

EXTENDING THE AUTHORITY OF THE PRESIDENT UNDER SECTION 350 OF THE TARIFF ACT OF 1930, AS AMENDED

MARCH 8 (legislative day, MARCH 4), 1940.—Ordered to be printed

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

REPORT

[To accompany H. J. Res 407]

The Committee on Finance, to whom was referred the joint resolution (H. J. Res. 407) to extend the authority of the President under section 350 of the Tariff Act of 1930, as amended, having considered the same, report favorably thereon without amendment and recommend that the joint resolution do pass.

TESTIMONY ON OPERATION OF TRADE AGREEMENTS ACT

The committee has heard the testimony of numerous witnesses relating to the manner in which the Trade Agreements Act has been administered during the past 5½ years and the effect of the agreements on various domestic interests. It has also had before it the extensive record on this subject of the hearings held by the Ways and Means Committee of the House of Representatives. The voluminous testimony leaves the committee with the clear conviction that the authority delegated to the Executive by this act has been carefully and painstakingly administered with due regard not only to the national interest as a whole but also to the particular interests immediately affected. Striking testimony to this effect was offered by W. L. Monroe, president of the American Tariff League, who, although critical of the program, said, in his 1938 annual report:

I will also stress the fact that, in carrying out the trade-agreement policy by Mr. Hull, great credit should be given to the fact that there has been no suspicion of political influence regarding the reduction of duties on any of the articles placed on the reciprocal-trade list. I believe that everyone who has had occasion to contact the staff that makes up the schedules must admit that, regardless of whether we approve of the policy or not, the agreements were prepared solely with a viewpoint of endeavoring to increase foreign trade with the least injury to domestic production.

On March 5, 1940, appearing before this committee, Mr. Monro reaffirmed this opinion.

It is unnecessary to summarize in detail the voluminous testimony presented before the committee and before the Ways and Means Committee of the House. The report of the Ways and Means Committee analyzes the most important aspects of the testimony before that committee on the merits of this legislation.

Let us recall briefly the background against which the trade-agreements program was enacted by the Congress 6 years ago, and the improvement which has taken place since that time.

Between 1929 and 1932 our national income had dropped from 80.8 to 39.5 billion dollars. Between 1934 and 1939 it had increased from 50.6 to 70 billion dollars.

Cash farm income, which had amounted to 11.2 billion dollars in 1929, had dropped to the low level of 4.7 billions in 1932; in 1934 had increased to 6.3 billions; and by 1939 had recovered to 7.7 billions, excluding benefit payments.

The wages and salaries in manufacturing industries, which had been 15.8 billion dollars in 1929, dropped to 7.4 billions in 1932; had risen to 9.3 billions in 1934; and had increased further to 12.6 billion dollars in 1939.

Nonagricultural employment, which had engaged 36.2 million persons in 1929, had fallen to 27.8 millions in 1932; 30.3 million persons were employed in nonagricultural pursuits in 1934 and employment recovered to a level of 33.7 million persons in 1939.

Between 1929 and 1932 our exports declined from 5.2 to 1.6 billion dollars. This loss of more than 3½ billion dollars of export business accentuated the difficulties which marked those years. The adoption of the Trade Agreements Act was one part of the program adopted to cope with the problems of that emergency. By 1939 our exports, which in 1934 amounted to 2.1 billions, had recovered to a level of 3.2 billion dollars.

To show the role the trade agreements have played in this improvement in our export trade, there is included herein a table taken from Commerce Reports of February 17, 1940, showing trade with agreement and nonagreement countries. As shown by this table, exports to trade-agreement countries increased by 62.8 percent whereas those to nonagreement countries improved by only 31.7 percent.

Between 1929 and 1932 there was also a pronounced decline in our imports. Entries from abroad, which had amounted to 4.3 billion dollars in 1929, were only 1.4 billions in 1932 and 1.6 billions in 1934. In the years since the trade-agreements program has been in effect imports have increased, and in 1939 amounted to 2.3 billion dollars. This increase made possible in part the additional purchasing power required to finance our expanding export trade. As shown by the table, the increase in imports from agreement countries amounted to 21.6 percent, compared with that for other countries of only 12.5 percent.

United States trade with trade-agreement countries and with all other countries
1939 compared with 1938, and 1938-39 compared with 1934-35

(Values in millions of dollars)

Items	Comparison of 1939 with 1938				Comparison of 1938-39 with 1934-35			
	1938 value	1939 value	Change		1934-35 average value	1938-39 average value	Change	
			Value	Percent			Value	Percent
<i>Exports, including reexports</i>								
Total, trade-agreement countries	1,758	1,901	+142	+8.1	767	1,232	+475	+62.8
Total, nonagreement countries	1,326	1,277	-59	-4.5	992	1,806	+314	+31.7
Total, all countries	3,084	3,177	+93	+2.7	2,268	2,136	+923	+42.0
<i>General imports</i>								
Total, trade-agreement countries	1,155	1,387	+233	+20.1	774	942	+168	+21.6
Total, nonagreement countries	806	931	+125	+15.6	772	868	+97	+12.6
Total, all countries	1,960	2,318	+358	+18.3	1,851	2,139	+288	+15.6

¹ Including the 18 countries (and colonies) with which agreements were in operation during the greater part of the last 12 months. Only 1 of the agreements was in operation throughout 1935, 6 throughout 1936, 14 by the end of 1936, 16 by the end of 1937, 17 by the end of 1938, and 15 by the end of 1939, including the agreement with the United Kingdom (covering also Newfoundland and the non-self-governing British Colonies). The agreement concluded with Turkey became provisionally effective only on May 5, 1939, and the agreement with Venezuela only on Dec. 16, 1939. Statistics for these countries are therefore not included in the above calculations.

² These figures do not include Ecuador, the United Kingdom, Newfoundland, and non-self-governing British Colonies, Turkey, and Venezuela with which agreements have been concluded but where the period during which the agreement has been in effect is too short to justify inclusion for purposes of comparison.

³ The apparent discrepancy shown by these figures in comparison with the other totals is due to the non-inclusion of trade with Ecuador and the United Kingdom and its Crown colonies.

GENERAL NOTE.—Percentage changes have been calculated upon fuller figures in thousands of dollars. Source: Latest records of Division of Foreign Trade Statistics, Bureau of Foreign and Domestic Commerce.

Reviewing the testimony as a whole, the most striking feature is that the trade-agreements program has accomplished highly beneficial results in the face of trying and discouraging conditions. The record of nearly 6 years' experience with the program shows that reciprocal trade agreements have been negotiated with 21 countries, accounting for about 60 percent of our foreign trade. In these agreements concessions have been obtained on thousands of separate tariff items, providing improved outlets for hundreds of American agricultural and industrial products. The agreements have in addition safeguarded a large amount of our export trade from the further inroads of trade barriers and discriminations.

In view of the period of time that this act has been in effect, and the scope of the action taken under its authority, it is highly significant that in the course of the hearings before this committee and before the Ways and Means Committee very few witnesses claimed that actual injury had resulted from the agreements. Most of the witnesses appearing in opposition to the program based their opposition not on any claim of injury suffered in the past, but on the apprehension that injury might be suffered in the future. No convincing evidence was presented in support of the relatively few claims that injury has resulted from the agreements. The care with which this authority has been exercised in the past is the surest guaranty against injury in the future. Moreover, the committee is convinced that the "escape" clauses of the agreements themselves provide ample flexibility for dealing with such contingencies as may occur.

PUBLIC SUPPORT OF THE PROGRAM

This program has stood up under the most critical examination in the course of the extended hearings. More than that, it has had perhaps the most widespread approval throughout the country which any important piece of tariff legislation has ever enjoyed. Evidence of this is found in the overwhelming support by the newspapers of the country. Some of the strongest support for this program has come from Republican and independent papers. The same nonpartisan support is found in the polls of public opinion and the almost unanimous endorsement given the program by economists from all sections of the country and by many important national organizations.

NO FEASIBLE ALTERNATIVE SUGGESTED

A further striking feature of the current discussion of this legislation is the absence of any suggestions as to feasible alternatives on the part of those who oppose it. Many opponents of the trade agreements agree that the Nation cannot dispense with a foreign-trade program of some kind. However, most of the opposition witnesses before this committee and the Ways and Means Committee, when asked what they would propose as a substitute for the reciprocal trade agreement program, had no suggestions to offer other than a return to the policy of excessive tariffs such as we had under the Smoot-Hawley Tariff Act of 1930. The disastrous results of such a policy have been so amply demonstrated that there is no need for further comment on the subject in this report.

The only other type of policy which has been suggested is one which, in the opinion of the committee, would be even more objectionable than a return to tariffs of the Smoot-Hawley variety. That suggestion is one which would involve a thoroughgoing regimentation of our foreign trade and of domestic industry and agriculture as well. The following quotation from the statement of the Secretary of State, when he appeared before the committee, is pertinent in this connection:

Other opponents of the trade-agreements program are putting forward proposals which, in the guise of an allegedly "more realistic" approach to the whole problem of foreign trade, would go beyond the extremes of the Hawley-Smoot policy and would commit this country to the use of exchange controls, quotas, and all the other devices which in recent years have disrupted and retarded international trade. To abandon the trade-agreements program and to substitute for it a system of this kind would be to destroy the only policy which in recent years has offered effective resistance to a spread of these destructive practices. It would be equivalent to committing our Nation to a course of far-reaching economic regimentation, since the experience of other nations shows clearly that, in an effort to make extreme trade controls function effectively, regimentation has to be constantly extended to other phases of business activity and of economic life in general. It would be a starkly realistic approach, not to an effective promotion of our foreign trade, but to governmental control over business activity on a scale never before attempted in this country, and to a policy of plunging this country into destructive economic warfare, from which no nation ever emerges the gainer.

The trade-agreements program has enabled us to expand our foreign trade without subjecting it to the strait jacket of extreme Government control. Under it, our trade has increased far more markedly than that of any other of the commercially important nations.

The program has been devised and carried out as a means of creating conditions in which free enterprise can function most effectively. Reversion to a policy of extreme protectionism or substitution for the trade-agreements program of a policy under which we would adopt all the instruments of economic warfare

that have been so disastrously prevalent in the recent past, would not only wipe out our recent trade gains, but would impose upon our people a further national loss of staggering proportions. Our Government would be compelled to adopt most costly and difficult measures of relief and adjustment and to regiment the country's economic activity. And the most astonishing thing is that courses of action which must inevitably lead to these results are proposed and advocated by the very people who like to regard themselves as the real proponents of free enterprise and nonintervention of Government in economic life.

This is the crux of the whole issue. The question of the survival or disappearance of free enterprise in our country and in the world is bound up with the continuation or abandonment of the trade-agreements program.

PROPOSALS TO REQUIRE CONGRESSIONAL APPROVAL OF INDIVIDUAL AGREEMENTS

Since an impregnable record buttressed by public support bars a frontal attack on the program, the principal strategy of the opposition is a flank attack by means of crippling amendments. The type of amendment which seems to be most in favor for this purpose is that which would provide for Senate ratification or some kind of congressional approval of the individual agreements.

No legal question involved.—This type of amendment has been advocated by some persons on the ground that it would remedy certain alleged constitutional defects in the act as it now stands. We shall not undertake here to review again the legal authorities and precedents which so amply support the constitutionality of the act; these are all to be found in the hearings which were held on this legislation in 1934, 1937, and 1940. The report of the Committee on Ways and Means of the House contains references to the principal authorities.

The following letter from the Attorney General which was presented at the hearings strongly confirms our original conclusion that there is no constitutional objection to this act:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., March 4, 1940.

The honorable the SECRETARY OF STATE.

MY DEAR MR. SECRETARY: Complying with your informal request, I am transmitting herewith a memorandum prepared in this Department concerning the constitutionality of the Foreign Trade Agreements Act.

It sets forth the authorities and principles which sustain a strong personal conviction on my part that there is no constitutional objection to this act, and that agreements executed under it are constitutionally unassailable.

Respectfully,

ROBERT H. JACKSON,
Attorney General.

(The text of the memorandum referred to in the letter appears in the record of the hearings before this committee on March 6, 1940.)

In view of the long line of precedents for Executive agreements, numbering at least 1,000, and the Supreme Court decisions recognizing the constitutional status of such agreements, the so-called treaty issue seems to be foreclosed as a subject for debate.

Likewise there can be no doubt that the authorities and precedents, which go back to the earliest days of the Nation, afford a complete answer to the charge that this act involves an unconstitutional delegation of legislative powers. The Trade Agreements Act was predicated upon the vital necessity of adopting a procedure which would permit Congress to fulfill its responsibility to regulate our foreign commerce so as to relieve and protect our overseas trade from excessive and ar-

bitrary interference by foreign governments. Viewed in this light alone the act stands squarely within the bounds of the Constitution as laid down by the Supreme Court in the case of *U. S. v. Curtiss-Wright Export Corporation* (299 U. S. 304, 1936) where it was stated that—

It is quite apparent that if, in the maintenance of our international relations, embarrassment—perhaps serious embarrassment—is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved.

Moreover, it may confidently be asserted that the Trade Agreements Act fully meets the constitutional principles governing legislation which does not involve international affairs. In the leading case of *Hampton Co. v. U. S.* (276 U. S. 394, 1928), Mr. Chief Justice Taft stated these basic principles as follows:

In determining what it [the Congress] may do in seeking assistance from another branch [the Executive], the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental coordination.

* * * * *

If Congress shall lay down by legislative act *an intelligible principle* to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power. [Italics supplied.]

The limitations and policies prescribed in the Trade Agreements Act constitute an “intelligible principle” or standard for the guidance of the Executive which is in no degree less precise than the standards contained in the “flexible provisions” of the Tariff Acts of 1922 and 1930, and the prior reciprocity statutory authorizations, all of which have been sustained by the courts. The same favorable comparison may be made with the authority delegated to the Interstate Commerce Commission, and upheld by the Supreme Court, to fix rates deemed to be “just and reasonable” and rates deemed “necessary or desirable in the public interest.”

Congressional approval from a policy standpoint.—Since there is no genuine legal issue involved, any proposal for Senate ratification or congressional approval of the individual agreements must be dealt with purely as a question of policy. From a policy standpoint, the burden of proof is on those who advocate such amendments. The act having been in effect nearly 6 years, a proposal at this time to require a congressional review of each individual agreement could be justified only by an affirmative showing that there have been defects in the operation of the act as it now stands and that there is need for such an amendment. The exhaustive examination of the record discloses no such need. Moreover, experience under tariff legislation in the past shows conclusively that such an amendment would destroy the program. Let those who may doubt this consider our experience under section 3 of the Tariff Act of 1890 and under sections 3 and 4 of the act of 1897. Under section 4 of the latter act 12 treaties were negotiated and, in spite of the strong recommendations of President McKinley and President Theodore Roosevelt, not a single one was permitted to become effective. In contrast with this record of fruitless attempts at reciprocity treaties requiring Senate or congressional approval, is the record of Executive agreements negotiated under prior authorization of Congress but not subject to Senate ratification. Under the McKinley Act of 1890 some 12 reciprocity agreements

were made effective, and under section 3 of the Dingley Tariff Act of 1897 some 14 or 15 similar agreements were brought into force.

In the light of experience it is abundantly clear that the requirement of Senate ratification or congressional approval of each individual trade agreement would nullify the program.

However, the committee does not seek to justify the present procedure solely on the ground that it is the only effective means of accomplishing the objectives of the Trade Agreements Act. The committee desires to emphasize that this procedure is wholly in accord with the principles of representative, democratic government. The reasons why this is true are, in the opinion of the committee, basic and wholly convincing.

In the first place it is well to remember that no trade agreement is made without the approval of Congress since the President can only conclude such agreements pursuant to the procedure and within the scope of the policies and limitations previously prescribed by both branches of the Congress. In this important respect trade agreements are completely and fundamentally unlike treaties which may be negotiated by the President without any prior authorization and without any limitations being previously prescribed by Congress or the Senate. It is necessary and wise that under such circumstances treaties should be subject to subsequent approval by the Senate as required by the Constitution, but conversely this sharp difference between treaties and trade agreements well illustrates why there is no such necessity for subsequent approval in the case of agreements which are only concluded pursuant to prior authorization and within the scope of policies previously laid down by Congress. Thus in the true and fundamental sense these agreements are concluded with the approval of both Houses of Congress.

Moreover, in the case of the trade agreements, congressional control is not limited to the prior authorization and prescription of policies and limitations set out in the act. Congress has reserved in the act itself, and it has now on two occasions exercised its right to review the administration of the act and the agreements which have been concluded. The Trade Agreements Act originally, and as extended in 1937, and as now proposed for further extension, limits the authority to conclude agreements to 3 years. In short, the Congress reserves the right to review periodically the operation of the act. No better proof of the thoroughgoing nature of this review can be found than the actual record of the hearings which have been held before this committee and the Ways and Means Committee of the House both in 1937 and now again in 1940. The bulky volumes which contain the record of these hearings are in themselves convincing arguments that this has been no perfunctory review.

This periodic check-up is a form of subsequent congressional approval which is both practicable and in accord with the proper function of the Congress. One of the principal purposes of Congress in setting up the trade-agreements procedure was to free Congress from the burden of attempting the impossible task of passing on each minute detail involved in keeping the tariff adjusted to current needs. The Congress had the same purpose in mind in the enactment of the flexible provisions of the Tariff Acts of 1922 and 1930 and action taken by the President under that authority is not made subject to subsequent congressional approval. Similarly, in the case of the

numerous administrative agencies such as the Interstate Commerce Commission which Congress has set up to administer specified policies, their rules, regulations, and actions are not made subject to subsequent congressional approval. To do so would simply render Congress ineffectual to do its real job of establishing policy through legislation.

SIGNIFICANCE OF REAFFIRMING THIS POLICY

The committee is impressed with the profound significance attaching to the enactment of this legislation at this time, as set forth in the following excerpt from the testimony of Secretary Hull:

We are now in a period when, as a result of the new and widespread wars, the need for means of prompt and effective action on the part of the Government in the promotion and defense of our foreign commerce is even more imperative than it has been hitherto. We are in a period in which our economic policies and action may have a determining influence upon the developments, which, after the cessation of hostilities, will shape the future world.

If we were now to abandon the program, we would reduce to practically nothing the efficacy of the existing trade agreements as a means of safeguarding our exports from the inroads of wartime restrictions. The need for keeping alive the principles which underlie the trade-agreements program is crucial now, during the war emergency, and will be of even more decisive importance after the war. Even a temporary abandonment of the program now would be construed everywhere as its permanent abandonment. Unless we continue to maintain our position of leadership in the promotion of liberal trade policies, unless we continue to urge upon others the need of adopting such policies as the basis of post-war economic reconstruction, the future will be dark, indeed. The triumph or defeat of liberal trade policies after the war will, in large measure, be determined by the commitments which the nations will assume between now and the peace conference.

At the termination of hostilities there will be an unprecedented need throughout the world for vastly increased production of useful goods of every kind. Only if this vital need is met, can our country and all countries hope for full employment and higher living standards. But production, employment, and living standards cannot be restored and expanded unless the nations decide from the outset to direct their policies toward as rapid as possible a reestablishment of mutually beneficial international trade. Otherwise, the economic life and the political stability of the world after this war will rest upon even more precarious foundations than those upon which they rested after the last war.

Had the nations of the world, including our own, followed at that time commercial policies conducive to the fullest practicable development of mutually beneficial international commerce, world trade would undoubtedly have expanded on a healthy basis far beyond the limits actually attained, and a foundation would have been laid for stable economic prosperity for all nations. Instead, the nations sought escape from their difficulties in constantly creating greater barriers to trade, the effects of which were obscured for a time by the unhealthy stimulation of reckless borrowing and lending of the twenties. But the ravages of the great depression, the years of only partial recovery which followed, and finally the supreme tragedy of the new wars have brought retribution for the mistakes and follies of the first decade after the World War.

Must all this be repeated again, perhaps in an even more acute form, after the present war? That may well be the case if we now turn our backs upon the policy which, under our leadership, has offered in recent years the only hope of promoting trade among nations in such a way as to rebuild the foundations of economic prosperity within nations and of stable peace among nations. Were we to do this we would inflict upon ourselves and upon the world an incalculable injury.

After the World War, through the policies which we then pursued we helped to create a situation in which the entire economic structure of the world rested upon shifting sands, with nothing in sight but inescapable disaster. The policy which we have pursued for the past 6 years, if we only have the wisdom to continue it, will enable us to place the whole weight of our country's influence behind a determined effort—in which, I am sure, we shall have the cooperation of other nations—to rebuild international economic relationships in such a way that our Nation and all nations can prosper and be at peace.