

DISAPPROVING EXTENSION OF WAIVER AUTHORITY
UNDER SECTION 402(c) OF THE TRADE ACT OF 1974 WITH
RESPECT TO VIETNAM

JULY 29, 1998.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

ADVERSE REPORT

[To accompany H.J. Res. 120]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the joint resolution (H.J. Res. 120) 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 and recommend that the joint resolution do not pass.

I. INTRODUCTION

A. PURPOSE AND SUMMARY

H.J. Res. 120 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

Since the early 1990s, the United States has taken gradual steps to improve relations with Vietnam. In February 1994, President Clinton lifted the trade embargo on Vietnam in recognition of the progress made in accounting for prisoners of war and missing-in-action (POW/MIA) and the successful implementation of the Paris Peace Accords. The United States opened a Liaison Office in Hanoi later that year. On July 11, 1995, President Clinton announced the establishment of diplomatic relations, which was followed by the

appointment of former Member of Congress Douglas "Pete" Peterson as U.S. Ambassador to Vietnam.

The Administration has also taken steps toward the normalization of U.S. trade relations with Vietnam. At present, Vietnam's trade status is subject to the Jackson-Vanik amendment to Title IV of the Trade Act of 1974. This provision of law governs the extension of most-favored-nation (MFN), or normal, tariff treatment, as well as access to U.S. government credits, or credit or investment guarantees, to nonmarket economy countries ineligible for MFN treatment as of the enactment of the Trade Act. A country subject to the provision is eligible for coverage by U.S. trade financing programs only if it is certified by the President as complying with the freedom of emigration provisions under the Act or if the President waives this requirement. Specifically, the Act authorizes the President to waive the requirements for full compliance with respect to a particular country if he determines that such 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. This determination is subject to a resolution of disapproval by Congress. In addition to the freedom of emigration requirements, the extension of MFN tariff treatment is subject to the conclusion and approval by Congress of a bilateral commercial agreement with the United States providing for reciprocal nondiscriminatory tariff treatment.

On March 9, 1998, the President determined that a Jackson-Vanik waiver for Vietnam would substantially promote the freedom of emigration objectives under the Trade Act of 1974. On April 7, 1998, the President issued Executive Order 13079 under which the Jackson-Vanik waiver for Vietnam went into force. Because Vietnam is still negotiating a bilateral commercial agreement with the United States, it is currently ineligible to receive MFN tariff treatment. The President's waiver for Vietnam, however, gives that country access to U.S. government credits, or credit or investment guarantees, such as those administered 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. The President's initial waiver determination for Vietnam expired on July 2, 1998. The renewal procedure under the Trade 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 (i.e., by no later than June 3). On June 3, 1998, the President determined that a 12-month continuation of the waiver for Vietnam (from July 3, 1998 to July 2, 1999) would substantially promote the freedom of emigration criteria in the statute.

After the President ordered an end to the U.S. trade embargo, two-way trade between the United States and Vietnam increased steadily from \$224 million in 1994 to \$948 million in 1996. In part, this rapid growth was due to a large number of U.S. plane sales to Vietnam in 1996. The pace of bilateral trade slowed in 1997, partially due to the Asian financial crisis, but two-way trade was still \$666 million. In 1997, U.S. exports to Vietnam were valued at \$278 million, while U.S. imports in return from Vietnam totaled

\$388 million. Top U.S. exports to Vietnam in 1997 included machinery, electrical equipment, vehicles, footwear, optic and medical instruments, aluminum, and cotton and yarn fabric. The largest U.S. imports from Vietnam in 1997 included spices, coffee, tea, footwear, fish and seafood, mineral fuel, cereals, woven apparel, and edible fruits and nuts. U.S. investment in Vietnam has grown in tandem with trade. Since 1993, U.S. investment in Vietnam has risen from just \$3.3 million to \$1.2 billion 1997, making the United States the eighth largest foreign investor in Vietnam. Another factor affecting U.S.-Vietnamese economic relations is the hundreds of millions of dollars that Vietnamese Americans send to Vietnam each year for family aid and business investment.

C. LEGISLATIVE HISTORY

Subcommittee action

House Joint Resolution 120 was introduced on June 4, 1998, by Mr. Rohrabacher to disapprove the extension of the waiver authority contained in the Jackson-Vanik amendment to Title IV of the Trade Act of 1974 recommended by the President to Congress on June 3, 1998 with respect to Vietnam, and was referred to the Committee on Ways and Means. On June 23, 1998, the Subcommittee on Trade of the Committee on Ways and Means ordered House Joint Resolution 120 reported adversely without amendment to the full Committee on Ways and Means by a voice vote with a quorum present. On June 25, 1998, the Committee on Ways and Means ordered House Joint Resolution 120 reported adversely without amendment to the House of Representatives by a voice vote with a quorum present.

Legislative hearing

On June 18, 1998, the Subcommittee on Trade of the Committee on Ways and Means held a hearing on the issue of U.S.-Vietnam trade relations. At this hearing, Members of Congress, as well as representatives of POW/MIA families, veterans organizations, refugees, Vietnamese-Americans, and U.S. businesses expressed their views regarding U.S.-Vietnam trade relations and the President's extension of the Jackson-Vanik waiver for Vietnam. Former Member of Congress and current U.S. Ambassador to Vietnam Douglas "Pete" Peterson presented testimony from the Administration in support of the President's waiver extension.

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 (Public Law 101-382), sets forth three 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, as well as the conclusion by the President of a bilateral commercial agreement providing for reciprocal non-discriminatory tariff treatment, subject to Congressional approval. Because Vietnam has not yet concluded a bilateral commercial

agreement with the United States, it is ineligible to receive MFN tariff treatment. The President's waiver of the freedom of emigration requirements for Vietnam, however, currently gives that country 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.

The President's waiver authority under Title IV expires at midnight on July 2 of each year. It 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 Trade Act of 1974. 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. Under Title IV amendments adopted as part of the Customs and Trade Act of 1990, disapproval takes the form of a joint resolution disapproving the extension of Presidential authority to waive the freedom of emigration requirements in the Trade Act of 1974. 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, under the 1990 amendments, 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, thus generally guaranteeing a vote in the House if a resolution of disapproval is introduced.

On June 3, 1998, 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 2nd of the next year. If a resolution of disapproval is enacted, it becomes effective 60 days after enactment.

Explanation of resolution

House Joint Resolution 120 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, 1998, with respect to Vietnam.

Reasons for Committee action

The Committee on Ways and Means reports House Joint Resolution adversely primarily because the Members, in general, 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 lead eventually to democratic principles. Fundamentally, the Committee believes that terminating

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 (ASEAN) and has applied to become a member of the World Trade Organization (WTO). In November 1998, Vietnam will join the Asia-Pacific Economic Cooperation (APEC) group.

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. Finally, the Committee recognizes that disapproving the President's extension of Vietnam's Jackson-Vanik waiver would derail progress toward market-oriented reforms and the process of normalizing U.S. trade relations with Vietnam, particularly the ongoing bilateral commercial agreement negotiations, while at the same time harming U.S. exporters and workers.

While the United States has many serious concerns about human rights abuses and the need for economic and political reforms in Vietnam, the Committee believes that they 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 is effective 60 days after enactment.

III. VOTE OF THE COMMITTEE

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee in its consideration of House Joint Resolution 120.

MOTION TO REPORT THE RESOLUTION

H.J. Res. 120 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 7(a) 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 120, 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 (B) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of House Joint Resolution 120 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 subdivision (C) of clause 2(1)(3) of rule XI 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 9, 1998.

Hon. BILL ARCHER,
*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. 120, a joint resolution expressing Congress's disapproval of the recommendation of the President to extend the waiver 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 contact for federal revenues is Hester Grippando, or for federal costs is Craig Jagger.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.J. Res. 120—A joint resolution 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, 1998, President Clinton transmitted to Congress his intention to waive the prohibition with respect to Vietnam for a year, beginning July 3, 1998. H.J. Res. 120 would disapprove the President's extension of this waiver.

Estimated cost to the Federal Government: CBO estimates that disapproving the extension of the waiver with respect to Vietnam would have no significant impact on outlays or receipts.

Basis of estimate: Because the waiver contained in section 402(c) of the Trade Act of 1974, as recommended by the President, would not give Vietnam most-favored-nation status, disapproving it would not affect customs duties. Enacting H.J. Res. 120 would prohibit various U.S. government agencies from extending credit and insurance to Vietnam. CBO estimates that the resolution would have no significant effect on Overseas Private Investment Corporation, Eximbank programs, or General Sales Manager (GSM) export credit guarantee programs of the U.S.

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

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to subdivision (A) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee, based on public hearing information and information from the Administration, believes that terminating Vietnam's Jackson-Vanik waiver by enacting House Joint Resolution 120 would be unwise and counterproductive.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

With respect to subdivision (D) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, the Committee advises that no oversight findings or recommendations have been submitted by the Committee on Government Reform and Oversight with respect to the subject matter contained in House Joint Resolution 120.

C. CONSTITUTIONAL AUTHORITY STATEMENT

Department of Agriculture (USDA). While USDA has testified that it is considering whether to offer GSM export credit guarantees to Vietnam if the waiver is not disapproved, CBO has no good basis for estimating when, how, and to what extent these guarantees may be offered. If USDA does offer GSM credit guarantees to Vietnam, the associated costs during the next year are likely to be small.

Pay-as-you-go considerations: Because H.J. Res. 120 could affect outlays, pay-as-you-go procedures, as designated under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, would apply. However, CBO estimates that disapproving the extension of the waiver to Vietnam would have no significant impact on receipts or outlays.

Intergovernmental and private-sector impact: The proposed legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995, and would impose no direct costs on state, local, or tribal governments.

Estimate prepared by: Federal Revenues: Hester Grippando. Federal Cost: Craig Jagger.

Estimate approved by: Frank Sammartino, Acting Assistant Director for Tax Analysis. Paul N. Van de Water, Assistant Director for Budget Analysis.

With respect to clause 2(1)(4) of rule XI 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 * * *").