of Commerce could delegate his functions under the bill to the Administrator of the Small Business Administration with respect to any firm considered to be a small business within the meaning of the Small Business Act. The bill also provides for the administration of financial assistance, and contains sections on protective provisions, definitions, penalties, lawsuits, and other provisions comparable to the Trade Expansion Act.

The Tariff Commission would be required to notify the Secretary of Commerce whenever it begins an import relief investigation under section 201 of the bill. Upon such notification, the Secretary of Commerce would be directed to make a study of the number of firms which have been or are likely to be certified as eligible for adjustment assistance and the extent to which adjustment of such firms to import competition may be facilitated through the use of existing programs. The Secretary would be required to report to the President concerning its study not later than 15 days after the Tariff Commission makes its injury determination report to the President.

TITLE III. RELIEF FROM UNFAIR TRADE PRACTICES

Whereas Title II deals with providing relief from injury caused by "fair" albeit injurious import competition, Title III deals with "unfair" and "illegal" trade practices affecting U.S. exports or foreign imports into the United States.

A. Foreign Import Restrictions and Export Subsidies, Chapter 1 of Title III (sections 301–302)

1. Retaliation Authority

The bill would broaden existing authority to retaliate against "unreasonable" or "unjustifiable" foreign import restrictions adversely affecting United States exports. The authority would continue to be wholly discretionary in the hands of the President. There is no complaint procedure, with time frames, to force a decision on any unfair foreign trade practice of foreign governments described in section 301 of the bill. But, if the President decides to act against unfair foreign trade practices he would have to hold a hearing for *any* interested person. In general, section 301 would authorize the President to suspend concessionary treatment for, and to impose duties or other import restrictions on, the imports of any foreign country which maintains unjustifiable or unreasonable tariff or other import restrictions, discriminatory or other acts or policies or subsidies on its exports to third countries which burden or discriminate against United States exports. Under the TEA, the President has full authority to impose duties and other import restrictions only when acting against "unjustifiable" (which has been interpreted by the Executive to connote an illegal act, i.e., a violation of GATT articles) foreign import restrictions aimed at U.S. agricultural exports. Section 301 of the proposed bill would extend this authority to cover unreasonable as well as unjustifiable foreign acts which adversely affect any U.S. export, "unreasonable" acts are not defined.

The President would also be given authority to act against countries which provide subsidies on imports to the United States, which have the effect of substantially reducing sales of competitive U.S. products in the United States. However, the President could *only* act in such cases if: (1) the Secretary of the Treasury finds that the country does provide subsidies, (2) the Tariff Commission finds that the subsidized

26-724 O - 74 - 4

imports do reduce sales of competitive U.S. products, and (3) the President finds that the Antidumping Act of 1921, and the Countervailing Duty law are inadequate to deter such practices.

In acting under this authority, the President would be required to consider the relationship of such action to the international obligations of the United States. Actions must be undertaken on a non-discriminatory treatment basis (MFN), except that the President could act selectively with respect to specific countries which maintain unreasonable as opposed to unjustifiable restrictions.

Section 301 would require the President to provide an opportunity for the presentation of views concerning the kinds of import restrictions dealt with in this section. The bill also contains a new requirement that the President provide an opportunity for the presentation of views and for appropriate public hearings *prior* to the taking of any action under section 301. The President could also ask for the views of the Tariff Commission as to the probable impact on the U.S. economy of the taking of any action under this section.

2. Congressional Veto Procedure

Section 302 would subject any measure taken under section 301 to the Congressional veto procedure. Thus any such action would remain in effect only if, before the close of the 90-day period following receipt of the Presidential document setting forth such action, neither House of Congress by an affirmative vote of a majority of those present and voting has adopted a resolution of disapproval with respect to such action.

B. Antidumping Duties, Chapter 2 of Title III (section 321)

1. Time Limits and Procedures

Section 321 would make several significant procedural changes in the present antidumping statute. In the first place, the Secretary of the Treasury would be given a time limit in which to make his findings as to whether there have been sales at less than fair value (generally sales at prices below those in the home markets of the exporting country). The Secretary would make such findings within 6 months or, in more complicated investigations, within 9 months after the question of dumping has been raised or presented to him, in accordance with regulations to be issued by the Secretary.

As under existing law, the Secretary upon making an affirmative finding of sales at less than fair value, would be authorized to order the "withholding of appraisement" of merchandise entered or withdrawn

from warehouse not more than 120 days before the question of dumping was raised by or presented to him. The bill would allow the Secretary, even if his initial determination were negative, to order the withholding of appraisement within 3 months of his published notice of negative determination, if within that time period he had reason to believe that there might be sales at less than fair value.

New provision would also be made in the bill for the holding of hearings by both the Secretary of the Treasury and the Tariff Commission, which must make a finding of injury following the Secretary's finding of sales at less than fair value. Any interested party may be allowed to appear. However, only foreign manufacturers, exporters, and domestic importers of the foreign merchandise in question would have an automatic right to appear at such hearings. Thus, U.S. manufacturers of the articles in question would be required under the bill to show good cause before they could present their views. Any determinations made by the Secretary of the Treasury or the Tariff Commission at such hearings would be published in the Federal Register together with a statement of findings and conclusions and reasons thereof.

2. Definitional Changes

Certain substantive changes in the antidumping statute would also be made by the bill. Under the 1921 Antidumping Act, sales at less than fair value are defined as occurring when the purchase price (in the United States) or the exporter's sales price is less than the foreign market value (generally defined as the price in the domestic market of the country of export). If the purchase price or exporter's sales price is less than the foreign market value, and if the Tariff Commission finds that the importation of such product results in injury to, or prevents from being established, a United States industry, an antidumping duty shall be levied in an amount equal to the difference between the foreign value and U.S. price (dumping margin). The bill would make certain amendments with respect to the sections of the Antidumping Act which define purchase price and exporter's sales price so that the dumping margin, if any, will not be artificially reduced or distorted through an improper treatment of foreign export taxes and indirect taxes affecting such products. Provision would also be made to coordinate this section with the countervailing duty law so that imports which have already been made subject to countervailing duties as a result of a finding of export subsidy would not be doubly penalized under this Act.

In order to determine the foreign market value of a particular product, the Secretary of the Treasury is directed to consider the price at

which that product has been sold in its home market or in the representative third country markets. However, if a manufacturer were to make foreign sales at prices below the cost of production, it would be inappropriate to use such prices as a measure of foreign value. Accordingly, the bill would direct the Secretary, where he determines that sales have been made at prices less than the cost of producing such merchandise and that certain other requirements are met, to construct the foreign market value according to section 206 of the Antidumping Act. Under Section 206, the foreign market value is constructed by adding together the estimated costs, expenses and profits which would be incurred in producing such merchandise. A similar provision would be added in the case of State controlled economies (i.e., the communist countries). If the Secretary determines that the economy of a country is state-controlled to such an extent that sales of merchandise do not permit a determination of foreign market value, he would determine such value either on the basis of the prices at which such or similar merchandise is sold by a non-state-controlled economy country for home consumption or to third countries, or on a constructed value basis.

Section 321 of the bill would also make certain other technical changes in the 1921 Antidumping Act relating to the comparison of foreign and U.S. prices of the same manufacturer and would provide transitional provisions regulating the phasing in of the amendments to this Act.

C. Countervailing Duties, Chapter 3 of Title III (section 331)

Section 303 of the Tariff Act of 1930 requires the Secretary of the Treasury to impose countervailing duties upon imported merchandise whose manufacture, production, or export has been benefitted directly or indirectly by a bounty or grant (subsidy). Section 331 of the bill would make major procedural as well as substantive changes in the countervailing duty law.

1. Time Limits

Under subsection (a) of the revised countervailing duty statute, the Secretary of the Treasury would be required to make determinations as to the existence of bounty or grant within 12 months after the date on which the question was presented to him. No time limit is contained in the present law.

Relief from Unfair Trade Practices

Foreign import restrictions or export subsidies

Authorizes President to retaliate against unjustifiable or unreasonable tariff or other import restrictions of foreign governments:

- no time limitation
- complex hearing procedures
- Congressional veto procedure applies

Antidumping

- 6 month time limit (9 months in complicated cases)
- Guaranteed hearing for foreign manufacturer or importer
- Provides for finding of dumping for below-cost sales

Countervailing duties

- 1-year time limit
- allows for findings on duty-free articles if injury exists
- Permits Secretary not to apply provision during negotiations
- Provides judicial review

Unfair import practices

- Permits Tariff Commission to force exclusion orders if imports violate U.S. patent laws
- No time limits

2. Extension to Non-Dutiable Items

Furthermore, under subsection (b) the countervailing duty law would be extended to cover non-dutiable items. However, in the case of such items, the bill would require an affirmative determination by the Tariff Commission that a United States industry is being, or likely to be, injured or prevented from being established as a result of the importation of the subsidized non-dutiable merchandise. The injury requirement would not apply to dutiable items. In the case of non-dutiable items, the injury requirement would be required only so long as the international obligations of the United States (GATT Article XIX) require such a determination.

If the Secretary made an affirmative finding that a bounty or grant exists with respect to a non-dutiable import, he would be authorized to order the suspension of liquidation with respect to such merchandise entered or withdrawn from warehouses on or after the 30th day after publication of such determination in the Federal Register. If the Tariff Commission then made a positive injury determination, it would take effect as of the date of the original subsidy determination by the Secretary of the Treasury, as in the case with dutiable imports.

3. Articles Subject to Quotas

Under new subsection (d), the Secretary of the Treasury would be authorized to refrain from applying countervailing duties, even if a subsidy were found to exist, to an article already subject to import quotas or to voluntary restraint agreements if he determined that such limitations were an adequate substitute for the imposition of such a duty.

4. Discretionary Moratorium While Negotiations Are In Process

Subsection (e) would add a wholly new concept to the unfair foreign trade statutes. During a 4-year period following the date of enactment of the bill, the Secretary of the Treasury would have *discretion to refrain from imposing a countervailing duty where he determined that such action would seriously jeopardize the satisfactory completion of trade negotiations contemplated under Title I of this bill.* The Secretary's discretion would only remain in effect for one year following enactment of the bill in the case of articles produced in facilities owned by or controlled by a developed country

where the investment in, or operation of, such facilities was subsidized. This whole subsection appears to say the law does not mean what it says while we are negotiating. It may be considered an open invitation to subject U.S. industry to injurious subsidized imports.

Apparently, the discretion provision was designed to provide the Executive Branch with the opportunity to negotiate internationally agreed-upon rules with respect to export subsidies during the 5-year period of trade agreements authority (5 years discretion is provided by adding the 4 years of discretionary authority to the 12-month period in which the Secretary must make his determination).

5. Judicial Review Rights

Section 331 of the bill would also amend section 516 of the 1930 Tariff Act in such a way as to provide American manufacturers, producers, or wholesalers, the right to seek judicial review of negative countervailing duty determinations by the Secretary of the Treasury. Under existing law, judicial review can only be had after the Secretary makes an affirmative finding of bounty or grant and levies countervailing duties. Thus, the present review system is only of benefit to importers and others adversely affected by countervailing duties. The bill would amend section 516 of the 1930 Tariff Act so that manufacturers and others could petition the Secretary of the Treasury to reconsider his determination that countervailing duties should not be levied in a particular case. There would be no time frame for the Secretary to reach a decision on the merits of the complaint by the petitioner. However, if the Secretary decides that his negative countervailing duty decision is correct the petitioner could serve notice that he will contest in the Customs Court and thereby initiate the process of judicial review.

D. Unfair Import Practices, Chapter 4 of Title III (section 341)

Section 337 of the Tariff Act of 1930 authorizes the Tariff Commission to investigate alleged unfair methods of competition in the importation of articles or in the sale of imported articles in the United States. It has been most often applied to articles entering the United States in violation of U.S. patent laws. If the Tariff Commission finds the effect of such methods is to destroy or substantially injure an indus-

try efficiently and economically operated in the United States, to prevent the establishment of an industry or to restrain or monopolize trade or commerce in the United States, the articles involved may be excluded from entry into the United States by the Secretary of the Treasury at the direction of the President.

1. Tariff Commission Power To Exclude Articles in Patent Infringement Cases

Section 341 of the bill would amend section 337 of the Tariff Act of 1930 to authorize the Tariff Commission, itself, to order the exclusion of articles involved in unfair methods of competition based upon violations of United States patent laws. In the case of patent violations, the President would be removed from any responsibility under section 337. The bill would not alter the existing roles and authorities of the President and the Tariff Commission with respect to unfair import practices not involving patents.

Under the proposed amendments to section 337 of the Tariff Act, whenever the Commission has reason to believe that any article entered into the United States in violation of United States patent laws would, in the absence of exclusion, result in immediate and substantial harm, it would so notify the Secretary of the Treasury. The Secretary would then exclude such articles from entry until an investigation by the Commission could be completed. Such articles, however, would be entitled to entry under bond. If the existence of such unfair method were established to the satisfaction of the Commission, such article would be excluded from entry into the United States until such time as the Commission found that the conditions leading to such refusal of entry no longer existed. No lesser remedies than outright exclusion would be provided. [An exclusion order is equivalent to a cease and desist order with respect to articles entered or sold in violation of patent laws.]

2. Hearings and Judicial Review

Any order entered into under this section would be made on the record after opportunity has been made for a full hearing. Any person adversely affected by an action of the Commission or the refusal of the Commission to act would have the right to seek judicial review.

TITLE IV. TRADE RELATIONS WITH COUNTRIES NOT ENJOYING NONDISCRIMINATORY TREATMENT (SECTIONS 401–407)

Title IV of the bill would authorize the President, under specified conditions, to extend nondiscriminatory or column 1 concessionary tariff treatment to countries whose imports into the United States do not currently receive such treatment. The term "nondiscriminatory" has been used in the bill as a substitute for the term "most favored-nation" treatment. The only countries not enjoying nondiscriminatory treatment today 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 Trade Reform Act 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. Since Czechoslovakia, Romania, and Hungary are already members of the GATT, they would be automatically eligible for column 1 treatment under this Title. Nondiscriminatory treatment would remain in effect only so long as the relevant trade agreement remained in force with respect to the United States and the country concerned. The President, however, would have the authority to suspend or withdraw the application of column 1 treatment to any country at any time.

If the President chooses to enter into a bilateral agreement for the purposes of this Title, he would be required to determine that the agreement would promote the purposes of the bill and would 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, in addition, include arrangements for the protection of industrial rights such as copyrights, promotion of trade, and other commercial arrangements promoting the purposes of the bill.

2. Freedom of Emigration in East-West Trade

Title IV would lay down several conditions with regard to the extension of nondiscriminatory treatment, which are aimed most directly at the Soviet Union. 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 or 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. This prohibition would have the primary effect of cutting off U.S. Export-Import Bank credits and guarantees to the Soviet Union.

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 U.S.-Russian lend-lease settlement agreement, on the other hand, conditions Russia'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 substantial, increasing rapidly, absolutely and relative to domestic consumption, *and* 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.) with respect to only 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, providing that any portion of the products receive column 1 treatment as a result of Title IV.

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

Under section 406, before a proclamation extending nondiscriminatory treatment to any country can 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 on a semi-annual basis concerning the emigration policies of any country receiving nondiscriminatory treatment pursuant to this Title. Congress, following receipt of the December report, could apply the congressional veto procedure to discontinue nondiscriminatory treatment for any country receiving such treatment pursuant to this act.

Trade Relations with Communist Countries

1. President authorized, under specified conditions, to grant most favored nation treatment to countries not currently receiving MFN treatment
2. Country must enter into a bilateral or multilateral trade agreement
3. MFN treatment would remain in effect only so long as trade agreement remained in force
4. Bilateral agreements would include:
   - suspension or termination for national security reasons
   - safeguards against disruption of domestic markets
   - protection of patents
   - settlement of commercial disputes
   - consultative procedures
5. Freedom of emigration.—No country would be eligible to receive MFN treatment, U.S. Government credits or investment guarantees if the President determines that the country
   - denies its citizens the right to emigrate,
   - imposes more than a nominal tax for emigration, or
   - otherwise imposes more than a nominal tax or other charge on any citizen as a result of his desire to emigrate

Trade Relations with Communist Countries (cont.)

6. Market disruption provision.—President could impose import relief measures if the Tariff Commission determined imports from Communist countries were causing market disruption and material injury. Market disruption would be deemed to exist whenever imports were:
   - substantial,
   - increasing rapidly, absolutely and relative to domestic consumption, and
   - being offered at prices substantially below those of comparable domestic articles

7. Proclamations and trade agreements under these provisions are subject to Congressional veto procedure

TITLE V. GENERALIZED SYSTEM OF PREFERENCE

(SECTIONS 501–505)

Title V of the bill would provide the President with general authority to extend *duty-free treatment* to products imported into the United States from eligible developing countries. The authority would be complementary to that already exercised by Japan and the EC countries pursuant to the 10-year GATT waiver authorizing generalized preferences for developing countries. The Japanese and European preference schemes, however, are wholly different from the plan proposed in the House bill.

In determining whether or not to provide duty-free treatment to any product from any country, the President would be required to have due regard for the effect of such action on the economic development of the countries, the extent to which other developed countries have extended comparable preferences, and the impact of such action on U.S. producers of like or directly competitive products.

1. Beneficiary Developing Country (Section 502)

Beneficiary developing countries would be designated by Executive order under section 502 of the bill. The President could terminate the designation of any country as a "beneficiary developing country", but only after he notifies both Houses of Congress of his intent at least thirty days before such termination goes into effect. The bill lists 27 specific developed countries which would be prohibited from being designated as beneficiaries under this Title. Countries which do not receive nondiscriminatory tariff treatment (Title IV) and countries which do not agree to eliminate reverse preference to other developed countries would also be precluded from receiving duty-free treatment. It is not clear whether, once communist nations not now receiving MFN treatment were granted such treatment under Title IV authority, they would be eligible for tariff preference treatment. Conceivably the People's Republic of China could qualify for tariff preference treatment under this bill if it were granted MFN treatment.

In determining whether to designate any country a beneficiary under this Title, the President would be directed to take into account the country's expression of desire to become a beneficiary (self-election procedure), its level of economic development, whether it receives preferential treatment from other developed countries, and whether it has expropriated property owned by U.S. citizens without provision for prompt, adequate, and effective compensation.

Generalized Tariff Preferences

- Authorizes President to extend duty-free treatment to products imported from developing countries
- Beneficiary developing countries designated by President; 27 countries specifically excluded
- To be eligible, articles must be imported directly from the developing country; the value added in that country must be at least a minimum percentage of the value of the article (to be set at from 35% to 50%)
- Excludes articles subject to escape clause relief
- Excludes an article imported from any one country if the imports of the article from that country exceed $25 million or 50% of total U.S. imports of that article
- Provision limited to 10-year duration; complete report to Congress after 5 years

2. Eligible Articles (Section 503)

Title V would lay down no specific guidelines as to the product or class of products which may or may not be given duty-free treatment pursuant to Title V. The administration bill originally specified manufactured and semi-manufactured articles, but did not preclude the extension of duty-free treatment to other products. However, the bill does require that in order to be eligible, the article must be imported directly from the beneficiary developing country into the customs territory of the United States and that it satisfy certain local cost requirements. Specifically, the cost of materials and processing originating or carried on in the particular country would be required to equal or exceed a specific percentage of the total value of the article at the time of its entry into the U.S. customs area. This percentage, which is to be determined by the Secretary of the Treasury, must be greater than 35 percent but not more than 50 percent. In practice, a 50-percent requirement would mean that a country would have to double the value of any product introduced into its territory for processing.

Articles which were the subject of import relief actions under Title II of the bill, would not be eligible for duty-free treatment. Upon the specific recommendation of the Tariff Commission in a Title II (import relief) proceeding, the President could also terminate duty-free treatment for any product otherwise eligible under Title V. Under section 504, the President would be required to terminate the eligibility of an article imported from any one country if the imports of the article from such country exceeded $25,000,000 or 50 percent of the total U.S. import of such article in any one calendar year. However he could continue to designate any country as a beneficiary if determined it was in the national interest to do so. It is not clear how the President would define "article."

3. Time Limit; Comprehensive Review

Duty-free treatment extended pursuant to Title V would cease to be in effect 10 years after the date of enactment of the bill. This time period coincides with the 10 year duration of the general GATT waiver on generalized tariff references. The bill would require the President to submit a full and complete report on the operation of this title within five years from the date of enactment of the bill.

26-724 O - 74 - 5

TITLE VI. GENERAL PROVISIONS

Title VI of the bill contains standard general provisions covering definitions, relations to other laws, changes in the tariff schedules to reflect actions taken under the bill and separability.

Section 603 would authorize the Tariff Commission to take certain procedural actions—such as preliminary investigations and consideration of proceedings—in order to facilitate the carrying out of its functions under the bill.

Section 606 would direct the President to embargo trade and investment, public and private, with any nation which does not take adequate steps to prevent narcotics and other controlled substances from unlawfully entering the United States. Any suspension of trade and investment would continue until the President determined that the government of the country had taken adequate steps to carry out the purposes of this section.

APPENDIX A

COMPARISON OF TARIFF LEVELS AMONG MAJOR INDUSTRIAL COUNTRIES: A REVIEW OF THE PROBLEMS OF COMPARISON AND OF RECENT DATA ON TARIFF AVERAGES

There is no simple, straightforward method for comparing tariff levels among countries. Even a direct comparison of duties on individual items may be ambiguous, due to differences in product specification, methods of valuation, preferences, etc. This ambiguity is compounded when we attempt to compare tariff levels for groups of items, or to calculate a single figure which can meaningfully represent a whole tariff structure. Tariff level comparisons must proceed from an understanding of these ambiguities. They must include several kinds of tariff averages, with full cognizance of the limitations on the meaning of each average. This paper will initially address itself to some of the pitfalls of tariff level comparisons, and summarize some of the results of a major comparative tariff study undertaken by the GATT secretariat.

I. CUSTOMS VALUATION

The first problem of comparing tariffs concerns customs valuation. An *ad valorem* tariff is levied on the value of an imported item. There are, however, several ways for determining this value. A major study of this problem, with recommendations for adoption of a uniform system, has been published by the U.S. Tariff Commission.[1] In considering very broad tariff level comparisons we may ignore most aspects of valuation practices. But one variation in customs valuation must be considered. It is important to know whether tariffs being compared are levied on a f.o.b. (free on board) or a c.i.f. (cost, insurance, freight) basis.

Neither f.o.b. nor c.i.f. are unambiguous concepts, but the main distinction between them can be clearly stated. The former decrees that the value of an import on which a duty is levied shall be the value of that good at the point of exportation, exclusive of subsequent costs incurred in transporting it to the point of importation. According to the c.i.f. method, the value of an import shall be its value at the point of importation, inclusive of insurance, freight, and transportation costs.

The Tariff Commission supports the f.o.b. method, though neither method is obviously superior, and good arguments can be made on

[1] U.S. Tariff Commission, *Customs Valuation*. Published as a committee print of the Senate Finance Committee, 93d Congress, 1st Session, March 14, 1973.

behalf of each.[2] It is desirable to have trade statistics based on both methods of valuation, as each method is appropriate to different kinds of economic analyses. A comparison of tariff levels should, ideally, be based on the same method of valuation, either f.o.b. or c.i.f. Two countries may have the same nominal tariff rate, but the country with c.i.f. valuation will exact a tariff payment higher than that demanded by the country with the f.o.b. valuation. Direct comparison of nominal tariff levels will suffer from this distortion unless the nominal rates are adjusted to reflect the actual tariff burden.

In order to transform U.S. trade statistics from an f.o.b. to a c.i.f. basis, the International Monetary Fund adopted the rule of adding 10 percent to the value of U.S. imports. This estimate of the *average* cost of freight and insurance was generally supported by past studies of the U.S. Tariff Commission. The Office for Special Trade Negotiations reports that a sample of imports in 1971 revealed an upward adjustment of about 6 percent would be required to transform the f.o.b. values into c.i.f. values. Any direct comparison of U.S. nominal tariff levels with those of c.i.f. countries implicitly assumes, therefore, that the duties actually paid on U.S. imports are around 6 to 10 percent higher than they really are, that is, by the margin by which c.i.f. valuation exceeds f.o.b. To render *average* U.S. nominal tariffs directly comparable to the tariffs of c.i.f. countries, the U.S. tariffs should be reduced by about 5–10 percent.

There are, however, some qualifications to this adjustment rule. It is required only when the U.S. valuation is substantially f.o.b. It could not be invoked for those tariffs levied on the "American Selling Price."[3] And it would be justified only for average tariff levels calculated for very broad groups of imports. The 5–10 percent upward adjustment required to switch from f.o.b. to c.i.f. valuation is the average additional cost of freight and insurance for all imports. This average permits no conclusions about the degree of adjustment required for individual items, or for narrowly defined groups.

The GATT comparative tariff data reported below are not adjusted to remove the distortion inherent in a comparison of c.i.f. with f.o.b. tariff levels. (The tariffs of the U.S. and of Canada are levied on an f.o.b. basis, in general, while those of the other countries are generally on a c.i.f. basis.) The magnitude of the distortion is not serious enough to warrant the considerable effort required to achieve greater precision, at least not for the purpose of comparing entire tariff structures. It could, however, assume greater significance in the comparison of tariffs on items whose transportation costs substantially exceed the 5–10 percent average differential between f.o.b. and c.i.f. valuations.

II. WEIGHTING AND AVERAGING

A more serious problem in comparing tariffs arises with the selection of an appropriate weighting method for calculating tariff averages. We are concerned not with a comparison of tariffs on individual

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[2] For a summary of these arguments, see pgs. 137–143 of *Customs Valuation.* At present the U.S. utilizes the f.o.b. method, with the variation that the dutiable value is taken to be the "principal market" value within the country of export, not at the port of export. In practice the "principal market" value means the cost of the good at the factory, exclusive of transportation costs to the port of export.

[3] *Customs Valuation* reports that duties in 1969 were levied according to the A.S.P. on less than 1 percent of imports. (p. 71)

items, but with the comparison of tariff structures for large groups of imports. It is necessary to calculate an "average" tariff to represent the entire tariff structure. Even if the calculation of "the" average poses no problem, to use just one figure for interpreting the significance of a whole array of figures is inherently ambiguous. The dispersion of the figures about the average, the value of the highest and lowest—such considerations may invalidate the use of "the" average for different kinds of comparisons. This is a quite familiar problem, however, as it pertains to the analysis of all forms of data. The problem peculiar to the analysis of trade data arises at an earlier stage, namely, the choice of methods for calculating various kinds of averages.

The first choice is whether or not to weight the tariffs. If each tariff within a tariff structure is of equal importance, "the" average may be calculated in the straightforward manner of summing all tariffs and dividing by the number of tariffs. But we generally want to accord greater importance to some tariffs; namely, those which have greater impact on trade. Tariffs which fall on items of great importance to a country's trade should obviously have greater weight in the calculation of "the" average than tariffs on items of trivial importance. We must, therefore, select a factor by which to weight the tariffs. The value of imports under each tariff is the obvious candidate.

Weighting by value of imports raises further problems. The ideal procedure would be to weight each tariff by the value of goods that would have been imported in the absence of any tariff. Weighting by the value of goods actually imported is potentially subject to distortions as severe as those connected with non-weighting. The more effective tariffs are in curtailing trade, the *less* weight they will have in the calculation of the average. Weighting by the value of actual imports could produce the absurd conclusion that, if the tariffs were high enough to prohibit all trade, the average tariff would be zero! Since the purpose of tariffs is protection against imports, we need a tariff average that conveys some notion of the actual restrictive impact. This requires at least an estimate of the amount of trade that would have occurred without tariffs. Such estimates are usually difficult to make, especially when tariffs have been in place for some time. None of the averages reported below are weighted by the trade that might have flowed.

III. THE GATT STUDY

Faced with the necessity of using actual trade data, the only recourse is to calculate several averages, each designed to correct the most pronounced distortions of the other. The most ambitious and comprehensive effort at computing and comparing tariff averages has been undertaken by the GATT secretariat. The President's Office for Special Trade Negotiations has furnished the Economics Division of the Congressional Research Service with one of the documents resulting from this study. According to that Office, the data in this document [4] reflect the tariffs in effect after completion of the Kennedy Round, but they are weighted by *1967* trade figures. Averages weighted by more recent

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[4] The document is entitled *Basic Documentation for the Tariff Study, Supplementary Tables,* GATT, Geneva, July 1970.

trade figures have reportedly been compiled by GATT, but, according to the Office for Special Trade Negotiations, they are restricted to the member governments and are not yet to be released to Congress.

The GATT study contains four kinds of tariff averages. They are calculated for each item in a comprehensive list of import categories, and for very broad groupings of categories. Averages for the broadest groupings, defined as "all industrial products," "finished manufactures," "semimanufacturers," and "raw materials" are calculated on the basis of all items within the group, and on the basis of dutiable items only. The results are:

TARIFFS

[Definitions and explanations of averages are found on pp. 12–14 in text]

All industrial products	On all items (average)				On dutiable items			
	No. 1	No. 2	No. 3	No. 4	No. 1	No. 2	No. 3	No. 4
World	8.7	6.7	5.3	6.5	10.5	9.4	9.6	9.2
EEC	6.9	6.0	3.9	6.0	7.5	8.0	8.0	8.1
United States	10.9	7.1	6.1	6.2	11.9	9.0	8.5	8.2
Canada	9.2	6.4	6.4	6.9	15.2	13.0	14.1	12.6
Japan	10.1	9.7	5.7	9.6	11.1	11.5	10.7	11.6
Finished manufactures:								
World	10.1	8.6	7.7	8.6	12.0	10.7	10.4	10.3
EEC	7.8	8.7	8.0	8.6	8.0	9.0	8.3	9.0
United States	12.8	8.1	8.4	7.2	13.4	9.0	9.2	8.1
Canada	10.6	9.2	6.6	9.9	16.1	15.3	14.3	14.7
Japan	11.4	12.0	12.0	12.5	11.7	12.2	12.3	12.8
Semimanufactures:								
World	7.9	7.1	5.4	6.6	9.3	9.2	9.0	8.9
EEC	6.7	6.2	4.7	6.3	7.1	7.8	8.5	8.1
United States	9.5	8.3	5.1	6.9	10.4	10.4	8.3	9.5
Canada	7.5	6.2	9.4	7.4	13.3	11.3	14.0	11.4
Japan	9.5	9.3	6.2	8.2	10.4	10.5	7.6	9.9
Raw materials:								
World	2.5	2.5	1.4	2.1	6.3	4.0	6.2	3.7
EEC	1.6	.6	.3	.4	3.9	1.3	3.4	1.4
United States	4.5	3.8	2.7	3.3	8.4	4.7	5.7	4.5
Canada	3.4	1.2	.4	.3	11.0	1.7	6.4	1.2
Japan	2.5	5.5	3.2	5.2	8.0	9.5	11.2	8.4

Note: The GATT document alsoi ncludes averages for Sweden, Denmark, Norway, Finland, Switzerland, Austria, and the United Kingdom. Denmark and the United Kingdom are now harmonizing their tariffs with those of the EEC.

Tariff averages calculated on the basis of all imported items will always be lower than those calculated only on the basis of dutiable items, as long as some imports are duty free. While tariff averages on all times are the best reflection of the tariff structure as a whole, since recognition should be given to zero tariffs, it is necessary to compare them to the averages on dutiable items only. A large discrepancy can call attention to the possibility of a significant degree of tariff protection despite rather low averages on all imported items. Effective protection often requires tariffs which exceed some critical level, below which a tariff may be a nuisance to foreign producers, may somewhat reduce their profits, but will not really prevent them from penetrating the domestic market. If low tariffs of this nature are abolished, while tariffs high enough to afford effective protection are retained, the average tariff on all imports may be very low, but the degree of meaningful protection, as reflected in the averages on dutiable items, can still be rather high.

These averages are not easy to interpret. Average No. 1 is simply the unweighted average: each tariff is of equal importance in its calculation. Goods imported at low tariffs, as are many raw materials, tend

to fall under a few comprehensive tariffs, whereas high duty goods are covered by a larger number of tariffs, each covering an import category of much finer definition. The summation of all tariffs will likely contain a large number of high duty tariffs, even though the bulk of trade may flow under the lower tariffs. If this is the case, average No. 1 will be significantly inflated. It could be expected to be the highest of the averages.

Average No. 3, on the other hand, could be expected to contain a strong downward bias. It is calculated by weighting each tariff by the value of imports entering under it. High tariffs which effectively reduce imports do not, therefore, receive a weight proportionate to their importance. One could expect average No. 3 to be the lowest average.

These general expectations are not, however, uniformly satisfied by the data. When they are, the difference between average No. 1 and No. 3 is often not striking. Averages calculated for each of twenty-three industrial product categories also refute the general expectation: in 40 percent of the cases, average No. 3 exceeds average No. 1. This can occur only when a disproportionately large amount of trade is flowing under tariffs which are higher than the average, unweighted tariff for that product category. In these cases, larger trade is associated with higher tariffs. Analysis of these cases, as reported in an addendum to the Basic Documentation, produces two general explanations. A tendency for average No. 3 to exceed average No. 1 is associated with labor-intensive products, and with the most specialized or technologically advanced products. These are complementary, not contradictory generalizations. In the first instance, it appears that the industrialized countries are at an increasing disadvantage in the production of labor-intensive goods, so that the most labor-intensive items within a general category of products will be imported in disproportionately large amounts despite duties on them higher than the duties on other items in the category. Despite higher tariffs, these goods can still be price-competitive. The second explanation refers to goods that do not compete on the basis of price with equivalent products. Because of their exceptionally high quality, or very advanced international specialization in their production, they do not face much competition for equivalent products of similar quality or special refinement. These are goods of which there are only a few suppliers in the world, or, if the general good is widely produced, a few particular suppliers dominate the high quality, specialized variations on the general good. High tariffs will not necessarily impede their importation.

Averages No. 2 and 4 were calculated to moderate the distortions normally characteristic of averages No. 1 and 3. They employ a two-stage weighting procedure. The GATT study utilizes the BTN (Brussels Tariff Nomenclature) system for classifying traded commodities. The BTN system consists of a list of tariff "headings", each of which groups together a set of individual tariff "lines." In the first stage, an average is calculated for the tariff lines within a BTN heading, producing an average tariff for each BTN heading. For average No. 2 there is no weighting of the tariff lines. It corresponds, at this stage, to average No. 1. For average No. 4 each tariff line is weighted by the value of the nation's imports under that line. It corresponds, at this stage, to average No. 3. In the final stage an average for the entire group is calculated from the averages for the BTN headings within the group.

Both averages No. 2 and 4 employ, in this final stage, a common weighting scheme. The tariffs for each BTN heading are weighted by the value of world imports under that heading. Weighting by world imports in the second stage should, for average No. 2, tend to remove the distortion of no weighting in the first stage. Weighting by world imports should, for average No. 4, tend to remove the distortion of weighting by national imports in the first stage. As a pair they should represent a better measurement of "the" tariff level than averages No. 1 and 3.

Weighting by world imports is not, however, without its own distorting effect. The rationale for averages No. 2 and 4 is that the distortions of the second stage offset the distortions of the first stage. But some skepticism concerning such beneficial offsetting is warranted. Weighting by world imports implicitly assumes that, in the absence of trade barriers, the composition of each nation's imports would roughly conform to the composition of world trade. Were that true, this method would be the best practical procedure. But it cannot be true, for it would contradict the basic rationale of trade; namely, that different countries have comparative advantages in the production of different goods, so all can benefit by each exporting those goods it produces most efficiently, and importing those it can only produce at a disadvantage. With international specialization, the composition of each country's imports would be markedly different from the composition of world imports. Weighting by world trade is distorting because it places undue emphasis on tariffs covering goods which other nations import in large amounts. The virtue of weighting by world trade is to restore a needed emphasis on those tariffs which are genuinely protective.

IV. INTERPRETATION

Since no tariff average is very satisfactory, the only recourse is to examine several of them, keeping in mind their limitations, and to venture generalizations about comparative tariff levels only when a consistent pattern can be discerned. These figures can support several generalizations. In the industrialized world, tariffs on raw materials are, as one would expect, very low. (The difference between tariff levels on manufactured goods and raw materials assumes considerable significance when one attempts to compare "nominal" with "effective" tariff levels, as discussed below.) Tariffs on finished manufactures tend to be higher than those on semimanufactures. Among countries, Canada's tariff structure is not, as a whole, exceptional, but it clearly emerges as the highest structure when only dutiable items are considered. Japan has the highest tariff level on all finished manufactures, but is second to Canada on dutiable finished manufactures. Despite her lack of domestic raw materials, Japan has high tariffs on dutiable raw materials, though the discrepancy between dutiable and all items indicates that a large portion of Japanese raw material imports are duty free. The U.S. appears to have somewhat higher tariffs than the EEC, though some of this difference would disappear if the comparison were adjusted to remove the f.o.b.–c.i.f. distortion. This would leave the U.S. at approximate equality with the EEC in industrial goods, though U.S. tariffs on raw materials would remain higher.

Tariff averages of this nature can provide a useful overview, and point to any gross differences among countries. One must stress, how-

ever, their limited validity. Aside from the difficulties of calculating a meaningful average, any average can conceal the impact of very high tariffs on a few strategic items. The larger the dispersion of very high and very low tariffs around an average, the less reliable that average as a meaningful interpretation of the tariff structure. In addition to pure averages, therefore, one should have some measure of this dispersion.

The GATT study contains data on the frequency distribution of the individual tariff lines. We can construct a comparison of the percentage of tariff lines within various tariff ranges:

	DUTIES				
All industrial products	Less than 5 percent	5 to 10 percent	10 to 15 percent	15 to 20 percent	Over 20 percent
World	42	28	14	9.0	7.0
EEC	31	56	11	1.6	.4
United States	32	30	14	12.0	12.0
Canada	42	13	16	24.0	5.0
Japan	18	49	22	7.0	4.0

This reveals that 32 percent of all U.S. tariff lines carry duties of less than 5 percent, 30 percent of the tariff lines have duties between 5 and 10 percent, etc. The United States and Canada have the larger portion of tariff lines in the higher ranges, where tariff protection is more effective. European and Japanese tariff show less variance from their "average" tariffs. This evidence suggests that, although U.S. tariff averages are, on the whole, very close to those of our major partners, the more dispersed American (and Canadian) tariff structure may be more restrictive of trade.

The divergence of tariffs can also be judged from data on the highest and lowest average tariffs (weighted by OECD trade) in each of twelve industrial sectors accounting for 85 percent of OECD non-agricultural imports. These averages, as published in the Report of the President's Commission on International Trade and Investment Policy,[5] are:

[In percent]

Industrial sector	Highest average	Lowest average	Point spread
Pulp and paper	[1] 7.8	[2] 2.5	5.3
Textiles	[2] 17.7	[3] 8.3	9.4
Mineral products	[2] 7.6	[3] 3.8	3.8
Ores and metals	[1] 6.5	[4] 4.1	2.4
Coal, petroleum, gas	[3] 10.8	[1] .9	9.9
Chemicals	[3] 10.0	[4] 7.4	2.6
Nonelectrical machinery	[3] 10.9	[2] 5.6	5.3
Electrical machinery	[1] 11.5	[2] 7.8	3.7
Transport equipment	[3] 14.0	[2] 5.0	9.0
Scientific instruments	[2] 16.1	[5] 8.0	8.1
Footwear	[5] 22.6	[1] 10.4	12.2
Furniture	[5] 17.3	[4] 8.3	9.0

[1] United Kingdom.
[2] United States.
[3] Japan.
[4] EEC.
[5] Canada.

[5] John C. Renner, "National Restrictions on International Trade," *United States International Economic Policy in an Interdependent World*, Compendium of Papers: Vol. I, p. 665.

Consideration of this spread, in conjunction with data on tariff distribution similar to those we presented, tends to confirm the view expressed by John C. Renner, that "The close grouping of the general average tariff rates of the major industrialized countries disguises considerable differences in the sectoral tariff rates . . . the level of tariffs is higher and the spread is greater than generally supposed." [6]

V. NOMINAL VERSUS EFFECTIVE TARIFFS

The difficulties in interpreting the restrictive impact of tariff levels do not lie solely in the computation of appropriate averages. A real measure of the effective protection afforded national industries by tariffs should take account of the difference between tariffs on imports used in the manufacture of finished products, and tariffs on finished products. Domestic industries utilize raw materials, and semi-manufactures, in the production of finished manufactures. Some of those raw materials and semi-manufactures are imported. Tariffs on these imports increase the cost of production for domestic industry, and thus influence their competitiveness with foreign industries. Tariffs on imports may operate to offset the nominal protection afforded by tariffs on finished manufactures. Effective protection could be considerably reduced.

In practice, however, tariffs on raw materials are usually much lower than tariffs on finished manufactures. In this case, "effective" protection is greatly enhanced. To understand the difference between "effective" and "nominal" tariff rates one must understand just what is being protected. A tariff on a finished manufacture is protection for the "value added" in the process of transforming imported raw (or semimanufactured) inputs into finished outputs.

An example can clarify the explanation. Assume a simple case in which a domestic industry imports all the materials it uses in the manufacturing process. These imports are duty-free, but there is a 10 percent tariff on the finished product. Assume the competitive world price of the materials required to manufacture one unit of output is $50. Assume the competitive world price of the finished good is $100. Businesses in foreign countries which export the raw materials face a choice: to export the raw materials for $50, or to manufacture the finished product themselves and export it for $100. The raw materials will be duty-free, but the finished good will bear a duty of $10. Assuming that, to compete with the domestic manufacturer, the foreign manufacturer cannot raise the price of his export, his revenue from exporting the finished good will be $90. compared to a revenue of $50 from exporting the raw materials. He has earned $40 from the "value added" by his manufacturing process. But the domestic manufacturer, who bears no tariff on the $100 price of the final good, earns $50 from the value added in the domestic manufacturing process. The "effective rate of protection" enjoyed by the domestic manufacturer is the ratio of $10 to $50, or 20 percent, not the nominal tariff rate of 10 percent. The "effective rate of protection" can be defined as "the maximum proportion by which the value added per unit of output by primary resources employed in the domestic industry can exceed

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[6] *Ibid.*

the value added per unit of output by primary resources employed in the foreign competitive industry." [7]

This example illustrates the theory of effective rates in the simplest form. In practice the calculation of effective rates can be very difficult. It requires accurate data on the value added in the manufacturing process, and on the proportions of various material inputs into the manufacturing process.

Despite these difficulties, a meaningful comparison of tariff levels, with the purpose of judging the relative degrees of protection they afford manufacturing industries, should be based on effective, not nominal, tariff rates. This is particularly true when the question concerns preferential treatment to less-developed countries. The nominal tariff rates on finished goods in which they might be able to develop an export competitiveness may appear deceptively low, while the effective rate which provides the real barrier against their exports is nonetheless prohibitive.

We have not been able to uncover any recent attempts to calculate effective tariff rates. The most recent figures at our disposal are calculations of nominal and effective rates in 1962. Though these obviously have no validity today, we include a few examples solely to illustrate the degree of divergence possible between nominal and effective rates;

NOMINAL AND EFFECTIVE TARIFF RATES, 1962

Commodity	U.S.		EEC		Japan	
	Nominal	Effective	Nominal	Effective	Nominal	Effective
Textile fabrics	24.1	50.6	17.6	44.4	19.7	48.8
Clothing	25.1	35.9	18.5	25.1	25.2	42.4
Metal manufactures	14.4	28.5	14.0	25.6	18.1	27.7
Automobiles	6.8	5.1	19.5	36.8	35.9	75.7

THE 1962 OVERALL WEIGHTED TARIFF AVERAGES

Country	Nominal	Effective
United States	11.6	20.0
United Kingdom	15.5	27.8
EEC	11.9	18.6
Japan	16.2	29.5

Source: Bela Belassa, "Tariff Protection in Industrial Countries: An Evaluation," Journal of Political Economy (December 1965).

[7] Giorgio Basevi, "The United States Tariff Structure: Estimates of Effective Rates of Protection of United States Industries and Industrial Labor." *The Review of Economics and statistics* (May 1966).

VALUE OF U.S. IMPORTS FOR CONSUMPTION, DUTIES COLLECTED, AND RATIO OF DUTIES TO VALUES, UNDER THE TARIFF ACT OF 1930, 1930–72

[Dollar amounts in thousands]

Year	Imports for consumption					Duties collected [1]		
	Free		Dutiable				Ratio to values	
	Amount	Percent of total	Amount	Percent of total	Total	Amount	Dutiable imports (percent)	Free and dutiable imports (percent)
1930 (June 18–Dec. 31)	$979,016	69.5	$429,063	30.5	$1,408,079	$192,528	44.9	13.8
1931	1,391,639	66.6	696,762	33.4	2,088,455	370,771	53.2	17.7
1932	885,536	66.8	439,557	33.2	1,325,093	259,600	59.1	19.6
1933	903,547	63.1	529,466	36.9	1,433,013	283,681	53.6	19.8
1934	991,161	60.6	644,842	39.4	1,636,003	301,168	46.7	18.4
1935	1,205,987	59.1	832,918	40.9	2,038,905	357,241	42.9	17.8
1936	1,384,937	57.1	1,039,040	42.9	2,423,977	408,127	39.3	16.5
1937	1,765,248	58.6	1,244,604	41.4	3,009,852	470,509	37.8	15.5
1938	1,182,696	60.7	766,928	39.3	1,949,624	301,375	39.3	15.9
1939	1,397,280	61.4	878,819	38.6	2,276,099	328,034	37.3	14.4
1940	1,648,965	64.9	891,691	35.1	2,540,656	317,711	35.6	12.5
1941	2,030,919	63.0	1,191,035	37.0	3,221,954	437,751	36.8	13.6
1942	1,767,592	63.8	1,001,693	36.2	2,769,285	320,117	32.1	11.6
1943	2,192,702	64.7	1,197,249	35.3	3,389,951	392,294	32.8	11.6
1944	2,717,986	69.9	1,169,504	30.1	3,887,409	382,109	32.7	9.8
1945	2,749,345	67.1	1,348,756	32.9	4,098,101	391,476	29.0	9.6
1946	2,934,955	60.8	1,889,946	39.2	4,824,902	498,001	26.4	10.3
1947	3,454,647	61.0	2,211,674	39.0	5,666,321	445,355	20.1	7.9
1948	4,174,523	58.9	2,917,509	41.1	7,092,032	417,401	14.3	5.9
1949	3,883,186	58.9	2,708,454	41.1	6,591,640	374,291	13.8	5.7
1950	4,766,778	54.5	3,976,304	45.5	8,743,082	529,621	13.3	6.1
1951	5,993,442	55.4	4,823,900	44.6	10,817,341	603,468	12.5	5.6
1952	6,256,950	58.2	4,490,546	41.8	10,747,497	574,733	12.8	5.3
1953	5,919,501	54.9	4,859,403	45.1	10,778,905	597,760	12.3	5.5
1954	5,667,904	55.4	4,571,613	44.6	10,239,517	556,939	12.2	5.4
1955	6,036,634	53.2	5,300,153	46.8	11,336,787	669,579	12.6	5.9
1956	6,234,514	49.8	6,281,233	50.2	12,515,747	739,228	11.8	5.9
1957	6,036,400	46.6	6,914,206	53.4	12,950,606	776,884	11.2	6.0
1958	5,341,561	41.9	7,397,868	58.1	12,739,429	832,155	11.2	6.5
1959	5,821,729	38.8	9,165,346	61.2	14,987,075	1,056,536	11.6	7.1
1960	6,142,076	40.9	8,871,834	59.1	15,013,910	1,086,115	12.2	7.2
1961	5,922,298	40.4	8,734,599	59.6	14,656,897	1,052,702	12.1	7.2
1962	6,224,850	38.3	10,026,213	61.7	16,251,063	1,234,921	12.3	7.6
1963	6,265,096	36.8	10,739,791	63.2	17,004,887	1,262,156	11.8	7.4
1964	7,045,056	37.8	11,568,138	62.2	18,613,193	1,371,265	11.9	7.4
1965	7,434,414	34.9	13,847,409	65.1	21,281,823	1,622,920	11.7	7.6
1966	9,343,899	36.8	16,022,695	63.2	25,366,594	1,920,755	12.0	7.6
1967	10,203,477	38.2	16,528,817	61.8	26,732,294	2,016,421	12.2	7.5
1968	12,266,825	37.2	20,724,900	62.8	32,991,725	2,341,058	11.3	7.1
1969	13,061,617	36.4	22,808,742	63.6	35,870,359	2,551,174	11.2	7.1
1970	13,877,262	34.9	25,890,412	65.1	39,767,674	2,584,092	10.0	6.5
1971	15,309,317	33.6	30,263,575	66.4	45,545,892	2,767,980	9.2	6.1
1972	18,911,798	34.2	36,370,512	65.8	55,282,310	3,123,673	8.6	5.6

[1] Calculated.

Note: The ratio of duties collected to the value of imports (sometimes referred to as the "average ad valorem equivalent") should be used with great reservation as a measure of the "height" of a country's tariff or of the tariff's restrictiveness of imports. Such a ratio for the schedule of duties as a whole (or even a ratio for most individual tariff categories) is heavily weighted by imports that enter either free of duty or at low unrestrictive rates; it is weighted less by imports that enter at high restrictive rates and not at all by imports that are precluded from entry. Moreover, an upward or downward trend in the "ratio" of duties collected may reflect alterations in the rates of duty applied, changes in the composition of imports from year to year, or changes in the prices of imported commodities.

Source: U.S. Tariff Commission, March 1973.

VALUE OF U.S. IMPORTS FOR CONSUMPTION, DUTIES COLLECTED, AND RATIO OF DUTIES TO VALUES, UNDER SPECIFIED TARIFF ACTS, 1891–1930

[Dollar amounts in thousands]

Fiscal years 1891–1918; calendar years 1919 and succeeding years	Free		Dutiable		Total	Ratio to values	
	Amount	Percent of total	Amount	Percent of total		Dutiable imports (percent)	Free and dutiable imports (percent)
McKINLEY LAW							
Effective Oct. 6, 1890:							
1891	$379,028	44.8	$466,455	55.2	$845,483	$215,791	46.3	25.5
1892	448,771	55.8	355,527	44.2	804,298	173,098	48.7	21.6
1893	432,405	51.9	400,283	48.1	832,733	198,373	49.6	23.8
1894	372,462	59.1	257,646	40.9	630,108	128,882	50.0	20.6
Annual average—McKinley law	408,178	52.4	369,978	47.6	778,155	179,036	48.4	23.0
WILSON LAW							
Effective Aug. 28, 1894:							
1895	376,890	51.6	354,272	48.4	731,162	147,901	41.8	20.2
1896	368,898	48.6	390,797	51.4	759,694	156,105	40.0	20.6
1897	381,902	48.4	407,349	51.6	789,251	171,779	42.2	21.8
Annual average, Wilson law	375,897	49.4	384,139	50.6	760,036	158,595	41.3	20.9
DINGLEY LAW							
Effective July 24, 1897:							
1898	291,534	49.6	295,620	50.4	587,154	144,259	48.8	24.6
1899	299,669	43.7	385,773	56.3	685,442	200,873	52.1	29.3
1900	366,760	44.2	463,759	55.8	830,519	228,365	49.2	27.6
1901	339,093	42.0	468,670	58.0	807,763	232,641	49.6	28.9
1902	396,542	44.0	503.252	56.0	899,794	250,550	49.8	28.0
1903	437,291	43.4	570,669	56.6	1,007,960	279,780	49.0	27.8
1904	454,153	46.3	527,669	53.7	981,823	257,331	48.8	26.3
1905	517,073	47.6	570,045	52.4	1,087,118	257,898	45.2	23.8
1906	548,696	45.2	664,722	54.8	1,213,418	293,558	44.2	24.2
1907	641,953	45.5	773,449	54.6	1,415,402	329,122	42.6	23.3
1908	525,705	44.4	657,416	55.6	1,183,121	282,273	42.9	23.9
1909	599,376	46.8	682,266	53.2	1,281,642	294,377	43.2	23.0
Annual average, Dingley law	451,487	45.2	546,942	54.8	998,430	254,252	46.5	25.5
PAYNE-ALDRICH LAW							
Effective Aug. 6, 1909:							
1910	761,353	49.2	785,756	50.8	1,547,109	326,562	41.6	21.1
1911	776,964	50.8	750,981	49.2	1,527,945	309,966	41.3	20.3
1912	881,513	53.7	759,210	46.3	1,640,723	304,899	40.2	18.6
1913	986,972	55.9	779,717	44.1	1,766,689	312,510	40.1	17.7
Annual average, Payne-Aldrich law	851,701	52.6	768,916	47.4	1,620,617	313,484	40.8	19.3
UNDERWOOD LAW							
Effective Oct. 4, 1913:							
1914	1,152,393	60.4	754,008	39.6	1,906,400	283,719	37.6	14.9
1915	1,032,863	62.7	615,523	37.3	1,648,386	205,747	33.4	12.5
1916	1,495,881	68.6	683,153	31.4	2,179,035	209,726	30.7	9.6
1917	1,852,531	69.5	814,689	30.5	2,667,220	221,659	27.2	8.3
1918	2,117,555	73.9	747,339	26.1	2,864,894	180,590	24.2	6.3
1918 (July–December)	1,149,882	79.1	303,079	20.9	1,452,961	73,854	24.4	5.1
1919	2,711,462	70.8	1,116,221	29.2	3,827,683	237,457	21.3	6.2
1920	3,115,958	61.1	1,985,865	38.9	5,101,823	325,646	16.4	6.4
1921 [1]	1,564,278	61.2	992,591	38.8	2,556,869	292,397	29.4	11.4
1922 [1]	1,888,240	61.4	1,185,533	38.6	3,073,773	451,356	38.1	14.7
Annual average, Underwood law	1,903,268	66.3	968,211	33.7	2,871,479	261,279	27.0	9.1

See footnotes at end of table.

VALUE OF U.S. IMPORTS FOR CONSUMPTION, DUTIES COLLECTED, AND RATIO OF DUTIES TO VALUES, UNDER SPECIFIED TARIFF ACTS, 1891–1930—Continued

[Dollar amounts in thousands]

Fiscal years 1891–1918; calendar years 1919 and succeeding years	Free		Dutiable		Total	Duties collected		
	Amount	Percent of total	Amount	Percent of total		Amount	Ratio to values: Dutiable imports (percent)	Ratio to values: Free and dutiable imports (percent)
FORDNEY-McCUMBER LAW								
Effective Sept. 22, 1922:								
1923	$2,165,148	58.0	$1,566,621	42.0	$3,731,769	$566,664	36.2	15.2
1924	2,118,168	59.2	1,456,943	40.8	3,575,111	532,286	36.5	14.9
1925	2,708,828	64.9	1,467,390	35.1	4,176,218	551,814	37.6	13.2
1926	2,908,107	66.0	1,499,969	34.0	4,408,076	590,045	39.3	13.4
1927	2,680,059	64.4	1,483,031	35.6	4,163,090	574,839	38.8	13.8
1928	2,678,633	65.7	1,399,304	34.3	4,077,937	542,270	38.8	13 8
1929	2,880,128	66.4	1,458,444	33.6	4,338,572	584,837	40.1	13.5
1930 (Jan. 1–June 17)	1,102,107	64.6	603,891	35.4	1,705,998	269,357	44.6	15.8
Annual average, Fordney-McCumber law	2,565,490	63.8	1,458,080	36.2	4,023,570	561,615	38.5	14.0

[1] The Emergency Tariff Act became effective on certain agricultural products on May 28, 1921, and continued in effect until Sept. 22, 1922.

Note: The ratio of duties collected to the value of imports (sometimes referred to as the "average ad valorem equivalent") should be used with great reservation as a measure of the "height" of a country's tariff or of the tariff's restrictiveness of imports. Such a ratio for the schedule of duties as a whole (or even a ratio for most individual tariff categories) is heavily weighted by imports that enter either free of duty or at low unrestrictive rates; it is weighted less by imports that enter at high restrictive rates and not at all by imports that are precluded from entry. Moreover, an upward or downward trend in the "ratio" of duties collected may reflect alternations in the rates of duty applied, changes in the composition of imports from year to year, or changes in the prices of imported commodities.

Source: U.S. Tariff Commission.

APPENDIX B

A SUMMARY OF THE PRINCIPAL TRADE BARRIERS*

This summary is based on an extensive study of trade barriers made by the U.S. Tariff Commission in which U.S. producers, exporters and importers were requested to report obstacles which they encountered in international trade. Ranked in the order of the number of their responses to the Commission, the areas of concern to U.S. traders are: Quantitative restrictions and similar specific limitations on trade, nontariff charges on imports, government participation in trade, tariffs, requirements on product and other standards, and customs procedures and administrative practices.

Complaints submitted to the Commission named most countries of the world, but were almost evenly divided between developed and developing nations, although less than one-fourth of U.S. trade is with the less-developed countries.

The eight countries making up the former European Free Trade Association (EFTA) were the object of about 13 percent of the complaints against tariffs. The European Community (of six countries as constituted before enlargement) received about 9 percent of the complaints; Canada and Australia, each about 5 percent; and the United States and Japan, each about 4 percent. Less developed countries (a large number were named) were the object of 53 percent of the complaints against tariffs.

With respect to nontariff trade barriers, the European Community (of six nations) drew 14 percent of the complaints. Countries formerly making up the EFTA drew 12 percent; the United States 8 percent, Japan about 6 percent, and Canada about 2 percent. Less developed countries in Latin America drew 22 percent of the complaints; in Asia, 9 percent; in Europe, 10 percent, and in Africa, about 9 percent.

About 80 percent of the complaints were concerned with practices affecting industrial products, 20 percent with agricultural products—a division that roughly corresponds to the distribution of U.S. trade. In industrial products, the largest number of problems seem to be encountered in the following product sectors: Transport equipment; chemicals, nonelectrical machinery; electrical machines and apparatus; ores, metals, and metal manufactures; and textiles. The largest number of complaints in the agricultural sectors were in beverages and spirits, foodstuffs, and animals and animal products.

Tariffs

Customs tariffs of the large trading nations are extremely complex. It is virtually impossible to summarize them meaningfully in any manner that correctly reflects the actual impact of the various duties

*Prepared by the Tariff Commission at the request of the Senate Committee on Finance.

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upon the flow in trade. When comparing national tariffs, the basic difficulties are further compounded by differences in product definition and methods of customs valuation.

Calculating average duty levels for aggregations of different product classifications is the only practical method for making such comparisons, even though it is almost universally conceded that there is no satisfactory method for averaging rates of duty.

When the GATT contracting parties set out to assemble data on the post Kennedy Round tariff levels of the larger members, they realized agreement could never be achieved on a single type of average as the "fairest" indicator of a country's tariff level. Thus, four averages were calculated:

1. A simple arithmetic average;
2. An average weighted by "world" imports; [1]
3. An average weighted by each country's own imports; and
4. Average number 3 weighted a second time by "world" imports.[1]

It is generally assumed that the simple arithmetic average (average number 1) has the strongest bias upward, since it gives equal weight to each line provision and national tariff nomenclatures usually are more detailed in competitive product areas, where higher rates are found, and less detailed in noncompetitive products which frequently are duty free. The average weighted by a country's own imports (average number 3) is assumed to have the strongest bias downward because it minimizes the importance of high rates which deter trade and emphasizes the importance of large trade items which are likely to be products with lower rates of duty. The purpose of weighting is to moderate the bias of the two extremes; so presumably, averages 2 and 4 could be expected to fall between the levels of the arithmetic and own-trade-weighted averages. The averages which were calculated were found not always in conformance with these assumptions.

AVERAGE MFN INDUSTRIAL TARIFFS

Average MFN tariffs on industrial products are shown in table 1–A for the European Community and 12 other industrialized nations. The rates of duty used in calculating the averages were MFN rates scheduled to be in effect after Kennedy Round concessions were implemented. Japan, Australia, and Canada have made further temporary reductions in many of their rates in the past two years which would significantly lower averages shown for those countries. Findings from a comparison of the averages are quite different, depending upon whether all items in a tariff are under consideration or only dutiable items, as well as which method of averaging has been employed.

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[1] "World" imports in this instance were total imports of the 18 developed countries for which tariff data were being assembled.

TABLE 1-A.—INDUSTRIAL PRODUCTS: AVERAGE MFN TARIFFS FOR SELECTED COUNTRIES [1]

Country	Simple arithmetic average [2]	Averages weighted by— World trade	Country's own trade	Country's own and world trade
	All products			
All countries, average	9.0	7.3	5.9	7.1
United States	11.1	7.3	6.8	6.3
Canada [3]	9.3	6.8	6.6	7.3
Japan [3]	10.1	10.1	6.3	10.1
European Community	6.9	6.4	4.5	6.5
United Kingdom	9.2	7.8	6.2	7.3
Denmark	4.5	3.5	4.2	3.9
Austria	10.8	10.4	11.0	11.3
Finland	8.6	5.4	4.6	5.3
Norway	8.3	5.5	4.5	5.1
Sweden	5.8	4.4	4.6	4.3
Switzerland	4.3	3.2	3.0	3.0
Australia [3]	18.5	15.5	13.1	14.5
New Zealand	25.2	21.1	14.6	18.0
	Dutiable products			
All countries, average	10.7	8.4	9.8	8.1
United States	12.1	8.1	8.8	7.1
Canada [3]	15.2	11.5	14.1	11.0
Japan [3]	11.2	10.8	11.6	10.7
European Community	7.5	6.7	8.1	6.9
United Kingdom	10.5	8.5	10.2	8.1
Denmark	8.3	4.3	8.5	4.6
Austria	13.5	11.4	16.3	12.3
Finland	13.3	6.4	9.5	6.4
Norway	11.4	7.6	11.0	7.2
Sweden	7.7	4.8	7.3	4.6
Switzerland	4.4	3.5	3.4	3.2
Australia [3]	26.5	22.1	23.0	20.7
New Zealand	32.3	24.1	23.4	20.3

[1] The averages shown were calculated using 1970 import data and MFN tariff rates scheduled to be in effect after implementation of Kennedy round tariff concessions. Since these averages were calculated, however, Japan, Australia, and Canada have made significant further temporary reductions in their tariffs. For Japan, about 80 percent of the rates were reduced by 20 percent, about 2 percent were made duty free, and about 6 percent were cut by amounts ranging from 10 to 95 percent. Australia has reduced all rates by 25 percent. Canada has made reductions on a wide range of products, particularly consumer goods, by an average of 5 percentage points.

[2] The implicit weight contained in a simple average is the number of tariff lines in the schedule; thus, the average is in fact weighted by the degree of detail within the tariff schedules.

[3] Averages for Canada, Japan, and Australia were calculated from rates higher than those being applied in 1974 (see footnote 1).

Source: Basic documentation for the tariff study, GATT.

AVERAGE MFN AGRICULTURAL TARIFFS

Similar calculations were carried out for agricultural product tariffs of the United States, Canada, Japan, the European Community, and the United Kingdom, and the results are shown in table 1–B. It was not possible to reflect in these calculations the variable levies applied on a wide scale by the European Community and on a much smaller scale by the United Kingdom. Consequently, these two averages (and especially that of the Community), are not really satisfactory indicators.

DISCRIMINATORY TARIFF TREATMENT

Customs unions and other regional trade groups and preferential trading arrangements have proliferated throughout the world in the past 15 years and created significant discrimination against products of countries outside those arrangements. Even a modest duty can foreclose participation in a market if other competing foreign suppliers are permitted free entry. In 1955, almost 90 percent of imports by GATT contracting parties paid MFN rates of duty; by 1970, this figure had declined to only 75 percent.

TABLE 1–B.—AGRICULTURAL PRODUCTS: AVERAGE MFN TARIFFS FOR SELECTED COUNTRIES[1]

Country	Simple arithmetic average[2]	Own trade weighted average
	All products	
United States	15.1	4.8
Canada	9.6	5.7
Japan[3]	40.6	27.4
European Community[4]	16.5	8.4
United Kingdom[5]	10.8	5.0
	Dutiable products	
United States	16.8	8.5
Canada	13.1	9.9
Japan[3]	44.2	39.7
European Community[4]	17.9	13.9
United Kingdom[5]	12.7	9.9

[1] The averages shown were calculated using trade data for 1970, and rates of duty scheduled to be in effect after implementation of Kennedy round concessions. Japan, however, has made significant further temporary reductions in about ¼ of its rates which were used in the calculations. More than half of the reductions were by 20 percent, and most of the remainder were by amounts ranging from 33 percent to complete removal of the duty.

[2] The implicit weight contained in a simple average is the number of tariff lines in the schedule. Thus the average is in fact weighted by the degree of detail within the tariff schedules.

[3] Averages for Japan were calculated using rates which were higher than those being applied in 1974 (see footnote 1).

[4] Rates shown for the European Community reflect fixed tariffs only and do not include variable levies applicable to a wide range of agricultural products. If data were available to reflect the variable levy charges, the rates would be very substantially higher than indicated here.

[5] The rates shown for the United Kingdom reflect fixed tariffs only and do not reflect variable levies applicable to a limited number of products in the year for which the averages were calculated.

Source: Compiled from national tariffs and trade statistics.

TARIFF DISPARITIES

A common complaint received by governments from domestic producers seeking to export their products is that higher tariff rates are encountered in foreign countries than are charged on imports into the producer's own domestic market. U.S. producers have made such complaints most frequently against tariff rates of Canada and Japan. This is a common complaint heard in the European Community against the United States.

Significant tariff disparities are most likely to be found when a country has a wide range of rates applicable to a category of products. This situation occurs more commonly in the U.S. tariff than in the schedules of most other nations. A study of duty rate ranges and own-trade-weighted averages for leading items of export from the United States to Canada and Japan and leading items of imports from these countries into the United States indicates that characteristically the United States has the greater range of duty rates and the greater likelihood of having the disparate high tariff. On own-trade-weighted averages, U.S. and Canadian rates divide fairly evenly between higher

and lower; but in the case of Japan, there are more situations where U.S. rates are higher than Japan's than vice versa.

In an exhaustive study of "possible" disparities at a more disaggregated product level and without regard to whether trade is occurring under the particular categories. Canada has markedly more disparities vis-a-vis the United States than the United States vis-a-vis Canada, but the United States has more disparities vis-a-vis Japan and the European Community than vice versa.

Quantitative Restrictions and Similar Specific Limitations on Trade

Quantitative import and export restrictions, the most obvious and easily identifiable nontariff barriers to trade, appear in three basic elemental forms: *Embargoes*, where trade is prohibited; *absolute quotas*, where a specified maximum amount of trade is permitted in a given period; or *licensing systems*, under which administrative officials have discretionary authority to permit trade. Other indirect, more sophisticated and subtle quantitative restrictions include: *Exchange controls*, where foreign exchange to pay for imports is limited and allocated by kind, quantity, and source of goods; *local content and mixing regulations*, where specified amounts of local products are required with consumption of a unit of a foreign product; minimum or maximum price controls, permitting trade only above or below stipulated prices; *restrictive business practices*, under which cartels or similar arrangements control market access; and *discriminatory bilateral agreements*, where two countries agree to purchase specified amounts of given products from each other before purchases are made from third countries.

Nearly one-third of the complaints against all trade barriers submitted in the Commission's investigation dealt with these types of restrictions, and the three basic elemental forms draw two-thirds of the complaints in this area. The largest number were against licensing requirements, while embargoes and quotas were next in number of complaints.

U.S. quantitative restrictions drew more complaints than those of any other single nation, but less than the total of complaints against either the European Community or EFTA countries. Over 60 percent of the complaints were against developing nations. Complaints against developed countries primarily concerned quotas, while licensing practices were the object of most of the complaints against LDC's.

The pattern of actual restrictions contrasted sharply with the distribution of complaints received by the Commission. For example, the countries of the European Community represent about half of the counted restrictions but received only 27 percent of the complaints. The United States and Japan, on the other hand, each had about 5 percent of the restrictions, but accounted for about one-fifth (each) of the complaints. About 80 percent of the complaints were in the industrial sector; only 20 percent concerned agricultural products, where some of the more significant restrictions are found.

Conclusions reached from an analysis of quantitative restrictions in 16 major trading countries indicate that France exhibits the heaviest use of such measures, followed by (in this order) Italy, the United States, West Germany, the United Kingdom, Japan, Netherlands,

Belgium-Luxembourg, Canada, Austria, Norway, Portugal, Switzerland, Denmark, Ireland, Sweden, and Australia. The study indicated that among the countries, quantitative restrictions tend to be found on similar products. When the restriction count is weighted by the level of trade, the high concentration of quantitative restrictions in agricultural products is apparent, as well as their heavy use in certain industrial areas by some countries. The six product sectors having the heaviest concentrations of quantitative restrictions are foodstuffs; coal, petroleum, and natural gas; animals and animal products; grains; beverages and spirits; and textiles. These sectors account for 70 percent of the total trade-weighted restrictions.

A few countries (e.g., France, Italy, Norway, and Sweden) tend to use quantitative restrictions to complement tariffs, but evidence generally indicates that such restrictions do not substitute for tariffs on a broad product sector basis.

VOLUNTARY EXPORT RESTRAINTS AND OTHER EXPORT CONTROLS

The use of "voluntary" export restraints has become increasingly important as a barrier to trade in recent years. Eleven countries have registered complaints against their GATT trading partners, stating that such limitations are resorted to only as a means of avoiding the unilateral application of more stringent import restrictions. Restraints on textiles and steel have received the most publicity in recent years, although exports of a wide variety of commodities have been restricted from time to time.

Exports are sometimes controlled for military or strategic reasons, or to conserve domestic supplies, or for political purposes. The United States has employed major restrictions on its export trade with the Communist countries for over 20 years. The Export Administration Act of 1969 began to relax these U.S. restrictions. In February 1972, the list of items for China was liberalized and made the same as that for the Soviet Union. Several countries have restricted exports of products in short supply. The recent limitations on oil exports from the Middle East has had worldwide attention.

EXCHANGE CONTROLS

Another type of widely-used trade barrier is a system of restrictions on the payments and/or financial cycle of a trade flow. Types of financial barriers include: Multiple exchange rates; prior import deposits; allocation of exchange only to holders of import licenses; and various other types of restrictions to conserve foreign exchange.

Under the rules of the International Monetary Fund and the GATT, countries are generally expected to maintain convertible currencies and no payments restrictions. If a country faces a deficit situation, however, it is granted a period of transition in which exchange restrictions are allowed while they undertake policies to correct the deficit situation. Developing countries have most often been granted this temporary relief, the removal of which is sometimes slow when they again return to satisfactory financial positions.

Some countries tend to exert stronger financial restrictions than are needed, given their financial situation. There is an indisputable link between balance of payments difficulties, poor international credit ratings, and financial barriers to trade.

RESTRICTIVE BUSINESS PRACTICES

While attention has been focused on trade barriers erected by governments and efforts to dismantle them, private organizations have been creating barriers of their own. The development of methods to deal with these problems have been of a limited nature.

International restrictive business practices are usually of two types: (1) those engaged in by the collective restraint of competition by independent organizations (cartels), and (2) restrictions resulting from concentration of economic power or control in one organization (multinational corporations). However, international trade may also be restricted by single firms if they have a dominating position as suppliers or purchasers of the commodity involved. Certain types of business discrimination engaged in by governments (e.g., flag discrimination in shipping) and labor unions have also caused some concern.

DISCRIMINATORY BILATERAL AGREEMENTS

Bilateral trade agreements are frequently concluded between countries to facilitate trade between them by granting special advantages to each other. They are implicitly discriminatory against third countries. Discriminatory sourcing is one type of bilateral arrangement which favors specific countries as sources for certain imports. Such arrangements are often tied to economic assistance programs.

Nontariff Charges on Imports

In most countries, imports pay a variety of charges in addition to a customs duty. Some of these charges, such as the variable levies found in Europe, are protective devices used to restrict imports, while others, such as U.S. excise taxes or value-added taxes in Europe, are collected to equalize the tax treatment of imported goods with that of domestic output. Some charges, such as port taxes, are levied in payment for services. Sometimes import "surcharges" are levied by countries with serious balance of payments deficits. Among these various charges are found some of the greatest barriers to world trade.

VARIABLE LEVIES

Variable levies are charges on imports in lieu of, or in addition to, normal custom duties. The levies vary far more frequently than normal customs duties, sometimes daily, and are used to raise the cost of imports to stipulated minimum prices. They have most commonly been used with domestic agricultural support programs.

Variable levies have risen to great prominence in the past decade because the European Community made the variable levy an essential element in its Common Agricultural Policy (CAP). The variable levy thus affects a large segment of world trade and is probably the most important single measure adversely affecting U.S. exports. Variable levies exclude imports from price competition with domestic products, and reduce imports to the position of a residual supply. Some shippers find the variable levy even more onerous than import quotas because of the uncertainty for traders caused by the frequent changes in rates and consequent changes in the amounts of imports which are able to enter.

Variable levies are found in several countries outside the European Community, including Austria, Finland, Greece, Portugal, Spain, Sweden, and Switzerland.

Under the European Community's CAP, details vary by product, but in general, the amount of the variable levy is the difference between the lowest offer price on the world market and an internal Community support price. The level of the tax is determined so that the lowest cost imports cannot undercut the highest cost producers within the Community, and thus tends to increase prices of imports above those for domestic goods. Examples of ad valorem equivalents of variable levies range as high as 480 percent.

Devices used under the CAP—including variable levies to limit or exclude imports, support of internal prices at high levels, a general absence of production controls, and export subsidies to remove excess production—have produced a continuing rise in EC agricultural prices, impressive increases in EC agricultural production, and an increasing necessity to subsidize the disposal of excess production in the world market.

The impact of the EC variable levy and its companion measures has been significant. From 1961 to 1970, the value of U.S. agricultural exports to countries outside the Community grew more than twice as much as exports to EC countries. For U.S. export commodities affected by the levy in 1971, the growth of exports from the 1959–61 period was less than one-fourth that of commodities not subject to the levies.

For variable levy products, the U.S. share of the EC market declined in favor of increased trade among EC member countries. If the growth of agricultural exports between 1961 and 1971 had followed the same trend as in the 1954–61 period (before the introduction of the CAP), EC imports of U.S. agricultural commodities would have increased 150 percent (instead of less than 50 percent).

As the CAP is extended to the new EC members (the United Kingdom, Ireland, and Denmark), the severity of the impact on U.S. agricultural exports will undoubtedly increase. U.S. and other third country agricultural exports to the United Kingdom are expected to decline. The United Kingdom could become self-sufficient in beef and veal and might even achieve a small surplus in grains through entry in the Community. CAP incentives could make the United Kingdom a net exporter of pork, poultry, and eggs.

BORDER TAX ADJUSTMENTS FOR INTERNAL TAXES

Border tax adjustments are any fiscal measure which enables imported products to be charged with a tax charged in the importing country on similar domestic products, and which enables exported products to be relieved of a tax charged in the exporting country on domestic products sold to consumers in the home market. Thus, "border" tax adjustments include taxes on imports not only at importation but also at any subsequent point in the distribution channel. Virtually all countries, including the United States, make some border tax adjustments on their imports and exports.

Under fairly longstanding international practices, which were incorporated into the General Agreement of Tariffs and Trade when it was drafted, taxes on products (usually referred to as indirect taxes

or consumption taxes) are considered eligible for border tax adjustments, while direct taxes such as income taxes, profits taxes, payroll taxes, and social security charges are not regarded as eligible.

Foreign countries rely much more heavily than the United States does upon indirect (consumption) taxes for government revenue. In foreign tax systems, the major consumption taxes are generally types which, with respect to imports, are collected when the goods enter the country, rather than at later stages of distribution. Therefore, imports are immediately assessed with taxes which are both substantial [1] and highly conspicuous. Moreover, products exported from these countries are shipped abroad at prices substantially below the internal domestic price by virtue of the fact that the consumption tax is not collected on the exported goods.

On the other hand, very few products imported into the United States are subject to a border tax adjustment at the time of entry. Most U.S. border tax adjustments are found later in the distribution channel, and occur principally as state and local retail sales taxes.

A large percentage of U.S. businessmen regard this situation as unfair to them in their efforts to compete with foreign producers both in markets abroad and in the United States. Their general complaint is that when selling abroad they bear the burden of the substantial U.S. direct taxes (corporate profits taxes, etc.) plus the significant indirect taxes of the foreign country; when selling in the United States, the imported product of their foreign competitors has been relieved of a substantial part of its national tax burden through the border tax adjustment process, and bears none of the U.S. direct taxes.

Economic analysts argue that the situation in which border tax adjustments may discriminate against imports or act as an aid to exports is much more complex than indicated by the traders' views; and so long as the same rate is applied to imports and domestic products, any discriminatory price effects would not equal the border tax rate itself (as businessmen assume), but would be only a small percentage of the rate. Moreover, the discriminatory effect would be confined to the short term, because in the long run other counterbalancing economic forces come into operation and negate the discrimination.

General border tax adjustments, such as those for the value-added tax widely used in Europe, under certain economic conditions, can affect trade in a manner similar to an exchange rate change. Changes in tax rates and accompanying border tax adjustments can theoretically disturb trade over short periods of time.

The U.S. proof-gallon/wine gallon system.—A special situation in the application of border taxes which has had much attention for many years is found in the manner in which the U.S. excise tax on distilled spirits is assessed. If distilled spirits are below 100 proof at the time the tax is assessed, they are nevertheless taxed as 100 proof; if above 100 proof, a proportional incremental amount of the basic 100 proof rate is applied. U.S. producers can arrange their production process so that the tax is always assessed when proof is 100 or above and before the beverage has been cut to normal bottling strength. Foreign

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[1] In France, for example, a standard effective rate of 23.45 percent applies to most goods; in West Germany, most goods are taxed at the rate of 11 percent.

producers may also do this if they ship their product in bulk to the United States and bottle it after entry. If it is bottled abroad, it will bear the additional revenue burden resulting from tax assessment after the proof has been cut to bottling strength.

The effect of this so-called wine-gallon/proof gallon method of tax assessment is that imported bottled spirits pay a significantly higher tax than domestic products and imported bulk products. Foreign producers of distilled spirits have described this situation as one of the major U.S. nontariff trade barriers.

OTHER CHARGES

There are numerous other nontariff charges on imports. The better known are consular fees, stamp taxes, statistical taxes, port charges, and import surcharges. Some, such as port fees or import surcharges, are levied solely on imports. Others, in effect, apply only to imports because there is no domestic production. In complaints to the Tariff Commission, automobiles, motion picture films, and alcoholic beverages were stressed as products subjected to unusually heavy or discriminatory taxes or charges in many countries.

All ports charge fees on vessels and/or cargo using the port. In some developing countries, the charges are found to run as high as 12 or 15 percent of the c.i.f. value of the shipment.

Prior import deposit systems require importers to deposit a percentage of the value of an import (usually in a noninterest bearing account for a fixed term.) Since World War II, such systems have been increasingly used to retard the flow of imports by countries with balance of payments difficulties. Countries without such difficulties have sometimes used such systems for control or surveillance of trade. In either case, the cost of imports is increased by preventing alternative productive uses of deposited funds.

Consular fees or charges must be paid on exports to many countries (principally developing nations), usually in relation to the issuance of a consular invoice or other required documentation. Complaints against such charges as high as 7 percent of the c.i.f. value of shipments were raised against 23 countries, largely in Latin America.

"Stamp taxes" are excise taxes paid through the purchase of stamps which must be affixed to articles or documents before they may be lawfully sold, purchased or used. The procedure is a common method for collecting taxes on tobacco or alcoholic beverages or assessing taxes on the transfer of documents. In the Commission's survey, complaints were received against stamp tax requirements in over 20 developing countries, and in France and Italy.

"Surcharges" on imports are taxes or levies applied in the same manner as customs tariffs, but in addition to the normal import duty, collected as a percentage of the normal duty. Nominal surcharges are sometimes collected for such purposes as port fees, statistical taxes, administrative taxes, etc. Substantial surcharges are usually applied to stem the flow of imports to correct balance of payments difficulties. Denmark, the United Kingdom and the United States have resorted to temporary use of import surcharges for balance of payments reasons in recent years.

Government Participation in Trade

Governments participate directly and indirectly in trade in several ways. Various forms of government monopolies are found in almost every country. The significance of government procurement in the market place increases daily. Virtually all governments, to some degree, give financial or other assistance to domestic industries which may result in subsidized exports or the displacement of imports in the local market. Some of the most significant trade distortions result from government participation in trade. Problems in this area are also the most deep rooted and difficult to deal with.

Complaints submitted to the Tariff Commission listed subsidies and other aids as the major concern in this area, followed by government monopolies and state trading, and government procurement. Seventy percent of the complaints were against practices of developed countries. About one-fifth involved members of the European Community, 16 percent were against EFTA countries, 13 percent against Japan, and 8 percent against the United States.

The industrial area received 82 percent of the complaints, with the largest number going to nonelectrical machinery, textiles, electrical machinery, and transport equipment. Agricultural sectors where complaints were concentrated were alcoholic beverages and grains.

SUBSIDIES AND OTHER AIDS

International trade can be distorted by government aids designed explicitly to stimulate exports, but also by general government subsidies given to domestic producers. Subsidized domestic producers obtain an artificial competitive advantage in export markets and are given a special advantage in their competition against imported products. In contrast to export aids, general subsidies have as their prime objective some desirable domestic goal such as regional development or national defense; the competitive advantage conferred upon domestic producers in foreign markets or in the domestic market may be only a secondary consequence of the subsidy program.

Under certain conditions subsidies may also serve to counterbalance distortions of international trade caused by some other factor. For example, a country with a grossly overvalued currency may find it impossible to export without subsidies. For this reason, export subsidies are more widely applied by less-developed countries than by developed nations.

A wide range of government activity may constitute a subsidy. However, the principal forms subsidies may take are generally:

(a) Explicit cash payments (cash subsidies)

(b) Implicit payments through a reduction of a specific tax liability (tax subsidies)

(c) Implicit payments by means of loans at preferential interest rates (credit subsidies)

(d) Implicit payments through provisions of goods and services at prices or fees below market value (benefit-in-kind subsidies)

(e) Implicit payments through government purchases of goods and services above market price (purchase subsidies)

Export subsidies.—Export subsidies are designed exclusively with the intent to stimulate exports. Agricultural exports are principally subsidized by direct cash payments on exports (cash subsidies), or through direct sales by the government at world market prices of products the government formerly purchased at higher prices from the farmer (purchase subsidies). Such subsidies on certain farm exports are employed for example both by the United States and the European Community. Governments rarely admit to the granting of direct export subsidies on industrial products. They, however, sometimes admit to actions which, while not explicitly export subsidies, have an export-promoting effect.

Government aids to export financing (credit subsidies) constitute probably the fastest growing area of subsidization in recent years. Such assistance occurs principally in the provision of direct loans, guarantees of loans made by commercial banks to foreign buyers of the country's exports, insurance and guarantee of credits extended by exporters. The purpose of these operations is to finance exports that would not otherwise be purchased.

The United States and most U.S. trading partners have similar arrangements for export financing aids. U.S. assistance is handled through the Export-Import Bank of Washington. Concessional financing by the U.S. government of agricultural exports under various laws is especially significant. Medium-term and long-term export credits in France are financed by private companies but then refinanced by special government-controlled credit institutions. The Export-Import Bank of Japan also directly finances long-term export credits charging significantly lower interest rates than commercial banks. The Japanese Government insures exporters against a wide range of risks; even against the risk of tariff increases in export markets.

In the United Kingdom, the Export Credit Guarantee Department (ECGD) provides credit insurance to exporters, guaranteed rates of return to banks, and refinancing of bank credit in order to keep export credit rates on a low level.

Several governments give special tax advantages (tax subsidies) to exporters.

Coal and petroleum subsidies.—The coal and petroleum industries are widely subsidized by governments that wish to sustain indigenous energy resources. In the European Community, in 1967, the total average subsidy of bituminous coal amounted to $7.56 per metric ton, i.e., over 40 percent of the price. Under a new system of reduced subsidization established in December 1969, the member States were authorized to grant production aids not exceeding $1.63 per ton to undertakings that deliver coking coal for the iron and steel industry. "Disposal aids" on deliveries to destinations within the Community far away from the coal basin were additionally authorized to be applied under specified conditions.

In the Federal Republic of Germany, federal and state assistance to coal production and consumption is substantial. Various subsidies, including tax concessions, amounted in 1972 to approximately DM1.2 billion. Subsidies included grants to encourage the use of E.C. coal instead of imported oil in the electrical industry.

U.S. coal exports may have been adversely affected on the markets of Japan and the United Kingdom by subsidization of the coal

industry in those countries, and on the Japanese market, also by the aids to the coal industry in Canada. Canada subsidizes the transport costs of coal that is exported to the Far East, competing thereby more effectively with U.S. coal exports to Japan. The Japanese government has aided its coal industry by providing long-term interest-free loans. In the United Kingdom, a program announced in December, 1972, allocated about $3 billion assistance to the coal industry over the next five years.

The U.S. government aids the petroleum industry by an oil depletion allowance from the tax liability of producers, and other write-offs. The industry in other countries receives direct grants in some countries and special tax privileges in most.

Electronic products subsidies.—Electronics, as a growth industry and standard bearer of technological progress, receives government aids in a number of industrial countries. In recent years France and the Federal Republic of Germany provided low interest or interest-free loans to firms in the industry. In 1972, the federal budget of the FRG provided subsidies of DM 43 million for "promotion of electronic data processing." The United Kingdom and France support their private computer industries by significant grants, and also participate directly in the industry.

Japan's aids to electronics appear most damaging to U.S. interests. In the framework of its export promotion policy, and under laws enacted in 1957 and 1971, the Japanese government has provided the electronics industry, especially in the area of research and development for computers and sophisticated industrial products, with massive financial assistance in the form of low-interest loans, grants and tax incentives.

The complaints of U.S. electronic manufacturers regarding Japanese subsidization of the electronic industry are challenged by the Japanese, as well as interested U.S. importers. These claim that over the years U.S. assistance to the domestic electronics industry has been incomparably higher than the Japanese government's assistance to its own industry, if research and development subsidies of the U.S. government to U.S. producers are considered. Although a large portion of the U.S. subsidies have been allocated for defense and space objectives, they have provided the technological foundation for many industrial and consumer electronic products.

Motion picture films.—The film industry enjoys government aids to production, distribution, exhibition and exports in various combinations in different countries. The United States does not subsidize the industry but all major U.S. trading partners and many other countries do. U.S. interests are hurt predominantly by subsidies granted by the United Kingdom, Italy and France. However, American film companies frequently qualify to share foreign subsidies; therefore, they are attracted by them (in addition to other factors) to produce abroad, with concomitant adverse effects on the U.S. domiciled film industry.

Shipping, shipbuilding.—Shipping and shipbuilding is widely subsidized owing to the relationship of these industries to foreign trade, the specific problematic nature of the shipbuilding industry, and the fact that these industries relate to national defense. Some countries support shipbuilding to the point where it can meet the demands of a national merchant marine and navy, and make no attempt to export

third markets. Principal examples are the United States, Canada, and Italy. Important exporters of ships (Japan, and to a smaller extent West Germany) subsidize their exports while preventing at the same time imports of foreign ships.

Other industry subsidies.—In addition to the aforementioned few, other manufacturing industries receive government aids which may affect international trade. A well subsidized growth industry, besides electronics, is the aircraft industry. The best known example in this field is the subsidization in France and the United Kingdom of the supersonic commercial aircraft. Moreover, the RB–211 engines, the production of which the United Kingdom supports heavily, are exported at this time exclusively to the United States.

In some countries steel and the paper and pulp industries are subsidized with concomitant effects on international trade. As a generally depressed industry, the textile industry obtains government aids in several advanced industrial countries.

Establishments in almost any industry can obtain government aids in some countries if they are located in so-called development areas (principally EC countries and the United Kingdom). For example, the aluminum industry of the United Kingdom obtains massive investment grants and low interest loans on grounds of regional economic assistance programs.

In most advanced countries several industries receive government aids for purposes of research and development. U.S. subsidies are devoted principally to atomic-, space-, defense-related and medical research, whereas in other countries R&D subsidies may act as stimulators to exports or import substitution in the subsidized industry.

Agricultural product subsidies.—Subsidies are generally applied in agriculture. In the framework of their agricultural policies, the governments of most industrial countries aid their domestic agriculture materially, protecting it, at the same time, from import competition principally by various other nontariff barriers. Subsidization may take the form of direct payments to the farmer per unit of acreage, output or exports, or purchases by the government of surpluses at supported prices, or a combination of both. In addition to direct aids, governments aid agricultural production and exports in a number of indirect ways. Heavy subsidization of production and exports in many countries has led to worldwide surpluses in certain farm products such as grains and dairy products.

GOVERNMENT PROCUREMENT PRACTICES

Most governments favor domestic suppliers over foreign ones in their procurement of goods. This is evidenced by the fact that the share of imports to total purchases in the public sector is much smaller than in the private sector. Governments are major purchasers of internationally traded commodities, hence the preferences they grant to domestic producers constitute a significant impediment to international trade. In several countries, also, governments below the national level are known to engage in preferential procurement practices.

Preferences accorded domestic suppliers may be incorporated in published laws and regulations, but in most countries they are effected through a wide variety of practices and procedures. Under

the so-called Buy-American Act of 1933 the Federal Government of the United States openly favors domestic suppliers in its procurement. On the other hand, in Europe and Japan, laws and published regulations providing for discriminatory practices are rare, nonetheless discrimination against foreign suppliers exists and is practiced in a number of ways generally surrounded by secrecy.

The principal practices that inhibit foreign participation in government procurement are insufficient publicity in the solicitation of bids and in the disclosure of the criteria on the basis of which contracts are awarded. Most trading partners of the United States, such as Japan, the United Kingdom and most European Community countries use predominantly the selective and single tender bid procedures. It is generally recognized that these lend themselves much better to discriminatory practices against foreign suppliers than public tendering.

Foreign suppliers can also be suppressed through specific conditions of bidding which put them at a disadvantage, such as certain administrative requirements or inadequate time allowed for submission of bids. Moreover, purchasing authorities may specify technical requirements in advance collaboration with domestic suppliers limiting thereby the competitiveness of the foreign bidder. In some countries only resident firms may undertake government contracts of certain types.

GOVERNMENT MONOPOLIES AND STATE TRADING

Most governments in market economy countries maintain monopolies of the manufacture or sale of certain goods. In several countries such monopolies have been traditionally instituted for fiscal purposes or social ones, such as guaranteeing a steady supply of a product and keeping the prices at a desired level. Traditional product areas for state monopolies are salt, tobacco and alcohol. State monopolies are organized in different ways, such as branches of government, or public or private corporations.

State import monopolies may also serve the objective of protecting domestic producers against foreign competition. Therefore, when the State handles the imports of a product, it may discriminate against foreign suppliers, restricting imports by administrative means, or by charging an unduly high markup on the landed price of the imported product. State import monopolies may also discriminate against certain foreign suppliers only, while favoring others.

State export monopolies may have the objective of facilitating export sales, and their operations may interfere on third country markets with the exports of other countries, which do not maintain export monopolies. Export monopolies may also discriminate against certain foreign countries only in allocating exports.

Import monopolies may have effects similar to quantitative restrictions or tariffs, and export monopolies similar to export subsidies.

Listed below are some products which come under state trading or government monopolies:

Canada—Wheat, oats, barley, and alcoholic beverages.

France—Tobacco, and tobacco products, newsprint, petroleum products, coal, potash fertilizer.

West Germany—Ethyl alcohol.

Italy—Tobacco and related products.

Japan—Tobacco, alcohol, rice, wheat, barley, dairy products.
United Kingdom—Coal, iron and steel.
United States—Alcoholic beverages.

STANDARDS AS TECHNICAL BARRIERS TO TRADE

Standards are laws, regulations, specifications, or other requirements with respect to the properties of products or the manner, conditions, or circumstances under which products are produced or marketed. These requirements usually deal with: A product's quality, purity, component materials, dimensions, level of performance, or other important characteristics; the health, sanitary, safety, technical, or other conditions or circumstances under which a product is produced or marketed; and the product's packaging or labelling.

Standards perform an extremely constructive and necessary role in commerce and trade, but they sometimes impede international trade and can be used as protective devices against import competition. Obstacles to trade arise because of differences among national standards and diverse requirements for testing, production, inspection, and certification. Inspection requirements during production are often especially troublesome to foreign suppliers and can amount to a virtual embargo. Regulations can particularly hinder trade if they are expensive to comply with, are based on characteristics peculiar to national production, foster uncertainty as to the acceptability of merchandise, are administered in a discriminatory fashion, or cause extra delay. In spite of several cases of discriminatory application, standards are not presently classed among the serious barriers to trade. Nevertheless, they hold the potential for becoming one of the greatest of trade barriers if appropriate steps are not taken internationally to prevent such a development.

The types of standards which have given rise to complaints as hindrances to trade have been: (1) industrial and product standards, (2) labelling and marketing requirements, (3) health and sanitary standards, and (4) pharmaceutical and veterinary standards.

INDUSTRIAL AND PRODUCT STANDARDS

Industrial and product standards relate principally to weights, measures, container sizes, nomenclature, quality, product content, production processes, safety, ecology, and environment. Industrial regulations have been greatly expanding in virtually all countries, particularly in the areas of environment and product safety. Electrical and electronic equipment and automotive products, two sectors which are closely regulated by virtually all countries and which are of particular importance for U.S. exports, illustrate this development.

A European organization called the Multipartite Accord for Assessment and Certification of Electronic Components, including all of the larger European countries, establishes standards and inspection procedures for electrical components. The Accord is now administered through the European Committee for Coordination or Electrical Standardization (CENEL). As the arrangement initially developed, it held the probability of virtually excluding U.S. products from the

European market. However, members of the Accord approved a U.S. request for membership in 1971, but the U.S. Government has not yet established the necessary administrative machinery for participation.

Motor vehicle safety and emission laws have been enacted increasingly both in the United States and other countries. Specifications vary widely, a fact which adds to production costs in compliance. For U.S. exporters, the new standards are often difficult to meet and inspection is time-consuming and costly. In many cases, U.S. products must be certified abroad, rather than being tested in the United States.

European Community.—The European Community has undertaken a program of harmonization of industrial and product standards among its members. EC requirements that containers for liquid foods be exclusively in metric units have presented difficulties for U.S. exporters. U.S. seed exporters have encountered problems in getting seeds approved for importation into the Community. Wine standards recently instituted will inhibit U.S. wine exports.

Complaints of standards hindering U.S. exports to individual members of the Community concerned the following products: gold jewelry in France and Italy; container-board liners and aircraft in France and Germany; hardware in Germany and the Netherlands; spirits and pressure vessels in France, Germany, and Italy; steam generating equipment in France, Germany, and Belgium; gas appliances and hybrid seeds in France; and film, welding and cutting equipment, and scientific apparatus in West Germany.

Canada.—Standards in Canada for electric ranges necessitate re-engineering of U.S. products. The number of can sizes for retailing of certain foods is restricted, and five standard U.S. can sizes are prohibited. U.S. fruit and vegetables which do not meet grade and quality standards of any U.S. marketing order cannot be imported from the United States but may be entered from other countries.

United States.—Complaints against U.S. industrial standards were directed principally against the Department of Transportation standards for high pressure gas cylinders; Coast Guard inspection of safety equipment on U.S. flag vessels; Federal Housing Administration standards for window glass; Department of Agriculture marketing orders on vegetables and fruit; safety and emission standards for motor vehicles; Underwriters Laboratory guarantee of inspection on products such as electrical appliances and apparatus, medical equipment, and gas and oil burning equipment; standards of professional and industrial associations covering products such as plumbing, heating, and fire-fighting equipment, lumber, pressure vessels, boilers, industrial fans, bicycles, and steel. Many of these organizations have their seal of approval required by local jurisdictions.

The United States was also criticized by domestic manufacturers for its failure to adopt the metric system, thus restricting acceptance of U.S. products overseas.

Other developed countries.—The following U.S. exports were said to meet industrial and product standards barriers in other major countries: Electrical equipment or electrical appliances in Denmark, Finland, Norway, and Sweden; aircraft in the United Kingdom, Switzerland, and Japan; articles of precious metal in the United Kingdom, Sweden, Switzerland, and Japan; distilled spirits in the

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United Kingdom and Japan; fertilizers in Finland; shoes in Norway; lawn mowers in Sweden; canned food in Australia; and packaged food, medical and clinical apparatus, and sensitized photographic supplies in Japan.

LABELLING AND MARKING REQUIREMENTS

The growing concern for consumer protection is bringing an increasing number of products under labelling requirements and expanding information required on labels. The cost of compliance may become significant, especially if information required is detailed and differs considerably from one country to the next.

Most industrialized nations and many developing countries have extensive lists of commodities which must be marked to show the country of origin. "Marks of origin" requirements are probably the most universally criticized of all labelling regulations. Several countries have formally complained that U.S. requirements are excessive and more difficult to meet than those of most countries. The method required for marking the origin can significantly affect the cost of complying with the regulation. France, for instance, requires the mark of origin for some canned foods to be embossed on the end of the can.

In many countries, labelling requirements for alcoholic beverages and pharmaceutical products are especially complex and costly to comply with. U.S. exports of wine to Western Europe are severely inhibited by appellation of origin requirements which restrict use of names such as "champagne" or "chianti" to wines from specific areas of Europe.

HEALTH AND SANITARY STANDARDS

Laws to protect the health of humans, animals, and plants exist in all countries. The health and sanitary standards of many countries (including the United States) were the subject of complaint. Most of the complaints concerned regulations on the use of food additives, regulations governing meat, poultry and seafood, and phytosanitary requirements for agricultural products. A number of complaints concerned the spreading ban on the use of DDT. Common complaints were that trade was hampered by different regulations among countries concerning food additives and pesticides or that inspection requirements were costly, repetitive, or impossible to meet. In a number of cases, there are blanket prohibitions against importation of products of certain countries or areas.

PHARMACEUTICAL AND VETERINARY STANDARDS

Complaints against the burden of pharmaceutical and veterinary standards principally concerned requirements for testing, plant inspection, special documentation, and the use of a specific pharmacopoeia. Testing requirements especially were cited as causing unreasonable delay and expense. Several countries do not accept the validity of tests and approval by the U.S. Food and Drug Administration. French regulations virtually exclude pharmaceutical imports. Italy does not recognize foreign tests. Japanese testing requirements differ from those of the United States.

Both U.S. and foreign firms complained against several U.S. requirements, including compulsory inspection of plants in the country of exploration by U.S. inspectors and repetition in the United States of research and tests.

Pharmaceutical regulations in developing countries cause problems to traders because of language requirements for documentation, conformance to any of a variety of pharmacopoeia, certification requirements, and restrictions on distributors, Some countries only permit importation of products not produced domestically.

Customs Procedures and Administrative Practices

Administrative procedures and customs matters other than rates of duty frequently impinge upon the free flow of trade. Obstacles can be found in tariff classification systems, customs valuation, documentation requirements, consular formalities, antidumping practices and other administrative practices connected with the international exchange of goods. In the Tariff Commission survey, about one-third of the complaints in this area dealt with customs valuation practices, and one-fourth with documentation requirements.

CUSTOMS VALUATION

Generally speaking, most nations assess customs duties on the c.i.f. value of imports. Five developed countries (the United States, Canada, Australia, New Zealand, and South Africa) and a few small nations apply duties on the f.o.b. value of imports. Many countries using the c.i.f. value operate with the so-called Brussels Definition of Value. Other countries have their individual valuation systems, which usually are more complex than the Brussels system.

By far the most numerous complaint against customs valuation received in the Tariff Commission's trade barrier survey came from U.S. exporters who objected to the prevalent use of c.i.f. values for customs purposes in most other countries. Because U.S. import duties are chiefly on an f.o.b. basis (which are lower than the c.i.f. value because they do not include freight and insurance charges), U.S. producers and exporters apparently look upon assessment on the c.i.f. value in other countries as inherently unfair.

Several countries assess duties on the "domestic value" of merchandise in the country of origin if it is higher than the invoice value for the imports being considered. This practice drew complaints principally against Canada, Australia, New Zealand, and South Africa.

A large number of developing countries were criticized for using "arbitrary" values for assessment of duties. Several of these use "official values" set by the government, rather than some form of commercial value, for customs purposes. Particularly singled out for criticism in this respect were Mexico, Brazil, Argentina, Venezuela, and Peru.

A problem in virtually all valuation systems is establishing a correct customs value for imports not shipped as arms-length transactions between independent unrelated parties. Most countries adjust upward the invoice values of such imports to establish the customs value. As multinational corporations and exclusive distributorships spread among the world, problems arising from non-arms-length transactions multiply. The upward adjustment of invoice values for customs pur-

poses in non-arms-length transactions is commonly referred to as "uplift," especially in countries using the Brussels Definition of Value. Japan, the United Kingdom, France, and Italy were particularly mentioned in complaints to the Commission concerning uplift procedures.

The American selling price valuation method used by the United States for four products (benzenoid chemicals, rubber footwear, low-priced wool knit gloves, and canned clams) has long been a major target of criticism. The complexity of the U.S. valuation system, which operates with nine different standards, is also strongly criticized. Five of these standards apply to 1,015 products which have come to be referred to as the "Final List." Many objections have been made to the Final List valuation standards, which employ as the primary standard "foreign value" or "export value," whichever is higher.

DOCUMENTATION REQUIREMENTS AND CUSTOMS FORMALITIES

Every country requires some form of documentation to be submitted on products crossing its borders. A serious detriment to trade in terms of costs to the exporter or importer is recognized to exist in the cost of complying with documentation requirements which are excessive in terms of quantity, complexity, formality, and the time consuming procedures associated with obtaining or clearing the documents. A recent study found that an average international shipment requires 46 different documents in about 360 copies requiring 64 hours of preparation and processing time.

Several nations, among which are Canada, Australia, New Zealand, South Africa, the United States, and a number of South American countries, require a special customs or consular invoice on merchandise shipped to them. Some nations also require these invoices to be certified at a consulate nearest the port of shipment of the cargo. Venezuela recently equated the revenue it received from consular invoices to a tariff of 3.5 percent ad valorem.

CUSTOMS NOMENCLATURE

The customs classification systems of the major trading nations each contain a few thousand product categories. The growing complexity of these systems led to a world-wide movement to a standardized customs nomenclature. The majority of nations today classify their imports according to the Brussels Tariff Nomenclature. Canada and the United States are the only major trading nations which do not use this system. Because the classification nomenclatures of these two countries differ substantially from the widely used standard system, they have been criticized as constituting barriers to trade.

ANTIDUMPING PRACTICES

For several years, the manner in which nations respond to the unfair competition of foreign dumping in their domestic markets has been the subject of international discussion. Laws and regulations to discourage the practice probably exist in most nations. However, Canada and the United States take antidumping actions far more frequently than any other major trading country. The frequency of these actions and some of the related procedures are often criticized as trade barriers.

Discriminatory Ocean Freight Rates

Many U.S. producers and exporters reported to the Tariff Commission that discriminatory treatment in ocean freight rates greatly weakens their ability to compete abroad and enhances the competitive strength of foreign industries in the U.S. market. For example, ocean freight rates on many commodities from the United States to Japan are higher than the rates from Japan to the United States on the same products. The differences frequently are large, ranging from 20 percent to well over 100 percent. Moreover, since most foreign tariffs are applied on a c.i.f. basis, and most foreign consumption taxes, such as the value-added taxes in Europe and the commodity taxes in Japan, are applied on a landed duty paid basis, the effects of the discriminatory rate treatment are multiplied.

On the basis of a series of hearings from 1963 to 1965, the Joint Economic Committee of the U.S. Congress issued this finding:

> The international ocean freight rate structure is weighted against U.S. exports. Our exports bear most of the cost of vessel operation, even in trades where imports approximate exports in value and quantity. Government studies reveal that on trade between U.S. Pacific coast and the Far East, freight rates on American exports exceeded rates on corresponding imports on 80 percent of the sampled items. This same discrimination prevails on 70 percent of the products shipped by American exporters from U.S. Atlantic and gulf ports to the Far East and on 60 percent of the commodities shipped from the Atlantic coast to Western Europe."

APPENDIX C

THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)*

Introduction

The Committee on Finance directed its staff to prepare a memorandum on certain provisions of the General Agreement on Tariffs and Trade which appear to discriminate against U.S. commerce, or which appear to be inadequate guides for the establishment of fair and reciprocal principles for governing the expansion of world trade. This memorandum is not an exhaustive treatment of all the GATT principles. Rather, it attempts to highlight some of the issues raised by the GATT which the staff feels are important.

GATT and the International Trade Organization

The collapse of international trade in the 1930's and the resulting political and economic effects led some world leaders to conclude that new international economic institutions were essential for international cooperation in international trade and payments matters. The ultimate goals envisaged for such institutions were the prevention of war and the establishment of a just system of economic relations.

During World War II preparations were underway for the establishment of these institutions. The Bretton Woods Conference in 1944 resulted in the emergence of the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD). But it was recognized that an international organization to regulate trade was a necessary complement to the IMF and the IBRD.[1] During the war years, the U.S. State Department had prepared a draft charter of an International Trade Organization.[2]

At the first session of the United Nations, the Economic and Social Council resolved that a conference to draft a charter for an ITO should be called. Four conferences were held. The last of these conferences was held in Havana from November 21, 1947 to March 24, 1948.

The ITO never came into being. Many of its provisions were considered too extreme. They would have amounted to a virtual delegation of congressional tariff setting and trade regulating powers under the Constitution to the Executive.

To fill the gap caused by the death of the ITO, many of the clauses in the drafts of the ITO charter were taken and put into a document called the General Agreement on Tariffs and Trade (GATT).

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[1] The Bretton Woods Conference resolved: "Complete attainment of * * * purposes and objectives [of the IMF] * * * cannot be achieved through the instrumentality of the Fund alone; * * *" and recommended that the government seek agreement "to reduce obstacles to international trade and in other ways promote mutually advantageous international commercial relations * * *."

[2] U.S. State Department Document 2411, December 1945.

*This document was published by the Committee on Finance in December 1970. Although there have been many changes in the world economy since then, it is still relevant to any discussion of institutional reform of GATT.

The basic GATT agreement was completed in 1947 but it has never been submitted to the Congress for its study and approval. It is being observed by the United States through a "protocol of provisional application."

The "protocol of provisional application" stated that the eight governments who signed it would undertake "not later than November 15, 1947, to apply provisionally on and after January 1, 1948:

(*a*) Parts I and III of the General Agreement on Tariffs and Trade, and

(*b*) Part II of that Agreement to the fullest extent *not inconsistent* with existing legislation." [3]

This protocol is still in effect, although the GATT has been amended a number of times and affected by other protocols, including some that are not in force themselves. Thus, the basic treaty is a complex set of instruments, applying with different rigor to different countries.[4]

In spite of the fact that the GATT has never been specifically approved by the U.S. Congress as a treaty or otherwise, the executive branch trade spokesmen tend to view GATT as "the law." Whenever the Congress contemplates taking any action to protect a domestic interest, the Executive pointedly reminds it of the "international commitments" of the United States.[5] It is not clear however, that the executive branch demands the same respect for adhering to "international commitments" from other signatories of the Agreement as it demands of itself.

For example, Japan has import quotas on 98 commodities without any finding of serious injury; Britain imposed a "surtax" on imports

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[3] The eight signatures, some with reservations, were Australia, Belgium, Canada, France, Luxembourg, The Netherlands, United Kingdom, and the United States.

[4] For example, the GATT provisions regarding subsidies apply to some countries, but not to others. Even the fundamental principle of GATT—nondiscrimination—has been compromised by numerous exceptions in recent years. The GATT provisions have not prevented the widespread use of nontariff barriers in recent years as substitutes for tariff protection.

[5] The prospect of "retaliation" against U.S. exports if the United States applied "unilateral" restrictions to foreign imports, was discussed by Secretary of State Dean Rusk before the Committee on Finance in these terms:

"Retaliation would simply be what is permitted by the rules of the game as that game is now practiced by some seventy countries accounting for about 85 percent of world trade. I refer, of course, to the General Agreement on Tariffs and Trade—the GATT.

"The GATT is essentially a code of conduct for fairplay in international trade. The United States played a major role in its negotiation in 1947. Like many of the great initiatives of the early post-World War II days, it reflected a conviction that there must surely be a better way to organize man's affairs than had been the case in the preceding decades of self-centered nationalism. In the area of international trade policy, the GATT represents an attempt to prevent a repetition of some of the economic blunders of the 1930's.

"The GATT does this by establishing *a legal framework* for the stability of trade concessions negotiated in good faith among sovereign countries. We accord others access to our market in return for the right of our exporters to sell in their markets. If we impair the access we have agreed to give others, two courses of action are available under the GATT. We ourselves can offer reductions of our import barriers on other products equivalent in trade value to the impaired concession or the foreign country can withdraw concessions affecting an equivalent trade value for American exports in the foreign market. This may sound a bit complicated—*the legal language* of the GATT is much more complicated—but the idea is clear. It is retaliation—by agreement among all parties in advance that restrictive action by one party entitles the aggrieved party, *as a matter of legal right,* to compensatory action." [Emphasis supplied.]

and an "import deposit scheme," in violation of GATT; the Continental Europeans have entered into "special commercial arrangements" on citrus fruits and other products in violation of GATT MFN principles, and its common agricultural policy is significantly more protectionist than the previous individual country restrictions on agricultural imports, another violation of GATT principles. Outside of complaining, the United States has done nothing to demand compensation or to retaliate against these violations of GATT principles.

The GATT was born more than 20 years ago at a time when Europe and Japan were in ruins and the United States completely dominated world trade as well as other matters. In the year in which GATT was negotiated, 1947, the United States had a $10 billion trade surplus. The attitude of many U.S. officials at that time was one of redistributing the wealth. We embarked on an ambitious Marshall plan aid program and later on a technical assistance program. U.S. officials were worried about the so-called "dollar gap" meaning that foreign countries did not have enough dollars to purchase needed imports. It is somewhat understandable that under these circumstances, the GATT would contain certain provisions designed to favor European countries and Japan.

Conditions in 1970 are vastly different from those in 1947. At this point, the GATT should be redrawn to take out the inequitable provisions which effectually discriminate against certain countries, mainly the United States, and to put in new provisions to cope with new conditions in the world economy.

Most-Favored-Nation Treatment

Nondiscrimination is intended to be the cardinal principle of GATT. It is embodied in article I. What you give to one you give to all. This principle is aimed at making anathema discriminatory bilateral trade agreements, preferences, and special commercial relationships.

However, the GATT sanctions the departure from unconditional MFN treatment in the case of customs unions and free trade areas (article XXIV), certain exceptions in article XIV, and the existence of certain preferences in article I, paragraph 2. These "exceptions" effectively allow European countries to depart from MFN treatment when it suits their commercial interests.

The United States generally observes the unconditional MFN principle although in recent years the United States has compromised on its rigid adherence to this GATT principle.[6] This is particularly

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[6] For 140 years, until 1923, the United States adhered to a "conditional" most-favored-nation principle, under which we would extend tariff and other trade benefits negotiated with one party to another, only if the latter offered reciprocal benefits. Under "conditional" MFN, no country would get a "free ride." The major considerations in the U.S. decision to change to an "unconditional" MFN principle were:

A. By 1923 international commercial relations were dominated by tariff rates and regulations, whereas previously tariffs were of relatively minor importance as compared with the right to trade at all. Bilateral negotiations with such trading partners were cumbersome and time-consuming.

B. The United States had become a major manufacturing nation and sought immunity from discrimination by other countries in order to compete abroad for markets.

C. Under the Tariff Act of 1922, the President was authorized to impose additional duties on the whole or on any part of the commerce of any country which discriminated against American commerce. Consistency, therefore, required that we not initiate discriminatory rates.

evident in the U.S. request for a GATT waiver on the United States-Canadian automobile pact and the Presidential announcements in favor of a system of special "generalized tariff preferences" for less developed countries.

One of the provisions of article XXIV in defining customs unions was that such formations were required to "facilitate trade between the parties" by eliminating regulations of commerce on "substantially all trade between constituent territories of the union." In fact, however, this was violated in 1952 when the six European nations set up the European Coal and Steel Community to pool resources of coal, steel, iron ore, and scrap in a single market without internal frontier barriers. The GATT considered this project as limited to one sector of the economy and therefore not covered by the provisions relating to customs unions. Nevertheless, in light of the fact that the ECSC would have been agreed to by the six with or without GATT approval, the GATT granted a waiver.

France, West Germany, Italy, Belgium, Luxembourg, and The Netherlands signed in 1958 the Treaty of Rome, establishing the European Economic Community, a common market agreement. The legal question of whether the Rome Treaty is consistent with article XXIV of the GATT has never been settled but is obviously academic. Since the common market of Europe was established in 1958, other important trade blocs have also developed. The outer countries of Europe established the European Free Trade Association in 1959. The countries of South America signed the Montevideo Treaty in 1960, creating the Latin American Free Trade Area (LAFTA), a free trade association among the South American countries. A common market among the Central American countries is in existence and now at Punte del Este agreement has been reached to integrate the Central American Common Market and the Latin American Free Trade Area into a Latin American common market. Japan is currently considering the establishment of a free trade area or common market with Australia and New Zealand (which already have a free trade area between themselves) hoping that it will later include Canada and the United States.

There are also tariff preferences, "reverse preferences" and special commercial arrangements sprouting up all over the world.

In Asia, Australia has unilaterally violated MFN by granting preferences to less developed countries. There is growing sentiment of a Pacific Free Trade Area among Japan, Australia, and New Zealand. The British Commonwealth preference system violates the MFN principle. In short, there are very few countries if any, who observe unconditional MFN treatment, without exceptions.

But, the problem is that the exceptions are growing and threaten to make the MFN principle a mockery. The EEC has special preferences for its 19 former African colonies which in turn give "reverse preferences" to EEC goods. The EEC has concluded or is in the process of negotiating discriminatory commercial arrangements with Greece, Turkey, Israel, Spain, Tunisia, and Morocco. Applications for membership with the community are being considered for Austria, Spain, Ireland, Great Britain, and others. All this involves a massive movement away from MFN.

Tariff preferences are by nature discriminatory, and yet the whole developed world seems to have accepted this as a necessary concession to the demands of the less developed countries. In short, the principle of nondiscrimination is being observed more and more in the breach.

It concerns us to see developing in the world a situation in which more and more trading partners of the United States are being incorporated in regional trade blocs which do not adhere to the unconditional most-favored-nation clause. The United States has eschewed joining a free trade area with North Atlantic countries mainly because of its concern for dividing up the world into competitive regional blocs. But, we have actively supported the participation of other countries in regional trade blocs, which threaten to accomplish the same unwanted result. In addition, as more countries enter into regional trade blocs the U.S. competitive position is bound to suffer from the inherently discriminatory nature of these arrangements. This fact has important ramifications in determining a future U.S. trade policy.

GATT Provisions on Subsidies and Border Taxes

Another important area in which GATT principles are both inadequate and discriminatory concerns subsidies and border tax adjustments.

In essence, the GATT provisions on subsidies and border taxes have been interpreted to permit the rebate of "indirect taxes" (such as value added or turnover taxes) on exports and the imposition of such taxes on imports, but to deny equivalent treatment for "direct taxes," such as income taxes.

TAX SHIFTING ASSUMPTIONS IN GATT

The entire border tax adjustment theory and practice is based on the assumption that "indirect taxes" are always and wholly shifted forward into the final price of a product and that "direct taxes" are always and wholly shifted backward to the factors of production.

The distinction between direct and indirect taxes on the basis of their presumed difference in incidence, though generally accepted two generations ago, is now widely questioned. All taxes on business are increasingly thought of as costs, with varying effects and differential impacts depending on their form, but in one way or another constituting a cost which must be recovered from customers or those who supply resources if the enterprise is to survive. Indirect taxes, at least in the short run, are partially absorbed by the manufacturer depending upon the degree of competition in his markets, and in the markets for his raw materials. Direct taxes, especially the corporate income tax, are shifted forward to the price of the product sold to consumers to the extent that market conditions allow. Well known economists and fiscal experts brought together in a symposium, organized by the Secretary-General of the Organization for Economic Cooperation and Development, in September 1964, reached the following conclusions, (1) "In practice, indirect taxes are not fully shifted into product

prices . . .” and, (2) “Certain direct taxes, and particularly the corporate profits tax, may be partially shifted into product prices: although the degree of shifting may vary from country to country.”

Businessmen operate with target rates of return in mind and will pass-on all costs, including taxes, into the price structure of their products to the extent that price elasticity of demand in the market will permit. Thus, modern economic theory suggests that the distinction in the GATT treatment of direct and indirect taxes is an extreme and arbitrary assumption which does not stand the test of economic reality. The Business and Industry Advisory Committee of the OECD (BIAC) in a report on the problem of tax shifting stated: “In a strongly competitive situation the prices obtainable—and hence the degree of tax shifting—are substantially determined by the market itself.” In short the GATT on border taxes are not “trade neutral.”

Actually, the distinction between “direct” and “indirect” taxes is itself somewhat arbitrary and appears to be based more on prevailing practice than on reason. The distinction is, in fact, not made explicit in the GATT provisions, but flows from interpretations of, and amendments to, various provisions. For example, value added taxes, according to GATT classification are considered to be indirect taxes. However, value added taxes fall on both costs and profits of the producer (value added being defined as the difference between the value of a firm's purchases and sales) and to the extent that they fall on profits how can they be distinguished from a profits tax in effect? Corporate profits taxes are classified by GATT as “direct” falling entirely on the producer. Logically, if corporate taxes were reduced, prices should fall. But to the extent that tax reductions stimulate increased spending and demand, they could stimulate price increases. For example, there is no evidence that corporate tax reductions in 1964, led to price reductions.

HISTORY OF GATT DISTINCTION

The provisions in GATT relevant to border taxes and subsidies, basically articles II, III, and XVI, are drawn from the Havana Charter of the 1940's. These provisions were themselves either a compromise (for example, article XVI) or were adapted from provisions of numerous bilateral trade treaties, including especially the United States-Canada reciprocal trade agreement of the midthirties.[7] The lack of precise or concentrated thinking about the border tax problem is illustrated by the absence of explicit definitions of key concepts.[8]

There is no unified section of the GATT which deals exclusively with border taxes and is quite clear that the provisions of GATT which do cover border tax adjustments were not the product of carefully reasoned theory, or of experience molded in the crucible of extensive usage.

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[7] 49 Stat. 3960 (1936). Effective May 14, 1936.

[8] For example, the meaning of linking the import charge at the border with “charge * * * applied, directly, or indirectly, to like domestic products” is not defined.

When the present GATT language was drawn up more than two decades ago, the question of border taxes did not appear to be a major one. Levels of indirect taxes were much lower. Under these circumstances, overlying simple and sweeping assumptions about tax shifting seemed acceptable, and already existing practices were incorporated in very general terms without searching examination.

IMPORT "EQUALIZATION" CHARGES

Border tax adjustments on the import side, i.e., import equalization charges, are permitted under Article II and III of the GATT, but only for "indirect taxes." Article II (Schedules of Concessions) provides that its terms shall not prevent any contracting party from imposing charges "equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part". This exemption of indirect taxes gives a GATT blessing to the European practice of imposing "equalization" charges at the border. Article III (National Treatment of Internal Taxation and Regulation) provides in paragraph 2 thereof that "products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products." This article is apparently being ignored by European countries which impose discriminatory road taxes against larger American cars. Japan and other countries also discriminate against American cars through their tax system.

EXPORT REBATES

Article XVI, adopted in 1955 deals with the question of border tax adjustments for exports in the following terms:

> The exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued shall not be deemed to be as subsidy.

This Article contains many vague terms which need clarification. For example, what is meant by "borne by the like product when destined for domestic consumption" or "remission of such duties or taxes in amounts not in excess of those which have accrued"? These terms seem to be an attempt to apply the "destination principle" to indirect taxes, but the meaning of indirect taxes itself is not at all clear.[9]

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[9] This principle states that internationally traded commodities should be subject to some specified taxes of the importing country and exempt from similar taxes of the exporting country in order to avoid double taxation. The principle contrasts with (a) the origin principle as applied to other forms of taxation on transactions, (b) income taxes levied according to source of income, or domicile or residence of the taxpayer, and (c) property taxes imposed according to the situs of the taxable object.

In 1960, the contracting parties adopted a Working Party Report which listed a number of practices construed to be subsidies.[10] Among these were the remission of direct taxes or social welfare charges on industrial or commercial enterprises and "the exemption in respect of exported goods, of charges or taxes, other than charges in connection with importation or indirect taxes *levied at one or several stages on the same goods* if sold for internal consumption. The implications of practices listed in (b), (c) and (d) of footnote 10 below were not fully appreciated by the United States. They, in effect permitted the European countries to impose border taxes on imports and rebate indirect taxes on exports in accordance with their value added or cascade turnover taxes.

In the late forties and early fifties it is not surprising that U.S. trade officials were willing to incorporate existing commercial practices on border tax adjustments into the GATT agreement. There were much larger problems in international trade than border tax adjustments, which at that time were low—in the range of 2–4 percent and limited to around one-sixth of the goods traded—and then only in the case of a few nations. The United States and a $10 billion trade surplus in 1947 which must have had an effect on our negotiators' attitudes.

But the failure to appreciate the consequences of excluding the so-called "indirect tax" rebates in 1960 from the general prohibition

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[10] Point 5 of the report adopted on November 19, 1960, dealing with subsidies stated:

"The following detailed list of measures which are considered as forms of export subsidies by a number of contracting parties was referred to in the proposal submitted by the Government of France, and the question was raised whether it was clear that these measures could not be maintained if the provisions of the first sentence of paragraph 4 of Article XVI were to become fully operative:

"(a) Currency retention schemes or any similar practices which involve a bonus on exports or re-exports;

"(b) The provision by governments of direct subsidies to exporters;

"(c) The remission, calculated in relation to exports, of direct taxes or social welfare charges on industrial or commercial enterprises;

"(d) The exemption, in respect of exported goods, of charges or taxes, other than charges in connexion with importation or indirect taxes levied at one or several stages on the same goods if sold for internal consumption; or the payment, in respect of exported goods, of amounts exceeding those effectively levied at one or several stages on these goods in the form of indirect taxes or of charges in connexion with importation or in both forms;

"(e) In respect of deliveries by governments or governmental agencies of imported raw materials for export business on different terms than for domestic business, the charging of prices below world prices;

"(f) In respect of government export credit guarantees, the charging of premiums at rates which are manifestly inadequate to cover the long-term operating costs and losses of the credit insurance institutions;

"(g) The grant by governments (or special institutions controlled by governments) of export credits at rates below those which they have to pay in order to obtain the funds so employed;

"(h) The government bearing all or part of the costs incurred by exporters in obtaining credit.

"The Working party agreed that this list should not be considered exhaustive or to limit in any way the generality of the provisions of paragraph 4 of Article XVI. It noted that the governments prepared to accept the declaration contained in Annex A agreed that, for the purpose of that declaration, these practices generally are to be considered as subsidies in the sense of Article XVI: 4 or are covered by the Articles of Agreement of the International Monetary Fund. The representatives of governments which were not prepared to accept that declaration were not able to subscribe at this juncture to a precise interpretation of the term 'subsidies,' but had no objection to the above interpretation being accepted by the future parties to that declaration for the purposes of its application."

against export subsidies while including a specific prohibition against rebating "direct taxes", was a major blunder. The United States by that time had run into serious balance of payments difficulties. Western Europe had become a prosperous "third force." Giving away commercial advantages to prosperous Europe for the sake of their own internal tax harmonization objectives was an unwise and costly move, in which vague political objectives out-weighted clear commercial considerations.

Balance-of-Payments Safeguards

Balance-of-payments considerations have exerted and will continue to exert a powerful influence on major countries' dispositions to deal with trade matters. Recent history shows that countries will adopt whatever measures they deem necessary to protect their balance of payments irrespective of GATT. The British imposed an import deposit scheme to control imports and prior to that they and the Canadians adopted import surcharges to protect their balance of payments. The French subsidized their exports even beyond what the inequitable GATT rules allow. In developed as well as the less developed countries quantitative restrictions and licensing arrangements are legion.

The GATT recognizes that member countries may have to protect their balance of payments and international reserve positions and to this end Article XII sanctions the use of quantitative restrictions (quotas). Export subsidies or import surcharges are not allowed under GATT rules as balance-of-payments adjustment mechanisms; import quotas are. This rigidity in the GATT flies in the face of other provisions of the GATT which are more flexible. Limiting available options to quotas also is inconsistent with the main emphasis of GATT to eliminate quotas as a trade protective device.

It is also difficult to understand why, if quotas are sanctioned by GATT as a balance of payments safeguard, the United States would be violating either the letter or the spirit of the agreement if it imposed quotas for balance of payments reasons—a position that has been stated by administration spokesmen. The United States has experienced deficits in its balance of payments in every year since 1950, with two exceptions, and its international reserve position has deteriorated substantially. This would appear to fully justify the application of Article XII quotas for the United States. Member countries in GATT should face up to the lack of flexibility in Article XII, and decide whether quotas should be the only recourse available to a country suffering from chronic balance of payments problems. In facing this issue, the member countries should consider that in recent years many countries have not hesitated to use whatever means they deemed necessary to restore equilibrium notwithstanding the GATT.

Conclusion

In a number of areas the GATT is deficient and discriminatory. Its exceptions to unconditional MFN treatment favor common markets and free trade areas, and threaten to break up the trading world into competitive regional blocs. Recent bilateral commercial arrangements involving the European Common Market and other countries do not even pretend to justify their existence under article XXIV. The United States could gradually become isolated as a trading

nation if it continues to adhere to a policy of encouraging other nations to join regional trade blocs which violate MFN principles, while eschewing U.S. participation in such arrangements under the theory of "multilateralism."

The GATT treatment of subsidies and import charges discriminate against countries relying principally on one form of tax structure—direct or income taxes—in favor of other countries whose revenues are derived from a different system—such as value added taxes.

The GATT safeguard on balance of payments is an anachronism and is inconsistent with other principles in GATT. Furthermore, in recent years major countries such as England and France have imposed import restrictions for balance of payments reasons in complete disdain of GATT principles.

The GATT does not even pretend to be a guide in agricultural trade which is now heavily controlled and subsidized, especially in the European Community.

In short, as presently constituted, the GATT is not a guide to fair trade. Its rules are often inequitable and outdated. It was written at a time when the United States held a virtual monopoly over production and trade and when the rest of the world suffered from an acute shortage of dollars. Trade at that time was mainly between unrelated parties at arms length transactions. Today, trade is increasingly becoming a movement of goods within a multinational business complex. The drafters of GATT may not have forseen all the postwar economic and structural changes. But no one can claim that world conditions have not changed sufficiently to require a new look at the GATT. It is the view of the staff that the GATT should be redrawn to provide for principles of fair and free trade before the Congress approves its provisions.

(Excerpts From the General Agreement on Tariffs and Trade Referred to in the Text of this Print)

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Article I

GENERAL MOST-FAVOURED-NATION TREATMENT

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

2. The provisions of paragraph 1 of this Article shall not require the elimination of any preferences in respect of import duties or charges which do not exceed the levels provided for in paragraph 4 of this Article and which fall within the following descriptions:

(a) preferences in force exclusively between two or more of the territories listed in Annex A, subject to the conditions set forth therein;

(b) preferences in force exclusively between two or more territories which on July 1, 1939, were connected by common sovereignty or relations of protection or suzerainty and which are listed in Annexes B, C, and D subject to the conditions set forth therein;

(c) preferences in force exclusively between the United States of America and the Republic of Cuba;

(d) preferences in force exclusively between neighbouring countries listed in Annexes E and F.

3. The provisions of paragraph 1 shall not apply to preferences between the countries formerly a part of the Ottoman Empire and detached from it on July 24, 1923, provided such preferences are approved under paragraph 5 of Article XXV,[1] which shall be applied in this respect in the light of paragraph 1 of Article XXIX.

4. The margin of preference on any product in respect of which a preference is permitted under paragraph 2 of this Article but is not specifically set forth as a maximum margin of preference in the appropriate Schedule annexed to this Agreement shall not exceed:

(a) in respect of duties or charges on any product described in such Schedule, the difference between the most-favoured-nation and preferential rates provided for therein; if no preferential rate is provided for, the preferential rate shall for the purposes of this

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[1] Pending the entry into force of the Protocol Amending Part I and Articles XXIX and XXX, this reference to Article XXV actually reads "sub-paragraph 5(a) of Article XXV," although paragraph 5 is no longer divided into sub-paragraphs (a), (b), etc., as was formerly the case. The present text of paragraph 5 was formerly sub-paragraph 5(a) of Article XXV.

paragraph be taken to be that in force on April 10, 1947, and, if no most-favoured-nation rate is provided for, the margin shall not exceed the difference between the most-favoured-nation and preferential rates existing on April 10, 1947;

(b) in respect of duties or charges on any product not described in the appropriate Schedule, the difference between the most-favoured-nation and preferential rates existing on April 10, 1947.

In the case of the contracting parties named in Annex G, the date of April 10, 1947, referred to in sub-paragraphs (a) and (b) of this paragraph shall be replaced by the respective dates set forth in that Annex.

Article II

SCHEDULES OF CONCESSIONS

1. (a) Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.

(b) The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided for therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

(c) The products described in Part II of the Schedule relating to any contracting party which are the products of territories entitled under Article I to receive preferential treatment upon importation into the territory to which the Schedule relates shall, on their importation into such territory, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided for in Part II of that Schedule. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date. Nothing in this Article shall prevent any contracting party from maintaining its requirements existing on the date of this Agreement as to the eligibility of goods for entry at preferential rates of duty.

2. Nothing in this Article shall prevent any contracting party from imposing at any time on the importation of any product:

(a) a charge equivalent to any internal tax imposed consistently with the provisions of paragraph 2 of Article III in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;

(b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI;

(c) fees or other charges commensurate with the cost of services rendered.

3. No contracting party shall alter its method of determining dutiable value or of converting currencies so as to impair the value of any of the concessions provided for in the appropriate Schedule annexed to this Agreement.

4. If any contracting party establishes, maintains or authorizes, formally or in effect, a monopoly of the importation of any product described in the appropriate Schedule annexed to this Agreement, such monopoly shall not, except as provided for in that Schedule or as otherwise agreed between the parties which initially negotiated the concession, operate so as to afford protection on the average in excess of the amount of protection provided for in that Schedule. The provisions of this paragraph shall not limit the use by contracting parties of any form of assistance to domestic producers permitted by other provisions of this Agreement.

5. If any contracting party considers that a product is not receiving from another contracting party the treatment which the first contracting party believes to have been contemplated by a concession provided for in the appropriate Schedule annexed to this Agreement, it shall bring the matter directly to the attention of the other contracting party. If the latter agrees that the treatment contemplated was that claimed by the first contracting party, but declares that such treatment cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such contracting party so as to permit the treatment contemplated in this Agreement, the two contracting parties, together with any other contracting parties substantially interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter.

6. (a) The specific duties and charges included in the Schedules relating to contracting parties members of the International Monetary Fund, and margins of preference in specific duties and charges maintained by such contracting parties, are expressed in the appropriate currency at the par value accepted or provisionally recognized by the Fund at the date of this Agreement. Accordingly, in case this par value is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per centum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; *Provided* that the Contracting Parties (i.e., the contracting parties acting jointly as provided for in Article XXV) concur that such adjustments will not impair the value of the concessions provided for in the appropriate Schedule or elsewhere in this Agreement, due account being taken of all factors which may influence the need for, or urgency of, such adjustments.

(b) Similar provisions shall apply to any contracting party not a member of the Fund, as from the date on which such contracting party becomes a member of the Fund or enters into a special exchange agreement in pursuance of Article XV.

7. The Schedules annexed to this Agreement are hereby made an integral part of Part I of this Agreement.

Article III

NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

3. With respect to any existing tax which is inconsistent with the provisions of paragraph 2, but which is specifically authorized under a trade agreement, in force on April 10, 1947, in which the import duty on the taxed product is bound against increase, the contracting party imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreement in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

5. No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.

6. The provisions of paragraph 5 shall not apply to any internal quantitative regulation in force in the territory of any contracting party on July 1, 1939, April 10, 1947, or March 24, 1948, at the option of that contracting party; *Provided* that any such regulation which is contrary to the provisions of paragraph 5 shall not be modified to the detriment of imports and shall be treated as a customs duty for the purpose of negotiation.

7. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.

8. (a) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

(b) The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

9. The contracting parties recognize that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of contracting parties supplying imported products. Accordingly, contracting parties applying such measures shall take account of the interests of exporting contracting parties with a view to avoiding to the fullest practicable extent such prejudicial effects.

10. The provisions of this Article shall not prevent any contracting party from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films and meeting the requirements of Article IV.

Article XII

RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. Notwithstanding the provisions of paragraph 1 of Article XI, any contracting party, in order to safeguard its external financial position and its balance of payments, may restrict the quantity or value of merchandise permitted to be imported, subject to the provisions of the following paragraphs of this Article.

2. (a) Import restrictions instituted, maintained or intensified by a contracting party under this Article shall not exceed those necessary:

(i) to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or

(ii) in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the reserves of such contracting party or its need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

(b) Contracting parties applying restrictions under sub-paragraph (a) of this paragraph shall progressively relax them as such conditions improve, maintaining them only to the extent that the conditions specified in that sub-paragraph still justify their application. They shall eliminate the restrictions when conditions would no longer justify their institution or maintenance under that sub-paragraph.

3. (a) Contracting parties undertake, in carrying out their domestic policies, to pay due regard to the need for maintaining or restoring equilibrium in their balance of payments on a sound and lasting basis and to the desirability of avoiding an uneconomic employment of

productive resources. They recognize that in order to achieve these ends, it is desirable so far as possible to adopt measures which expand rather than contract international trade.

(b) Contracting parties applying restrictions under this Article may determine the incidence of the restrictions on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential.

(c) Contracting parties applying restrictions under this Article undertake:

(i) to avoid unnecessary damage to the commercial or economic interests of any other contracting party;

(ii) not to apply restrictions so as to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and

(iii) not to apply restrictions which would prevent the importation of commercial samples or prevent compliance with patent, trade mark, copyright, or similar procedures.

(d) The contracting parties recognize that, as a result of domestic policies directed towards the achievement and maintenance of full and productive employment or towards the development of economic resources, a contracting party may experience a high level of demand for imports involving a threat to its monetary reserves of the sort referred to in paragraph 2(a) of this Article. Accordingly, a contracting party otherwise complying with the provisions of this Article shall not be required to withdraw or modify restrictions on the ground that a change in those policies would render unnecessary restrictions which it is applying under this Article.

4. (a) Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Article shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the Contracting Parties as to the nature of its balance of payments difficulties, alternative corrective measures which may be available, and the possible effect of the restrictions on the economies of other contracting parties.

(b) On a date to be determined by them, the Contracting Parties shall review all restrictions still applied under this Article on that date. Beginning one year after that date, contracting parties applying import restrictions under this Article shall enter into consultations of the type provided for in sub-paragraph (a) of this paragraph with the Contracting Parties annually.

(c) (i) If, in the course of consultations with a contracting party under sub-paragraph (a) or (b) above, the Contracting Parties find that the restrictions are not consistent with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV), they shall indicate the nature of the inconsistency and may advise that the restrictions be suitably modified.

(ii) If, however, as a result of the consultations, the Contracting Parties determine that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV) and that damage to the trade of any contracting party

is caused or threatened thereby, they shall so inform the contracting party applying the restrictions and shall make appropriate recommendations for securing conformity with such provisions within a specified period of time. If such contracting party does not comply with these recommendations within the specified period, the Contracting Parties may release any contracting party the trade of which is adversely affected by the restrictions from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(d) The Contracting Parties shall invite any contracting party which is applying restrictions under this Article to enter into consultations with them at the request of any contracting party which can establish a *prima facie* case that the restrictions are inconsistent with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby. However, no such invitation shall be issued unless the Contracting Parties have ascertained that direct discussions between the contracting parties concerned have not been successful. If, as a result of the consultations with the Contracting Parties, no agreement is reached and they determine that the restrictions are being applied inconsistently with such provisions, and that damage to the trade of the contracting party initiating the procedure is caused or threatened thereby, they shall recommend the withdrawal or modification of the restrictions. If the restrictions are not withdrawn or modified within such time as the Contracting Parties may prescribe, they may release the contracting party initiating the procedure from such obilgations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(e) In proceeding under this paragraph, the Contracting Parties shall have due regard to any special external factors adversely affecting the export trade of the contracting party applying restrictions.

(f) Determinations under this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations.

5. If there is a persistent and widespread application of import restrictions under this Article, indicating the existence of a general disequilibrium which is restricting international trade, the Contracting Parties shall initiate discussions to consider whether other measures might be taken, either by those contracting parties the balances of payments of which are under pressure or by those the balances of payments of which are tending to be exceptionally favourable, or by any appropriate intergovernmental organization, to remove the underlying causes of the disequilibrium. On the invitation of the Contracting Parties, contracting parties shall participate in such discussions.

Article XIV [1]

EXCEPTIONS TO THE RULE OF NON-DISCRIMINATION

1. A contracting party which applies restrictions under Article XII or under Section B of Article XVIII may, in the application of such restrictions, deviate from the provisions of Article XIII in a manner having equivalent effect to restrictions on payments and transfers

[1] Text as amended Feb. 15, 1961, on which date Annex J was deleted.

for current international transactions which that contracting party may at that time apply under Article VIII or XIV of the Articles of Agreement of the International Monetary Fund, or under analogous provisions of a special exchange agreement entered into pursuant to paragraph 6 of Article XV.

2. A contracting party which is applying import restrictions under Article XII or under Section B of Article XVIII may, with the consent of the Contracting Parties, temporarily deviate from the provisions of Article XIII in respect of a small part of its external trade where the benefits to the contracting party or contracting parties concerned substantially outweigh any injury which may result to the trade of other contracting parties.

3. The provisions of Article XIII shall not preclude a group of territories having a common quota in the International Monetary Fund from applying against imports from other countries, but not among themselves, restrictions in accordance with the provisions of Article XII or of Section B of Article XVIII on condition that such restrictions are in all other respects consistent with the provisions of Article XIII.

4. A contracting party applying import restrictions under Article XII or under Section B of Article XVIII shall not be precluded by Articles XI to XV or Section B of Article XVIII of this Agreement from applying measures to direct its exports in such a manner as to increase its earnings of currencies which it can use without deviation from the provisions of Article XIII.

5. A contracting party shall not be precluded by Articles XI to XV, inclusive, or by Section B of Article XVIII, of this Agreement from applying quantitative restrictions:

(a) having equivalent effect to exchange restrictions authorized under Section 3(b) of Article VII of the Articles of Agreement of the International Monetary Fund, or

(b) under the preferential arrangements provided for in Annex A of this Agreement, pending the outcome of the negotiations referred to therein.

Article XVI

SUBSIDIES

Section A—Subsidies in General

1. If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the Contracting Parties in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the Contracting Parties, the possibility of limiting the subsidization.

Section B—Additional Provisions on Export Subsidies

2. The contracting parties recognize that the granting by a contracting party of a subsidy on the export of any product may have harmful effects for other contracting parties, both importing and exporting, may cause undue disturbance to their normal commercial interests, and may hinder the achievement of the objectives of this Agreement.

3. Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product.

4. Further, as from 1 January 1958 or the earliest practicable date thereafter, contracting parties shall cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market. Until 31 December 1957 no contracting party shall extend the scope of any such subsidization beyond that existing on 1 January 1955 by the introduction of new, or the extension of existing, subsidies.

5. The Contracting Parties shall review the operation of the provisions of this Article from time to time with a view to examining its effectiveness, in the light of actual experience, in promoting the objectives of this Agreement and avoiding subsidization seriously prejudicial to the trade or interests of contracting parties.

Article XXIV

TERRITORIAL APPLICATION—FRONTIER TRAFFIC—CUSTOMS UNIONS AND FREE-TRADE AREAS

1. The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a contracting party; *Provided* that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application by a single contracting party.

2. For the purposes of this Agreement a customs territory shall be understood to mean any territory with respect to which separate

tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.

3. The provisions of this Agreement shall not be construed to prevent:

(a) advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic;

(b) advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; *Provided* that:

(a) with respect to a customs union, or an interim agreement leading to the formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(b) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement, as the case may be; and

(c) any interim agreement referred to in sub-paragraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

6. If, in fulfilling the requirements of sub-paragraph 5(a), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reductions brought about in the corresponding duty of the other constituents of the union.

7. (a) Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation

of such a union or area, shall promptly notify the Contracting Parties and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

(b) If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of sub-paragraph (a), the Contracting Parties find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the Contracting Parties shall make recommendations to the parties to the agreement. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.

(c) Any substantial change in the plan or schedule referred to in paragraph 5 (c) shall be communicated to the Contracting Parties, which may request the contracting parties concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

8. For the purposes of this Agreement:

(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

(b) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

9. The preferences referred to in paragraph 2 of Article I shall not be affected by the formation of a customs union or a of free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected. This procedure of negotiations with affected contracting parties shall, in particular, apply to the elimination of preferences required to conform with the provisions of paragraph 8 (a) (i) and paragraph 8 (b).

10. The contracting parties may by a two-thirds majority approve proposals which do not full comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

11. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognizing the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.

12. Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territory.

Article XXX

AMENDMENTS

1. Except where provision for modification is made elsewhere in this Agreement, amendments to the provisions of Part I of this Agreement or to the provisions of Article XXIX or of this Article shall become effective upon acceptance by all the contracting parties, and other amendments to this Agreement shall become effective, in respect of those contracting parties which accept them, upon acceptance by two-thirds of the contracting parties and thereafter for each other contracting party upon acceptance by it.

2. Any contracting party accepting an amendment to this Agreement shall deposit an instrument of acceptance with the Secretary-General of the United Nations within such period as the Contracting Parties may specify. The Contracting Parties may decide that any amendment made effective under this Article is of such a nature that any contracting party which has not accepted it within a period specified by the Contracting Parties shall be free to withdraw from this Agreement, or to remain a contracting party with the consent of the Contracting Parties.

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