NONTARIFF TRADE BARRIERS AS DISCRIMINATION AGAINST THE COMMERCE OF THE UNITED STATES

Nontariff trade barriers come in many guises and take many forms, but the end result of the introduction of such elements into the trade relationship is inevitably the frustration of the purpose of international trade, which is to benefit all of the participating nations through a free interchange of products. Unfortunately, because each nation must see to its own economic security, the line between a trade barrier and a legitimate exercise of financial responsibility by a nation is often difficult to lay down with precision. However, there are many elements introduced into the trade relationship by certain of our neighbors around the world which are clearly, we believe, intentional barriers to trade.

For instance, a very troublesome nontariff barrier is that of a license system predicated upon a quota. This device is currently employed in Japan and Mexico and it creates serious problems in establishing and maintaining trade relations with those nations.

Some countries impose excise taxes which apply unequally as between imported and domestically produced alcoholic beverages. This occurs in Argentina, Finland, Malawi, the Netherlands, Nicaragua and the United Arab Republic.

The Dominican Republic requires a deposit (equal to 40% of the f.o.b. value) to be made 6 months prior to importation and even then, imports can be made only under a prepaid letter of credit.

While the foregoing example represent only a fraction of the types of barriers encountered, they should serve to show the gravity of the problems which the industry must face.

We might note that aside from industry complaints concerning the existence of such barriers, the Administration is quite cognizant of the dangers of such impediments to trade. For example, in testimony before this Committee on February 5, 1968, concerning the Administration's Balance-of-Payments proposals, Ambassador Roth, the Special Representative for Trade Negotiations stated that:

"There are important nontariff barriers still outstanding and there is a danger that, as tariffs are reduced, these barriers are likely to have a more severe impact on world trade. One of the most urgent jobs we have ahead of us is to get rid of them. Apart from border tax adjustments . . . we must obtain the liberalization of such practices as undue protection through state trading, preferences to domestic producers in filling public procurement contracts . . . and onerous and unnecessary health and sanitary regulations to name only some of the measures that impede American exports." (Hearings, Part 1, p. 277.)

We concur in this estimation and cite this example of the Administration's interest in the problem because while H.R. 17551 speaks of nontariff barriers, the references are too limited, and primarily domestic, situations. It is our belief that the "Trade Expansion Act of 1968" should contain a provision concerning the future conduct of our trade policy with respect to the imposition of nontariff barriers on American produced goods by foreign nations. There are precedents for a declaration by the Congress of the intention of this nation not to be disadvantaged at the hands of our trading partners which are, we think, apposite to the proposal we wish to make, and we would like to call the attention of the Committee to the following statutes.

EXISTING DECLARATIONS BY THE CONGRESS OPPOSING TRADE DISCRIMINATION BY FOREIGN NATIONS AGAINST THE UNITED STATES

The Congress has in the past vested considerable discretion in the President of the United States with respect to steps which he may take to insure that American made products shall not be discriminated against by other nations. For instance, the following statute, which was passed in 1890, states that:

"Whenever the President shall be satisfied that unjust discriminations are made by or under the authority of any foreign state against the importation to or sale in such foreign state of any product of the United States, he may direct that such products of such foreign state so discriminating against any product of the United States as he may deem proper shall be excluded from importation to the United States; . . . and in such case . . . the importation of the articles . . . shall be unlawful." (19 U.S.C. 181)

While this particular remedy is somewhat more drastic than what we propose with respect to nontariff trade barriers, it does show that the Congress