

November 20, 1985

**TRADE ENHANCEMENT ACT OF 1985****OVERVIEW**

The Trade Enhancement Act is a major bipartisan attempt to formulate a comprehensive approach to national trade policy and address major trade problems. It does so by setting out measures designed to ensure systematic enforcement of existing trade laws against foreign unfair practices; expand trade through market liberalization; promote meaningful adjustment by import-damaged industries to new competitive conditions; and address misalignment of the dollar, developing country debt, and disincentives to U. S. exports.

**SUMMARY OF THE LEGISLATION****Title I, Statement of National Trade Policy.**

**Title II, Unfair Foreign Trade Practices.** Title focuses on removing barriers to U. S. exports. Would require initiation of more cases against foreign barriers ("Section 301"); establish mandatory deadlines for retaliation against uncorrected violations (generally, 15 months); and expand the definition of unfair practices to include certain "targeting" policies.

**Title III, Serious Injury Due to Imports.** Title would expand the options available to the President for relief of domestic industries damaged by imports. Existing options of quotas, tariffs, or adjustment assistance would be expanded to include accelerated anti-dumping cases, multilateral agreements on excess capacity and depressed prices, limited antitrust exemptions, and financial assistance.

Title would encourage positive adjustment by domestic industries by limiting Presidential discretion in cases where ITC has approved an industry-labor adjustment plan. In such cases, the President would grant relief at least equivalent to that recommended by ITC unless Congress approves lesser relief or no relief.

**Title IV, New Trade Round Authority.** Title establishes specific congressional objectives for a new round of trade negotiations; extends for five years authority for "fast-track" consideration of trade agreements; provides that fast-track consideration of proposed agreements be approved by the Senate Finance and House Ways and Means Committees. (Fast-track authority provides for up-or-down vote within 90 days, without amendment, on act implementing a trade agreement.)

**Title V, Exchange Rates, Developing Country Debt.** Title commits U. S. to coordination of monetary and fiscal policies with the G-5 nations (Britain, Federal Republic of Germany, Japan, France) and to coordination of central bank participation in currency markets. Requires President to open negotiations with G-5 nations within six months on functions of international monetary system and to enhance coordination of national economic policies. Establishes Strategic Exchange Reserve for Treasury, Federal Reserve interventions.

Title makes additional financing available to developing nations through increases in loan guarantee authority of Ex-Im Bank and World Bank loan leverage, at no additional budgetary cost to U. S. Additional funds would be conditioned on developing country removal of trade barriers.

**Title VI, Generalized System of Preferences (GSP).** Title reforms GSP eligibility provisions, requires that advanced developing countries (such as Hong Kong, Korea, Taiwan) be graduated from GSP within two years. Graduation will be based on per capita income and export capability.

**Title VII, Non-market Economy Dumping.** Title sets up a mechanism to combat "dumping" by non-market economies and defines NME dumping on the basis of the average U. S. import price.

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**Trade Enhancement Act**  
**First, last add**

**Title VIII, Intellectual Property Rights.** This title liberalizes standards for complaints of infringement on patents, trademarks and copyrights, strengthens penalties for violation of intellectual property rights by other nations, expands patent law protection available to agricultural chemicals and holders of process patents.

**Title IX, Export Expansion.** This title authorizes a \$300 million "war chest" sought by the President to counter foreign export credit subsidies; revises Foreign Corrupt Practices Act on terms previously approved by Senate; increases ambassadorial and Foreign Commercial Service responsibilities to assist U. S. exporters; expands data collection, dissemination programs of Commerce Department.

**Title X, National Security Revisions.** Sets 90-day deadline for action by President on Commerce Secretary's recommendations in Section 232 cases (imports threatening national security). Secretary's recommendation takes effect in the absence of action by President.

**Attachment: Outline, Trade Enhancement Act**

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TRADE ENHANCEMENT ACT OF 1985

Outline of Legislation

- (\*) I. Statement of National Trade Policy
- (\*) II. Measures to Eliminate Barriers and Distortions (301)
- (\*) III. Section 201 Reform (Revive Escape Clause)
- (\*) IIIa. Threat of Injury (201/301 Admts. Related to Targeting)
- (\*) IV. New Round Authority (Linked to Negotiating Objectives)
- (\*) V. Measures Related to Exchange Rates and Debt
  - Chapter 1 -- Exchange Rates
  - Chapter 2 -- LDC Debt
- (\*) VI. GSP Graduation
- (\*) VII. Non-Market Economy Dumping
- VIII. Intellectual Property Rights
  - (\*) Chapter 1 -- Amendments to Section 337
  - Chapter 2 -- Amendments to Other Statutes
- IX. Export-Related Measures
  - Chapter 1 -- Export Credit Subsidy "War Chest"
  - Chapter 2 -- Amendments to FCPA
  - (\*) Chapter 3 -- Export Promotion Measures
- (\*) X. Revision of Section 232/National Security Measures
  - \* -- Introduced as SEPARATE bill (as well as part of overall)

Summary of Titles, Trade Enhancement Act

**I. STATEMENT OF NATIONAL TRADE POLICY**

**II. FOREIGN BARRIERS TO U. S. EXPORTS**

Amendments to Sections 181/301 of the Trade Act of 1974:

1. Require annual self-initiation of several Section 301 cases based on National Trade Estimates inventory of foreign barriers. Cases should focus on the most onerous foreign barriers and represent a substantial amount of U. S. trade.

2. Transfer Section 301 authority to USTR to enhance leverage of negotiators and depoliticize self-initiation.

3. Require retaliation in 15-18 months for all Section 301 cases in the absence of

(a) a GATT ruling against the U. S.;

(b) a settlement to offset or eliminate the barrier; or

(c) a subsequent USTR determination that the barrier is not actionable under Section 301.

4. USTR is authorized to terminate or modify the retaliation (and, if necessary, provide compensation) if

(a) the GATT subsequently finds it to be a violation of U. S. obligations; or

(b) the foreign practice is subsequently eliminated or reduced.

[\*\*5. Add to Section 301 causes of action relating to "targeting" including anti-competitive practices; infant industry protection; export subsidies to third markets; diversion of trade into the U. S. market; or combinations thereof. Foreign practices that threaten to burden or restrict U. S. commerce in the future would also be actionable.\*\*]

6. Add retaliatory options including withdrawal of Generalized System of Preferences (GSP) benefits and offsetting settlements (that satisfy the petitioner and the affected industry.)

7. Require automatic termination of any retaliatory measure after 7 years unless the petitioner objects. If the petitioner wants retaliation continued, the USTR could substitute a new measure to (a) increase the pressure on the foreign country or (b) relieve the consumer impact of the old measure.

**III. ESCAPE CLAUSE**

Amendments to Section 201 of the Trade Act of 1974:

1. Enhance presidential (as opposed to International Trade Commission) remedy options beyond tariffs, quotas and trade adjustment assistance (TAA) to include:

-- limited anti-trust exemptions

-- multilateral solutions (eg, to deal with world excess capacity/depressed commodity prices, targeting, etc.)

- accelerated anti-dumping/countervailing duty cases
- fast-track financial/other assistance

[\*\*2. Enhance "threat of injury" language to deal with targeting and targeted imports.\*\*]

3. Provide petitioners with the option of developing an adjustment plan (to be agreed between labor and management, with government acting in an advisory capacity).

4. In addition to an injury determination and remedy recommendation, the ITC would have to determine whether the adjustment plan could reasonably be expected to result in sufficient adjustment by the industry to be competitive (in the absence of import relief) at the end of the relief period. If the ITC so determines, the President's discretion on provision of relief would be limited, whereby

-- the President would have to provide relief recommended by the ITC or relief substantially equivalent to it (in the form of tariffs, quotas or TAA) unless

-- he gets fast-track Congressional approval for a remedy less than that recommended by the ITC -- including no remedy. (Congress would act on the President's proposal within 60 days. If Congress does not approve his proposal, the ITC remedy would go into effect.)

5. If the ITC finds "no injury" or determines that the adjustment plan is inadequate (all interested parties, including government, would be permitted to comment on the plan), the President could provide or decline to provide import relief, as under current law.

6. If the industry is found by the President not to be in compliance with adjustment plan commitments, he may withdraw import relief at any time.

#### IIIa. THREAT OF INJURY FROM FOREIGN TARGETING PRACTICES

- A. Amendments to Section 301 marked [\*\*] on Page 2
- B. Amendments to Section 201 marked [\*\*] on Page 3

#### IV. AUTHORITY FOR A NEW ROUND OF TRADE NEGOTIATIONS

A. Authority for 5 years, beginning January 1988, for the President to use legislative fast-track procedures to implement multilateral or bilateral tariff and non-tariff trade agreements.

B. Specific Negotiating Objectives (related primarily to reform of General Agreement on Tariffs and Trade):

1. Revise GATT dispute settlement process to ensure faster and more decisive settlements (including key recommendations from recent GATT advisory panel)

2. Eliminate agricultural export subsidies

3. Define and discipline negative trade effects of certain practices not covered by GATT, including natural resource subsidies, targeting, upstream subsidies and downstream dumping

4. Extend GATT rules to cover services, investment, intellectual property rights and expand coverage of Government Procurement Code

6. Revise GATT Balance of Payments Article to better reflect floating exchange rate system
  7. Provide for accelerated implementation of trade concessions by countries with major trade surpluses
  8. Enhance transparency of trade barriers under GATT through substitution of tariffs for quantitative restrictions ("retariffication")
  9. Increase GATT coordination with the International Monetary Fund (IMF) and the World Bank in their dealings with developing country debtors
  10. Establish minimum standards for the workplace to prevent abuses of human rights of workers
- C. Require the President to get permission from the Finance and Ways and Means Committees prior to use of fast-track legislative implementing authority. Committee approval would be based on the extent to which the negotiating objectives had been achieved in agreements or in proposed implementing legislation.

D. Consultations:

1. Provisions similar to those in the Trade Act of 1974 requiring consultations with Congressional advisors and private sector advisory committees; public hearings and advice from the ITC.
2. In addition, the USTR would be required to brief interested members of Congress on an annual basis during the negotiations on
  - progress/prospects for achieving specific negotiating objectives, and
  - demands of other countries on the U. S. (related to the achievement of U. S. objectives).

V. EXCHANGE RATE MANDATE/LDC DEBT

Chapter 1 -- Exchange Rates

A. Statement of U. S. Policy, including

- Coordination of monetary and fiscal policies with the objectives of eliminating imbalances in trade and capital flows and stabilizing exchange rates, and
- Coordination of central bank participation in international currency markets.

B. Require the President, within 6 months of enactment, to enter into negotiations:

- (With G-5 countries) To improve the functioning of the international monetary system in light of the Congressional policy statement;
- To enhance the role of the G-5 to coordinate fiscal and monetary policies to provide for policies that converge on money growth, inflation, fiscal policy and other economic factors; and
- To achieve reciprocal investment opportunities.

C. Provide for the establishment of a Strategic Exch Reserve for the Treasury and Federal Reserve to moder exchange rate fluctuations.

## Chapter 2 -- Developing Country (LDC) Debt

A. Make additional funds available for LDC debtor nations conditioned on their removal of trade and investment barriers and the development of private sector growth. Funding would be made available at no budgetary cost to the U. S. through:

- increased Ex-Im Bank loan guarantee authority and
- additional leveraging for World Bank loans (without an increase in subscription by Members)

B. Negotiate termination of the IMF Compensatory Financing Facility, transferring its assets to the Fund's general resources.

C. Provide for negotiations through the Organization for Economic Cooperation and Development (OECD) and the multilateral development banks to eliminate official financing for new mining or production facilities for commodities in oversupply.

## VI. GENERALIZED SYSTEM OF PREFERENCES (GSP) GRADUATION

A. Require the President to establish criteria for graduation of advanced developing countries (such as Hong Kong, Korea and Taiwan) from the GSP program within 90 days of enactment.

B. Criteria is to be based on considerations such as per capita income and demonstrated export capability (in the absence of preferential tariff treatment.)

C. Require such countries to be graduated from GSP within 2 years of enactment.

## VII. NONMARKET ECONOMY DUMPING

-- Establish anti-dumping standard for NMEs based on average U. S. import price.

## VIII. INTELLECTUAL PROPERTY RIGHTS

### Chapter 1 -- Amendments to Section 337

- Remove injury test from cases under Section 337;
- Allow owner of intellectual property right to meet definition of "industry";
- Enhance penalties for violations of intellectual property rights.

### Chapter 2 -- Amendments to Other Statutes

- Extend patent term for agricultural chemicals /
- Provide protection against infringement of pr patents in U. S. courts (S.1543).

**IX. EXPORT-RELATED MEASURES**

**Chapter 1 -- President's \$300 million export credit "war chest" (S.1763).**

**Chapter 2 -- Revisions to the Foreign Corrupt Practices Act (from legislation previously approved by the Senate, S. 430)**

**Chapter 3 -- Other Export Related Measures**

-- Strengthen Foreign Commercial Service and role of Ambassadors in U. S. export activities;

-- Require trade impact statements for legislation and major regulatory agency and Executive Branch decisions that might affect U. S. trade competitiveness;

-- Improve collection and dissemination of information and data related to trade within the Department of Commerce.

**X. NATIONAL SECURITY/REVISIONS TO SECTION 232**

A. Place 90-day limit on the President to act on the Secretary of Commerce's recommendation in these cases. If the President does not act, the Commerce recommendation would take effect after 90 days.

B. Transition rule would require immediate action on cases that have been awaiting a presidential decision for more than 90 days.