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Summary of Provisions

OF

H.R. 18970

"THE TRADE ACT OF 1970"

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CHAIRMAN WILBUR D. MILLS (D., ARK.), COMMITTEE ON WAYS AND MEANS, ANNOUNCES SUMMARY OF COMMITTEE DECISIONS ON THE TRADE ACT OF 1970

Chairman Wilbur D. Mills (D., Ark.), Committee on Ways and Means, House of Representatives, today announced that the Committee had completed action on the trade proposals which have been under consideration, and that the Committee had ordered favorably reported H.R. 18970, The Trade Act of 1970. It is expected that the Committee report will be filed by midnight, Friday, August 21, 1970.

A summary of the major provisions of the bill are described below.

SUMMARY OF MAJOR PROVISIONS OF H.R. 18970

TRADE AGREEMENT AUTHORITY

Trade Negotiations and Tariff Reductions.—The bill will extend the President's trade agreement authority to proclaim reductions in rates of duty under the Trade Expansion Act of 1962 to July 1, 1973. Under this authority, the President's traiff reduction authority will in general be limited to 20 percent of the rates of duty which will exist when the final stage of the Kennedy Round reduction is made effective on January 1, 1972. The staging of tariff reductions under this new authority is provided for in two annual stages.

Foreign Import Restrictions and Discriminatory Acts.—Provides new authority and direction to the President under section 252 of the Trade Expansion Act to act against import restrictions or other acts of other countries which unjustifiably or unreasonably burden or discriminate against United States commerce. An amendment to section 252(a) removes the word "agricultural" so that the President is directed to take such action as he deems necessary and appropriate when a foreign country unjustifiably restricts "any" United States product. Such action might include the imposition of duties or other import restriction on products of the foreign country imported into the United States.

Section 252(b) is amended by adding a provision which specifically embraces foreign export subsidies as being among those restrictions, policies or acts of foreign governments against which the President is directed to take action. In addition, the President is given new authority to take such action as he deems necessary against the imports of products from the country involved when he deems it necessary or

appropriate to obtain the removal of such restrictive acts, policies, or subsidies and to provide access for United States products to foreign countries on an equitable basis.

Section 252(c) is amended so that the President will be directed to impose duties or other import restrictions (or to withdraw or suspend, or refrain from proclaiming trade agreement concessions) when unreasonable foreign import restrictions substantially burden United States commerce.

Determinations and Import Adjustments for Safeguarding National Security.—Section 232 of the Trade Expansion Act of 1962 (the "National Security Provision") is amended to provide that any adjustment of imports under that section shall not be accomplished by the imposition or increase of any duty or of any fee or charge having the effect of a duty. The Director of the Office of Emergency Preparedness will be required to make a determination on new applications under the national security provision within one year after the date on which the investigation is requested. (Present law sets no time limits within which decisions must be made.) Determinations on active pending cases are to be made within 60 days of enactment of the Act.

TARIFF ADJUSTMENT AND ADJUSTMENT ASSISTANCE

The tariff adjustment and adjustment assistance provisions of the Trade Expansion Act of 1962 are amended to provide new criteria under which it will be easier to establish injury for purposes of obtaining tariff adjustment (industry import relief) and for adjustment assistance (relief for firms and groups of workers).

Tariff Adjustment.—The Tariff adjustment criteria for determining serious injury to an industry is amended to provide that the Tariff Commission is to determine whether increased imports are "contributing *substantially* toward causing or threatening serious injury to a domestic industry." A majority of the Tariff Commissioners present and voting is required for an affirmative injury determination.

If an affirmative injury determination is made, an additional determination as to injury from increased imports is to be made under a new provision of the tariff adjustment provisions.The additional determination as to injury would be as to whether either of the conditions specified under (A) or (B) described below in combination with the conditions specified in (C) below exist.

(A) Imports of the article under investigation constituted more than 15 percent of apparent United States consumption of the article in the first calendar year preceding the calendar year in which the investigation was instituted, the ratio of imports of such article to consumption for such first preceding calendar year increased absolutely by at least 3 percentage points over the corresponding ratio for the second calendar year preceding the calendar year in which the investigation was instituted, and the ratio of imports of such article to consumption for such first preceding calendar year increased absolutely by at least 5 percentage points over the corresponding ratio for the third calendar year preceding the calendar year in which the investigation was instituted.

(B) As a result of increased imports (1) domestic production of the like or directly competitive product is declining or is likely to decline so as to substantially affect the ability of domestic producers to con-

tinue to produce the like or directly competitive product at a level of reasonable profit, and (2) production workers' jobs, man-hours worked, or wages paid production workers in the domestic production of the like or directly competitive product are declining substantially or are likely to decline substantially.

(C) (1) The imported article is offered for sale at prices which are substantially below those prevailing for like or directly competitive products of comparable quality produced in the United States and constitutes an increasing proportion of apparent domestic consumption, and (2) the unit labor costs attributable to producing the imported article are substantially below those attributable to producing like or competitive articles in the United States.

Adjustment Assistance.—In addition to petitions for a determination of eligibility being filed with the President rather than the Tariff Commission, the criteria for determining eligibility are amended. Such criteria are similar to the criteria for an affirmative injury determination for industry. The Tariff Commission will continue to make a factual report to the President in order to assist the President in making his determination for a firm or a group of workers.

Increased Assistance for Workers.—The amount of trade readjustment allowances payable to an adversely affected worker for a week of unemployment is increased. Under existing law the allowance is 65 percent of the worker's average weekly wage or 65 percent of the average weekly manufacturing wage, whichever is lower. The bill increases *each* of these percentages from 65 percent to 75 percent. Conforming amendments are made to other provisions in light of the increased benefits available.

In the case of both tariff adjustment and adjustment assistance determinations, transitional rules are provided to give petitioners the benefit of the new relaxed criteria for making injury determinations.

Presidential Action After Tariff Commission Reports.—Section 302 of the Trade Expansion Act is also amended to provide that if the President does not provide tariff adjustment for an industry after an affirmative injury determination, he must provide that the firms and workers in that industry may request certification of eligibility for adjustment assistance. Certain other amendments are made to the procedures to be followed in connection with permitting firms and workers to request certifications of eligibility to apply for adjustment assistance.

Presidential Action on Tariff Adjustment.—Section 351 of the Trade Expansion Act is amended to provide that the President shall, upon receipt of an affirmative injury determination, proclaim such import restrictions as he determines necessary to prevent or remedy serious injury. The amendment provides that he shall take such action unless he determines that it would not be in the national interest.

When a majority of the Tariff Commissioners making an injury determination also makes the aforementioned additional affirmative determination, the determination of a majority of the Commissioners making the determination as to the action necessary to prevent or remedy such injury shall be implemented by the President unless he determines that such action would not be in the national interest.

If the President does not within 60 days after he receives an affirmative injury determination proclaim the remedy determined and reported by the Tariff Commission, he must immediately report to the

Congress, giving his reasons for not doing so. The existing procedures for Congressional action in the form of a concurrent resolution to implement the Tariff Commission's determinations and report would then apply. The amendment would not require the President to disclose considerations of national interest on which his decision is based.

Other procedures and authority presently provided in connection with affirmative injury determinations would continue to apply.

Review of Adjustment Action.—The review procedures on outstanding tariff adjustment actions are amended to provide that the Tariff Commission in its reports on conditions in the industry concerned with the tariff adjustment, will include information on the steps taken by the firms in the industry to compete more effectively with imports.

The reporting requirements in reviewing tariff adjustment action are also amended to provide that the Tariff Commission will make findings similar to those in an original tariff adjustment investigation if it should determine that the existing restrictions on imports are insufficient to prevent or remedy injury to the domestic industry.

Orderly Marketing Agreements.—Section 352 of the Trade Expansion Act is amended to provide that the President may negotiate orderly marketing agreements at any time and to provide that such agreements may be combined with tariff adjustment. (Under existing law, the negotiating authority under section 352 is to be used at the conclusion of the Tariff Commission investigation and the agreements are to be a substitute for tariff action.

ANNUAL QUOTAS ON CERTAIN TEXTILE AND FOOTWEAR ARTICLES

Under this provision total quantities of imports of certain textiles and footwear would be limited by category and by country beginning in calendar year 1971 to the average annual quantities imported during 1967–69. For the years after 1971, the total quantity of imports of each category of textile articles or footwear articles would be limited to the quantity determined for the foreign country for the preceding year plus an increase determined by the President. Such increase would be limited to a percentage (not over 5 percent) of the total quantity permitted to be entered in the immediately preceding year which the President determines to be consistent with the purposes of these quota provisions. The percentage increase for any category for any year would be the same for all countries.

Authority for limiting the quantity of imports for periods shorter than a calendar year is permitted, including the adjustment of imports becoming subject to limitation by reason of termination of the exempt status of an article.

The President may exempt from quota imports of articles which he determines are not disrupting the United States market or when he determines that the national interest requires such action. The President is also authorized to negotiate agreements under which imports of textiles and footwear would be controlled. Imports covered by such agreements would also be exempt from the quantitative limitations.

The rulemaking provisions of the Administrative Procedure Act are to apply to determinations made with respect to the establishment

of or changes in quantitative limitations and exemptions from such limitations other than determinations made by the President for national interest reasons.

Definitions.—Textile articles and footwear articles are defined. In general, textile articles are such articles of cotton, wool, man-made fiber and blends thereof, and footwear articles are nonrubber footwear.

Presidential Report on Textile and Footwear Quotas.—The bill provides that on July 1, 1976, the quota limitations will terminate unless the President finds that extension of the quantitative limitations for periods not to exceed 5 years would be in the national interest. The review procedure to be used by the President in determinating whether the quantitative limitations should be extended are similar to those which the President is required to follow in determining whether or not to extend tariff adjustment action.

OTHER TARIFF AND TRADE PROVISIONS

Amendments to the Antidumping and Countervailing Duty Laws.

Antidumping Act of 1921.—Section 201(b) of the Antidumping Act is amended by providing that the Secretary of the Treasury must act within four months after a dumping question has been presented to him. This is to assure that the withholding of appraisement will not be delayed more than four months. The Secretary will still be permitted to withhold appraisement up to 120 days before the question of dumping was raised or to withhold appraisement after a negative determination has been made.

An amendment to the Antidumping Act is also made under which the Secretary of the Treasury will determine "dumping" with regard to imports from countries with state-controlled economies on the basis of prices at which goods of a non-state-controlled economy country are sold in the home market or in the United States, or on the basis of constructed value.

Countervailing Duties.—Section 303 of the Tariff Act is amended to require the Secretary of the Treasury to make a determination under this provision within 12 months after the question is presented to him. This requirement will apply only on questions presented after the enactment of this Act.

A second change provides that countervailing duties are to be imposed on subsidized duty-free imports, if the Tariff Commission determines that such imports are injuring a domestic industry.

The countervailing duty provision is also amended to provide the Secretary of the Treasury with the authority to not impose countervailing duties on articles subject to quantitative limitation or subject to agreements under which the volume of imports is limited when he determines that such limitations are adequate substitutes for countervailing duties.

TARIFF COMMISSION

Tariff Commission Membership.—The number of Commissioners is raised to seven, and the terms of office adjusted for prospective members to a period of 7 years.

American Selling Price (ASP).—The President is authorized to proclaim modifications of the tariff schedules of the United States

required or appropriate to carry out an international agreement (or agreements) which relates primarily to the elimination of the American selling price system of custom valuation if he determines that the concessions which would be granted with respect to products of the United States under such agreement fully compensate for the concessions which would be made by the United States under the agreement. Such a proclamation would be subject to a Congressional override provision by Concurrent Resolution. Certain footwear presently subject to the American selling price valuation will be exempted from action under this section.

Amendments to Automotive Products Trade Act of 1965.—The transitional adjustment assistance for firms and workers under the APTA is renewed and conforming amendments to those for regular adjustment assistance criteria are provided.

Certain Classification by Secretary of Agriculture.—The Secretary of Agriculture is given final responsibility for determining whether articles come within the import limitations imposed under section 22 of the Agricultural Adjustment Act.

Invoice Information.—Section 481 (a) of the Tariff Act is amended to provide invoice information on the entry papers with regard to product description for purposes of statistical classification of imports according to the United States Tariff Schedules, Annotated.

Rates of Duty on Mink Furskins; Repeal of Embargo on Certain Furs.—This provision would establish a tariff rate quota on imported mink skins with a rate of duty of 25 percent ad valorem to be imposed on imports of skins in excess of 4.6 million skins in any calendar year. In addition, the existing embargo on imports of certain types of furskins from the Soviet Union would be repealed, and adjustments are made in non most favored nation rates of duty on imports of mink skins. The existing levels of duty on mink skins are made statutory, as is the existing duty of 14 percent ad valorem on wearing apparel of mink. These provisions would become effective on or after January 1, 1971.

Rate of duty on Glycine and Certain Related Products.—A tariff-rate quota would be imposed on imports of certain forms of glycine in excess of 1.5 million pounds in any Calendar year. The existing rate of duty of 8.5 percent ad valorem would become a statutory rate and continue to apply to within quota imports. Imports in excess of 1.5 million pounds in any Calendar year, computed on a Calendar quarter basis, would be dutiable at the rate of 25 cents per pound plus 8.5 percent ad valorem. This provision is to become effective on January 1, 1971

Trade with Foreign Countries Permitting Uncontrolled Production of or Trafficking in Certain Drugs.—This provision would authorize the President to impose an embargo or suspension of trade with a nation which permits the uncontrolled or unregulated production of or trafficking in opium, heroin, or other poppy derivatives in a manner to permit these drugs to fall into illicit commerce for ultimate disposition and use in this country.

DOMESTIC INTERNATIONAL SALES CORPORATIONS

The Committee agreed in substance to the Administration's DISC proposal presented to the Committee on May 12, 1970, with amendments providing that in place of the proposal becoming effective for taxable years beginning after June 30, 1971, it would be effective

for taxable years beginning after December 31, 1970, but for the year 1971 the tax deferral is to be available only to the extent of 50 percent, for the years 1972 and 1973 to the extent of 75 percent and thereafter it would be fully effective. The President is to have the option to except from the tax deferral privilege DISC income derived from sales of any commodity he deems to be in short domestic supply.

More specifically, the bill provides a system of tax deferral for a new type of U.S. corporation known as a Domestic International Sales Corporation, or a "DISC", and its shareholders. Under this tax system, the profits of a DISC are not to be taxed to the DISC but instead are to be taxed to the shareholders when distributed to them. The bill provides a 3-year phase in period during which only a portion of a DISC's profits are relieved of current taxation. In the first year (1970), 50 percent of a DISC's profits are not currently subject to taxation, and in the second and third years, 75 percent are not subject to taxation. In the fourth year and thereafter, 100 percent of a DISC's profits are not currently subject to taxation.

The deferral of tax accorded to profits earned by DISC ends not only when those profits are distributed to the DISC's shareholders but also when the DISC fails to continue qualifying as a DISC (in this case the profits are taxed to the shareholders as "deemed" distributions). When a DISC's profits are distributed to a corporate shareholder, he is treated in most respects as if he were the initial recipient of the profits: as a result, no dividends received deduction is available for these profits, but instead the profits are to be treated as foreign source income and the shareholder is to be allowed to credit against its tax liability on these profits any taxes paid to a foreign country (by the DISC if the taxpayer is on the "per country" limitation or by the DISC or on income of the shareholder from other foreign sources if he is on the "overall limitation").

To qualify as a DISC, at least 95 percent of a corporation's gross receipts must arise from export sale or lease transactions and other export-related investments or activities. In addition, at least 95 percent of the corporation's assets must be export related. Included in export-related assets are "producers loans" which are loans (subject to certain restrictions) made to the U.S. parent producer (or any other U.S. exporter) to the extent of his assets used for export business. These loans by a DISC are not considered a distribution and do not give rise to taxation of the DISC or the parent.

Although generally the income of a DISC is not to be subject to current taxation, each year a DISC is to be deemed to have distributed to its shareholders certain types of its income, thus, subjecting that income to current taxation in the shareholders' hands. The principal type of income falling in this category is the interest realized by the DISC on its "producer loans".

Generally, present law requires sales between a parent corporation and its subsidiary to be made on an arm's length basis; that is, at the price the parent company would have charged an unrelated third party. Special pricing rules in the bill permit a DISC to earn a larger relative amount of the profits arising on sales by the DISC of its parent company's export products. Under these pricing rules, a DISC may earn an amount of profits up to the greater of 4 percent of its sales or 50 percent of the combined income arising from the manu-

facture and sale of the products sold through the DISC. In either case a DISC also is to be allowed to earn an additional amount equal to 10 percent of its export promotion expenses.