

**FISCAL YEAR 1979 AUTHORIZATION OF APPROPRI-
ATIONS FOR THE U.S. INTERNATIONAL
TRADE COMMISSION**

**HEARING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
SECOND SESSION**

APRIL 21, 1978



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FISCAL YEAR 1979 AUTHORIZATION OF APPROPRIATIONS FOR THE U.S. INTERNATIONAL TRADE COMMISSION

FRIDAY, APRIL 21, 1978

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2221, Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman of the subcommittee) presiding.

Present: Senators Ribicoff and Byrd, Jr., of Virginia.

[The committee press release announcing this hearing follows:]

FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE SETS HEARINGS ON AUTHORIZATION FOR U.S. INTERNATIONAL TRADE COMMISSION

The Honorable Abraham Ribicoff (D., Conn.), Chairman of the Subcommittee on International Trade of the Committee on Finance, announced today that the Subcommittee will hold hearings on the authorization of appropriations for the U.S. International Trade Commission for Fiscal Year 1979. The hearings will be held at 10:00 A.M. on the morning of Friday, April 21, 1978, in Room 2221 of the Dirksen Senate Office Building. The Honorable Daniel Minchew, Chairman of the Commission, accompanied by the Honorable Joseph O. Parker, Vice Chairman of the Commission, will outline the Commission's budget plans for the upcoming year.

Chairman Ribicoff noted that an authorization is required by subsection (e) of section 330 of the Tariff Act of 1930 (19 U.S.C. 1330(e)), which provides:

(e) Authorization of Appropriations.—For the Fiscal Year beginning October 1, 1976, and each Fiscal Year thereafter, there are authorized to be appropriated to the Commission only such sums as may hereafter be provided by law.

Written Testimony.—Chairman Ribicoff stated that the Subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length, and mailed with five (5) copies by close of business Friday, April 28, 1978, to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.

Senator RIBICOFF. The committee will be in order.

Today we will hear testimony on the fiscal year 1979 authorization of appropriations for the U.S. International Trade Commission. The Commission performs a vital role in the administration of our trade laws. It is also a primary source of international economic information and analysis for the Congress and the executive branch.

As the multilateral trade negotiations move to a conclusion, the Congress and particularly this committee will require even more assistance from the Commission. For this reason, the authorization of appropriations for fiscal year 1979 is of considerable importance.

We look forward to hearing from the Chairman of the Commission, Daniel Minchew, and his colleagues, Vice Chairman Parker and Commissioner Alberger.

STATEMENT OF HON. DANIEL MINCHEW, CHAIRMAN, UNITED STATES INTERNATIONAL TRADE COMMISSION; ACCOMPANIED BY HON. JOSEPH O. PARKER, VICE CHAIRMAN; AND HON. BILL ALBERGER, COMMISSIONER

Mr. MINCHEW. Mr. Chairman, it is a pleasure for me and Vice Chairman Parker and our colleague, Commissioner Alberger, to appear before you today on behalf of the Commission. I have a brief statement, three and a half pages. I will be happy to submit that for the record and summarize it or I could read it, whichever you prefer.

Senator RIBICOFF. Use your own judgment.

Mr. MINCHEW. If you don't mind, having worked here at the Senate and having listened to lots of statements read, I will submit it for the record and summarize the main points.

Senator RIBICOFF. I appreciate it and I am grateful to you.

Mr. MINCHEW. Basically the Commission is requesting an appropriation of \$13,113,000 for the fiscal year in question. This figure represents a very stringent effort on the part of USITC to hold its expenses in line. It represents virtually no increase in money from the previous fiscal year and it authorizes no additional—

Senator RIBICOFF. What was the figure last year?

Mr. MINCHEW. The figure for the previous year, actual appropriations, was \$12,213,000.

Senator RIBICOFF. Practically you are asking for \$900,000—

Mr. MINCHEW. Yes; sir, but there have been salary increases authorized since that time and, if you deduct for those salary increases, it is virtually the same amount of money. We are not asking for any additional employees. We are asking for the same number of employees we had in the previous fiscal year.

The House reduced our budget request by \$300,000. I am not certain what the House intended for us to reduce from our budget. They made some general comment about providing incentives for us to cut our own expenses.

Senator RIBICOFF. What would the impact be of that \$300,000 cut, the impact on the work your commission performs?

Mr. MINCHEW. Not filling 12 positions. Not filling 12 positions in the Federal Government at USITC itself probably does not have that much of an impact except that in the USITC instance our work load, Mr. Chairman, has grown significantly.

In my prepared remarks, I outline the large increase in caseload that we have at the Commission and that we anticipate for the coming years.

Senator RIBICOFF. It would seem to me that last year was an unusually busy time.

Mr. MINCHEW. It was.

Senator RIBICOFF. Do you anticipate the coming year will be the same?

Mr. MINCHEW. Yes, sir; we, in fact, anticipate that it will be busier. The fact that we are able to program ourselves to do more work

with the same amount of people I think is a result of the reorganization of the Commission, which this committee assisted in, in previous years, and of management decisions on the part of the Commission to increase our efficiency and productivity. I think that is the reason we are able to accomplish more work with fewer people.

Generally our work on behalf of the Congress is increasing as well. Our requests from the executive branch, particularly the Office of Special Trade Representative, have been at an all-time high. I do not anticipate increases in requests from the Special Trade Representative.

I do think that some of the present outstanding requests will carry over into this fiscal year. We are servicing Ambassador Strauss' office at the greatest level in the history of the Commission.

Senator RIBICOFF. What are some of the important cases, matters now pending before the committee, that you will have to be acting on during the next year? What are some of the matters before you?

Mr. MINCHEW. As you know, Mr. Chairman, many of our cases have statutory time limits. Some of these cases have a time limit as short as 3 months, in the case of dumping; 6 months in the case of escape clause, and a year to 18 months in unfair trade practice cases. Therefore, many of the cases that we are presently considering will be finished in a relatively short period of time.

The trend in the public coming to the USITC for assistance in getting some sort of protection from foreign unfair trade practices has been increasing just so drastically that it almost boggles the mind.

In the case of our longest and most complicated type of investigation for example, the unfair trade practice investigation, we traditionally got one case every 4 to 6 weeks. We are now getting one of those petitions every 10 days. We have instituted 15 of those cases so far this calendar year.

For us to continue to serve the needs of the public, I think that our justification is almost self-evident. As late as 1975 the volume of trade complaints before the Commission totaled less than \$1 billion in trade impact. This year we might decide cases involving as much as \$28 billion, up from less than \$1 billion 3 years ago.

The USITC, I think, has been servicing its constituency very well. We give fast decisions. We give, I think, very fair decisions. And people who historically have not heard of USITC are now coming to us for the litigation of their disputes. Frankly we welcome this because for a long time the activities of USITC were not as well utilized by the public.

Senator RIBICOFF. I would imagine, with continued adverse trade balance, you are going to have many more cases brought in. The impact on American industry must be very grave as it affects the economy and employment in this country, and the figures are certainly discouraging on what is happening.

I would anticipate you are going to be even busier and undoubtedly, once GATT is through—I don't know where that is coming out—you will have a lot more work when that is finally adopted or not adopted.

Mr. MINCHEW. I would concur with that.

Senator RIBICOFF. What countries generally give the most work to your committee?

Mr. MINCHEW. It is difficult to answer that question because, in the case of every statute that we administer, we have complaints filed against the products from both the developing and the developed world. Obviously Japan has been a big source of complaints on the part of U.S. industry, but we are getting a large number of complaints against European products, and I anticipate an increasing interest in petitioning against the competition from the developing world.

Japan, in fact, in my 3 years at the Commission, I think, has become less of a competitive factor as Japanese costs of production increase, as the yen value changes relative to that of the dollar.

We are seeing more and more complaints against Korean and Taiwanese products. We are even now beginning to see complaints against the really less developed countries like Malaysia and Singapore. We have a large number of complaints against Latin America.

Senator RIBICOFF. In marking up the customs bill the other day, we came across the factor of misbranding and mislabeling and counterfeiting. Does that come in any way before you?

Mr. MINCHEW. It could, in my opinion, under our authority under section 337, the so-called unfair trade practices. We traditionally in that area have dealt with only patent violations. Because of the new authority this committee and the House and the Congress gave us in 1975 we now are looking into the broader unfair trade practices. Labeling, for example, in the opinion of this Commissioner and, I think, the majority of the Commission, is reachable under section 337.

Senator RIBICOFF. What can you do if you have an obvious misbranding, mislabeling, counterfeiting?

Mr. MINCHEW. We have these alternatives: We can issue an exclusion order, which stops the product at the border. We can issue a cease-and-desist order directing the foreign manufacturers to cease and desist from the infringing practice. We could and have on occasion—one occasion—issued a consent order which has resulted when the parties got together and, in effect, settled their differences, with the Government looking on to make sure there were no consumer violations.

In fact, I am rather excited about the possibilities of dealing with many of the trade problems under section 337.

Senator RIBICOFF. I think you ought to talk with the staff of this committee. I put an amendment into the Customs Act regarding what to do with counterfeiting and mislabeled goods. It is not quite satisfactory. It is about all we could do; but, with your authority, I would suggest that you get together with the Customs Bureau and see how you can cooperate with them.

It is inexcusable to have this merchandise coming in really counterfeit, mislabeled; the most careful purchaser could not tell they were not made in the United States with some of those labels on there. We have enough problems without foisting on the American people goods coming from all over the world with the indication they were manufactured in the United States.

Mr. MINCHEW. I will follow through with your staff and with customs officials.

Senator RIBICOFF. I think you should coordinate with Mr. Cassidy and with the customs people in view of what came up in the customs

bill. I think you could really render a very, very necessary and valuable service to American industry.

Mr. MINCHEW. We have, as I recall, issued one exclusion order involving both a patent and, in that instance, a label which led people to believe that it was a U.S. product or very similar to a U.S. product when, in fact, it was not.

I think there is a very fertile ground for additional work on the part of the Commission in that area and it is the area of the Commission that is growing the fastest because we now find that the public is becoming aware that there is an avenue of relief through the Federal Government which will give them an answer of yes or no in 1 year's time.

When this committee was adamant in putting a time limit on this section, I was very supportive of that because, when the public is suffering an unfair practice, they don't want to wait, as they previously had to wait, for 5, 6, 7 or longer years, to get some sort of answer from their Government. We now give these answers in less than 1 year.

We have authority, as you know, to extend such a case by 6 months; we have exercised that authority on only one occasion, and we did not use the full 6 months. We have a good record of giving the public quick answers, I think, Mr. Chairman.

Senator RIBICOFF. Chairman Long has submitted this question for you: I understand that the new administrative powers of the USITC chairman have worked very well with one exception. I hear that your authority to transfer personnel within the agency has been challenged. Last year we gave you authority to make all the administrative decisions of the agency—hiring people, setting their salaries—in short, all the administrative authority, including transferring people in the agency, subject to being overruled by a majority of the Commission.

We restricted you only in terminating employment with the Commission—complete removal from the rolls of the agency—and the formulation of the budget. For those powers, the chairman must have a majority of the Commission.

Do you think we need to clarify our intentions of last year's law?

Mr. MINCHEW. Mr. Chairman, I personally don't think that the intentions of the Congress or of the conferees were ambiguous in last year's law. I sat through the markup session, I answered questions in the markup session and it seemed to me abundantly clear that the intent of the Congress and of the conferees was to allow the chairman, whether it be me or my successor or future chairmen, to run the administrative functions of the agency subject to being overruled on any provision by a majority of the Commission save in two areas: the area of formulating the budget, in which case the chairman must get the approval of a majority of the Commission; and in removing from the rolls of the Commission—terminating, firing, removal of employees from service in the Government—in which case a chairman needs to get a majority of the Commission. All other functions administratively are subject to override by majority.

I have been challenged on only one occasion in this area, and because there is a challenge, perhaps there does need to be some clarification.

There have been in my time at the Commission, during the time this provision has been in law, seven different commissioners. Of those

seven commissioners, four commissioners—not all at the same time; we have had a departure and reappointment of a new commissioner—at least four of the seven who sat on the Commission have agreed with my interpretation.

I think the other three, who have not expressed an opinion, don't necessarily disagree with my opinion; they have just not expressed an opinion one way or the other.

Since it does focus on the authority, I think, of the chairman to operate the agency efficiently, I would think that the chairman's question should be answered in the affirmative even though by saying that, I don't concede that there is any ambiguity in what the Congress has done.

If you hamstring a chairman so that he cannot transfer people within the agency as the need arises, you, I think, very severely impair his effectiveness to run the place as an efficient, well-organized agency.

In the particular case that is involved, I made that decision to make a transfer only after repeated and continuous and strenuous efforts to solve the administrative problem short of transferring. When those efforts were unsuccessful I felt it was in the interest of the Commission to exercise those authorities; and frankly I was very surprised, in face of the clear meaning of the statute, in face of my consulting with both members and staff of this committee and members and staff of the House committee, that there was any interpretation possible other than the interpretation that I, and at times four of seven people who have sat on this commission, have agreed with.

Senator RUBINOFF. Senator Byrd, do you have any questions?

Senator BYRD. Thank you, Mr. Chairman.

I would just like you to explain, if you would, how you go about developing a zero-based budget. I assume the way you do it is probably the way other agencies do it, and I would like an explanation of exactly how that is done.

Mr. MINCHEW. It is done with great difficulty, Senator Byrd, if you have been in an agency that has over the years worked without that much scrutiny, self-scrutiny, of its budget. I am proud of the record of USITC. As you know, in 1974, this committee removed the provision that we go through OMB. Since that time, under the leadership of then Commissioner Bedell, followed by leadership of Chairman Leonard—and I hope I follow in their footsteps—we have taken a very, very close look at our budgetary needs.

In this budget that is before you, we had our staff go through and list in numerical order the priorities that they felt were properly listed. Every function we do in the agency was subjected to this, and we chopped off things at the bottom.

The position of a majority of this Commission has been that we wanted, before we grew to a larger size, to increase our efficiency, get our own house and our own management in order. For us in 1978 to handle cases perhaps involving \$28 billion worth of trade, using virtually the same resources with which we handled less than \$1 billion worth of trade cases 3 years ago, I think is a phenomenal record in the Federal Government.

We have done it by cutting out anything that we felt was not necessary, putting in order of priority the things that were most important, deciding what we could do and chopping off those things at the bottom.

Senator BYRD. The reason I asked is that the Director of OMB came before the Subcommittee on Taxation of the Finance Committee and stated that the budget the Carter administration submitted was developed from zero-based budgeting. I note that the fiscal year 1979 budget increases the cost of Government by 10 percent and creates the highest Federal funds deficit in the history of the Nation. So I am beginning to wonder just what zero-based budgeting is or means.

Mr. MINCHEW. If you would like, I would be happy for us to submit to you our internal working papers.

Senator BYRD. Just give me one or two figures. You are seeking \$13,113,000 as I understand it.

Mr. MINCHEW. Yes, sir, that is true. Our last budget was \$12,213,000. It is roughly an increase of \$900,000, but Federal salary increases account for almost all of that increase.

Senator BYRD. How many employees do you have?

Mr. MINCHEW. We are authorized 395. We have on board today 379.

Senator BYRD. How does that compare with this past year?

Mr. MINCHEW. The figure is up somewhat but not a large amount from the past year. It is roughly a static figure. It is a figure that is down from our high levels in previous years. We at times have been authorized up to 420. I do not know of another agency in the Government that has come forward, as we have on two occasions, requesting fewer rather than more people.

On this occasion we are requesting exactly the same number that we had last year. Frankly we have not filled some of the positions because, in the judgment of the administrative side of the agency, we have not needed to fill those positions—and we do not fill positions just because a vacancy exists.

Senator BYRD. Thank you. Thank you. Mr. Chairman.

Senator RIBICOFF. Thank you very much, gentlemen. Does anybody else want to comment?

Mr. MINCHEW. Could I ask my colleagues, Vice Chairman Parker and Commissioner Alberger, whether they have any additions or corrections to my comments.

Mr. PARKER. I have no additions or corrections but I would like to add my support to the remarks of the chairman, and to point out that this is, I think, a tight budget and, if there is any error, I think it is an error on the lean side.

Mr. ALBERGER. I have no additional comments.

Senator RIBICOFF. I have no additional comments.

[The prepared statements of Mr. Minchew follows:]

STATEMENT BY DANIEL MINCHEW, CHAIRMAN, U.S. INTERNATIONAL TRADE COMMISSION

Mr. Chairman and Members of the Subcommittee: It is a pleasure to be with you today. With your permission, I would like to introduce my fellow witnesses and then make a few brief remarks.

This past fiscal year has been a period of determined self-evaluation and improvement for us at the U.S. International Trade Commission. Since I last testified before this committee, we have followed through with our reorganization and also implemented the administrative Chairmanship provided last year by our authorizing legislation. By exercising new control that these two innovations have given us, we have streamlined our organization and improved our efficiency to such an extent that we are presently meeting heavy demands for service without significant increases in our resources.

Our request of \$13,113,000 this year is based for the first time on the minimum level indicated by zero-based budgeting. In spite of the increases in our workload, we are asking for basically the same amount of money we requested last year, adjusted for automatic cost increases. We are not asking for an increase in the number of employees we are authorized, and in the non-personnel area we ask an increase of only around 1 percent.

Nevertheless, from this basic request, the House has cut \$300,000, without any findings of unnecessary work or excessive cost estimates. This cut, which was suggested to provide an incentive for saving, would have the immediate effect of requiring us to reduce our average employment by about 12 employees, by allowing authorized positions to remain vacant. As we ourselves have taken the initiative in economizing as much as possible before coming to you with this budget, I would ask you to restore these truly needed funds and authorize our original request, for the following reasons.

Demands on the U.S. International Trade Commission have increased steadily over the several years since the passage of the Trade Act of 1974. The first few months of Fiscal Year 1978 bring with them signs that in some areas the increase is on the verge of becoming drastic. In Fiscal Year 1977, for example, we instituted 10 unfair trade practice investigations—one more than we had instituted over the previous 12 months. However, in just the first 6½ months of fiscal year 1978, we have already had 18 unfair trade practice investigations instituted or requested, 15 of which we received since the 1st of January. This is a rate of one request every ten days, as opposed to the less than one request per month the Commission received in Fiscal Year 1977, a trend which, if it continues, will mean a staggering increase in our workload in this area. Antidumping and import injury cases also show signs of increasing this year. As significant as the numerical growth in these cases is the expansion of their potential political and economic impact. From October 1975 to October 1976 we returned decisions affecting \$2.5 billion in foreign commodities under the import relief section of the statute. In the next year, Fiscal Year 1977, that dollar value doubled, approaching \$5 billion. In antidumping cases, we are faced with an even more startling growth in economic importance. Antidumping cases involved an average of \$1.7 billion worth of foreign commodities in Fiscal Year 1976 and in Fiscal Year 1977. Dumping cases are expected to involve nine or ten times that dollar value during this coming fiscal year, and affect commodities of the highest sensitivity and importance, such as steel.

While coping with and preparing for these increases in our caseload, we have been spending more time and effort than ever before improving the quality and usefulness of our research. We attach the highest importance to being able to predict in advance the advent of trade problems, and to being able to supply this country's policymakers with sound and reliable data on which to base their decisions. Our studies requested by Congress, such as our two Fuel Efficiency Incentive Tax Proposal reports, and by the President, such as our GSP Probable Economic Effects studies, as well as the studies we ourselves have initiated, such as our Report on Petroleum Prices to 1985, have been more ably compiled and presented than ever before. We have also revamped and revitalized our summaries of trade and tariff information, once the most famous product of this commission and now even more comprehensive and more thorough.

All of these projects and investigations have from time to time taxed our resources and tested the commitment of our employees to the limit. However, I am proud to say that we have reacted to meet these increasing demands, not by pulling back our research efforts and doing simply the bare minimum required of us by law, but by improving our productivity and by making our operation more efficient. It is for this reason that we are able this year, in spite of the enormous workload facing us in the unfair trade practice and antidumping areas, to come to you asking for the same amount of money, in real terms, that we requested last year, and for the same number of authorized employees.

In effect we are saying to you that we have made a determined and continuing effort to stay lean and give value for money in the face of a growing demand for our services. Our request to you this year is for the first time based on the hard assessment of needs provided by zero-based budgeting, and, in keeping with the spirit of that system, we are asking you for the bare minimum which we must have to continue to meet our responsibilities in the manner required by law. If we are in error in projecting our requirements for the coming fiscal year, that error lies in under- not over-estimation. For this reason, I ask that you recognize the sincere, voluntary effort we have made, by restoring the \$300,000 cut by the

House and authorizing the lean \$18,113,000 budget we need to remain effective. I or my fellow witnesses will, of course, be pleased to answer any questions you have concerning our request.

Senator Ribicoff. The committee will stand adjourned.
[Whereupon, at 10:30 a.m. the subcommittee adjourned.]

