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A BILL TO ESTABLISH A COMMISSION TO REVIEW THE DISPUTE SETTLEMENT REPORTS OF THE WORLD TRADE ORGANIZATION

HON. AMO HOUGHTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 6, 1995

Mr. HOUGHTON. Mr. Speaker, I am joined today by my colleague, Mr. LEVIN, in introducing legislation which will create a process by which the Congress can act to ensure that the new World Trade Organization dispute settlement system is not abused by our trading partners to undermine U.S. interests.

Late last year, in consecutive special sessions, both Houses of Congress passed legislation implementing the new GATT agreement. That agreement establishes a new international body to oversee trade disputes, the WTO, and gives it unprecedented authority to enforce the decisions of its dispute settlement panels.

During the period leading up to the vote, many Americans voiced their concerns that this new international organization would undermine U.S. sovereignty and might harm rather than help U.S. interests in global trade. I spent a great deal of time and effort in developing the implementing legislation that ensures that U.S. industries and their workers would continue to have remedies available in U.S. law to protect against foreign unfair trade practices like dumping and subsidies. While it was not perfect, I supported the final version of the bill because I believed that on balance it served the interests of the United States. But this does not mean we can now ignore the legitimate concerns raised last year about the WTO and its new dispute settlement process. We must carefully scrutinize the actions of the WTO and its dispute settlement mechanism in order to ensure that our trade laws are not undermined through improper WTO decisions.

Under the WTO, as under the old GATT, trade disputes will be submitted to international panels for review. However, unlike the old GATT system, no WTO member nation will have the right to block the adoption of a panel report, even if that nation considers the panel report to be fundamentally flawed in its analysis. Thus, no WTO member nation will be able to ignore the findings of a dispute settlement panel without paying a price: international condemnation, weakened international respect for the trading rules, and possible internationally sanctioned retaliation against its goods. The enhanced power of the dispute settlement panels requires that this process be used prudently and administered wisely for the sake of the world trading system in general and American national commercial interests in particular.

The bill we are introducing establishes the WTO Dispute Settlement Review Commission composed of five Federal appellate judges, appointed by the President in consultation with Congress. The Commission will be empowered to review every decision adverse to the United States by a WTO dispute settlement panel. In cases where the dispute settlement

panels adhered to the proper standard of review, and where they did not exceed or abuse their authority, no further action will be taken. But if the Review Commission determines that a panel reached an inappropriate result that amounts to abuse of its mandate, the Commission would transmit that determination to Congress. Any Member of Congress would then be permitted to introduce a privileged resolution and, if such resolution were enacted, the U.S. Trade Representative would be required to enter into negotiations to amend the WTO dispute settlement rules. After three determinations of inappropriate decisions by dispute settlement panels, any Member could introduce a privileged resolution and, if such resolution were enacted, the United States would be required to withdraw from the WTO.

This bill is very similar to legislation already introduced in the other body by Senator DOLE to implement an agreement he reached last year with the administration to protect against just such a threat to U.S. sovereignty by the WTO. It differs only in that it clarifies that it is the U.S. Trade Representative who is responsible for negotiations to amend the WTO rules if a joint resolution is approved by Congress. It is a farsighted proposal that permits the United States to exercise international leadership. Through the careful review of WTO decisions by the Review Commission, we will be able to prevent countries who engage in unfair trade practices from abusing the role of the WTO dispute settlement panels. The United States will be in a position to oversee the operation of these panels to ensure that any such abuse does not adversely affect U.S. trade laws and ultimately, American national commercial interests.

Another important feature of this bill is the provision permitting the participation of U.S. private parties in the consultations and panel proceedings. If a U.S. private party with a direct economic interest in a WTO proceeding supports the U.S. Government's position, then the USTR must permit the party to participate in the WTO panel process. The USTR must consult in advance with the party before submitting written briefs to a panel, include the party as an advisory member of the U.S. delegation dealing with the dispute, and in certain instances, permit the party to appear before the panel hearing the case.

Private party participation is a key aspect of this bill. Because the dispute settlement decisions will be binding, it is imperative that American interests be properly represented. Given the USTR's active schedule in representing the United States in a variety of trade matters, the assistance private parties can provide will be crucial.

We welcome the support of our colleagues in cosponsoring this important legislation.

WTO COMMISSION ACT

HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 6, 1995

Mr. LEVIN. Mr. Speaker, I am pleased to join my colleague, the gentleman from New York, in introducing the WTO Dispute Settlement Review Commission Act. This is an important piece of legislation designed to ensure

that our rights as a nation to defend industries and workers from foreign unfair trade practices are not diminished by the new World Trade Organization dispute settlement system.

Last year, Congressman HOUGHTON and I worked together in the Ways and Means Committee and helped secure GATT implementing legislation that preserved the effectiveness of our trade laws against dumping, subsidies, and other unfair trade practices. These laws are a critical last line of defense for American workers and companies facing unfair trade restrictions. These laws have been on the books in one form or another for over 70 years.

But writing good laws in the Congress is not enough. Under the new World Trade Organization, the United States will no longer have the ability to veto an international dispute settlement decision against us, even if we think it was wrongly decided. This creates a tremendous temptation for some of our trading partners who have been disciplined by our trade laws to use the new dispute settlement process to undermine the effectiveness of those laws. Many foreign trade negotiators have said they will attempt to use the WTO to invalidate section 301 or to force certain changes in the way the Department of Commerce enforces the antidumping laws.

We have a concrete example in our current negotiations with Japan in the Framework talks. The Japanese trade minister has threatened to bring a WTO case against the United States if we impose section 301 sanctions against Japan for its barriers to United States autos and auto parts. In effect, the Japanese want to use the WTO—which is supposed to keep markets open—to keep the Japanese market closed.

Mr. Speaker, we cannot allow this kind of abuse of the WTO. This bill is designed to create a fair and impartial process to review WTO decisions, and to provide the Congress with a mechanism to bring about changes in the WTO if it is misused.

The bill establishes a WTO Dispute Settlement Review Commission composed of five Federal appellate judges, appointed by the President in consultation with the Congress. The Commission will review every decision against the United States by a WTO panel. Where a panel has applied the proper standard of review, and did not exceed or abuse its authority, no further action would be warranted. But if the Commission determines that a panel reached an inappropriate result that amounts to abuse of its mandate, the Commission would so inform the Congress. Any Member of Congress would then have the right to introduce a privileged resolution directing the U.S. Trade Representative to negotiate amendments to the WTO dispute settlement rules to fix the situation.

And if the Commission determines that WTO panels have abused their mandate on three separate occasions in any 5-year period, Members would have the right to introduce a privileged resolution directing that the United States withdraw from the WTO by a date certain if one last effort to amend it fails.

This basic arrangement was agreed to by our U.S. Trade Representative Mickey Kantor during last year's GATT debate. I think Ambassador Kantor deserves credit for recognizing the legitimacy of this issue and working with Members of Congress, both Democrats and Republicans, to craft a fair solution.

The Commission may find that its very first case involves Japan and the auto sector. If Japan carries through on its threat to appeal to the WTO rather than open its markets, and if the WTO panel were to rule against us—an occurrence I do not foresee in view of the clearly exclusionary and discriminatory practices presently undertaken or tolerated by the Government of Japan—this would raise a serious question about whether the new WTO dispute settlement process is really in our national interest. I would expect a very careful review of that decision by the Review Commission, with appropriate recommendations to the Congress.

But it is my sincere hope that the mere existence of the Commission will encourage appropriate use of the WTO and will discourage WTO panels from acting beyond their authority when such cases are brought.

Finally, let me also speak to the final section of the bill, which provides that private parties may participate with the USTR in WTO dispute settlement proceedings. Under our legislation, if a U.S. private party with a direct economic interest in a WTO proceeding supports the U.S. Government's position, then the USTR must permit the party to participate in the WTO panel process. This private party participation is critical to protecting American jobs. Because the dispute settlement decisions will be binding, it is imperative that the interests of American companies and their workers be fully represented. This is not meant as a criticism of USTR in any way. But given the reality of USTR's many obligations in negotiating with countries around the world, they need the help of the private sector.

Mr. Speaker, this is an important piece of bipartisan legislation, and I hope we can move quickly to see it enacted into law.

**RESIST IMPULSE TO BE PENNY
WISE AND POUND FOOLISH**

HON. JERROLD NADLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 6, 1995

Mr. NADLER. Mr. Speaker, I rise today to add my voice to the growing concern expressed by many of my colleagues over the dangerous and devastating effects of many of the actions taken by this body in recent weeks, and actions that will be taken in the coming weeks.

I am gravely concerned that the frontal attack on low- and middle-income Americans that some are waging will have far-reaching effects that we cannot begin to fathom today.

Some Members of this body seem to be engaged in a race to cut, with little regard to what we are cutting, and what the effects of these cuts will be to Americans who are truly in need of assistance. While there is most certainly wasteful spending occurring which must be addressed by this body, we seem to be engaged in an exercise which is driven by a complete disregard to the content of what we do, with regard only to how much we do.

At the same time, we are transferring spending authority to our States, many of which are engaged in the same exercise.

We must remember that the cuts we make here are being echoed in our cities and our States. Even the most cost-effective programs

are being cut at the city and State level—including a small and highly effective program in New York State called NORC, designed to assist moderate-income elderly remain in their homes, rather than cost taxpayers millions by financing nursing home care. This program receives only \$1 million of State funding, and cutting it would likely end up costing much more.

We must resist the impulse to be penny wise and pound foolish. We must also be aware that, in our current climate, the cuts we make in Washington will be duplicated at the city and State level. We must equally resist the impulse shared by some in this House to punish those most in need of assistance—the poor, the elderly, the disabled, children, workers, legal immigrants—and to place the blame for our Nation's deficit on those who truly need assistance.

**DO NOT FORGET MILITARY
RETIREEES**

HON. JOHN M. McHUGH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 6, 1995

Mr. McHUGH. Mr. Speaker, today the United States stands as the world's only remaining superpower. Having won the cold war we set out to downsize our military and cut defense expenditures. As we continue this process, we must not forget those military retirees who, through their many years of service and dedication, helped secure our Nation's future.

I fear that those who served during the World War II, Korea, and Vietnam eras, and who have since retired from the military, are being asked to bear unfairly the brunt of this downsizing process. The closing of bases throughout the country will leave many retirees without immediate access to DOD medical facilities. For example, the 1993 BRAC Commission's ill-advised closure of Plattsburgh Air Force Base will leave thousands of military retirees in upstate New York and in nearby Vermont without the services of the base hospital. Retirees over the age of 65 will be forced to rely on other, more costly, means to secure health care. Many people joined the military with the understanding that DOD would provide them with health care for life.

If we renege on our commitment to these military retirees, it will only serve to harm future efforts to attract high-quality personnel. We cannot expect service members to make a long-term career out of the military if we continue to demonstrate that a promise made yesterday no longer counts today.

Mr. Speaker, we have come to be a nation of strength by holding steadfast to our commitments and not by shirking our responsibilities. We did not do it in the past and we should not start now, especially when it comes to those men and women who were willing to make the ultimate sacrifice for their country. I believe that we must do whatever is in our means to ensure that these military retirees are not left to fend for themselves.

**NATIONAL BEVERAGE CONTAINER
REUSE AND RECYCLING ACT OF
1995**

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 6, 1995

Mr. MARKEY. Mr. Speaker, today I am introducing the National Beverage Container Reuse and Recycling Act of 1995. This important piece of legislation is especially relevant today as we approach the 25th anniversary of Earth Day. I have introduced this legislation in the past with my colleague, the late Paul Henry (R-MI), who was a true and dedicated champion for this important initiative, and hope that my colleagues will this year embrace this bill that combats the problems we have of shrinking landfill space, skyrocketing waste disposal costs, misspent energy and natural resources, and litter strewn roadsides by setting in place a national beverage container recycling program. If passed, this bill would save millions of dollars in energy costs, divert a significant portion of the solid waste stream, foster the growth of a recycling infrastructure, and help reverse the throwaway ethic our Nation has embraced.

Most importantly, this will be done at no cost to the taxpayer. This bill, which requires a deposit paid on beverage containers, will act as a positive economic incentive to individuals to clean up the environment and will result in a high level of reuse and recycling of such containers, and help reduce the costs associated with solid waste management. Such a system will result in significant pollution prevention, energy conservation and recycling.

We can conquer the problem of one-way, throwaway beverage containers as 10 States have already done. Under these deposit programs, which are in effect in California, Connecticut, Delaware, Iowa, Maine, Massachusetts, Michigan, New York, Oregon, and Vermont, consumers pay a deposit on each container purchased, and this is refunded when the container is returned. Consumers in these States have proven the effectiveness of such legislation by reaching recycling rates as high as 95 percent.

This bill will encourage the development and maintenance of a recycling infrastructure. The plastics industry, which already has a recycling infrastructure, would particularly benefit from this bill since it has been plagued by supply shortages.

Consumers have demonstrated the popularity of deposit laws. A General Accounting Office [GAO] study found that 70 percent of Americans support national deposit legislation. Perhaps more importantly, in States that have deposit laws, this level is even greater.

This bill allows States to recycle in any manner they wish, as long as they achieve a 70-percent recycling goal for beverage containers. Only States that fail to meet this challenge would be required to implement the deposit program outlined in this bill.

To further encourage recycling efforts, the unclaimed deposits collected under this bill, which could total as much as \$1 to \$1.7 billion annually, would be used to support other recycling programs. For example, deposit laws can help subsidize the costs of curbside recycling. Together, deposit laws and curbside recycling