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Senate

By Mr. MATHIAS:

S. 432. A bill to establish a Commission on the International Application of Antitrust Laws; to the Committee on the Judiciary.

INTERNATIONAL ANTITRUST TASK FORCE

● Mr. MATHIAS. Mr. President, the importance of exports to our country cannot be overstated. One of every eight jobs in this country is involved in export; \$1 of every \$3 of U.S. corporate profits comes from international activities; 1 of every 3 acres of farmland produces for export; and exports now contribute more to our gross national product than private corporate investment does. Despite the importance of exports, the United States has lagged behind its major trading partners in export promotion. The U.S. share of international commerce has steadily decreased—from 27.7 percent in 1958 to 17 percent in 1979. And the figures for 1980, although an improvement, suggest that the problem is still with us. In Germany, France, Italy, and the United Kingdom, exports account for more than 50 percent of all goods produced, while in the United States they account for merely 14 percent.

In December 1980, the President's Export Council submitted its report to President Carter. The council found that a great deal can and must be done to increase our export effort, particularly in the area of removing self-imposed disincentives to U.S. exports. The council recommended that every reasonable effort must be made to facilitate U.S. export efforts and overseas operations by freeing U.S. firms from unnecessary antitrust constraints and uncertainties where U.S. consumers would not be adversely affected. To help accomplish this goal, the council specifically recommended the enactment of the bill which I am reintroducing today.

This bill passed the Senate last year without a dissenting vote. It would establish a 12-month task force to study the extraterritorial aspects of U.S. antitrust laws and their effect on our ability to compete overseas. Specifically, the task force would provide a forum to examine the whole gamut of issues raised by the extraterritorial application of these laws, including how they interface with the laws of other nations, and what might be done to promote the doctrine of competition worldwide. The task force would report its findings to the President and to Congress, making recommendations on what changes, if any, should be made in our antitrust laws to insure that they promote competition without handicapping U.S. business abroad and without causing offense to our trading partners.

Extensive hearings were held on this bill last year before the Governmental Affairs Committee which reported the bill out unanimously. In addition to the President's Export Council, the bill has the support of many groups, including the U.S. Chamber of Commerce and the National Association of Manufacturers. Last year it attracted over 20 cosponsors in the Senate.

If we are going to beat inflation and get our decelerating economy moving again, we have got to reduce barriers to trade. And if export promotion is to become a top national priority—which it must—we need a team effort, with the Federal Government removing unwarranted barriers and substituting creative incentives to exports. Like Churchill in another context, U.S. business executives have asked us to give them the tools; they will finish the job.

Once we remove the disincentives, they will get out and fight for their share of the world trade. More trade means more jobs for U.S. workers, a reduced trade deficit, and a sounder dollar.

Whenever I discuss export policy, I recall the story of Alexander the Great and the Gordian knot. The Delphic oracle predicted that whoever unraveled the knot would rule the world. Shortly thereafter, Alexander, still trying to emerge from his father's shadow, strode up to the knot, looked at it thoughtfully for a moment, then drew his sword and cleft the knot a part.

For too long, the trade debate has been bogged down in the technical language of experts who have a very narrow area of responsibility. We have passively adopted their terms of reference, and conducted the debate at the wrong level. We must now raise the level of the debate and talk in terms of national interest and economic survival.

My point is simple—if rational men and women were to sit down to devise a rational trade policy, they would not devise a policy anything like the one that burdens us today. Our trading partners do not so burden their business people, and we must get our laws in order if we are to remain competitive in international markets. We have got to cut the Gordian knot that hobbles U.S. trade, not pick at its edges, and the task force I propose has an important role to play in this regard.

I think we should encourage a dialog and not pretend that the problem does not exist. A Presidential commission, chaired by the Vice President, would provide such a forum for discussion, and I urge all of my colleagues to join me in support of this bill.

I ask unanimous consent that the text of my bill appear in the Record following my statement.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 432

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Commission on the International Application of the United States Antitrust Laws Act."

ESTABLISHMENT OF COMMISSION

SEC. 2. (a) There is established the Commission on the International Application of the United States Antitrust Laws (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of eighteen members who shall be appointed by the President as follows:

(1) four members from the executive branch of the Government;

(A) the Vice President of the United States;

(B) the Assistant Attorney General for the Antitrust Division;

(C) the Chairman of the Federal Trade Commission; and

(D) the Legal Advisor of the Department of State;

(2) four members from the Senate, two members to be named upon the recommendation of the majority leaders, and two members to be named upon the recommendation of the minority leader;

(3) four members from the House of Representatives to be named upon the recommendation of the Speaker of the House of Representatives; and

(4) six members from the private sector.

(c) The Chairman of the Commission shall be the Vice President of the United States.

(d) The President shall designate the Assistant Attorney General for the Antitrust Division and the Legal Advisor of the Department of State as the Vice Chairman of the Commission.

(e) The majority and minority leaders and the Speaker of the House shall make recommendations for the appointments to be made pursuant to subsection (b) within thirty days of the enactment of this Act.

(f) The President shall make all of the appointments in accordance with subsection (b) after receiving the recommendations set forth in paragraphs (2) and (3) of subsection (b) but such appointments shall be made no later than sixty days after the date of enactment.

(g) The first meeting of the Commission shall be called by the President within thirty days following the date such appointments to the Commission are made.

(h) Not more than one-half of the members of each class of members set forth in paragraphs (2), (3), and (4) of subsection (b) shall be from the same political party.

(i) The term of office for members shall be for the term of the Commission.

(j) A vacancy in the Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(k) Ten members of the Commission shall constitute a quorum (but a lesser number may hold hearings).

(l) The membership of the Commission shall be selected in such a manner as to be broadly representative of the various interests, needs, and concerns which may be affected by the international aspects of the United States antitrust laws.

PURPOSES OF THE COMMISSION

SEC. 3. (a) The Commission shall—

(1) conduct a comprehensive study of and make recommendations concerning the international aspects of the antitrust laws of the United States, the applicable rules of court, related statutes, administrative procedures, and their applications, their consequences, and their interpretation by the courts and Federal agencies (hereinafter referred to as "the United States antitrust laws"); and

(2) make periodic reports to the President and to the Congress concerning its activities and make a final report to the President and the Congress concerning such comprehensive study.

(b) Such comprehensive study shall specifically address—

(1) the application of the United States antitrust laws in foreign commerce, and their effect on—

(A) the ability of United States enterprises to compete effectively abroad; and

(B) the ability of United States enterprises to compete or deal effectively with foreign controlled enterprises in market and nonmarket economies;

(2) the effect of the application of the United States antitrust laws on United States relations with other countries;

(3) the jurisdiction and scope of the application of the antitrust laws to foreign conduct and foreign parties;

(4) the issue of reciprocity between nations with respect to mutual access to markets, equal opportunities for foreign investments, and enforcement of antitrust laws;

(5) the applications of United States rules of court relating to the enforcement of antitrust laws in the context of international transactions (for example, the "per se" and "rule of reason" doctrines); and

(6) the application of the United States antitrust laws to joint ventures, mergers, acquisitions, and distributions and licensing arrangements between and among the United States and foreign based enterprises.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 4. (a) Members of Congress, who are members of the Commission, shall serve without compensation in addition to that received for their services as Members of Congress, but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) Notwithstanding section 5533 of title 5, United States Code, any member of the Commission who is in the executive branch of the Government shall receive the compensation which he would receive if he were not a member of the Commission, plus such additional compensation, if any, as is necessary to make his aggregate salary not in excess of the highest rate for employees compensated at the rate of GS-18 of the General Schedule under section 5332 of title 5, United States Code, and he shall be reimbursed for travel, subsistence, and other necessary expenses incurred by him in the performance of the duties vested in the Commission.

(c) Members from the private sector shall each receive compensation not exceeding \$200 per diem when engaged in the performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

POWERS OF THE COMMISSION

SEC. 5. (a) (1) The Commission or, on the authorization of the Commission, any subcommittee thereof, may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpoena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission or such subcommittee may deem advisable. Subpoenas may be issued to any person within the jurisdiction of the United States courts, under the signature of the Chairman or Vice Chairman, or any duly designated member, and may be served by any person designated by the Chairman, the Vice Chairmen, or such member. In the case of the failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the provisions of section 102 through 104, inclusive, of the Revised Statutes (2 U.S.C. 192-194), shall apply to the Commission to the same extent as such provisions apply to Congress.

(2) For purposes of Section 552(e) of title 5, United States Code, the Commission shall not be considered to be an agency.

(b) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman or Vice Chairmen, such information as the Commission deems necessary to carry out its function under this Act.

(c) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 of the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services in accordance with the provisions of section 3109 of title 5, United States Code, but at rates not to exceed \$200 per day for individuals.

(d) The Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties to such extent and in such amount as are provided in appropriation Acts.

FINAL REPORT

SEC. 6. The Commission shall transmit to the President and to the Congress not later than one year after the first meeting of the Commission, a final report containing a detailed statement of the findings and conclusions of the Commission, including its recommendations for administrative, judicial, and legislative action which it deems advisable. Any formal recommendation made by the Commission to the President and to the Congress must have the majority vote of the Commission as present and voting.

EXPIRATION OF THE COMMISSION

SEC. 7. Sixty days after the submission to Congress of the final report provided for in section 6, the Commission shall cease to exist.

AUTHORIZATION OF APPROPRIATION

SEC. 8. There are hereby authorized to be appropriated such sums as may be necessary to carry out the activities of the Commission.

EFFECTIVE DATE

SEC. 9. The provisions of this Act shall take effect upon the date of enactment of this Act. ●