

## TEMPORARY EXTENSION OF COUNTERVAILING DUTY WAIVER AUTHORITY

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

### REPORT

[To accompany H.R. 1147]

The Committee on Finance, to which was referred the bill (H.R. 1147) to extend temporarily the authority of the Secretary of the Treasury to waive the imposition of the countervailing duties, having considered the same, reports favorably thereon and recommends that the bill do pass.

#### I. SUMMARY

The bill would extend the authority of the Secretary of the Treasury to waive countervailing duties under section 303 of the Tariff Act of 1930 to the earliest of the following dates: (a) The date on which either House of Congress defeats on a vote of final passage the domestic implementing bill for the subsidy/countervailing duty code; (b) the date of enactment of such implementing bill; or (c) September 30, 1979.

The authority would apply retroactive to January 3, 1979, the date when the previous waiver authority expired. Waivers existing as of January 2, 1979, which would continue in effect, and any future waivers made during the period of the waiver authority extension, would be subject to the existing conditions in the law for granting waivers. All waivers would be subject to the existing congressional override provisions under which either House of Congress by majority vote may disapprove a waiver. If an override resolution is adopted, imports covered by that resolution become subject to countervailing duties immediately.

## II. PURPOSE OF THE BILL

### BACKGROUND AND PURPOSE

Under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303), the Secretary of the Treasury is required to impose countervailing duties on imports of products on which he determines a bounty or grant (subsidy) is being paid or bestowed by a foreign government. The countervailing duty, which is imposed in addition to regular duties, is equal to the net amount of the bounty or grant and is intended to offset the advantage afforded by the foreign subsidy practice.

In the Trade Act of 1974, Congress directed the President to seek new international rules on subsidy practices in the multilateral trade negotiations. To permit the President to avoid confrontations over the U.S. countervailing duty law and to create an international climate conducive to negotiating a subsidies code, Congress provided the Secretary of the Treasury temporary authority for 4 years, until January 3, 1979, to waive countervailing duties; that is, not impose and collect them even though a subsidy exists if he determined certain conditions were met. Those conditions are (1) the foreign government has taken adequate steps to substantially reduce or eliminate the adverse effect of the subsidy, (2) there is a reasonable prospect that the multilateral trade negotiations will result in codes reducing nontariff barriers, such as subsidies, and (3) the imposition of the countervailing duty would be likely to seriously jeopardize completion of the multilateral trade negotiations.

The waiver authority was exercised 19 times (see app. 1), of which three waivers on leather articles from Uruguay were revoked prior to January 2 because the conditions of the waiver were breached. One finding of bounty or grant on steel plate from Mexico was revoked prior to January 2, 1979, because of the elimination of the subsidy. Of the 15 waivers remaining in effect as of the January 2 expiration date, 3 findings of bounty or grant will soon be revoked on cheese from Austria and leather handbags from Brazil and Colombia because the subsidies applying to these products have been eliminated.

The value of U.S. imports, based on 1977 trade, for the 12 cases subject to countervailing duty waivers as of January 2 which would presumably remain in effect under a waiver extension is about \$567 million. Countervailing duties not collected on these imports totals an estimated \$40 million, based on 1977 trade. The principal products among these 12 cases are dairy products (cheese), canned hams from the European communities and EFTA countries, rubber footwear from Korea, fish from Canada, and textiles from Brazil. Imports from the EC of products covered by waivers on January 2 (dairy products, Danish canned hams and butter cookies) totaled about \$280 million in 1977. There are 17 countervailing duty cases pending as of February 1, 1979 on which extended waiver authority might be exercised if there are affirmative determinations and the statutory conditions were met.

The President transmitted a message on September 28, 1978, requesting the Congress to extend the waiver authority until August 1, 1979. On October 23, 1978 the Senate Finance Committee reported favor-

ably H.R. 7108, a House-passed bill used as a vehicle for sugar legislation and including an extension of the countervailing duty waiver authority until September 1, 1979, if the President notified the Congress before January 3, 1979, that subsidy agreements had been concluded meeting specified U.S. objectives and that the multilateral trade negotiations (MTN) were substantially completed. A Senate floor amendment changed this date to February 15. The Senate extension as title II of a Senate-amended version of the House-passed sugar bill (H.R. 13750) on October 12. House conferees accepted the waiver amendment. The Senate approved the conference report on the bill, but the House rejected the report in a rollcall vote of 177 to 194 on October 14.

On October 14, the Senate amended the House-passed trade adjustment assistance bill (H.R. 11711) to add as title V a different version of waiver extension authority until February 15 and under certain additional conditions until July 30, 1979. The House in its final hour before adjournment on October 15 accepted the Senate waiver but substituted amendments for nonrelated Senate amendment (child welfare, Virgin Island watch duties) on the same bill. The Senate adjourned sine die without acting on H.R. 11711 as further amended by the House.

After Congress failed to pass legislation to extend the waiver authority as the President had requested, the European communities took the position that the only basis on which they could conclude the MTN was if there were assurances from U.S. negotiators that countervailing duties would not be imposed on January 3, through the 90-working-day period for congressional consideration of legislation to implement the agreements, including an agreement on the use of the subsidies/countervailing duties.

In mid-November meetings with key European leaders, Ambassador Strauss made commitments that the President would request legislation early in the new Congress to extend the waiver authority from January 3 through congressional consideration of the negotiated package, and provide an "administrative solution" to avoid actual collection of countervailing duties on products previously subject to waiver in the interim period pending congressional action on implementing legislation. On this basis the European Commission has continued to negotiate the substance of the agreements on its own authority, subject to reviews by the Council of Foreign Ministers representing the nine member states. The Council has made clear it will not "conclude" the multilateral trade negotiations in terms of formal approval of the agreements until Congress insures continued application of the waiver authority.

As of January 3, 1979, merchandise previously subject to waiver entered, or withdrawn from warehouse, for consumption on or after that date became subject to the assessment of countervailing duties. In lieu of actual collection of these duties, Treasury has suspended liquidation until further notice of entries of merchandise previously subject to waivers entered on or after January 3. Unless actual deposits of estimated additional duties are made, Treasury is requiring the posting of bond or irrevocable letters of credit at the time of entry in order to protect the revenue by guaranteeing the payment of potential countervailing duties. Section 209 of the Customs Procedural Reform

and Simplification Act of 1978 provides a 1-year time limit generally on the liquidation of customs entries.

On January 15, 1979, the President transmitted a message to Congress requesting enactment of legislation at the earliest possible date to amend section 303(d) of the Tariff Act of 1930 to extend the waiver authority until September 30, 1979. The President stated that negotiations have been "substantially concluded" on a "satisfactory subsidy/countervailing duty code which includes: (1) New rules on the use of internal and export subsidies which substantially increase protection of U.S. agricultural and industrial trading interests, and (2) more effective provisions on notification, consultation and dispute settlement that will provide for timely resolutions of disputes involving trade subsidies in international trade." He also stated he has been informed that agreements which "meet basic U.S. objectives" have been "substantially concluded" in almost all topics under negotiation. However, final agreement is "unlikely" and a successful conclusion would be placed "in serious jeopardy" if the waiver authority is not extended for the period of congressional consideration of the agreements and their implementing legislation.

On January 18, 1979, Congressman Ullman introduced H.R. 1147 to extend the waiver authority retroactively from January 3 until October 20, 1979, rather than September 30 as proposed by the President, or until legislation implementing the international agreement or agreements on subsidy practices is enacted or either House of Congress defeats such implementing legislation, whichever occurs first.

On February 21 the Committee on Ways and Means ordered H.R. 1147 favorably reported by a rollcall vote of 29 to 1 with one amendment, changing the expiration date of the waiver to September 30, 1979. The House passed the amended bill on March 1, 1979.

### III. GENERAL EXPLANATION

The negotiation of a subsidy/countervailing duty code in the MTN is essentially completed, and the conclusion of the entire MTN is near. The committee, based on its oversight of the trade negotiations, believes passage of H.R. 1147 is necessary to remove a procedural obstacle to completion of the negotiations and thereby to provide Congress the opportunity to consider the results of the negotiations.

Section 1 of H.R. 1147 amends section 303(d) of the Tariff Act of 1930 by adding a new paragraph (4) to extend the 4-year period under paragraph (2) of section 303(d) during which the Secretary of the Treasury has the authority to waive the imposition of countervailing duties if he determines that the conditions cited in paragraph (2) have been met.

Subparagraph (A) of new paragraph 4 extends this authority from January 2, 1979 (the expiration date of the 4-year period) until whichever date occurs first: (1) The date either House defeats on a vote of final passage under the expedited procedures of section 151 of the Trade Act of 1974 legislation to implement a multilateral trade agreement or agreements governing the use of subsidies, (2) the date of enactment of such implementing legislation, or (3) September 30, 1979. Under this provision, the waiver could not extend beyond

September 30, 1979. If Congress completes its consideration of implementing legislation prior to September 30, the waiver authority would expire automatically on that date. If either House defeats the legislation to implement that agreement, then mandatory imposition of countervailing duties should be restored at that time, the Congress having specifically provided temporary waiver authority under section 331(a) of the Trade Act of 1974 to create a climate conducive to negotiating acceptable internationally agreed rules and procedures governing the use of subsidies.

Subparagraph (B) of new paragraph (4) provides that any determination made by the Secretary of the Treasury to waive imposition of countervailing duties that was in effect on January 2, 1979, will remain in effect until whichever date occurs first: (1) The date to which the 4-year period of the waiver authority is extended under subparagraph (A), (2) the date the Secretary revokes such a determination to waive as authorized under section 303(d) (3) because the conditions on which it is based no longer exist, or (3) the date on which either House of Congress adopts a resolution disapproving such a waiver determination, as provided under section 303(e) (2) of the Trade Act.

Authority to continue the 15 waivers in effect as of the date the waiver authority expired obviates the need for the Secretary of the Treasury to make and issue new determinations in any of these cases. The Secretary is required to revoke a waiver determination, however, if he finds that any of the three conditions under section 303(d) (2) for granting it in a particular case is no longer met. Congress retains its authority to disapprove determinations to waive in individual cases.

Section 2 of H.R. 1147 makes the extended waiver authority provided under section 1 effective retroactively as of January 3, 1979. This provision enables the Secretary of the Treasury to issue new waiver determinations under section 303(d) (2) in cases for which he makes or has made a final affirmative determination under section 303(a) that a bounty or grant is being paid or bestowed or, in the case of duty-free imports, the International Trade Commission makes an affirmative injury finding under section 303(b), after January 2, 1979.

The subcommittee expects vigorous enforcement of the three waiver conditions, with the Secretary of the Treasury to keep outstanding waivers under review and to revoke them if any of the conditions are no longer met, in order to protect domestic producing interests from the adverse effects of subsidized competition. Exercise of the extended waiver authority in any new cases not already subject to waiver as of January 2 should apply only prospectively from the date the Secretary determines the three waiver conditions have been met.

On March 19, 1979, the committee heard testimony on H.R. 1147 from parties in favor of and opposed to the bill.

#### IV. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the committee states that the bill was ordered reported by a voice vote.

## V. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970 and sections 308 and 403 of the Congressional Budget Act, the following statement is made relative to the costs and budgetary impact of the bill.

The bill has a one time budget impact in the nature of a revenue reduction of no more than \$30 million in fiscal year 1979, based on 1977 trade. The committee had not received the Congressional Budget Office report under section 403 of the Congressional Budget Act at the time the bill was filed.

## VI. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the committee states that the provisions of the bill should not result in new major and continuing regulatory activity. The legislation will reduce somewhat the paperwork which would otherwise be involved in the imposition and collection of the waived duties. No impact on privacy is anticipated as a result of this legislation. The bill would relieve importers of various products of a liability for countervailing duties of up to \$30 million for the 9-month period ending September 30, 1979, which could improve their competitive position.

## VII. CHANGES IN EXISTING LAW

In compliance with paragraph (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown below (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in *roman*):

### TARIFF ACT OF 1930

#### Sec. 303. Countervailing Duties.

(d) TEMPORARY PROVISION WHILE NEGOTIATIONS ARE IN PROGRESS.—(1) It is the sense of the Congress that the President, to the extent practicable and consistent with United States interests, seek through negotiations the establishment of internationally agreed rules and procedures governing the use of subsidies (and other export incentives) and the application of countervailing duties.

(2) If, after seeking information and advice from such agencies as he may deem appropriate, the Secretary of the Treasury determines, at any time during the four-year period beginning on the date of the enactment of the Trade Act of 1974, that—

(A) adequate steps have been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

(B) there is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered

into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

(C) the imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardize the satisfactory completion of such negotiations; the imposition of the additional duty under this section with respect to such article or merchandise shall not be required during the remainder of such four-year period. This paragraph shall not apply with respect to any case involving non-rubber footwear pending on the date of the enactment of the Trade Act of 1974 until and unless agreements which temporize imports of non-rubber footwear become effective.

(3) The determination of the Secretary under paragraph (2) may be revoked by him, in his discretion, at any time, and any determination made under such paragraph shall be revoked whenever the basis supporting such determination no longer exists. The additional duty provided under this section shall apply with respect to any affected articles or merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of any revocation under this subsection in the Federal Register.

(4) (A) *The four-year referred to in paragraph (2) is extended from January 2, 1979, until whichever of the following dates first occurs:*

(i) *The date on which either House of Congress defeats on a vote of final passage, in accordance with the provisions of section 151 of the Trade Act of 1974, implementing legislation with respect to a multilateral trade agreement or agreements governing the use of subsidies.*

(ii) *The date of the enactment of such implementing legislation.*

(iii) *September 30, 1979.*

(B) *Any determination made under this subsection by the Secretary that was in effect on January 2, 1979, shall remain in effect, until whichever of the following dates first occurs:*

(i) *The date to which the four-year period is extended under subparagraph (A), notwithstanding any provision to the contrary in any such determination.*

(ii) *The date such determination is revoked under paragraph (3).*

(iii) *The date of adoption of a resolution of disapproval of such determination under subsection (e) (2).*

## APPENDIX 1

## Countervailing duty actions involving waivers

Country	Date of waiver	Publication reference	Product	Subsidy on date of waiver	Subsidy on Feb. 1, 1979	Remarks	U.S. imports 1977 (millions)
EEC	May 19, 1975	40 FR 21720	Dairy products	Varied	Unchanged		\$85.7
EEC	Dec. 12, 1975	40 FR 55639	Canned hams	16.5-20 units of account per 100 kg.	25-30 units of account per 100 kg.	Subsidy increase occurred December 1978.	191.5
Mexico	Jan. 7, 1976	41 FR 1273	Steel plate	\$0.76 per ton	Zero	Finding revoked	1.0
Austria	do	41 FR 1275	Cheese	Soft cheese, \$0.02-\$0.40 per pound.	do	Finding soon to be revoked	17.1
Switzerland	Jan. 8, 1976	41 FR 1468	do	Hard cheese, \$0.02-\$0.33 per pound.	\$0.60-\$0.96 per pound	Increase due entirely to currency changes.	16.8
Korea	Jan. 9, 1976	41 FR 1587	Rubber footwear	0.7 percent ad valorem	Unchanged		108.2
Norway	May 27, 1976	41 FR 21767	Cheese	\$0.20-\$0.50 per pound	Hard cheese—zero, soft cheese—unchanged.		22.4
Finland	June 18, 1976	41 FR 24703	do	\$0.30-\$1.70 per pound	Zero on emmenthaler (except wheels) others, \$1.14-\$1.66 per lb.	Finding on emmenthaler (except wheels) soon to be revoked.	22.4
Sweden	July 1, 1976	41 FR 27032	do	\$0.40-\$0.50 per pound	Unchanged		3.0
Brazil	July 13, 1976	41 FR 28787	Leather handbags	14 percent ad valorem	Zero	Finding soon to be revoked	6.0
Canada	Jan. 12, 1977	42 FR 19327	Fish	17 percent ad valorem	1.17 percent ad valorem		4.4
Denmark	Jan. 5, 1978	43 FR 955	Butter cookies	30 percent ad valorem	Unchanged		16.3
Uruguay	Jan. 30, 1978	43 FR 3904	Leather handbags	17.4 percent ad valorem	14.4 percent ad valorem	Waiver revoked, liquidation suspended.	4.1
Do	do	43 FR 3904	Nonrubber footwear	23 percent ad valorem	16.0 percent ad valorem	do	20.7
Colombia	Apr. 24, 1978	43 FR 18659	Leather handbags	5.5 percent ad valorem	Zero	Finding soon to be revoked	6.0
Uruguay	June 1, 1978	43 FR 23709	Leather apparel	12 percent ad valorem	13.3 percent ad valorem	Waiver revoked, liquidation suspended.	17.8
Canada	June 16, 1978	43 FR 25995	Fish	17 percent ad valorem	1.17 percent ad valorem		68.1
Brazil	Nov. 16, 1978	43 FR 53425	Textiles and apparel	37.2 percent ad valorem	17.0 percent ad valorem	Remaining subsidy to be eliminated by Jan. 1, 1980.	37.6
Canada	Dec. 29, 1978	44 FR 1728	Fish	1.17 percent ad valorem	Unchanged		.1
Total, all waivers (19 cases)							639.2
Total, excluding findings already revoked (15 cases)							595.6
Total, excluding findings soon to be revoked (12 cases)							566.5

<sup>1</sup> Total for basket category of which butter cookies are the major part.