

1 EXECUTIVE COMMITTEE MEETING

2 TUESDAY, SEPTEMBER 22, 1992

3 U.S. Senate,
4 Committee on Finance,
5 Washington, DC

ORIGINAL

6 The meeting was convened, pursuant to notice, at 3:30
7 p.m., in room SD-215, Dirksen Senate Office Building, Hon.
8 Lloyd Bentsen (Chairman of the Committee) presiding.

9 Also present: Senators Baucus, Bradley, Mitchell,
10 Rockefeller, Breaux, Packwood, Danforth, Chafee,
11 Durenberger, Grassley and Hatch.

12 Also present: Vanda McMurtry, Staff Director and
13 Chief Counsel; Edmund Mihalski, Chief of Staff, Minority.

14 Also present: Debbie Lamb, Professional Staff,
15 Majority; Robert Kyle, Chief International Trade Counsel,
16 Majority.

17 [The press release announcing the meeting follows:]

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1 The Chairman. The first item on our agenda will be
2 Customs modernization, trying to bring the Customs Service
3 into the 20th century. I sure support that goal. The
4 world has changed a lot since the first Customs laws were
5 written some 200 years ago in this country. It is time we
6 recognize that change and respond to it.

7 The Finance Committee held a hearing on Custom
8 modernization legislation in July. That legislation was
9 the result of a lot of hard work, long hours, and tough
10 debates over several years. The heart of that
11 legislation is actually three bills pending before the
12 committee, including a bill recently introduced by Senator
13 Hatch.

14 I want to say that my hat is off to the Joint Industry
15 Committee that worked long and hard in the modernization
16 of our Customs laws to help it enter the computer age.
17 They were supported by such diverse groups as the National
18 Customs Brokers Association, the union that represents
19 Customs employees and a wide range of importers,
20 exporters, transportation companies, air couriers, and, of
21 course, the Customs Service.

22 The bill that emerged is compromise legislation; a
23 deal that these varied groups painstakingly pulled
24 together. No single interest won out; everyone had to
25 compromise. But, in the end, I think we have ended up

1 with a good package, and it is a deal that I think this
2 committee ought to support.

3 I had some concerns about the bill as it was passed by
4 the House, and I know that some of my colleagues on the
5 committee shared those concerns. In the week since the
6 committee held its hearings on Customs legislation, I have
7 heard from a number of Customs brokers who are not happy
8 with one part of this bill, the section of the bill
9 relating to what is called "remote entry filing." In the
10 past few weeks, I have spent a lot of time reviewing those
11 Customs procedures.

12 I understand some of the concerns that some of the
13 Customs brokers have over remote filing. At the same
14 time, I can certainly see the benefits to the importing
15 community, and to the Customs Service, which is looking
16 for ways to streamline the operations, increase
17 efficiency, and improve compliance with the laws we expect
18 to enforce.

19 The proposal I am putting before the committee today
20 includes several modifications regarding remote filing
21 entries in order to address some of the major concerns
22 that certain broker groups have raised, and I want to
23 particularly express my appreciation to Senator Packwood,
24 to Senator Breaux, and to others on this committee who
25 worked to resolve those differences because we all shared

1 those same concerns.

2 First, I propose we tighten requirements that Customs
3 adequately test and evaluate remote filing before it
4 implements this program on a permanent basis. Second,
5 before the program can go into effect permanently, Customs
6 and the General Accounting Office must report to the
7 Finance and Ways and Means Committees, and then wait a
8 minimum of 30 session days before implementing the
9 program.

10 That will guarantee that the Congress will have an
11 adequate amount of time, time that runs while we are in
12 session, to review the test results and take into account
13 the views of the business community, including the various
14 broker groups, and decide whether this program makes
15 sense.

16 Third, once the program is in place, I want to see a
17 comprehensive review each year during the transition
18 period so that we can see for ourselves how this program
19 is working.

20 More important, I am proposing additional changes to
21 the remote filing program. While information can be filed
22 either remotely or locally, I believe that certain types
23 of additional information--information that Customs
24 requires for the release of merchandise, but which Customs
25 cannot accept electronically, including information

1 required by other agencies, such as the Food and Drug
2 Administration--should always be filed locally and not
3 remotely.

4 I think that other types of additional information
5 should be able to be filed remotely, but only after a six-
6 year transition period. That is a two-year extension
7 beyond the House bill.

8 I am also proposing a modification to the bill
9 regarding the boarding of vessels. The bill approved by
10 the House eliminated that requirement that Customs must
11 meet all arriving vessels. In practice, as trade
12 increased, Customs has not boarded all incoming vessels
13 and has developed alternatives to that boarding
14 requirement.

15 But I am convinced that the boarding of vessels can,
16 in some circumstances, play an important role in the
17 enforcement of our trade, drug, and Customs laws. For
18 that reason, I am proposing that we add a requirement that
19 Customs must provide a sufficient number of vessels to
20 ensure compliance with our laws. It is like the old
21 taxpayer compliance audit that we do on random selection
22 in this country.

23 On balance, I think the package we have before us is a
24 good, well-balanced package. I am convinced that this
25 will give Customs the tools it needs to process

1 merchandise quickly, while, at the same time, properly
2 enforcing our laws. I yield to Senator Packwood for any
3 comments he would like to make.

4 Senator Packwood. Mr. Chairman, I think you have done
5 a Solomon-like job on this, and I think we ought to send
6 the bill out without amendment.

7 The Chairman. Well, I propose to call up H.R. 5643,
8 the substance of which is included in H.R. 11. I propose
9 to strike all of the enacting clause and substitute the
10 Customs modernization legislation. That is what we will
11 be calling up. Are there other comments concerning the
12 legislation?

13 Senator Baucus. Mr. Chairman.

14 The Chairman. Yes.

15 Senator Baucus. Mr. Chairman, I appreciate the
16 Customs Modernization Act that you are calling up before
17 this committee to pass out of this committee onto the
18 Floor and be enacted this year. At the appropriate time,
19 either here or on the Floor, I have an amendment which I
20 intend to offer. It would be a provision which I
21 introduced some time ago.

22 It is the Trade Agreements Compliance Act. It is a
23 bill I introduced, sponsored by Senator Rockefeller,
24 Senator Riegle, Senator Breaux, Senator Daschle, Senator
25 Grassley, Senator Danforth, Senator Pryor, Senator

1 Bingaman, Senator Glenn, Senator DeConcini, Senator Levin,
2 Senator Symms, and Senator Mitchell.

3 Essentially, it allows industries to file with the
4 USTR a petition asking the USTR to determine whether or
5 not another country has lived up to an agreement the
6 United States has signed.

7 And if, in fact, the USTR, at its own discretion,
8 determines that the foreign country has not lived up to
9 the agreement, then the usual 301 enforcement provisions
10 apply. And if, on the other hand, USTR, at its own
11 discretion, determines that there is not a violation of
12 the trade agreement, then the USTR's discretion would
13 apply and no action would be forthcoming.

14 Essentially, this amendment is based upon the premise
15 that a deal is a deal. That is, if another country signs
16 a deal with the United States, it is only fair that it
17 lives up to the deal. Often, we negotiate agreements
18 where other countries do not live up to the agreements,
19 and we are left handcuffed because there is not sufficient
20 enforcement action with respect to that agreement.

21 Examples are: the semiconductor agreement which Japan
22 has not lived up to; the softwood MOU, which Canada has
23 not lived up to; the Korean beef agreement would be
24 another example. I just feel that because this is
25 essentially non-controversial, it is a provision which is

1 in the House bill, it is a provision which the
2 administration does not support or oppose, and it is just
3 basically good policy encouraging countries to live up to
4 the end of their deal. As I say, at the appropriate time,
5 this amendment I will offer. Otherwise, I appreciate the
6 bill that you have brought up before us and I think it has
7 significant merit.

8 The Chairman. Let me say the problem the Chair has on
9 this one. Frankly, the amendment sounds like a good one
10 to me. I know that there are others. I know the Majority
11 Leader has one that I am a co-sponsor of. My problem is
12 this, that if we start putting on amendments that are not
13 germane to the subject of Customs, then the word is out we
14 have got ourselves a trade bill.

15 And my concern is, then they are going to load this
16 thing down and we will have no bill at all. Every member
17 of this committee has one trade amendment or more that he
18 would like to get on the bill. I do not know where you
19 stop. That is my problem.

20 Senator Mitchell. Mr. Chairman.

21 The Chairman. Yes.

22 Senator Mitchell. Mr. Chairman, when the Caribbean
23 Basin Initiative was enacted in 1983, footwear and other
24 import-sensitive products were exempted from the duty-free
25 treatment otherwise provided to products imported from

1 Caribbean Basin nations.

2 When the CBI was reconsidered in 1990, both the Senate
3 and the House went on record in different ways, but
4 clearly evidencing their support for a continuation of
5 that exemption.

6 Indeed, the Senate debated and voted in a recorded
7 vote on an amendment to reduce the import duties to 50
8 percent. The amendment was defeated by the overwhelming
9 margin of 63 to 33.

10 However, the conference ignored the expressed intent
11 of both the House and Senate, and effectively reduced the
12 import duties to zero, even though the Senate had voted
13 overwhelmingly against reducing them at all.

14 Senator Cohen and I have introduced legislation to
15 correct that situation. It is bipartisan in nature; 23
16 co-sponsors--as you indicated, Mr. Chairman, including
17 yourself.

18 I want to be cooperative to the Chairman's desire, but
19 I feel that we have been victimized by conference action,
20 which, of course, we could not then attempt to amend, that
21 was plainly inconsistent with the expressed will of the
22 Senate by a very substantial margin.

23 The consequences are significant. A quarter of a
24 century ago there were nearly 30,000 persons employed in
25 the manufacture of shoes in my State. There are now fewer

1 than 8,000. And many of them will lose their jobs unless
2 the situation is corrected.

3 I have had more than one owner of a manufacturing
4 plant in my State tell me explicitly and directly that
5 unless this is corrected, it will simply close their
6 facilities and move them to one of the Caribbean nations.

7 Of course, shoe manufacturing exists in many other
8 States. They have encountered the same situation we have
9 as production has declined, but it still accounts for a
10 substantial number of manufacturing jobs in several
11 States.

12 I am sympathetic with the Chairman's circumstance. I
13 hope that he and the other members of the committee are
14 sympathetic with ours. So, like Senator Baucus, I would
15 like to reserve my rights as well, if and when this bill
16 ever gets to the Floor, that this could be considered. I
17 emphasize, it is not as though this is a new issue. It is
18 an old issue.

19 It is not as though the Senate has not expressed its
20 will on it, the Senate has expressed its will on it more
21 than once. We find ourselves in a situation where,
22 because the conference took action contrary to the
23 expressed will of the Senate, there have been severe
24 adverse consequences.

25 The Chairman. I would say to the Majority Leader, I

1 certainly share his concerns. And, as I stated earlier, I
2 am a co-sponsor of the amendment and recognize the
3 seriousness of the problem. And if it was early in the
4 session, I would strongly support it, and doing it right
5 now.

6 But I am afraid if we start down that road in this
7 committee, we are going to load it up. I have been told
8 by the members of the committee that, once it starts, they
9 want theirs. I would have to pose it in the committee,
10 and I would hope the Majority Leader and my friend from
11 Montana would reserve their rights for the Floor. Senator
12 Rockefeller.

13 Senator Rockefeller. Mr. Chairman, I will support
14 your decision, whichever way you want to go, amendments or
15 no amendments. And I see the advantage of a clean bill,
16 and I understand the problem of members having amendments.

17 I did way to say, though, that if the Chairman does
18 not go the clean bill way, that I would have an amendment
19 on pipe and tube, which relates to a tariff inversion
20 matter, which has been before this body for eight years.
21 It was something that Senator Heinz worked on; Senator
22 Danforth and Senator Grassley are co-sponsors. But I will
23 completely follow the wish of the Chairman.

24 The Chairman. I would say to the committee that every
25 member of the committee has advised me that they have

1 amendments to offer in that regard if we start that way.

2 I see we have a vote, Mr. Leader.

3 Senator Bradley. Mr. Chairman, if there are no
4 further comments, is it appropriate to move the bill?

5 The Chairman. If there are no further comments, yes,
6 it is. We will make the vote. Do you so move?

7 Senator Packwood. Second.

8 The Chairman. All in favor of the motion as stated,
9 make it known by saying aye.

10 (A chorus of ayes.)

11 Senator Mitchell. Mr. Chairman, I want my vote to be
12 recorded as abstained.

13 The Chairman. Yes, of course. All right. I want to
14 turn now to Senate Joint Resolution 320, a resolution that
15 approves the extension of most-favored-nation treatment to
16 Romania. Our trade relations with Romania have had a
17 checkered past.

18 We first granted MFN treatment in 1875, and continued
19 that until 1988. But, under the Ceaucescu regime,
20 conditions in that country deteriorated and human rights
21 abuses grew. In 1988, when we threatened to revoke MFN,
22 Romania renounced our trade agreement and MFN treatment
23 ceased.

24 The world has changed dramatically since that time,
25 and Romania has changed dramatically. We still have

1 concerns--concerns about the treatment of Hungarian
2 minorities, concerns that the upcoming elections be
3 conducted freely and fairly, and concerns that the
4 democratic process be irreversibly put in place.

5 The Senate passed a resolution last month underscoring
6 these concerns and expressing the conviction that we
7 should not extend MFN treatment unless we determine that
8 the upcoming elections are free and fair. I intend to
9 abide by that resolution.

10 But I wanted the committee to consider this MFN
11 resolution today, in order to speed up its possible
12 consideration by the full Senate when the appropriate time
13 comes. The motion has been made to report it out. Are
14 there questions?

15 (No response)

16 The Chairman. If not, all in favor of the motion as
17 stated, make it known by saying aye.

18 (A chorus of ayes.)

19 The Chairman. Opposed, no.

20 (No response)

21 The Chairman. Now, we had two other items. The next,
22 was to consider the Section 332 request regarding the
23 economic impact of the North American Free Trade
24 Agreement. That was a study. All in favor, make it known
25 by saying aye.

1 (A chorus of ayes.)

2 The Chairman. Opposed, similar sign.

3 (No response)

4 The Chairman. And, last, to consider a Section 332
5 request regarding energy, trade, and investment barriers
6 in the former Soviet Union. May I have a motion?

7 Senator Packwood. So moved.

8 Senator Bradley. Second.

9 The Chairman. All in favor, make it known by saying
10 aye.

11 (A chorus of ayes.)

12 The Chairman. Opposed, same sign.

13 (No response)

14 The Chairman. Motion carried.

15 (Whereupon, the meeting was concluded at 3:48 p.m.)

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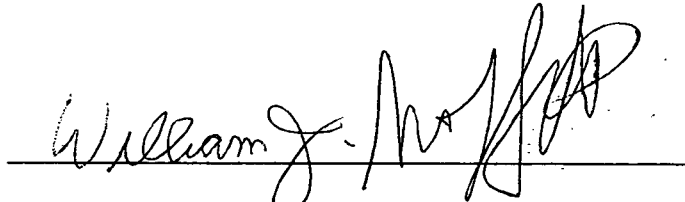
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C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Committee Meeting, Committee on Finance, United States Senate, held on September 22, 1992, were transcribed as herein appears and that this is the original transcript thereof.



WILLIAM J. MOFFITT

Official Court Reporter

My Commission Expires April 14, 1994

UNITED STATES SENATE
COMMITTEE ON FINANCE

Executive Session

Tuesday, September 22, 1992 - 3:00 PM
SD-215 Dirksen Senate Office Building

A G E N D A

- I. To consider legislation to modernize the U. S. Customs Service.
- II. To consider S. Res. 320, Approving the Extension of Non-discriminatory Treatment (Most-Favored-Nation Treatment) to the Products of Romania.
- III. To consider a Section 332 request regarding the economic impact of the North American Free Trade Agreement.
- IV. To consider a Section 332 request regarding energy trade and investment barriers in the former Soviet Union.

CUSTOMS MODERNIZATION LEGISLATION
Chairman's Mark

Tuesday, September 22, 1992

A. General Provisions

The provisions of the mark address four major issues: (1) facilitating Customs' processing of merchandise through automation; (2) improving compliance with U.S. customs laws by adopting or, where appropriate, increasing penalties for non-compliance; (3) providing the trade community with greater certainty concerning Customs' rules and regulations ("informed compliance"); and (4) streamlining Customs' operations through a number of administrative changes.

(1) Facilitation of entries.--The Chairman's mark provides the statutory authority to establish the National Customs Automation Program (NCAP) and authorizes the remote filing of entry documents, which would permit an importer to file some of the necessary information from a single location regardless where the merchandise arrives in the United States or where it is released by the Customs Service. The mark also permits importers, in order to cut costs through the submission of information in batch form, to file electronically and periodically summaries of the information now contained in individual entry summaries. In addition, importers will be permitted to file "reconciliation" statements, permitting Customs to finalize the duty assessment process by liquidating the underlying entry as to all merchandise covered by the entry, except for the merchandise identified by the importer as requiring the submission of additional information not currently available to the importer. This additional information will be contained in a reconciliation statement, which will in turn be liquidated by Customs. The mark also permits importers to pay duties and fees periodically, with interest.

Other provisions aimed at facilitating the entry of merchandise include changes and clarifications to the laws regarding duty drawback, the elimination of requirements to provide unnecessary documents or information, and changes updating the laws regarding the entry of vessels.

(2) Improved enforcement of customs laws.--The Chairman's mark also contains a number of provisions aimed at improving compliance with the customs laws, in exchange for the steps that Customs will take to facilitate the entry of merchandise. These measures chiefly take the form of penalties for failure to provide accurate information or to keep the records that will be necessary for Customs to audit or review entries of merchandise after they have been cleared through Customs.

The Chairman's mark makes clear that penalties that currently apply to false, forged or altered documents will also apply to information submitted electronically. In addition, importers will be required to exercise "reasonable care" in entering merchandise electronically; failure to do so will subject importers to civil penalties. The mark also subjects additional parties to the recordkeeping requirements of the law and establishes a new administrative penalty if parties fail to produce the records required by Customs to audit or review entries of merchandise. Penalties are also established for the filing of false duty drawback claims. The Chairman's mark also establishes two voluntary compliance programs, a "Recordkeeping Compliance Program" and a "Drawback Compliance Program," in which Customs will be required to inform participants of their rights and obligations concerning recordkeeping and the filing of drawback claims.

(3) Informed compliance.--The concept of "informed compliance" is addressed in the Chairman's mark in a number of provisions. "Informed compliance" is premised on the belief that importers have a right to be informed about Customs rules and regulations, as well as interpretive rulings and directives, and to expect certainty that Customs could not unilaterally change the rules without providing importers with proper notice and an opportunity to respond.

To expedite the entry of merchandise, the mark authorizes Customs to accredit private laboratories and commercial gaugers, and to accept quantity and analysis results from such accredited facilities, although Customs will always reserve the right to independently test, analyze or quantify merchandise. The Chairman's mark also establishes specific procedures for the detention of merchandise by Customs and guarantees recourse to the Court of International Trade in cases where Customs fails to make a timely decision concerning the admissibility of detained merchandise. The mark also clarifies the circumstances under which merchandise may be seized and forfeited; it is intended to codify existing practices. Additional provisions relate to Customs protest procedures, the publication of interpretive rulings and appeals of adverse interpretive rulings, and the conduct of regulatory audits.

(4) Administrative modifications.--The Chairman's mark also includes a number of measures aimed at streamlining Customs' operations and improving the productivity of the Service. For example, Customs will be authorized to use private collection agencies to recover money owed to the U.S. Government under the Customs laws. In addition, other agencies on whose behalf Customs collects fees will be required to reimburse Customs for its services. The mark also increases the specific dollar limits that authorize eligibility for Customs to issue administrative

exemptions from duty and taxes on articles such as gifts and personal and household goods and authorizes Customs to waive the collection of duty where the duty is so low that the expense and resources required to process the entry are disproportionate to the revenue that would be collected. The Chairman's mark also requires reports to Congress regarding the collection of duties imposed under the antidumping and countervailing duty laws, compliance with the laws enforced by Customs, a review of courier services and the distribution of costs of Customs cargo examination program.

B. Specific Issues

(1) Remote entry filing.--The Chairman's mark will permit remote filing only under the following circumstances:

- (a) remote filing will be allowed for "core" entry information;
- (b) in cases where Customs requires additional information for the release of merchandise, remote filing will be permitted only for documents that are not necessary for the release of merchandise, and only after December 31, 1998.

In addition, the Chairman's mark requires that Customs test and evaluate remote filing, taking into account the comments of small, medium, and large brokers, and report those results to the Finance and Ways and Means Committees. At the same time, the General Accounting Office will be required to prepare an evaluation of remote entry filing and submit it to the Committees. Customs will be permitted to implement remote filing on a permanent basis only after a 30-session-day waiting period to ensure proper Congressional review. The Chairman's mark also includes a mandatory annual review of the remote filing program throughout the transition period (that is, through December 31, 1998).

(2) Vessel boarding.--The Chairman's mark includes a requirement that Customs board a sufficient number of vessels to ensure compliance with our customs, drug and trade laws.

**BACKGROUND INFORMATION ON S.J. RES. 320, A RESOLUTION
APPROVING THE EXTENSION OF MOST-FAVORED-NATION (MFN)
TREATMENT TO ROMANIA**

(Prepared by the Staff of the Senate Committee on Finance)

This document provides background information relevant to the Committee's consideration of the trade agreement with Romania and S.J. Res. 320, a resolution approving the extension of MFN treatment to that country.

The U.S.-Romanian trade agreement was signed on April 3, 1992, and forwarded to the Senate for its approval on June 23, 1992. The trade agreement and the accompanying resolution would restore MFN to Romania, which ceased receiving MFN treatment on July 3, 1988.¹ On July 2, 1992, Chairman Bentsen issued a press release requesting public comments on the agreement by July 17, 1992. In response, the Committee received 28 comments, all but two in favor of approving MFN for Romania. The House Ways and Means Committee, on July 29, 1992, ordered the companion resolution, H.J. Res. 512, favorably reported.

This document provides information on the statutory requirements for extending MFN treatment to Romania; compliance with the Jackson-Vanik freedom-of-emigration requirements; the trade agreement itself; procedures for Congressional consideration of the trade agreement; and background on U.S.-Romanian trade. Copies of S.J. Res. 320 and an article-by-article summary of the agreement are attached. The full text of the agreement and copies of the accompanying side letters are available in the Committee on Finance.

Statutory requirements for granting MFN treatment to the products of Communist countries.--The United States maintains two rates of customs duties for most imported products. The "column 1" rates of duty are relatively low, the result of various rounds of multilateral, reciprocal tariff negotiations.

¹ Romania was first accorded MFN status on August 3, 1975, when a trade agreement conforming to the requirements of Title IV of the Trade Act of 1974 entered into force. In 1987, in reaction to concerns about Romania's emigration and human rights policies, the House and the Senate each adopted resolutions to suspend Romania's MFN status for six months. On February 26, 1988, in the expectation that then-President Reagan would not renew the waiver of the Jackson-Vanik freedom of emigration requirements (described elsewhere in this Staff Document), Romania renounced the renewal of MFN treatment for its products. The President then proclaimed that he would not seek the renewal of MFN status for Romania and Romanian products ceased receiving MFN treatment as of July 3, 1988.

The "column 2" rates of duty are much higher; these were set by the Smoot-Hawley Tariff Act of 1930. The lower "column 1" rates of duty apply to countries to which the United States grants MFN treatment. Column 2 rates of duty apply to countries not accorded MFN status.

In 1951, Congress enacted the Trade Agreements Extension Act which required the President to suspend MFN status for countries under the control of international communism, including Romania. In Title IV of the Trade Act of 1974 (1974 Trade Act), Congress created a new statutory scheme for restoring MFN treatment to the products of those countries not receiving MFN treatment as of the date of enactment of the 1974 Trade Act (January 3, 1975), including Romania.

Under Title IV, the President may grant MFN treatment if two basic conditions are met: (1) compliance with the requirements of the freedom-of-emigration provisions of the 1974 Trade Act, commonly known as the Jackson-Vanik amendment, or a waiver of those requirements; and (2) conclusion of a bilateral commercial agreement with the United States that contains specific provisions identified in section 405 of the 1974 Trade Act.

Compliance with Jackson-Vanik requirements.--Under the Jackson-Vanik amendment (section 402 of the 1974 Trade Act, as amended), MFN treatment may be granted to the countries covered by Title IV if the President finds that the country is affording its citizens the right of free and unrestricted emigration. The President is authorized to waive this requirement if he determines that doing so will substantially promote the objectives of the law and if he has received assurances that the emigration practices of the country will lead substantially to the achievement of the objectives.

The Jackson-Vanik requirements for Romania were first waived on April 24, 1975 and extended annually from 1976 through 1987. In 1988, after Romania renounced MFN status from the United States, then-President Reagan announced that he would not seek renewal of MFN for Romania and did not, therefore, renew the Jackson-Vanik waiver. On August 17, 1991, President Bush once again waived the Jackson-Vanik requirements and renewed the waiver on June 3, 1992. In his 1992 report to the Congress, the President stated that, since the Jackson-Vanik waiver was issued in August 1991, Romania has continued to respect freedom of emigration. The President noted that passports are obtainable upon application and payment of normal fees. He noted further that, although Romanians must present proof that they have settled their debts in Romania in order to emigrate, this requirement may slow, but does not measurably impede, emigration.

The trade agreement.--Title IV of the 1974 Trade Act also requires that a bilateral commercial agreement be in effect before MFN treatment may be granted to the countries subject to Title IV. Section 405 of the Act sets forth a number of specific provisions that must be included in these agreements. They must, for example: be limited to three years in duration (but are renewable for three-year periods); provide for suspension or termination at any time for national security reasons; include safeguard arrangements; and include provisions relating to the protection of intellectual property, the settlement of disputes and the promotion of trade.

A trade agreement meeting the Title IV requirements entered into force August 3, 1975, and was renewed every three years until it was suspended by the Romanians on June 22, 1988. A new U.S.-Romanian trade agreement was sent to the Congress for approval on June 23, 1992. The agreement provides for the reciprocal extension of MFN treatment and contains a number of additional provisions designed to facilitate trade between the two countries. Included in the agreement are measures to encourage the mounting of trade promotion events; ease the establishment of business offices and the direct hire of employees; and improve the transparency of laws and regulations affecting trade and commercial matters. Additional provisions require that trade be conducted in convertible currencies and require the parties to provide non-discriminatory treatment with respect to a range of financial transactions. In addition, hard currency earnings from trade may be immediately repatriated. Further, Romania agreed to provide strong protection for intellectual property. A summary of the agreement is attached.

Procedures for Congressional consideration of the trade agreement.--The 1974 Trade Act, as amended by the Customs and Trade Act of 1990, provides expedited ("fast-track") legislative procedures for Congress to consider both bilateral commercial agreements and Presidential declarations proclaiming MFN status for those countries which have entered into commercial agreements which meet the Title IV requirements.

Under Title IV, as amended, such trade agreements and MFN proclamations may take effect only after the House and Senate adopt a joint resolution of approval under "fast-track" procedures (i.e., no amendments and limited debate). Under section 151 of the Trade Act of 1974, the approval resolution with respect to such trade agreements is automatically referred to the Finance Committee. No amendments are in order. The procedures of section 151 provide for final Congressional action on an approval resolution within 90 session days after its introduction.

U.S. trade with Romania.--U.S. exports to Romania in 1991 reached \$206 million, down sharply from the \$368 million in goods the U.S. exported in 1990. Our leading 1991 exports were coal (\$54 million), soybeans (\$28 million), corn (\$20 million), and butter (\$11 million). U.S. imports from Romania in 1991 totaled \$70 million, or one-third the value of our imports from that country in 1990. Leading imports were iron and steel products, tractors, refined petroleum products, footwear, apparel, luggage and glassware. For the first six months of 1992, U.S. exports to Romania were down six percent over the comparable period in 1991, while U.S. imports were up 17 percent.

The General Accounting Office (GAO) has estimated that granting MFN status to Romania would reduce the weighted average tariff rate on dutiable products, excluding refined petroleum products, by about 25 percentage points, from about 34 percent to 8.8 percent. The GAO estimates that the tariff on refined petroleum products, historically the leading U.S. import from Romania, would drop about 3.5 percentage points. The GAO has also concluded, however, that even a substantial increase in U.S. imports from Romania would likely have only a small impact on total U.S. imports. At their peak, Romania's share of total U.S. imports was less than three-tenths of one percent, and Romania's total exports to all countries in 1989 amounted to less than three percent of total U.S. imports.

Attachments

102^D CONGRESS
2^D SESSION

S. J. RES. 320

Approving the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of Romania.

IN THE SENATE OF THE UNITED STATES

JUNE 23 (legislative day, JUNE 16), 1992

Mr. MITCHELL (for himself and Mr. DOLE) (by request) introduced the following joint resolution; which was read twice and referred to the Committee on Finance

JOINT RESOLUTION

Approving the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of Romania.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*
3 That the Congress approves the extension of non-
4 discriminatory treatment with respect to the products of
5 Romania transmitted by the President to the Congress on
6 June 23, 1992.

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SUMMARY OF THE U.S.-ROMANIAN TRADE AGREEMENT

Article I.--Article I provides that the United States and Romania shall apply to each other the provisions of the General Agreement on Tariffs and Trade (GATT) and accord most-favored-nation (MFN) treatment to each other's products. In addition, both countries reaffirm their participation in the GATT Code Agreements to which both are presently signatories (Standards, Customs Valuation, Licensing, Aircraft, and Bovine Meat) and commit to participate in multilateral negotiations aimed at improving the existing agreements, and any other GATT negotiations. Each country will also accord to the products and services of the other MFN treatment with respect to the allocation of and access to currency to pay for such imports.

Article II.--This article sets forth the agreement of both countries to maintain a "satisfactory balance of market access opportunities" through reciprocal reductions of tariff and non-tariff barriers. It also provides that trade is to be conducted between the two countries by means of contracts concluded as exercises of independent commercial judgment on the basis of non-discrimination and customary commercial considerations such as price, quality, availability, delivery, and terms of payment. In addition, Article II provides that neither country will require or encourage barter or countertrade. However, in the event that nationals or companies choose to resort to such practices, this article provides that both Governments will encourage them to furnish each other with all necessary information to facilitate the transaction.

Article III.--Article III includes general provisions concerning the desirability of expanding two-way trade and commits both countries to take "appropriate measures" to encourage the exchange of goods and services. Article III also states the mutual expectation of both countries that the agreement will result in increased orders for each other's goods and services. Moreover, under Article III, the countries agree to facilitate the holding of trade promotional events and encourage their companies and citizens to participate in such events. Article III further provides that, consistent with their laws, the United States and Romania will permit the duty-free importation and reexport of articles used in trade promotion events.

Article IV.--Under Article IV, the United States and Romania agree to permit, on a reciprocal basis, the establishment of government commercial offices. Article IV prohibits these offices and their respective officers from participating directly in the negotiation, execution, or fulfillment of trade transactions. This provision permits government commercial offices to hire directly both host country and third country nationals, consistent with applicable immigration laws. This article also contains general provisions concerning unhindered access to government commercial offices, participation in the activities of these offices, and access to the personnel of these offices.

Article V.--This article contains a number of provisions aimed at facilitating business transactions between the United States and Romania. These provisions relate to the establishment of "commercial representations," the direct hire of employees, importation of office equipment, access to office space, living accommodations, employment of agents and distributors, the stocking and distribution of samples and replacement parts, advertising, market research, and access to services provided by governments (e.g. public utilities). Article V also prohibits each country from imposing measures which unreasonably impair the contractual or property rights of the other and obligates each country to ensure that governmental decisions affecting commercial operations are made expeditiously.

Article VI.--In Article VI, the United States and Romania agree to make publicly available on a timely basis all laws, regulations, judicial decisions, and administrative rulings relating to trade, investment, and other commercial matters. This article also stipulates that each country shall provide access to available non-confidential information on its internal market. In addition, Article VI requires each party to permit nationals and companies of the other country to comment on the formulation of rules and regulations which affect the conduct of business.

Article VII.--This article stipulates that trade between the United States and Romania is to be conducted in U.S. dollars or other convertible currencies, unless the parties to individual transactions agree otherwise. The article also binds the parties not to restrict the export of convertible currencies or deposits obtained in connection with trade in goods and services. Article VII also permits nationals and companies to deposit local currency in local financial institutions. Article VII also requires non-discriminatory treatment with respect to a range of financial transactions.

Article VIII.--In Article VIII, both countries agree to provide adequate and effective protection and enforcement of intellectual property rights. Details of the commitments are set forth in a separate side letter.

Article IX.--In Article IX, both countries agree to work toward agreements on investment matters such as the repatriation of profits and the transfer of capital. The two countries agree generally to foster economic cooperation in such fields as statistics, standards, and production data. The two countries also agree to consult on services trade.

Article X.--Article X provides safeguard arrangements calling for prompt consultations and permitting the imposition of import restrictions in cases of market disruption.

Article XI.--This article incorporates a number of provisions relating to the settlement of disputes. For example, Article XI grants national treatment to the nationals and companies of both countries with respect to access to courts and administrative bodies, encourages the adoption of arbitration, sets forth desired arbitration procedures, and provides that each country is to ensure that there is an effective means for the recognition and enforcement of arbitral awards.

Article XII.--Article XII stipulates that nothing in the agreement limits the right of either country to take actions to protect its national security interests.

Article XIII.--This article provides that the Joint American-Romanian Economic Commission shall periodically review the operation of the agreement. Article XIII also provides for prompt consultations through appropriate channels to discuss any matter relating to the agreement.

Article XIV.--This article provides definitions of the key terms used in the agreement.

Article XV.--Article XV contains several exceptions to the agreement. The agreement is not to be construed, for example, to prohibit action required or permitted by the GATT or measures to protect intellectual property rights. The article also provides that trade in products or services that are subject to existing bilateral or multilateral agreements on specific sectors, including textiles and civil aircraft, will be subject to those agreements, rather than this bilateral trade agreement.

Article XVI.--Article XVI deals with the entry-into-force of the agreement, stipulates that the initial term of the agreement will be three years, with possible extensions for three-year terms, and provides for termination of the agreement.

Side Letters.--In separate side letters, each of which constitutes an integral part of the trade agreement, Romania made additional commitments concerning the protection of intellectual property, the promotion of tourism, and access to information on companies and individuals involved in foreign trade and other information that would be useful in developing business contacts.

September 22, 1992

The Honorable
Don E. Newquist
Chairman
U.S. International Trade Commission
500 "E" Street, S.W.
Washington, D.C. 20436

Dear Mr. Chairman:

As you know, on August 12, negotiations were concluded for a North American Free Trade Agreement (NAFTA). Administration officials have indicated that the President may notify the Congress this month of his intention to enter into the NAFTA, which he must do at least 90 days before actually signing the Agreement.

The NAFTA will have important implications for the U.S. economy overall and could have a significant impact on individual industrial, agricultural, and service sectors. An understanding of the potential short- and long-term costs and benefits of the Agreement for U.S. producers and workers will be crucial to the consideration of implementing legislation by the Congress.

Consequently, on behalf of the House Committee on Ways and Means and the Senate Committee on Finance, we request that you conduct a study under section 332(g) of the Tariff Act of 1930 consisting of (1) an analysis of the economic costs and benefits of the NAFTA for the U.S. economy in the short and long term and (2) analyses of the short- and long-term impact of the NAFTA on important agricultural, industrial, and service sectors of the economy. The analyses should be based on the provisions of the Agreement itself as concluded, not on hypothetical assumptions. The study should focus on those provisions having the most direct impact on the U.S. economy or individual sectors.

The analysis of the likely impact of the NAFTA on the U.S. economy should reflect the Commission's own work and expertise in this area, and its understanding of the actual provisions of the Agreement. The assessment should include an analysis of the likely impact of the NAFTA on (1) overall employment and wage rates in the United States, (2) U.S. wages at different skill levels, (3) U.S. production, (4) U.S. import and export performance, and (5) the national income. This assessment should also address, to the extent feasible, related implications for Canada and Mexico.

The Honorable
Don E. Newquist
September 22, 1992
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In addition, it is also important that the context in which the Agreement is being implemented, especially with regard to Mexico, be well understood. The Commission's report should, therefore, also provide an overview of recent economic trends in Mexico, including but not necessarily limited to, major developments in infrastructure, productivity, product quality, and education; foreign trade and investment patterns; and related government regulatory reform.

The sector analyses should include assessments of the likely impact of the Agreement on U.S. exports and imports, and on U.S. production, employment, and investment. To the extent feasible, the analyses should address the likely impact on investment patterns among the three countries, as well as the potential impact of the NAFTA on U.S. global competitiveness and trade patterns. The study should identify the changes in U.S. law required by the Agreement that may significantly affect individual sectors and discuss the potential economic impact of those provisions. To the extent feasible, the study should also identify significant changes in Mexican and Canadian law required by the Agreement for those sectors for which there is a significant economic impact.

The key sectors for individual analysis should include agriculture overall and the following individual sectors: grains and oilseeds, citrus fruit and juice, other fruits, vegetables, sugar, dairy products, cotton, peanuts, sugar containing products, livestock and meat, poultry, fish, cut flowers, lumber and wood products, and alcoholic beverages; automotive (motor vehicles and parts); textiles and apparel; computers (including major components) and electronics; petroleum (including oilfield services); primary petrochemicals; pharmaceuticals; natural gas, oil/natural gas pipelines; electricity transmission; steel mill products; bearings; machine tools; flat glass; household glassware; ceramic tile; and service sectors such as telecommunications, transportation, engineering and construction, banking, and insurance. These analyses should take into account generic as well as sector-specific provisions in the Agreement.

The Honorable
Don E. Newquist
September 22, 1992
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Since Congressional Committees will be reviewing the draft NAFTA text this fall before adjournment and are likely to develop implementing legislation early in the 103rd Congress, we would appreciate receiving the study by January 29, 1993. It is recognized that adjustments in the timetable for submitting the study may be appropriate. In view of the time constraint and to provide the most useful information, the report should be concise and emphasize important implications rather than be excessively quantitative and detailed.

In addition, the Committee would appreciate technical assistance from the Commission and its staff as the Committee begins the process of developing implementing legislation for the NAFTA. In particular, the Committee expects to seek informal advice from the Commission, as it has with previous trade agreements, regarding changes in U.S. laws that must be made to implement the NAFTA and, to the extent questions may arise, necessary changes in Mexican and Canadian laws.

Thank you for your cooperation.

Sincerely,

Dan Rostenkowski
Chairman
Committee on Ways and Means
U.S. House of Representatives

Lloyd Bentsen
Chairman
Committee on Finance
United States Senate

LLOYD BENTSEN, TEXAS, CHAIRMAN

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STAFF DOCUMENT E

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

September 22, 1992

VANDA B. McMURTRY, STAFF DIRECTOR AND CHIEF COUNSEL
EDMUND J. MIHALSKI, MINORITY CHIEF OF STAFF

The Honorable
Don E. Newquist
Chairman
U.S. International Trade Commission
500 "E" Street, S.W.
Washington, D.C. 20436

Dear Mr. Chairman:

The former Soviet Union historically depended heavily on exports of crude petroleum and natural gas for hard currency. Recent political changes and a foreign debt exceeding \$83 billion have made crude petroleum and natural gas exports even more critical at a time when production of these commodities has reached an all time low. The United States is the world leader in crude petroleum and natural gas exploration and production technology, including types adapted to harsh climates and difficult terrain. Although commitment of U.S. capital and technology would aid the further development of the petroleum and natural gas industry in the newly independent states of the former Soviet Union (NIS), to date only a few U.S.-NIS joint ventures have begun to produce crude petroleum and natural gas in the area.

On behalf of the Senate Committee on Finance, and under the authority of section 332(g) of the Tariff Act of 1930, I am requesting that the Commission conduct a baseline analysis of existing trade and investment patterns in the crude petroleum and natural gas sectors of the energy producing states of the NIS, as well as an examination of the current and potential impediments affecting the production, distribution, transportation, and storage of and trade and investment in these commodities. In its report, the Commission should evaluate the energy-producing states of the NIS in terms of reserves and production of crude petroleum and natural gas, as well as analyze the past, current, and likely future trade patterns of these nations for these products.

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More specifically, among the issues the Commission should review are:

- (1) Crude petroleum and natural gas production in the NIS over a five-to-ten year period;
- (2) Crude petroleum and natural gas trade over a five-to-ten year period, including principal markets for both the United States and the NIS;
- (3) Impediments, if any, to increased crude petroleum and natural gas exploration and production in the NIS, such as U.S. export restrictions concerning technology and foreign investment restrictions in the NIS;
- (4) The investment situation in the NIS, such as the role of joint ventures and equity-sharing, or petroleum pricing policies that could affect the industry; and
- (5) To the extent feasible, the future markets for increased NIS crude petroleum and natural gas production.

The Committee would appreciate receiving the study no later than nine months after receipt of this letter. Thank you for your attention to this important matter.

Sincerely,

Lloyd Bentsen
Chairman