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DEPOSITORY

SERVICE INDUSTRIES COMMERCE DEVELOPMENT ACT OF 1983

SEPTEMBER 22, 1983.—Ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

ADVERSE REPORT

[To accompany H.R. 2848]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2848) having considered the same, report unfavorably thereon, and recommend that the bill do not pass.

BACKGROUND AND PURPOSE

The purpose of H.R. 2848 is to promote the international competitiveness of U.S. service firms.

In the economies of the United States and most other industrialized countries, the service sector has assumed increasing importance over the last 30 years. By 1978, "services" accounted for at least as much of the gross national product (GNP) of nearly all member countries of the General Agreement on Tariffs and Trade (GATT) as "goods." The services sector accounts for more than one-half of U.S. GNP and employs about two-thirds of nonfarm private sector labor. In the past 10 years, services trade has grown by 17 percent a year and has created nearly 18 million new jobs in the United States. U.S. exports of services are estimated to exceed $60 billion annually, not including services sold internationally by companies which primarily produce goods.

In its favorable report on the bill, the Committee on Energy and Commerce states the need for H.R. 2848 as follows:

> The United States has been a leader in the development of service industries trade, but it now faces two major problems to the future growth of this sector of the economy. First, in the absence of an international trade agreement on services, many countries are arbitrarily establishing "protectionist" barriers which limit trade in services. As a result, the U.S.

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share of total world trade in services has fallen from 20 percent in 1972 to 15 percent in 1980. Second, there is little data on services available, and what is available is very imprecise, often misleading and generally inadequate for the purposes of developing an effective trade policy on services.

To address these problems, the nations of the world need to negotiate an agreement on trade in services. U.S. efforts to initiate the negotiating process at the GATT level have had very limited success so far. Even after negotiations begin, it will be a long time before a services agreement can be implemented. Thus, in the short-term, the reported bill will be needed in order to permit the United States to limit foreign access to the domestic service market, if appropriate, in order to promote "reciprocity" (or substantially equivalent relationships). Finally, much better data is needed in order to understand more accurately the nature and problems of the service sector and to develop an effective trade policy.

The Committee on Ways and Means agrees with the need for legislation to seek reduction of barriers to trade in services through negotiation of trade agreements and to obtain more adequate and precise data on which to base services trade policy. However, the committee believes that H.R. 1571, which it ordered reported favorably to the House on September 20, contains the essential elements of such a program and more appropriate Presidential authority for dealing with foreign barriers to U.S. trade in services, as explained in the section-by-section analysis. The committee has strong objections to various other provisions of H.R. 2848 within its jurisdiction which establish authority for the Secretary of Commerce to determine the impact and make recommendations to the President concerning actions with respect to foreign barriers to U.S. trade in services. These are currently statutory responsibilities of the U.S. Trade Representative (USTR) under title III of the Trade Act of 1974 and Reorganization Plan No. 3 of 1979. The bill also establishes Presidential authority separate from title III to act against such barriers. The committee opposes transfer or duplication of these functions through H.R. 2848, which have been presented without rationale and are contrary to sound trade policy management.

SUMMARY OF H.R. 2848, AS AMENDED—SERVICE INDUSTRIES COMMERCE DEVELOPMENT ACT OF 1983

Section 1. Short title.

Section 2. Definition of terms used in the bill.

Section 3. Service Industries Development Program and reports.

1. Service Industries Development Program.—Requires the Secretary of Commerce to establish a service industries development program designed (a) to develop policies regarding services, (b) to develop a data base to assess the adequacy of U.S. policies and actions on services, (c) to collect and analyze information on international operations and the competitiveness of U.S. service industries, and (d) to study U.S. service industries and their ability to compete.

2. Reports to Congress.—Requires a biennial report from the Secretary of Commerce containing (a) an analysis of activities of foreign service suppliers in the U.S. market, (b) an analysis of regulations of foreign and U.S. suppliers and their potential trade effects, (c) an analysis of activities of U.S. service suppliers in foreign countries, and (d) a study and impact analysis of trade barriers to services.

3. Access to private sector information.—Authorizes the Secretary of Commerce to obtain private sector information necessary to carry out the service industries development program and to issue subpenas requiring the information requested; provides for a maximum civil penalty of $10,000 for refusal to obey request, subject to judicial review.

4. Coordination with States.—Requires the Secretary of Commerce to consult regularly with State governments and U.S. service industry representatives concerning services trade policy and to provide them statistical, analytical, and policy information.

Section 4. Presidential authority

Section 4 (a) authorizes the President to restrict the ability of foreign suppliers of services to engage in interstate commerce, notwithstanding any other provision of law; (b) requires the President to determine whether such limits should be imposed with respect to barriers identified in the reports required under section 3; and (c) authorizes the Secretary of Commerce to review petitions, initiate investigations and consultations with foreign governments, and make recommendations to the President for action under such authority.

Section 5. Authorization of appropriations

Section 5 authorizes $5 million to be appropriated beginning October 1, 1983, to carry out the activities authorized by the Act.

COMMITTEE ACTION

H.R. 2848, as amended and reported favorably to the House by the Committee on Energy and Commerce on May 16, 1983, was referred sequentially to the Committee on Ways and Means until September 30, 1983.

The Subcommittee on Trade held extensive hearings on trade in services in May 1982, including on bills similar to H.R. 2848 introduced in the 97th Congress. Consequently, the subcommittee invited written comments on H.R. 2848 in a press release issued on August 5, 1983, instead of holding further hearings.

The comments from major business organizations generally support H.R. 2848 but oppose the subpena and civil penalty powers under section 3 and the vesting of authority to investigate and recommend action to the President on foreign barriers to exports of services with the Secretary of Commerce rather than with the USTR under section 4. The AFL–CIO opposes the bill.

The subcommittee in markup session on September 15 ordered H.R. 2848 reported adversely to the full Committee on Ways and Means by voice vote. On September 20, the Committee on Ways and Means ordered H.R. 2848 reported adversely to the House by voice vote.

SECTION-BY-SECTION ANALYSIS AND JUSTIFICATION, INCLUDING COMPARISON WITH PRESENT LAW

Section 1. Short title

Section 1 contains the short title of H.R. 2848, which may be cited as the "Services Industries Commerce Development Act of 1983."

Section 2. Definitions

Section 2 contains definitions of certain terms used in the bill.

Section 3. Service industries development program and reports

Section 3 contains requirements for the Secretary of Commerce to establish a service industries development program and to submit periodic reports to the Congress on barriers to trade in services.

1. Service Industries Development Program.—Paragraph (1) of subsection (a) requires the Secretary of Commerce to establish a service industries development program designed (1) to develop policies to increase the international competitiveness of U.S. service industries in interstate and foreign commerce; (2) to develop a data base for assessing and developing U.S. policies and actions pertaining to services, including annual data concerning purchases of United States and foreign service industries; (3) to collect and analyze information pertaining to the international operations and competitiveness of U.S. service industries; (4) to conduct studies of U.S. service industries, including assessments of their present and future ability to compete in interstate and foreign commerce; and (5) to provide information to State and local governments and to U.S. service industries. While the Department of Commerce currently maintains information on services, such a program is not presently established by law.

Section 6(b) of H.R. 1571, as ordered reported by the committee, contains identical provisions in substance as the elements of a services industries development program, with only two exceptions: (1) annual data on sales by U.S. services industries and their affiliates to foreign customers and domestic purchases of services from foreign suppliers; and (2) assessments of the ability of U.S. service industries to compete in interstate and foreign commerce.

2. Access to private sector information.—Paragraph (2) of subsection (a) authorizes the Secretary of Commerce to obtain private sector information that is necessary to carry out his functions under the service industries development program. Such information is to remain confidential and not disclosed except by waiver, court order, or congressional request, or by the Secretary in aggregate or summary form which does not disclose the identity or business operations of the party submitting the information.

The Secretary of Commerce may issue subpenas requiring the production of any information requested by him for the program. A U.S. court may issue orders compelling production and find those who fail to comply in contempt. Finally, there is provision for a civil penalty not to exceed $10,000 for willful refusal to obey a request by the Secretary for information, subject to judicial review. Any final order or judgment would be enforced by the U.S. Attorney General in U.S. district court. The Secretary may compromise, modify, or remit any civil penalty.

H.R. 1571, as ordered reported by the committee does not contain similar provisions. Considerable opposition was expressed by private sector interests to these provisions in written comments submitted to the Subcommittee on Trade on H.R. 2848.

3. Coordination with States and U.S. service industries.—Section 3(b) requires the Secretary of Commerce (1) to consult regularly with representatives of State governments and representatives of U.S. service industries concerning the development and implementation of policies on services; and (2) to provide to State and local governments, upon their request, advice, assistance, and information concerning U.S. policies on foreign commerce in services.

Section 6(c) of H.R. 1571, as ordered reported by the committee, includes similar consultation provisions, plus consultations with the States on negotiating objectives and implementation of trade agreements, specifically. The committee believes consultations on these issues is particularly important since implementation of trade agreements in certain service sectors could potentially involve changes in domestic law primarily subject to State rather than Federal regulation. As a consultation mechanism, H.R. 1571 also mandates establishment of intergovernmental advisory committees to supplement the existing private sector advisory committee structure under section 135 of the Trade Act of 1974. These committees, including representatives of domestic service industries, are the main mechanism for input and advice to the Executive branch on trade policy objectives and negotiations.

H.R. 1571 states as congressional policy that the President should conduct the consultations with the States and domestic service industries, as opposed to the Secretary of Commerce under H.R. 2848. The committee is strongly of the view that this function appropriately resides in the President, primarily through the U.S. Trade Representative as his chief adviser on trade policy and responsible for trade negotiations on services as well as goods.

4. Reports to Congress.—Section 3(c), as amended, requires the Secretary of Commerce, at least every 2 years beginning in 1985, to submit a report to the Congress and to the President which includes: (1) an analysis of the activities of foreign suppliers with service industries in the U.S. market; (2) an analysis of Federal, State, and local regulations of foreign and U.S. suppliers and their potential trade effects; (3) an analysis of activities of U.S. service suppliers in foreign countries; and (4) a study and analysis of barriers to, or other distortions of, international trade in services, including the impact of any act, policy, or practice of each major trading country that limits the access of U.S. suppliers of services to markets in that country in a manner that is unjustifiable, unreasonable, or discriminatory. The Secretary must consult with the House Committees on Ways and Means and Energy and Commerce and the Senate Committees on Finance and Commerce, Science and Transportation on the designation of major trading countries.

A study and analysis of barriers to services trade is included in section 3(a) of H.R. 1571, as ordered reported by the committee, which requires an annual report containing a comprehensive inven-

tory of barriers to U.S. exports of goods or services or U.S. foreign direct investment. That report must also contain a quantitative or qualitative assessment, as appropriate, of the principal restrictions on market assess, the extent any international agreements apply, and whether any government actions have been taken to eliminate or reduce such measures.

The committee has serious objections to the Secretary of Commerce making a determination, in effect, as to whether particular foreign barriers to trade in services are "unjustifiable, unreasonable, or discriminatory". These criteria are currently the basis of Presidential authority on petitions filed under section 301 of the Trade Act of 1974 to respond to foreign practices affecting U.S. trade in goods and services. The determination under that statute is made as a result of a thorough investigation of the facts in usually very complex cases. Consultations with foreign governments involved and recommendations to the President are currently the responsibilities of the USTR by statute, under title III of the Trade Act of 1974, with the coordinated input of the other agencies with trade interests, including the Department of Commerce. The analysis required under H.R. 2848 would circumvent the section 301 process, in effect prejudging potential section 301 petitions involving trade in services before they are filed.

The committee did not address other elements included in the biennial report requirement under section 3(c) of H.R. 2848, involving analyses of activities of U.S. and foreign suppliers of services and the effects of Federal, State, and local regulations.

Section 4. Presidential authority

Section 4 authorizes the President, notwithstanding any other provision of law, to impose such terms, conditions, or limitations as he deems appropriate, under which foreign suppliers shall be eligible to engage in interstate commerce in the United States.

Within 120 days of receiving each biennial report of the Secretary of Commerce on services under section 3(c), the President must review all acts, policies and practices discussed in the report and determine whether the authority should be exercised. No limitation may be imposed until notice and opportunity to comment has been provided, and the President has taken into account all comments submitted within 150 days.

Section 4 also establishes authority for the Secretary of Commerce to review petitions, initiate and conduct investigations, initiate consultations with foreign governments involved, and make recommendations to the President regarding petitions for action under the authority described above. The procedures and time limits are identical to those under title III of the Trade Act of 1974, except recommendations to the President on action must be made within 90 days rather than 12 months after initiation of an investigation. The Secretary of Commerce must consult with Federal agencies having jurisdiction over the particular service involved and the Congress if he initiates an investigation.

The committee has strong objections to the provisions of section 4. Title III of the Trade Act of 1974 establishes the procedures and the Presidential authority for enforcing U.S. rights under trade agree-

ments or responding to other foreign acts, policies, or practices which he determines to be unjustifiable, unreasonable, or discriminatory by imposing import restrictions on goods and fees or restrictions on services. The U.S. Trade Representative, as the chief advisor to the President on trade policy and responsible for developing and coordinating U.S. trade policy through the statutory interagency mechanism, is responsible by current statute for the identical investigation, consultation, and recommendation functions set forth in section 4.

Section 4 circumvents and duplicates title III by establishing an identical separate authority, rather than directly amending current law, for the Secretary of Commerce to conduct the functions of the USTR with respect to petitions involving trade in services. Domestic industries will be given two avenues—through the Department of Commerce and through the USTR—to obtain foreign consultations and recommendations to the President on retaliatory action, thereby inviting forum-shopping for the more sympathetic executive ear. This situation creates a high risk of differing interpretations and inconsistent application of U.S. trade law, as well as unnecessary additional time, expense, and use of limited administrative resources on the same case.

The effect of section 4 is also to achieve a portion of the reorganization of Executive branch trade functions proposed by the Administration by authorizing the Secretary of Commerce to conduct section 301-type investigations and foreign consultations, and to make recommendations to the President in cases involving services. The committee believes that any reorganization of trade functions from the USTR should be thoroughly considered separately on its merits through the normal process by the committees of jurisdiction, not achieved in piecemeal fashion through unrelated legislation. Such a result is directly contrary to a basic argument presented by proponents of trade reoorganization, namely placing trade policy development and implementation in a single agency. The committee is not aware of any rationale or merit for the authority proposed under this section.

Further, the committee believes that the time limit for recommendations to the President within 90 days after initiation of an investigation is unrealistic given the complexities of the foreign practices on which investigations and consultations are required. H.R. 1571, as ordered by the committee, reduces the current statutory time limits applicable to cases involving services from 12 months to 9 months.

Section 4(a) of H.R. 1571, as ordered reported by the committee, amends section 301 of the Trade Act of 1974 to clarify the President's authority to restrict terms and conditions or deny the issuance of licenses or other authorizations allowing access of foreign suppliers of services to the U.S. market, notwithstanding the authority of independent regulatory agencies. This provision achieves the clarification of Presidential authority sought under section 4(a) of H.R. 2848 to respond to foreign barriers to U.S. exports of services, but within the appropriate context of the existing statutory authority of section 301 of the Trade Act for dealing with such cases.

Section 5. Funding

Section 5, as amended, authorizes $5 million to be appropriated to carry out the activities authorized by the act, beginning October 1, 1983. This amount corresponds to the estimate supplied by the Con-

gressional Budget Office of the costs of the service industries development program under section 3.

Section 6(b)(3) of H.R. 1571, as ordered reported by the committee, requires that program to be funded from funds otherwise made available to the Secretary of Commerce. The committee believes sufficient money is available to the Department of Commerce to fund the modest cost of the program (estimated by the Congressional Budget Office as $1 million in each of fiscal years 1984 through 1988) without the need for a separate authorization.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the committee in reporting the bill. H.R. 2848 was ordered adversely reported by the committee by a voice vote.

COST ESTIMATE AND INFLATIONARY IMPACT STATEMENT

With respect to clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee states that the cost of H.R. 2848 as estimated by the Congressional Budget Office for the Committee on Energy and Commerce (H. Rept. 98–203, pt. I, pp. 17 and 18) would be $5 million ($1 million in each of the fiscal years 1984 through 1988).

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the committee states that the budgetary costs of H.R. 2848 would not have an inflationary impact on the economy.

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