

A RESOLUTION TO PROTECT THE ABILITY OF THE
UNITED STATES TO TRADE ABROAD

 NOVEMBER 5, 1975.—Ordered to be printed

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

REPORT

[To accompany S. Res. 265]

The Committee on Finance, to which was referred the resolution (S. Res. 265) to protect the ability of the United States to trade abroad, having considered the same, reports favorably thereon with an amendment to the preamble and to the text and recommends that the resolution as amended do pass.

The resolution as originally introduced was cosponsored by Senators Ribicoff, Long, and Church. As reported, the following members of the Committee on Finance have also become cosponsors of this resolution: Senators Talmadge, Hartke, Nelson, Mondale, Gravel, Bentsen, Hathaway, Haskell, Curtis, Fannin, Hansen, Packwood, and Roth.

I. SUMMARY

S. Res. 265 expresses the resolve of the Senate that the President's Special Trade Representative, together with the officials of the Departments of State, Defense, Commerce, Treasury, Agriculture, Justice, the U.S. Ambassador to the United Nations, and other appropriate officials of the executive branch immediately commence international negotiations for the purpose of developing an international code of conduct to eliminate the practices of bribery, indirect payments, kickbacks, unethical political contributions, and other unethical payments which presently burden the international trade of the United States. These negotiations are to be undertaken in consultation with the chairman of the Committee on Finance and the congressional delegates on trade agreements, and within the framework of the multilateral trade negotiations now underway in Geneva as well as other negotiations of trade agreements undertaken pursuant

to the Trade Act of 1974, and other appropriate international forums. The negotiations are to be undertaken with the intent of developing an international code of conduct, together with specific trading obligations among governments, and suitable procedures for dispute settlement, including sanctions to cope with problems posed by nonparticipating nations which would result in the elimination of such illegal and unethical practices. The code of conduct and other obligations would become part of the international system of rules and obligations under the framework of the General Agreement on Tariffs and Trade and other international trade agreements negotiated under authority of the Trade Act of 1974.

For example, the Geneva trade negotiations are currently dealing with such issues as defining unfair and illegal subsidy practices and securing open procedures on government procurement practices. It would seem quite appropriate to include into whatever trade agreements result in these areas a ban on the kind of unfair trade practices that this resolution seeks to eliminate. Thus, the resolution should have more than a high moral sounding effect; it can and should have a practical effect of establishing fair and enforceable rules governing such trade practices on an international basis.

The committee resolution expressly finds that policies and practices in foreign countries frequently necessitate illegal and unethical payments for corporations to effectively compete within the markets of those countries; that these practices represent a significant adverse influence on the flow of international trade and commerce; and that it is the intent of the Congress that U.S. companies doing business abroad be able to compete fairly without participating or being coerced to participate in such improper practices. The resolution notes that under the Trade Act of 1974 an overall objective of the United States in negotiating trade agreements is to obtain more open and equitable market access in the harmonization, reduction, or elimination of devices which distort trade or commerce and empowers the President to retaliate against countries which are engaging in discriminatory acts or policies which are unjustifiable and unreasonable and which burden or restrict U.S. commerce.

Thus the committee resolution is completely consistent with the trade policy established by the Congress in enacting the Trade Act of 1974. Indeed, the failure to deal effectively with these widespread practices would frustrate the basic purpose of the Geneva negotiations which is to establish fair, open, and equitable conditions of trade.

The committee resolution intends that the Special Representative for Trade Negotiations and other appropriate officials in the executive branch seek the negotiation of a code of international conduct banning such practices and use the framework of the General Agreement on Tariffs and Trade *and* other appropriate international forums. The committee deliberately intended that the resolution be broadly drafted so that the issue can be dealt with in the multilateral trade negotiations in Geneva, in other negotiations pursuant to the Trade Act of 1974, as well as other appropriate forums. The Special Representative would include in his annual report to the Congress required by section 163 of the Trade Act of 1974, a status report on the progress made in negotiating the international code of conduct sought by this resolution.

II. REASONS FOR THE BILL

Recent investigations by the committees of the Congress, the Securities and Exchange Commission, and other governmental agencies have revealed a widespread pattern of bribery and other forms of illegal payments by U.S. companies seeking to do business in foreign countries. These practices are frequently typically rooted in the policies and practices of other countries and are widely regarded as an unpleasant but necessary cost of doing business in such countries. Frequently, U.S. companies have found it necessary to employ "sales agents" who act as middlemen in dealing with foreign governments. Huge amounts of money have been transferred for the purpose of bribing officials of foreign governments. In one widely publicized case, a middleman was allegedly given more than \$200 million over a five-year period to aid an American aerospace company to obtain contracts with a Middle East nation. The public record is replete with similar instances. It is apparent, however, that the public record shows only the tip of an iceberg and that these practices represent a widespread and unacceptable burden on international commerce which it is already the policy of the United States to eliminate through international, multilateral trade negotiations.

It would not serve U.S. trading interests simply to enact domestic laws outlawing such practices for U.S. corporations while neglecting to deal with the practices of foreign corporations which compete in world markets against U.S. corporations.

The committee held hearings on this resolution and received favorable testimony from representatives for U.S. corporations which deal in the international marketplace.

For example, Daniel J. Haughton, chairman of Lockheed Aircraft Corp., submitted a statement in support of the resolution saying that international negotiations were needed ". . . to serve the important purpose of preventing United States companies from being placed at a disadvantage in the international marketplace in competition with foreign concerns . . ." Charles W. Stewart, president of the Machinery and Allied Products Institute, testified in support of the resolution, adding that it should be adopted on a "crash" basis. Raymond Garcia, representing the Emergency Committee for American Trade also testified in support of the resolution, saying "First of all, . . . (it makes it very clear) . . . that we are dealing not just with an American phenomenon; we are dealing with an international phenomenon." Numerous other statements in support of the resolution were received.

ADDITIONAL VIEWS OF SENATORS CURTIS, FANNIN, HANSEN, DOLE, PACKWOOD, AND BROCK

We support S. Res. 265, as amended and ordered reported by the Committee on Finance, but we believe it desirable to add a few additional comments with respect to its scope and purpose.

No responsible individual can condone the illegal payments and questionable practices the disclosure of which prompted the committee to consider and approve S. Res. 265. Nevertheless, past debate on this subject has frequently amounted to little more than a general condemnation of American corporations doing business abroad together with a call for Congress to enact legislation directed at American corporations alone. These calls for unilateral actions by the United States ignore what we believe to be the irrefutable fact that the problem is an international one and hence can be resolved only on an international basis. S. Res. 265 recognizes that the problem is international in scope, and we thus support its call for prompt and vigorous efforts to seek a solution, not by unilateral action, but through multilateral negotiations.

We also support the premise of S. Res. 265 that the current multilateral trade negotiations represent an appropriate and important forum for decisive initiatives by the United States. Nevertheless, we believe it is self-evident that the problems prompting action by the committee are far too important to permit the search for an international solution to be artificially restricted to a single forum. Thus, as recommended by the Special Trade Representative during the hearings on S. Res. 265, the committee acted to include all appropriate international forums within the purview of S. Res. 265. We support this aspect of the committee's action as essential to any serious efforts to effect a resolution of this problem. In this connection, we were particularly pleased to note during the hearings the record of extensive prior activity in this area by the administration. We view S. Res. 265, as modified, as complimentary to and supportive of the administration's initiatives.

For these reasons, we support S. Res. 265 as an important and constructive measure. We express the hope that, if S. Res. 265 is adopted by the Senate, the process of international negotiations will then be accorded sufficient time to prove its effectiveness.

CARL T. CURTIS.
PAUL FANNIN.
CLIFFORD P. HANSEN.
ROBERT DOLE.
BOB PACKWOOD.
BILL BROCK.

○