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A TRADE BILL'S POTENTIAL FALLOUT ON AMERICA'S SOUTHEAST ASIAN FRIENDS

INTRODUCTION

As Congress moves closer to completing its work on an omnibus trade bill, much debate is focusing on the possible effects of such legislation on the United States economy and American consumers. Free trade advocates point out that, in its current form, the bill would make it easier to impose protectionist restrictions on imports, which would lead to higher consumer prices and less job creation. The bill also could harm America's international economic and security interests. Painful, for instance, would be the impact on U.S. trade with the Association of Southeast Asian Nations or ASEAN. Comprised of Brunei, Indonesia, Malaysia, the Philippines, Singapore, and Thailand, ASEAN was the seventh largest trading partner of the U.S. last year. The U.S. sold ASEAN \$8.2 billion in goods and bought \$15.1 billion from ASEAN.

In addition to its strong trading relationship with the U.S., ASEAN supports the U.S. politically on such critical issues as opposing the Soviet military presence at Cam Ranh Bay in Vietnam and Hanoi's occupation of Cambodia with 140,000 troops. In general, ASEAN supports U.S. military bases in the Philippines. Moreover, the economic prosperity of individual ASEAN states contributes enormously to peace and stability in Southeast Asia, the primary U.S. goals for the region.

Free Trade Area. Since trade is critical to ASEAN's continued economic prosperity, and U.S. interests are secured by ASEAN stability, it is important for Congress and the Administration to take steps to prevent ASEAN from being damaged by protectionism. First, the Administration should urge ASEAN countries to eliminate their own trade barriers. This will show U.S. policy makers that these countries truly support free and fair trade. Second, the Administration should begin preliminary talks with ASEAN on a possible Free Trade Area with the U.S. Third, the Administration should ensure that State Department officials explain forcefully to congressional conferees the adverse foreign policy implications of the trade bill.

TRADITIONAL ASEAN TRADE POLICY

Until recently, U.S. trade policy was of minor concern to ASEAN governments. The exception was Singapore with its large manufacturing and assembly operations. And except for textiles, ASEAN officials were not particularly concerned with changes in U.S. trade law. Little attention, for example, was paid to U.S. administrative or legislative initiatives to tighten such U.S. trade regulations as Section 301 of the 1974 Trade Act, which seeks to combat barriers to U.S. exports. ASEAN also was generally unconcerned about U.S. anti-dumping restrictions and the application of Section 201 "escape clause" relief for American industries harmed by import surges.

Given the reliance of most of its members' economies on the production and export of such primary agricultural products as sugar, oilseeds, and rice, ASEAN was concerned with U.S. subsidy and export policies for these commodities that could affect ASEAN sales. ASEAN, as a group of developing countries dependent on agricultural exports, also was concerned about policies of the United Nations Conference on Trade and Development (UNCTAD) with its emphasis on commodities trading and pricing issues.

Backing Radical Socialists. Within the General Agreement on Tariffs and Trade (GATT), ASEAN generally adheres to the policies pushed by the Group of 77, a coalition of lesser developed countries (LDCs) seeking special, unilateral trade concessions for poorer nations. These policies usually have been initiated by the larger developing countries such as Brazil and India and have often been based on a radical socialist world view.

In past years, the principal trade policy concern of the ASEAN members has been the economic integration of their own individual markets into one large ASEAN-wide market. It was felt that integration would offer new opportunities for economic expansion. ASEAN has emphasized reducing the trade barriers between the member states to provide them with greater opportunities for business enterprise. This approach was supported by import substitution policies. By retaining trade barriers against third countries, including the U.S., ASEAN believed, it would reserve the integrated market for ASEAN producers. The principal external trade policy objective for ASEAN, nonetheless, was to gain preferential or more favorable treatment in the markets of the developed world, and full negotiations with ASEAN trading partners and developed countries for mutual trade concessions have been avoided since ASEAN wanted to maintain its barriers to foreign goods and services.

CHANGES IN ASEAN OUTLOOK TOWARD TRADE

ASEAN recently has been forced to rethink its trade strategy. While efforts toward increased ASEAN economic integration persist, ASEAN member states now are much more concerned with increasing their exports to nonmember states and especially to developed countries. There are several reasons for these developments.

- 1) **As commodity prices have fallen**, ASEAN countries have become more reliant on nontraditional exports to earn foreign currency.
- 2) **Young and growing populations** have put pressure on ASEAN governments to create new and better paying jobs, which usually means nonagricultural work.
- 3) **Progress toward economic integration** has not been as fast as originally hoped, and the timetable for fuller integration has experienced frequent delays and postponements. There has been strong internal opposition in most of the countries to opening their sectors to trade from more competitive ASEAN members. There is little consensus, for example, among other ASEAN members concerning how best to deal with exports from very competitive Singapore.
- 4) **There has been a lack of willingness** among high-level leaders in individual member states to make the political commitments necessary to assure future significant economic integration.
- 5) **In the move toward nontraditional exports**, the successes of such newly industrialized countries--now commonly known as NICs--as Hong Kong, South Korea, and the Republic of China on Taiwan, as well as Singapore, have provided role models for ASEAN.
- 6) **Recent developments in the NICs** offer new opportunities for ASEAN countries to move into manufacturing. Protectionism in the developed world targeted at the NICs has encouraged the dispersion of production to newer producing countries including ASEAN members. Wage pressure and slowly appreciating currencies in the NICs also have improved the competitive advantage of ASEAN. As a result of these factors, ASEAN is paying greater attention to its role in the GATT and to changes in U.S. trade laws that deal with trade in manufactured goods.

THE NEW ASEAN TRADE OUTLOOK

The orientation of ASEAN trade policy has changed considerably in recent years. In GATT, for example, ASEAN has become more pragmatic and less attached to the Group of 77 rhetoric that divides the world into greedy developed and worthy developing countries. During discussions preliminary to the Uruguay GATT Round to liberalize world trade last fall, ASEAN chose not to follow the hard line of India and Brazil, which sought to restrict consideration of nontariff trade barriers. Instead, ASEAN countries became leaders in the so-called group of 44 countries trying to bridge the gap between hard-line developing countries and the larger developed countries such as the United States, the European Community, and Japan. ASEAN accepted developed country proposals that the Uruguay Round consider such new issues as service trade, trade-related investment, and protection of intellectual property rights. ASEAN members, for their part, were successful in assuring attention for developing countries' requests for fuller implementation of the Tokyo Round GATT agreements to provide special and more favorable treatment toward developing countries and new concessions for labor intensive products, including textiles.

ASEAN also has been active in assuring that agricultural issues have a prominent place on the international trade agenda through the membership of Indonesia, Malaysia, the Philippines, and Thailand in the so-called Cairn group of developing and developed country exporters. And ASEAN successfully argued for procedural safeguards, which assured that countries not making concessions in agricultural trade would not be subject to retaliation in more traditional trade areas.

U.S.-ASEAN TRADE RELATIONS

U.S. trade policy has changed significantly over the past few years in ways that directly affect ASEAN members. The Reagan Administration has attempted to head off congressionally mandated protectionism by taking less restrictive, more mildly protectionist actions. For example, the Administration successfully opposed legislated rollbacks of textile imports that violated U.S. international trade obligations by strictly enforcing and tightening the Multi-Fiber Arrangement, which governs international textile trade. Among the results, Indonesia agreed to strict bilateral limitations on textile sales to the U.S., and the U.S. actually embargoed textile exports to the U.S. from Thailand until that country also agreed to limits. The U.S. also has pursued an export promotion program for American agricultural products, which, among other effects, has had an adverse impact on competitive rice exports from the region, particularly from Thailand.

While some American political leaders seek to keep out foreign goods, others, in the interest of improved trade relations, wisely wish to open foreign markets to U.S. goods. The U.S. Trade Representative's (USTR) annual report on alleged foreign unfair trade practices and market restrictions lists grievances with all ASEAN countries except Brunei and Singapore. These complaints fall into several categories:

General trade restrictions. Most criticized was Indonesia, cited for such traditional barriers as high tariffs, quantitative restrictions, import licenses, and local content requirements as well as a new requirement for barter arrangements. Specific trade barriers maintained by the Philippines also were cited, although giving that country time to remove them was advised in view of the current delicate Philippine political situation. High duties, particularly special tariff surcharges in excess of levels allowed under GATT commitments, were identified as the principal U.S. concerns with Thailand. Malaysia, the Philippines, and Thailand were recognized for responding to specific U.S. requests.

Limits on trade in services. In addition to multilateral efforts to include trade in services as a new issue in the Uruguay GATT Round, the Reagan Administration is pushing for bilateral improvements in such trade. The U.S. has criticized all ASEAN countries, except Singapore, for restrictions in this area. In the banking industry, for example, Indonesia, the Philippines, and Thailand were criticized for restrictions on market entry by foreign banks, for limits on the number and location of sub-branches within the country, and for restraints on the types of financial transactions allowed. In the insurance sector, Indonesia, Malaysia, and Thailand limit entry, require joint ventures with domestic firms, and mandate local majority ownership. Further, state-owned concerns often reserve their insurance business for

locally owned companies. Finally, government-mandated capital requirements often discriminate against foreign business activities. Indonesia and the Philippines have been criticized for their motion picture industry policies that limit the share of screen time during which foreign films can be shown, place discriminatory taxes on foreign films, and require foreign producers to use specific companies to distribute films.

Inadequate protection of intellectual property rights. Here also the U.S. is pushing bilateral reforms rather than waiting for new multilateral agreements. South Korea and the Republic of China, for example, already have agreed to U.S. requests for tougher domestic laws protecting patents, trademarks, and copyrights. ASEAN countries have a mixed record in responding to U.S. requests for improved protection of intellectual property rights. Singapore largely has satisfied U.S. requests with a new copyright law and a bilateral agreement with the U.S. Malaysia is on the verge of enacting legislation to satisfy U.S. concerns. Thailand promises to satisfy U.S. concerns in trademarks and copyrights; patent protection remains a problem. Progress in Indonesia is limited to the establishment of a commission to study the problem. An official trade complaint by the U.S. pharmaceutical industry has recently been lodged against Indonesia. There has been little progress in the Philippines.

Discrimination against foreign investors. A less pressing but nevertheless important subject for the U.S. is foreign treatment of American investments. Washington is urging its trading partners to sign treaties to assure that American investors receive the same treatment as local investors (so-called national treatment). The U.S. seeks to guard American businesses against export performance requirements, domestic content rules, and other preconditions for investment approval or qualification for investment incentives. The U.S. Trade Representative's 1986 trade report took Indonesia, Malaysia, and the Philippines to task for a number of measures that penalize American investors. These include the absence of national treatment, prohibitions on foreign land ownership, requirements for a minimum of local equity participation in investments, requirements for foreign companies to export a certain percentage of their production, divestment regulations, the phase-out of foreign management, and technology transfer requirements.

IMPLICATIONS OF THE PROPOSED U.S. 1987 TRADE ACT

Members of the House and Senate currently are resolving differences in the two trade bills (H.R. 3, S. 490) that were passed this summer. The omnibus bill under consideration seeks to modify U.S. trade law rather than to limit access for specific products. Several provisions of the bills would benefit ASEAN countries. For one thing, the legislation authorizes continuing U.S. participation in the new GATT round. For another, the legislation could make it easier for the President to negotiate bilateral Free Trade Areas with countries that seek complete free trade.

Other provisions of the proposed trade bills could harm ASEAN countries. These provisions include:

Section 201 of the 1974 Trade Act: The Escape Clause

The omnibus trade bill would make it easier for U.S. firms to obtain restrictions on imports and would severely restrict the President's discretion to judge whether such restrictions were in the nation's economic interest. Current law contains an escape clause that allows a U.S. industry, which believes that it has been harmed by a sudden surge of fairly traded imports, to seek up to five years of import restrictions from the U.S. International Trade Commission. If the ITC finds that the industry is injured, it can send a recommendation for relief to the President. The President can then impose some type of import relief, although not necessarily that recommended by the ITC. He also can determine that granting relief will not be in U.S. economic interests. Congress has a little used right to override a presidential decision not to follow ITC recommendations.

Congress has expressed frustration over the number of petitions by American firms to the ITC that have not been granted relief because of the ITC's failure to find injury or the President's failure to implement relief. Many businesses feel that the Reagan Administration is not protecting their interests. To address this alleged problem, the Senate and House versions of the trade bill make it easier for industries to demonstrate injury and therefore gain a positive finding by the ITC. In addition, the Senate bill severely restricts the President's ability to reject ITC recommendations. Many of the newer imports from ASEAN countries are labor intensive products against which American industries are very likely to petition for import relief. Less flexible enforcement of this statute will increase the chances that such ASEAN exports will be subject to import quotas.

Antidumping and Countervailing Duties

Provisions in the pending trade bills would tighten current antidumping and countervailing laws. Today, if the Commerce Department rules that foreign firms are "dumping" products in the U.S. market, that is, selling products below their costs of production, the Department can apply a duty to the product.

In the House trade bill, the so-called diversionary dumping provision would allow the U.S. government to act against manufacturers of products that use materials or components imported from a third country if the manufacturers purchased these materials or components at alleged dumping prices. Example: an ASEAN producer using steel purchased at prices below the cost of its production could face U.S. dumping penalties, even if the ASEAN producer adhered to fair trade rules in the sale of the finished product.

Another House provision broadly defines what is a resource input subsidy. Under this provision, the Commerce Department must rule that a product is being subsidized if it contains a significant amount of an input sold at prices below world market prices. Example: if a country maintained a domestic oil price at lower than international levels, energy intensive exports from that country would be viewed as being subsidized. This provision departs from current international rules that narrowly define subsidies as government payments to specific industries, which are not generally available to all customers throughout the economy. Under congressional and domestic industry pressure, the Administration has already begun

to act against alleged resource subsidies, for example, in the cases of Canadian lumber and Mexican petrochemical products. The House provisions pose a particular threat to Indonesia, which has abundant petroleum.

Section 301 of the 1974 Trade Act: Unfair Trade Practices.

Section 301 of the 1974 Trade Act allows the President to take action against countries that limit market access to U.S. exports in violation of treaty obligations. The legislation now before Congress would expand the definition of unfair practices and would significantly reduce presidential discretion to act in such cases. A change in the law that would affect ASEAN is the proposal to define export targeting as a practice actionable under Section 301. Export targeting is defined as government attempts to assist a specific industry to become export competitive. Such a definition encompasses the type of development programs employed by most ASEAN members and could pose a serious threat to future exports. Under the proposed law, a country can be subject to action for past targeting under Section 301, even if it has discontinued the practice in question.

Another proposed provision would establish relatively short deadlines for presidential action. In effect, this would make it more difficult for a President to refuse to take action in alleged unfair trade cases. The Senate bill, for example, requires the President to act in cases involving violations of trade agreements where negotiations have been unsuccessful. The only exception would be if action threatened national security or there were a GATT ruling contradictory to the position of the U.S. This imposes an unrealistic time limit, for it is highly unlikely that there would be a GATT decision before the time limit had expired. The ASEAN political process, moreover, cannot move quickly enough to deal with U.S. demands, especially if the shorter deadlines for action are enacted.

Agricultural Exports

The trade bill contains provisions allowing for the extension and the expansion of U.S. agricultural subsidies. These provisions are designed to promote U.S. exports and to convince the European Community to reduce its own subsidy programs. U.S. rice subsidies, however, harm ASEAN directly, particularly Thailand. The current legislation proposes to extend this program and expand coverage to other products, including oilseeds. American soybean oil competes directly with ASEAN palm oil.

RECOMMENDATIONS

A growing U.S.-ASEAN trade relationship benefits both parties. The transformation of ASEAN nations from primary product exporters to exporters of manufactured and processed agricultural goods means that ASEAN will be producing more goods desired by American consumers. As ASEAN grows, of course, its ability to purchase more U.S. goods and services also grows. Freer trade with ASEAN members would let the U.S. in on the ground floor of a market destined to expand in the future. A restrictive U.S. trade bill, however, would deter ASEAN economic expansion and in the end harm U.S. economic interests. Economic

