107TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 107–602

DISAPPROVAL OF THE EXTENSION OF THE WAIVER AUTHORITY CONTAINED IN SECTION 402(c) OF THE TRADE ACT OF 1974 WITH RESPECT TO VIETNAM

JULY 22, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

ADVERSE REPORT

[To accompany H.J. Res. 101]

The Committee on Ways and Means, to whom was referred the joint resolution (H.J. Res. 101) disapproving the extension of the waiver authority contained in section 402(c) of the Trade Act of 1974 with respect to Vietnam, having considered the same, report unfavorably thereon without amendment and recommend that the joint resolution do not pass.

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I. INTRODUCTION

A. Purpose and Summary

House Joint Resolution 101 would disapprove the extension of the waiver authority contained in section 402(c) of the Trade Act of 1974 with respect to Vietnam.

B. Background

Vietnam's trade status is subject to the "Jackson-Vanik" provisions in Title IV of the Trade Act of 1974 (the Act). This provision of law governs the extension of normal trade relations (NTR), including NTR tariff treatment, and access to U.S. Government credits, or credit or investment guarantees, to nonmarket economy countries ineligible for NTR treatment as of the enactment of the Act. A country subject to the provision may gain coverage by U.S. trade financing programs by complying with the freedom of emigration provisions under the Act. The extension of NTR tariff treatment also requires the conclusion and approval by Congress of a bilateral commercial agreement with the United States providing for reciprocal nondiscriminatory treatment.

The Act authorizes the President to waive the freedom of emigration requirement with respect to a particular country if he determines that a waiver will substantially promote the freedom of emigration provisions, and if he has received assurances that the emigration practices of the country will lead substantially to the achievement of those objectives. Waiver of the emigration requirement allows the country to be eligible for U.S. trade financing programs and, if the country has concluded a bilateral commercial agreement approved by Congress, to receive NTR tariff treatment.

Since the early 1990s, the United States has taken gradual steps to improve relations with Vietnam. On February 3, 1994, the President lifted the trade embargo on Vietnam in recognition of the cooperation received from the Government of Vietnam in Prisoner of War/Missing in Action (POW/MIA) accounting. On July 11, 1995, the President announced the establishment of diplomatic relations, which was followed by the appointment of former Congressman Douglas "Pete" Peterson as U.S. Ambassador to Vietnam. In 1997, the United States began negotiations with Vietnam toward the conclusion of a bilateral commercial agreement.

On March 9, 1998, the President first determined that a Jackson-Vanik waiver for Vietnam would substantially promote the freedom of emigration objectives under the Act. On April 7, 1998, the President issued Executive Order 13079, under which the waiver entered into force. The renewal procedure under the Act requires the President to submit to Congress a recommendation for a 12-month extension no later than 30 days prior to the waiver's expiration. The President has renewed Vietnam's waiver every year since 1998, most recently on June 3, 2002 (H. Doc. 107–221). This waiver authority will continue in effect unless disapproved by Congress within 60 calendar days after the expiration of the existing waiver (i.e., September 1). Disapproval, should it occur, would take the form of a joint resolution disapproving of the President's waiver determination.

On December 10, 2001, the U.S.-Vietnam bilateral commercial agreement entered into force. The agreement contains five major sections, including: (1) market access for agricultural and industrial goods; (2) intellectual property rights protection; (3) market access for services; (4) provisions to protect U.S. investments; and (5) measures to ensure transparency in Vietnamese laws, rules and regulations.

Because the bilateral commercial agreement is now in force, the President's annual determinations to grant a waiver of Jackson-Vanik emigration requirements to Vietnam provide NTR status to products imported from Vietnam, and also allow U.S. exporters doing business in Vietnam to have access to U.S. government credits, or credit or investment guarantees, such as those provided by the Overseas Private Investment Corporation (OPIC), the Export-Import Bank (Ex-Im Bank), and the U.S. Department of Agriculture (USDA), provided that Vietnam meets the relevant program criteria. A formal agreement between OPIC and Vietnam was signed on March 19, 1998, and the Ex-Im Bank signed a framework guarantee agreement with the State Bank of Vietnam on December 9, 1999. As of March 31, 2001, OPIC has received political risk insurance registrations for 20 projects, representing potential U.S. investment of $1.2 billion. However, actual current OPIC exposure is 2 projects, representing $8.8 million. At present, the Ex-Im Bank has one pending preliminary commitment for the sale of three 777 aircraft to Vietnam totalling approximately $300 million, and the Bank has several letters of interest to various exporters out. As of July 18, 2002, OPIC has received political risk insurance registrations for 20 projects, representing potential U.S. investment of $1.2 billion. However, actual current OPIC exposure is 2 projects, representing $8.8 million. At present, the Ex-Im Bank has one pending preliminary commitment for the sale of three 777 aircraft to Vietnam totalling approximately $300 million, and the Bank has several letters of interest to various exporters out. Commercial sales of agricultural commodities to Vietnam are also eligible for coverage by USDA's Southeast Asia Regional GSM–102 program for short-term export credit guarantees.

Vietnam is the world's 14th most populous country, with over 81 million people. While the country has emerged as one of Southeast Asia's more promising economies and has the potential to be a strong trading partner for the United States, its full potential has yet to be realized. Cumulative foreign direct investment by U.S. companies in Vietnam is low, valued about $1 billion.

After the President ordered an end to the U.S. trade embargo in 1994, two-way trade between the United States and Vietnam increased steadily from $223 million in 1994 to $935 million in 1996. In part, this rapid growth was due to a large number of U.S. aircraft sales to Vietnam in 1996. Despite a dampening effect on trade as a result of the Asian financial crisis which began in 1997, two-way trade was still $666 million that year. Beginning in 1998, two-way trade began to increase again and reached $827 million in 1998, $900 million in 1999, $1.19 billion in 2000, and $1.51 billion in 2001. Last year, U.S. exports to Vietnam totaled $461 million, while U.S. imports in return were valued at $1.05 billion. Between 1994 and 2001, total trade between the United States and Vietnam increased by 679 percent. In the first four months of 2002, U.S. exports have grown by 27.5 percent compared to the same period last year—at a time when overall U.S. exports to Asia are off by nearly 15 percent.

Top U.S. exports to Vietnam include aircraft and associated equipment, cotton textile fibers, fertilizers, footwear, and civil engineering and contractors' plant and equipment. Major U.S. imports from Vietnam include crustaceans, crude oil, footwear, fish and mollusks, coffee, and fruits and nuts.

C. Legislative History

COMMITTEE ACTION

House Joint Resolution 101 was introduced on June 25, 2002, by Mr. Rohrabacher (R–CA) to disapprove the extension of the waiver authority contained in section 402(c) of the Trade Act of 1974, recommended by the President to Congress on June 3, 2002, with respect to Vietnam. The resolution was referred to the Committee on Ways and Means. On July 18, 2002, the Committee on Ways and Means ordered House Joint Resolution 101 reported adversely without amendment to the House of Representatives by a voice vote with a quorum present.

LEGISLATIVE HEARING

On July 18, 2002, the Ways and Means Subcommittee held a hearing on Vietnam's Jackson-Vanik waiver and H.J. Res. 101, a resolution to disapprove such waiver. Witnesses at the hearing included Assistant United States Trade Representative for Asia and the Pacific, Mr. Ralph Ives; Acting Assistant Secretary of State for East Asian and Pacific Affairs Bureau, Mr. Chris LaFleur; and representatives from business and agriculture interests.

II. EXPLANATION OF THE RESOLUTION

PRESENT LAW

Title IV of the Trade Act of 1974, as amended by the Customs and Trade Act of 1990 (P.L. 101–382), sets forth requirements relating to freedom of emigration which must be met or waived by the President in order for a nonmarket economy country to gain access to U.S. government credits, or credit or investment guarantees.

The President's waiver authority under the Act expires at midnight on July 2 of each year. The Act also establishes procedures by which the President can renew his waiver on an annual basis and procedures for Congressional disapproval of the President's waiver. A waiver may be extended on an annual basis upon a Presidential determination and report to Congress that such extension will substantially promote the freedom of emigration objectives in the Act. The waiver authority continues in effect unless disapproved by the Congress, either generally or with respect to a specific country, within 60 calendar days after the expiration of the existing authority. Disapproval takes the form of a joint resolution disapproving the extension of Presidential authority to waive the freedom of emigration requirements in the Act. The resolution is referred to the Committee on Ways and Means, which has 30 days to consider it. The resolution is not amendable except to add or remove country names affected. If the resolution passes both Houses and is vetoed by the President, Congress must consider the veto message before the later of the end of the 60–day period or within 15 legislative days. The disapproval resolution is highly privileged.

On June 3, 2002, the President issued an extension of the waiver from the Jackson-Vanik freedom of emigration requirements for Vietnam. If both chambers of Congress do not pass a resolution of disapproval within the 60 calendar days following the expiration of the existing waiver authority, the President's waiver is automatically renewed through July 2, 2003. If a resolution of disapproval is enacted, it becomes effective 60 days after enactment.

Because the bilateral commercial agreement between the United States and Vietnam has entered into force, the President's waiver gives Vietnam continued NTR tariff treatment for another year and gives U.S. exporters doing business in Vietnam access to U.S. government credits, or credit or investment guarantees, such as those administered by OPIC, the Ex-Im Bank, and USDA, provided that Vietnam meets the relevant program criteria.

EXPLANATION OF RESOLUTION

House Joint Resolution 101 states that Congress does not approve the extension of the authority contained in section 402(c) of the Trade Act of 1974, recommended by the President to Congress on June 3, 2002, with respect to Vietnam.

REASONS FOR COMMITTEE ACTION

The Committee on Ways and Means reports House Joint Resolution 101 adversely primarily because the Members support the Administration's policy of engagement and gradual normalization of relations with Vietnam. In particular, the Committee is convinced that this policy is the cornerstone on which the United States will be able to continue cooperation with the Vietnamese government to achieve the fullest possible accounting of POWs and MIAs in Vietnam. In addition, engagement enables the United States to influence the pace and direction of economic and political reform in Vietnam in a manner that will improve respect for fundamental human rights and promote democratic reforms. Furthermore, termination of the President's Jackson-Vanik waiver for Vietnam would undermine the ability of the United States to influence Vietnam's re-emergence into the community of nations. In recent years, Vietnam has joined the Association of Southeast Asian Nations and the Asia-Pacific Economic Cooperation group. Vietnam has also applied to become a member of the World Trade Organization.

The Committee recognizes that disapproving the President's extension of Vietnam's Jackson-Vanik waiver would derail the process of normalizing U.S. trade relations with Vietnam. In particular, overturning the Jackson-Vanik waiver would harm U.S. exporters and their workers by jeopardizing the ability of U.S. interests to export to Vietnam and by removing access to U.S. trade financing programs, such as those administered by OPIC, the Ex-Im Bank, and USDA, thereby enabling foreign competitors to gain an unfair advantage in exports to Vietnam.

While emigration issues remain to be resolved, Vietnam has continued to make progress, and the Members of the Committee support the President's determination that waiving the Jackson-Vanik freedom of emigration criteria will substantially lead to the achievement of those emigration objectives. The Committee also believes the serious concerns that the United States has about human rights abuses and the need for economic and political reform in Vietnam are best addressed through expanding government and business contacts and the involvement of U.S. citizens in Vietnamese society, making full use of U.S. trade statutes where necessary.

EFFECTIVE DATE

The resolution would be effective 60 days after enactment.

III. VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the votes of the Committee in its consideration of House Joint Resolution 101.

MOTION TO REPORT THE RESOLUTION

House Joint Resolution 101 was ordered reported adversely without amendment by a voice vote with a quorum present.

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of House Joint Resolution 101, as reported: The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO), which is included below.

B. Statement Regarding New Budget Authority and Tax Expenditures

In compliance with subdivision 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the provisions of House Joint Resolution 101 do not involve any new budget authority, or any increase or decrease in revenues or tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 22, 2002.

Hon. WILLIAM "BILL" M. THOMAS,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res. 101, disapproving the extension of the waiver authority contained in section 402(c) of the Trade Act of 1974 with respect to Vietnam.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Erin Whitaker and Annie Bartsch (for revenues) and Lauren Marks (for private-sector mandates).

Sincerely,

STEVEN M. LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.J. Res. 101—Disapproving the extension of the waiver authority contained in section 402(c) of the Trade Act of 1974 with respect to Vietnam

Summary: Under the Trade Act of 1974, nondiscriminatory trade relations may not be conferred on a country with a nonmarket economy if that country maintains restrictive emigration policies. However, the President may waive this prohibition on an annual basis if he certifies that doing so would promote freedom of emigration in that country. On June 3, 2002, President Bush transmitted to the Congress his intention to waive to waive the prohibition with respect to Vietnam for a year, beginning July 3, 2002. H.J. Res. 101 would disapprove the President's extension of this waiver. CBO estimates that denying nondiscriminatory tariff treatment to Vietnam would decrease revenues by $8 million in fiscal year 2003. Since adopting this resolution would affect receipts, pay-as-you-go procedures would apply.

H.J. Res. 101 would impose a private-sector mandate on importers of Vietnamese goods that would be subject to higher tariffs. The higher tariff rates imposed by the bill would decrease tariff receipts by $8 million compared to current law because the quantity of imports from Vietnam would decrease as a consequence of increasing the cost of those goods. Importers of those goods would bear a cost of lost profits on about $350 million of sales. Other goods imported from Vietnam would continue to enter the United States, and the importers of those goods would also bear a mandate imposed by the bill in the form of higher tariff of $13 million.

CBO does not have sufficient information to determine whether the cost of the mandate in the bill would exceed the threshold established in UMRA ($115 million in 2002, adjusted annually for inflation). Specifically, CBO could not determine the value of profits lost because of lower imports from Vietnam.

Estimated cost to the Federal Government: The estimated budgetary impact of H.J. Res. 101 is shown in the following table.

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
CHANGES IN REVENUES						
Estimated revenues	0	−8	0	0	0	0

Basis of estimate: Denial of nondiscriminatory trade relations to Vietnam would substantially increase the tariff rates imposed on certain exports to the United States. CBO asssumes that these higher tariff rates would increase U.S. prices of, and would decrease U.S. demand for, goods imported from Vietnam. CBO estimates that imports from Vietnam would decline by more than enough to offset the higher rates, so that the U.S. customs duties collections on Vietnam imports would fall.

CBO also estimates that some of the decrease in trade with Vietnam would be offset by an increase in imports from other countries with nondiscriminatory trade relations status. The increase in revenues from this effect, however, would not outweigh the reduction in revenues from Vietnam. On net, CBO estimates that revenues would decrease by $8 million in fiscal year 2003. Vietnam has received nondiscriminatory trade relations status through Presidential proclamation on an annual basis beginning in 2001, and CBO assumes there would be a resumption of nondiscriminatory trade relations with Vietnam after July 3, 2003.

Pay-as-you-go-consideration: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go-procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table.

	By fiscal year, in millions of dollars—										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in outlays	Not applicable										
Changes in receipts	0	−8	0	0	0	0	0	0	0	0	0

Estimated impact on state, local, and tribal governments: H.J. Res. 101 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: H.J. Res. 101 would impose a private-sector mandate on importers of Vietnamese goods that would be subject to higher tariffs. The higher tariff rates imposed by the bill would decrease tariff receipts by $8 million compared to current law because the quantity of imports from Vietnam would decrease as a consequence of increasing the cost of those goods. Importers of those goods would bear a cost of lost profits on about $350 million of sales. Other goods imported from Vietnam would continue to enter the United States, and the importers of those goods would also bear a mandate imposed by the bill in the form of higher tariffs of $13 million.

CBO does not have sufficient information to determine whether the cost of the mandate in the bill would exceed the threshold established in UMRA ($115 million in 2002, adjusted annually for inflation). Specifically, CBO could not determine the value of profits lost because of lower imports from Vietnam.

Previous estimate: On July 16, 2001, CBO transmitted an estimate for H.J. Res. 55, disapproving the extension of the waiver authority contained in section 402(c) of the Trade Act of 1974 with respect to Vietnam as ordered reported adversely by the House Committee on Ways and Means. Last year's joint resolution would have disapproved the extension of the President's waiver for the period beginning on July 3, 2001, and ending on July 2, 2002. CBO estimated that disapproving the extension of the waiver would have no significant impact on receipts, because the waiver would not give Vietnam nondiscriminatory trade relations status. Since the transmission of the previous estimate, the Congress passed H.J. Res. 51, approving the extension of nondiscriminatory treatment to the products of the Socialist Republic of Vietnam.

Because the bilateral trade agreement between Vietnam and the United States had not been ratified at the time the bill was ordered reported, H.J. Res. 55 did not contain a private-sector mandate.

Estimate prepared by: Costs: Erin Whitaker and Annie Bartsch; impact on private sector: Lauren Marks; impact on state, local, and tribal governments: Greg Waring.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis.

V. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee believes, based on information from the Administration, that terminating Vietnam's Jackson-Vanik waiver by enacting House Joint Resolution 101 would be detrimental to the trade policy objectives of the United States.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that enacting House Joint Resolution 101 would undermine the goals and objectives of the Congress and the Administration in maintaining economic and political engagement with Vietnam.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States * * *").

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