

GENERAL AGREEMENT ON
TARIFFS AND TRADE

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Working Party on Procedures for Tariff Reduction

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UNITED STATES TRADE EXPANSION ACT 1962

The attached notes on the United States Trade Expansion Act 1962 have been prepared on the basis of a paper submitted by the United States delegation.

It is suggested that any requests for additional information or for clarification of the information contained in this document might be submitted to the secretariat which would seek such information or clarification from the United States delegation. This procedure is suggested as a means of ensuring that the Working Party as a whole is kept informed of any additional information supplied. It is not the intention to limit discussion in the Working Party.

I. Introduction

The Trade Expansion Act of 1962 was signed into law on October 11, 1962. It confers upon the President of the United States broad authority to enter into trade agreements for the reciprocal reduction of tariffs. In the course of consideration of this legislation by the United States Congress, the Administration made clear its expectation that the principal use of this authority would be in a new round of multilateral tariff negotiations in the GATT. These notes on the new United States legislation have been prepared for the information of the GATT Working Party on Tariff Reductions. Accordingly, the emphasis is on the provisions of the Act which deal with the authority to enter into trade agreements and on the related safeguarding provisions. The features of the Act which primarily concern such essentially domestic matters as adjustment assistance for firms and workers are dealt with only briefly.

II. Purposes of the Act

The purposes of the Act are, inter alia through trade agreements affording mutual trade benefits, to stimulate the economic growth of the United States and maintain and enlarge foreign markets for American products, to strengthen economic relations with foreign countries through the development of open and non-discriminatory trading.

III. Form of the Act

The Act grants authority to the President which can be generally divided into three major subjects:

- (1) the authority to enter into trade agreements;
- (2) the authority to proclaim changes in the tariff treatment of articles in order to carry out such trade agreements; and
- (3) the authority to assist industries, firms and workers who may be seriously injured by reason of increased imports resulting from trade agreement concessions.

The major subjects may in turn be subdivided in terms of limitations, conditions and safeguards applicable to the grants of authority.

IV. Authority to Enter into Trade Agreements

The Act authorizes the President to enter into trade agreements with foreign countries or instrumentalities thereof during the period from July 1, 1962 through June 30, 1967 whenever he determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that any of the purposes of the Act will be thereby promoted. This provision permits the conclusion of an agreement as late as June 30, 1967, even if it is not proclaimed and put into effect until after that date.

V. Authority to Modify Import Restrictions

The President is authorized, within specified limits and pursuant to prescribed procedures, described below, to make changes in the import restrictions of the United States which are required or appropriate to carry out any trade agreement entered into by him under this Act.

A. Basic Authority - The basic authority in the Act permits the President to (a) decrease by 50 percent any rate of duty existing on July 1, 1962 or (b) increase by 50 percent any rate of duty existing on July 1, 1934. The basic grant of authority also permits the modification of existing import restrictions other than duties, and the imposition of additional import restrictions (e.g. quotas).

The phrase "existing on July 1, 1962", as applied to a rate of duty in the Act, is defined as meaning the lowest nonpreferential rate of duty existing on such date or (if lower) the lowest nonpreferential rate to which the United States is committed on such date and which may be proclaimed under section 350 of the Tariff Act of 1930. Thus, the reduced rates to which the United States is committed as a result of concessions made in the Dillon Round prior to July 1, 1962 are considered for purposes of the Act as "existing on July 1, 1962" even though the reduced rates had not come into effect on that date.

B. Special Authority for Negotiations with the EEC - In a trade agreement with the EEC, the President is authorized to exceed the basic 50 percent limitation on the tariff reduction authority and to reduce tariffs to zero on industrial products within categories of which the United States and the EEC together account for 80 percent or more of aggregated world export value in a representative period. Intra-EEC trade and the trade of certain specified countries are excluded from the trade data in determining "aggregated world export value".

The Act directs the President, after taking into account the availability of trade statistics, to select a system of comprehensive classification of articles by category, and make public his selection of such system. It is anticipated that the system to be selected will be the 3-digit grouping under the Standard International Classification (SITC). After the President has announced his selection of a system, the Tariff Commission is to determine (in terms of U.S. tariff classification) the articles falling within each category of the system and make public its determinations.

For purposes of applying this authority, the EEC is to be regarded as made up of those members who, at the date of the President's request for findings with respect to any category of products, are agreed to achieve a common external tariff through the EEC. The determination of eligible categories is to be made on the basis of the "dominant supplier" position of the U.S. and the EEC in a representative period which must contain at least two one-year periods and must be included in the most recent 5-year period for which statistics are available. The period need not be the same for all categories under consideration.

The basic 50 per cent limitation on tariff reductions may also be exceeded with respect to agricultural commodities (i.e. commodities referred to in U.S. Department of Agriculture Handbook No. 143) in a trade agreement with the EEC if, before entering into the agreement, the President determines that the agreement will tend to assure the maintenance or expansion of U.S. exports of the like agricultural commodity.

C. Special Authority for Tropical Agricultural and Forest Commodities - This authority permits the President to exceed the 50 per cent limitation on the tariff reduction authority and to reduce tariffs to zero on any tropical agricultural or forestry commodity (defined as a commodity principally produced between the 20 degree latitude lines) provided the commodity is not produced in significant quantities in the U.S. and provided the EEC has made a commitment on the substantially non-discriminatory basis with respect to import treatment (tariff or other import restrictions) of the commodity which is likely to assure access to the markets of the EEC countries comparable to that which the article will have in U.S. markets. This authority applies to unprocessed commodities and those commodities which have undergone only such minimum processing as is customarily required to prepare them for marketing in substantial volume in international trade.

D. Low Duty Authority - This authority permits the President to exceed the 50 per cent limitation on the tariff reduction authority and to reduce tariffs to zero on products which are dutiable at a rate of not more than five per cent ad valorem or at a specific or compound rate of which the ad valorem equivalent is not more than five per cent.

E. Limitations on Use of Authority

1. Reservation of Articles from Tariff Negotiations

The Act provides that, under specified conditions, articles on which a serious injury finding has been made by the Tariff Commission in an escape clause case are to be reserved from negotiations for the reduction of any duty or other import restriction or the elimination of any duty. The President may also reserve any other articles he deems appropriate. The conditions under which he must reserve articles are as follows:

(a) Articles on which Action is in Effect - Articles must be reserved so long as there is in effect any action taken under the escape clause of previous legislation (section 7 of the Trade Agreements Extension Act of 1951) or under the new Act. In the latter case the article must be reserved whether the action in effect is an increased tariff or other import restriction imposed under section 351 or an orderly marketing agreement negotiated in accordance with section 352. (Articles on which action is in effect under the national security provision of previous legislation or the new Act must also be excluded from such negotiations.) As of February 15, 1963, the articles which would be reserved under this provision are the following:

- Dried figs
- Watches
- Toweling of flax, hemp or ramie
- Safety pins
- Clinical thermometers
- Lead and zinc
- Stainless steel table flatware
- Cotton typewriter-ribbon cloth
- Sheet glass
- Certain carpets and rugs
- Crude petroleum and derivatives

Except for petroleum, on which action is in effect under the national security provision, all other articles listed above are presently subject to escape clause action.

If and when the existing restriction on any of the articles listed above is terminated, the article may be treated, for purposes of utilizing the tariff reduction authority of the Act, on exactly the same footing as an article on which there had never been an adverse finding. Such an article thus would not become subject to the provision outlined in the immediately following paragraph.

(b) Articles on which Action is not in Effect - During the five-year period beginning on the date of enactment of the new Act, any article (other than those listed above) on which the Tariff Commission made a serious injury finding under the escape clause of the 1951 Act must be reserved if the article is listed for trade agreement consideration and the Tariff Commission finds on application by the interested industry that economic conditions in that industry have not substantially improved since the basic escape clause finding. The following are the only articles on which applications for reservation could be made to the Tariff Commission by the interested industries under this provision if the articles were listed for trade agreement consideration:

Hatters' fur
Garlic
Tobacco pipes and bowls
Screen-printed silk scarves
Scissors and shears
Groundfish fillets
Alsike clover seed
Bicycles
Ferrocerium (lighter flints)
Velveteen fabrics
Violins and violas
Straight pins
Spring clothespins
Umbrella frames
Tartaric acid
Cream of tartar
Baseball and softball gloves
Ceramic mosaic tile

2. National Security Provisions - The Act repeats practically verbatim the provision of previous trade agreements legislation relating to national security. Under this provision no action is to be taken reducing or eliminating tariffs when the President determines that such action would threaten to impair the national security. In addition, the President is required to take action to adjust imports of an article or its derivatives when he concurs in the advice of the Director of the Office of Emergency Planning, following an investigation, that imports threaten to impair the national security.

3. Staging Requirements - Tariff reductions made under the Act are in general to take effect in not less than five equal annual installments. They may take effect in unequal intervals and amounts provided that the sum of reductions at any one time does not exceed

what would occur under five equal installments. No staging is required for reductions or eliminations of duties made under the tropical products authority.

VI. Procedures and Safeguards Applicable to Trade Agreement Negotiations

A. Tariff Commission Advice Prior to Negotiations - The Act requires the Tariff Commission to advise the President as to the probable economic effect of any proposed trade agreement concession on any article. The President is required to furnish the Tariff Commission with a list of all articles on which he contemplates negotiating and the Commission is required within six months thereafter to render its advice. The Tariff Commission is required to hold hearings in the course of its investigations and to give all interested persons an opportunity to present their views. The executive order on the administration of the Act specifies that such advice of the Tariff Commission shall not be released or disclosed in any manner or to any extent not specifically authorized by the President or by the Special Representative.

B. Other Advice -- Before entering into any trade agreement under the Act, the President is required to seek information and advice from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and Treasury and from such other sources as he may deem appropriate. He is also required to afford an opportunity for any interested person to present his views on any matter relevant to the proposed trade agreement. For this purpose the President is required to designate an agency or interagency committee which after reasonable public notice is to hold the hearings.

C. Prerequisites for Offers - The President may make an offer of a tariff concession in a trade agreement with respect to any article only after he has received (1) the Tariff Commission's advice concerning the article, or after the expiration of the relevant six month period provided for rendering such advice, whichever occurs first; and (2) a summary of the hearings held by the interagency committee.

D. Negotiating Procedures - The Act contains no provisions specifying procedures for negotiating trade agreements utilizing the authority of the Act. However, in developing acceptable procedures it would, of course, be necessary to take into account the provisions of the Act relating to the amount of tariff reduction authority granted to the President under the Act, the requirements for reservation of articles from negotiations, and other provisions relevant to the utilization of the authority.

VII. General Provisions Relating to Trade Agreements

A. Special Representative for Trade Negotiations - The Act provides for the appointment by the President, with the advice and consent

of the Senate, of a Special Representative for Trade Negotiations who is to be the chief United States representative for each trade agreement negotiation. The Special Representative has Ambassadorial rank and is chairman of the interagency trade organization referred to below. In the performance of his functions the Special Representative is directed to seek information and advice from representatives of industry, agriculture and labor and from such agencies as he deem appropriate. Mr. Christian A. Herter, formerly Secretary of State, has been named to this position.

B. Interagency Trade Organization - The Act provides for the establishment of an interagency trade organization at Cabinet level. This organization, which has been established as the Trade Expansion Act Advisory Committee, will make recommendations to the President on basic policy issues arising in the administration of the trade agreements program; make recommendations as to what action the President should take on Tariff Commission advice in escape clause cases; advise the President of the results of hearings which it is required to hold concerning unjustifiable and unreasonable foreign import restrictions and recommend appropriate action with respect thereto; and perform such other functions with respect to the trade agreements program as the President may designate.

C. Congressional Delegates to Tariff Negotiations - Two members of the House and two members of the Senate are to be accredited to United States Delegations conducting tariff negotiations under the Act.

D. Reports to Congress - The President is required to transmit promptly to the Congress a copy of each trade agreement entered into together under the Act, with a statement of his reasons for entering into the agreement in light of the advice of the Tariff Commission (see section VI A above) and other relevant considerations. Annual reports on the operation of the trade agreements program are to be submitted to the Congress by the President and by the Tariff Commission.

E. Most-Favored-Nation Principle - The Act continues existing policy of extending to products of all countries (with certain exceptions) the duties and other import restrictions proclaimed under the Act or under previous legislation. The principal exceptions to this general rule are:

1. Products from certain specified Countries - The President is required, as soon as practicable, to deny the benefits of trade agreement concessions to products, whether imported directly or indirectly, from certain specified countries.

2. Foreign Import Restrictions - The Act contains several provisions to strengthen the hand of the President in dealing with unjustifiable and unreasonable foreign import restrictions.

First, it directs him to take all appropriate and feasible steps within his power to eliminate any unjustifiable, i.e. illegal, import restrictions which impair the value of tariff commitments made to the United States, oppress U.S. commerce, or prevent the expansion of trade on a mutually advantageous basis. The President may not negotiate the reduction or elimination of any U.S. import restrictions under the Act in order to obtain the relaxation or removal of any such unjustifiable restriction.

Second, the President is directed, notwithstanding any provision of any trade agreement under the new Act, and to the extent he deems necessary and appropriate, to impose duties or other import restrictions on the products of any country which establishes or maintains unjustifiable import restrictions against United States agricultural products when he considers such action against the products of the foreign country necessary and appropriate to obtain relaxation of the foreign restriction and to provide equitable access for United States agricultural products in the foreign market.

Third, the President is required, to the extent such action is consistent with the purposes stated in the Act, to deny the benefits of existing trade agreement concessions or to refrain from proclaiming the benefits of any new concession to any foreign country or instrumentality which: (a) maintains non-tariff trade restrictions including variable import fees which substantially burden United States commerce in a manner inconsistent with trade agreements, or (b) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce.

Fourth, the President is authorized, to the extent that such action is consistent with the purposes stated in the Act and having due regard for the international obligations of the United States, to deny the benefits of existing trade agreement concessions or to refrain from proclaiming new concessions which would benefit a country maintaining unreasonable (though not necessarily illegal) import restrictions which either directly or indirectly substantially burden U.S. commerce.

VIII. Tariff Adjustment and Other Adjustment Assistance

The Act authorizes the provision of assistance to industry, firms or workers, as the case may be, upon a finding by the Tariff Commission that, as a result in major part of concessions granted under trade agreements, an article is being imported into the United States in such

increased quantities as to be the major factor in causing or threatening serious injury to the industry, firm or workers producing a like or directly competitive article. All petitions for investigation to determine eligibility for assistance are to be filed with the Tariff Commission.

A. Determinations of Injury to Industries - Upon receipt of a petition on behalf of an industry for tariff adjustment, the Tariff Commission must conduct an industry-wide investigation to determine whether serious injury to the industry is occurring or is threatened. In the course of such investigation the Commission must hold public hearings. In making its determination, the Tariff Commission is required to take into account all economic factors which it considers relevant, including: (a) idling of productive facilities, (b) inability to operate at a level of reasonable profit, and (c) unemployment or underemployment. The Commission's report to the President is to be made not later than six months after the filing of the petition. If the Commission should find serious injury or threat thereof, it is to advise the President in its report of the amount of the increase in or imposition of any duty or other import restriction on the article which is necessary to prevent or remedy the injury.

B. Action by the President after a Serious Injury Finding as to an Industry - The President may take any of the following actions after receiving a report from the Tariff Commission containing a finding that, as a result in major part of concessions granted under trade agreements, an article is being imported into the United States in such increased quantities as to be the major factor in causing or threatening serious injury to the domestic industry producing a like or directly competitive article:

1. Increased Import Restrictions - The President may proclaim increased duties or other import restrictions. The increased duty may not be more than 50 percent above the rate existing on July 1, 1934 (or if the article is dutiable but no rate existed on July 1, 1934, the rate existing at the time of the proclamation). In the case of an article not subject to duty, the rate imposed may not exceed 50 percent ad valorem. If the President does not concur in the Tariff Commission finding, he must report the reasons for his action to the Congress which may within 60 days cause the Tariff Commission finding to be put into effect by adopting a concurrent resolution by a vote of the majority of the authorized membership of each House.

2. Orderly Marketing Agreements - Whenever the President determines that such action would be more appropriate to prevent or remedy serious injury than would action under 1 above, he may negotiate international

agreements with foreign countries limiting their exports to the United States of the article causing or threatening serious injury. He may issue regulations governing the importation of the article into the United States from countries which are parties to the agreement and from other countries.

3. Adjustment Assistance - As an alternative to action under 1 or 2 or in combination with such action, the President may provide adjustment assistance to firms and workers in the industry concerned.

For firms determined to be eligible for adjustment assistance it may be provided in any or all of the following forms:

- (a) technical assistance;
- (b) financial assistance in the form of loans, guarantees of loans, or agreements for deferred participation in loans; and
- (c) tax assistance in the form of special carry-back of operating losses.

For eligible workers, the Act authorizes the following forms of assistance:

- (a) trade readjustment allowances in the form of compensation for partial or complete unemployment;
- (b) retraining of workers for other types of employment; and
- (c) relocation allowances to assist families in moving to an area where employment may be available.

(Note: In addition to authorizing adjustment assistance to firms and workers after a serious injury finding applicable to the entire industry of which they are a part, the Act also authorizes provision of such assistance (but not increased tariffs or quotas) where the finding of injury from imports is limited to the applicant firm or group of workers rather than applying to the industry as a whole.)

C. Termination or Extension of Escape Clause Action

1. Termination - Any increase in import restrictions proclaimed under the escape clause of the new Act or of previous legislation may be reduced or terminated by the President at any time when he determines, after taking into account the advice of the Tariff Commission and after seeking the advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest. Unless extended in accordance with the procedures outlined below, any action taken under the escape clause of previous legislation will terminate not later than five years after the date of enactment of the new Act, and any increase imposed under the escape clause of the new

Act will terminate not later than four years after the proclamation of the increase. The Tariff Commission is to make annual reports to the President concerning developments in any industry producing articles on which an escape clause restriction is in effect.

2. Extension - Any increase in import restrictions under the escape clause of the new Act or of previous legislation may be extended in whole or in part for such periods (not in excess of four years each) as the President may designate if he determines, after taking into account the advice of the Tariff Commission and after seeking the advice of the Secretary of Commerce and the Secretary of Labor, that such extension is in the national interest. The Tariff Commission may advise the President, either upon his request or upon its own motion, of the probable economic effect on the industry concerned of the reduction or termination of the increase in import restrictions. In addition, upon petition on behalf of the industry concerned, filed not earlier than nine months and not later than six months before a termination date under 1 above or an extension thereof, the Tariff Commission is to advise the President of its judgment as to the probable economic effect on the industry of such termination. In rendering its advice, the Tariff Commission is to conduct an investigation during the course of which it is to hold public hearings.