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Imported Cut Flowers—A Thorny Question

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Commentary

IMPORTED CUT FLOWERS - A THORNY QUESTION

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I. INTRODUCTION

Like many American industries, the domestic production of fresh cut flowers is being challenged and threatened by foreign competition.¹ Not surprisingly, the public hears little about this problem. In an effort to win support and recognition for their cause, the Society of American Florists lobbied the United States Congress by leaving a colorful trail of blossoms throughout the House and Senate chambers on Congressional Action Day, 1983.² The purpose of this symbolic gesture was to dramatize some hard, unpleasant facts.

Between 1976 and 1981, imports on fresh cut flowers more than tripled from \$41.7 million to over \$140 million.³ In the past ten years, foreign imports have come to seize over 60% of the carnation and chrysanthemum markets.⁴ The latest attack on the industry has come from a different quarter — the importers of foreign roses. Before 1977, almost every rose sold domestically was grown on United States soil;⁵ in 1982, imports already accounted for more than 16% of the market, with this percentage steadily increasing.⁶

The principle competitors are Colombia (the largest importer)⁷

1. Leavitt, *Billions in Blossoms*, FORTUNE, May 18, 1981, at 68.

2. New York Times, April 12, 1983, § II, at 6, col. 2.

3. Washington Post, May 2, 1982, § L, at 1, col. 2.

4. See generally, *Floriculture Crops, Production Area and Sales*, 1980, 1981, 1982, U.S. Dept. of Agriculture (1982).

5. Wall Street Journal, May 24, 1983, at 39, col. 1.

6. *Id.*

7. See generally *Ornamental Crops Nat'l. Market Trends of AMS*, U.S. Dept. of Agriculture, at 8 (1983).

and Holland (whose sales nearly doubled between 1981 and 1982).⁸ Israel and Mexico (with 6% and 4% respectively, of the carnation/rose market) are playing increasingly greater roles in the U.S. market.⁹ The growers blame the invasion of U.S. markets on a number of factors. Some of these factors include low domestic tariffs coupled with high European tariffs,¹⁰ foreign governments subsidizing exports¹¹ and a constant increase in production costs.¹² Consequently, the wholesalers are able to buy imported cut flowers for 30-40% less than the domestic varieties.¹³

This essay will treat several related topics: the conflict within the domestic industry itself between growers and wholesalers; the remedies available to counteract the conduct of foreign importers; the futile attempt on the part of growers to limit imports and establish countervailing duties against foreign competitors; and finally the political stalemate between an unsympathetic administration and a Congress sympathetic to the grower's plight.

II. THE INDUSTRY AND ITS OPPOSITION

Many growers fear for their survival if the administration does not impose stiffer tariffs and duties.¹⁴ There are growers, however, within the industry who strongly oppose the imposition of import duties, added tariffs and orderly marketing agreements.¹⁵ Members of the Florist's Transworld Delivery Association (FTD), and the Society of American Florists (SAF) (and of course, the foreign importers themselves) have testified at numerous hearings before the ITC in opposition to any type of import restriction.¹⁶ FTD does concede that imports have gained a substantial share of the market, and rightly so, since imports provide a quality product in adequate quantities and at reasonable prices to the consumer, particularly during peak demand periods.¹⁷ Furthermore, FTD contends the florists still pay a higher price for domestic varieties than for imports.¹⁸ The growers respond

8. *Id.*

9. *Id.*

10. *Imports the Issue That Won't Die*, Florist, March, 1977, at 47.

11. Los Angeles Times, July 24, 1982, § 1, at 24, col. 1 (Dutch government charged with financing 18% of costs of growers' new greenhouses; provides extensive heating subsidiaries for its greenhouses).

12. *Id.*

13. New York Times, August 15, 1982, § III, at 20, col. 3.

14. *Supra* note 11, at 1.

15. Southern Florist & Nurseryman, April, 1980, at 23.

16. Nichols, *End of Import Battle*, Florist, June 1980 at 59.

17. *Id.* at 60.

18. *Id.*

that rising production costs force them to charge higher prices.¹⁹ Additionally, the growers contend that consumer prices are still inflated even when the retailers and wholesalers purchase the imports.²⁰

Retailers, among them FTD, maintain that the domestic industry must do more to help itself. "It must get its own production, distribution and marketing system in order before it seeks palliatives and short-cut solutions such as import controls."²¹ The growers, on the other hand, feel retailers are not looking beyond the short term benefit and argue that instead of opposing the growers the retailers should work with them in stopping the influx of imports.²² Additionally, the increased control by importers²³ over the industry because of their increased market share has devastating results on the economy and all aspects of the industry from grower to retail florist.²⁴

III. OFFENSIVE CONDUCT AND AVAILABLE REMEDIES

Following World War II, the concept of international trade was greatly altered.²⁵ The signing in 1947 of the General Agreement on Tariffs and Trade²⁶ (GATT) created an expanded international trading community which tried to operate on the promise of good faith and free trade.²⁷ However, this practice was soon ignored, and American industries recognized that provisions under United States law governing international trade were to take on added meaning.²⁸ In 1979, the GATT signatories, including the United States, signed a

19. Gainesville Sun, February 5, 1984, § E, at 5, col. 2. In California, heating bills can run as high as \$160,000 a month.

20. Harris, *Flower Power*, FORBES, October 25, 1982, at 75. Retailers automatically tack on a 250% to 300% markup. FTD responds that their markup is due to high spoilage caused by low volume. (Americans spend \$10 per capita annually on flowers, whereas in France, Germany and Holland, the population spends over \$30 per capita).

21. *Supra* note 15, at 23 (statement of FTD President Thomas Kanganis at ITC hearings on § 201, Trade Act of 1974 petition initiated by Roses, Inc., asking for relief in form of countervailing duty equaling amount of subsidy given to Dutch growers).

22. *Supra* note 16, at 59.

23. *Id.* (Colombia, Holland, Israel and Mexico).

24. *Id.*

25. See comment, *Roadmap to the Trade Act*, 8 LAW & POL. INT'L BUS. 125 (1976) (hereinafter cited as *Roadmap*). The flow of international trade has been hampered throughout the twentieth century by the problem of tariffs. The major trading countries have, since the 1940's, been trying to reduce the problem by freezing tariffs.

26. General Agreement on Tariffs and Trade, *opened for signature* October 30, 1947, 61 Stat. A-11, T.I.A.S. No. 1700, 55 U.N.T.S. 194.

27. MacDonnel, *Offset Policy Under the New Countervailing Duty Law*, 15 CORNELL INT'L L.J. 429, 433 (1982) (hereinafter cited as *Offset Policy*).

28. Garfinkel, *Import Relief and Unfair Trade Actions*, 15 THE INT'L LAW 240 (1981) (hereinafter cited as *Import Relief*). The countries began using discriminatory trade practices, giving themselves an advantage in the international trading market.

new multinational trade agreement which was endorsed by Congress and became the Trade Agreements Act of 1979 (TAA).²⁹

The TAA's most controversial element was the restriction placed on the United States' ability to impose a countervailing duty against a foreign importer receiving a subsidy from its government, unless the subsidy caused a "*material injury*"³⁰ to a domestic industry. The Act defines a material injury as "harm, to the domestic industry, which is not inconsequential, immaterial or unimportant."³¹ It only operates against a country that is a signatory to the GATT or other multilateral agreements with the United States.³² If a country is not a member of any such agreement, then the Tariff Act of 1930³³ and the Trade Act of 1974³⁴ apply. The earlier acts are more lenient in that no showing of material injury is necessary in antidumping and countervailing duty actions.³⁵

The three trade laws do not come into play unless certain types of offensive conduct are perpetrated by the foreign importer, which would include but are not limited to the following:

1. The sale of imports at an unfairly low price because of a bounty or grant offered by a foreign government, corporation, person, etc.³⁶

2. The sale in this country of items at a price lower than the sales price in the exporter's home country or the cost of production.³⁷

To counteract these unfair trade practices, there are three major alternatives of relief available to an injured domestic industry:³⁸ a

29. Trade Agreements Act of 1979, Pub. L. No. 96-39, § 9, 93 Stat. 147 (1979) 19 U.S.C. §§ 1671, 1673 (1983) (hereinafter cited as 1979 Trade Act).

30. Note, *An Analysis of "Material Injury" Under the 1979 Trade Agreements Act*, 4 *LOV. L.A. INT'L & COMP. L.J.* 87 (1981) (hereinafter cited as *An Analysis of Material Injury*).

31. Trade Act, 19 U.S.C. §1677(7)(A) (1980).

32. See generally *supra* note 30, at 88.

33. Tariff Act of 1930, 19 U.S.C. § 1301, *et seq.* (1983).

34. Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1980 19 U.S.C. § 2101 (1976).

35. See *An Analysis of Material Injury*, *supra* note 30.

36. See *Import Relief*, *supra* note 28, at 243.

37. *Id.* at 241.

38. *Id.* at 241. Antidumping actions under Subtitle B of Title VII of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979, 19 U.S.C. § 1673 (1976). Countervailing duty actions under Subtitle A of Title VII of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979, and § 303 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1671 (1976) and 19 U.S.C. § 1303 (1976). Escape clause action under § 201(b) of the Trade Act of 1974, 19 U.S.C. § 2251(b) (1976). There are two additional avenues of redress normally available to a threatened domestic industry - Unfair Methods of Competition in Import Trade under § 337 of the Tariff Act of 1930 as amended by the Trade Act of 1974 and the Unjustifiable Foreign Trade Practice under § 301 of the Trade Act of 1974, as amended the Trade Agreements Act of 1979. However, neither of these remedies would appear to offer the beleaguered cut

countervailing duty action, an antidumping duty action and a section 201 escape clause action.

In a countervailing duty action, a domestic industry alleges a foreign government, corporation or person is subsidizing, either directly or indirectly, the exporter or producer of a class or kind of merchandise imported to the United States resulting in harm to the complaining domestic industry.³⁹ If the petitioner is a GATT signatory, the burden is on the petitioner to prove "material injury."⁴⁰ Merchandise imported from a nonsignatory country only requires proof of a subsidy.⁴¹ Once subsidization and injury are proven, the Commerce Department then imposes a countervailing duty on the imported product, which offsets the subsidy and equalizes the advantages gained by the foreign importers.⁴² The problem, however, is proving the two allegations, as the threshold is an abnormally high one.⁴³

flower industry any relief.

39. 19 U.S.C. § 1671(a):

The term 'subsidy' has the same meaning as the term 'bounty or grant' as that term is used in § 1303 of this title, and includes, but is not limited to, the following:

(A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

(B) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production or export of any class or kind of merchandise:

(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

(ii) The provision of goods or services at preferential rates.

(iii) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

(iv) The assumption of any costs or expenses of manufacture, production or distribution.

40. The requirement that an industry be materially injured by reason of imports of the subsidized article is applicable only where the country subject to investigation is a country under the agreement on subsidies and countervailing measures, the code negotiated by parties of the Tokyo Round of Multilateral Trade Negotiations in Spring 1979. See Murphy, *Antidumping and Countervailing Duties under the Trade Agreements Act of 1979: A Preliminary Analysis*, 14 INT'L LAW 203 (1980).

"Countries under the agreement" include (1) countries which have signed the agreement; (2) those which have assumed obligations with respect to the United States which are substantially equivalent to obligations under the agreement; and (3) those with which the United States has an unconditional most-favored-nation agreement obligation that runs specifically to countervailing duties.

41. *Id.*

42. See *Import Relief*, *supra* note 33, at 244.

43. *Id.* at 244.

A second alternative is that of an antidumping duty action. It is a price discrimination case.⁴⁴ To succeed, the complainant must meet two criteria: first, that a foreign exporter is selling the product in this country at a price which is less than the fair market value (LTFV) of the product sold in the importer's country; second, there must be "material injury" to the domestic industry by reason of the LTFV.⁴⁵ The assessment of whether there is a material injury must be made in the context of the conditions of trade, competition and development regarding the industry concerned.⁴⁶

The third major remedy available is a section 201 escape clause investigation⁴⁷ which allows any domestic industry that feels it is being injured or threatened with injury from imports to petition the ITC for relief. The petition must allege that the increasing imports are causing "serious" injury⁴⁸ to the domestic product. A section 201 petition has an advantage over the other legal actions mentioned because it covers "all" countries exporting to the United States whereas other approaches are aimed at one company or a group of companies within a single country.⁴⁹ The relief offered to the domestic industry by a section 201 action is solely within the discretion of the President, and therefore, involves a substantial political effort.⁵⁰

The administrative provisions under the relevant statutes involve similar procedures and players. In practice, however, there tends to be a great deal of confusion over which agency handles which aspect of the relief petition. Before instituting any petition for relief, counsel should be thoroughly familiar with the provisions and requirements of these laws.⁵¹

44. *Id.* at 241, *see also* note 38.

45. *Id.*, *see also* § 732(b)(1) of the Tariff Act of 1930, as amended by the 1979 Act, 19 U.S.C. § 1673(b) (1980).

46. *See generally* Note, *The Trade Agreements Act of 1979: Countervailing Duty and Antidumping Duty Procedures*, 14 J. INT'L L. & ECON. 63 (1979).

47. *See Import Relief, supra* note 33, at 244.

48. *Id.*

49. *Id.* Further, it allows the President to ignore the requirements of GATT.

50. *Id.* at 245. To persuade the President to provide effective relief, it is necessary to generate support in Congress and among key Administration officials.

51. 19 U.S.C. § 1671(a); 19 U.S.C. § 1673(a), *see also supra* note 37. The procedures for each action are set forth in the respective statutory sections.

Briefly, the participants involved and their respective responsibilities are listed below:

1. The Department of Commerce acts as the enforcer of the import laws. In countervailing duty actions, the Commerce Department determines whether subsidies are being paid. Similarly, in antidumping cases, the Commerce Department determines whether dumping has occurred.
2. The International Trade Administration (ITA) is the arm of commerce which actually administers the import programs.
3. The International Trade Commission (ITC) is an independent agency responsible to

IV. THE WAR OF THE ROSES

The growers have not been sitting idle while imports swallow the domestic market;⁵² instead, they have attempted to find relief by invoking statutory remedies.⁵³

In March 1977, domestic growers attempted to limit imports when the growers' council of the Society of American Florists filed a section 201 escape clause investigation.⁵⁴ The initial escape clause petition asked for mandatory import quotas in carnations and pompom chrysanthemums for a three-year period beginning in January 1977 with the quantities based on 1975 import levels.⁵⁵ The ITC in a thorough report noted all relevant economic factors: no idle production facilities; value of domestic production increased; and domestic cut flower acreage was the same in 1976 as in 1972. The ITC denied the petition, ruling not to impose tariffs or quotas on cut flower imports.⁵⁶

In November 1979, Roses, Inc., a national trade association whose members produce 80 percent of all greenhouse roses grown in the United States and Canada, invoked the presidential escape clause once again. This time, Roses, Inc., asked the ITC to conduct an investigation and to make a determination that the domestic rose growers were being seriously injured or threatened with serious injury by the increased imports of fresh cut roses.⁵⁷ The petition further sought to increase the duty on all foreign cut roses from 8 percent to 32 percent to establish monthly import quotas and to return to the 1977 import levels.⁵⁸ Once again, the ITC voted unanimously to deny the request.⁵⁹

In January 1980, the domestic rose growers changed their strategy

both Congress and the President for making all determinations as to whether a domestic industry is suffering injury.

4. The Court of International Trade (CIT) acts as an appellate court and reviews decisions of the Commerce Department and the International Trade Commission.

5. The Federal Court of Appeals for the Federal Circuit was recently created to handle, among other things, appeals from the Court of International Trade.

6. The U.S. Trade Representative acts as a representative of the executive branch in negotiating trade matters with foreign countries.

52. James C. Krone, Briefing Document Prepared by Roses, Inc. (1983) (personal copy provided by Mr. Krone). For a description of petitions, see text.

53. Krone, *Cut Flower Imports. . . A Concern for More Than Just the U.S. Grower*, *The Michigan Florist* 10, February 1980.

54. See *supra* note 527; see also *supra* note 37.

55. *Id.* See also *supra* notes 15 and 16.

56. See *supra* notes 15 and 16; see also *Fresh Cut Flowers*, U.S. Int'l. Trade Comm. Pub. 827 (1977).

57. *Id.* See also *supra* notes 15 and 16.

58. *Id.* See also *supra* notes 15 and 16.

59. *Id.* See also *supra* note 15. The political atmosphere, namely the Reagan Administration, was and is for open trading and no import quotas or duties.

and initiated two countervailing duty investigations against subsidized exports of roses to the United States from the Netherlands and Israel.⁶⁰ The Netherlands, as a GATT signatory, was subject to the "material injury" test of the TAA.⁶¹ Since Israel is not a GATT signatory, the countervailing duty investigation was conducted pursuant to the rules under the Tariff Act of 1930.⁶² In February 1980, the ITC determined that Dutch roses were not "causing or threatening to cause material injury to the domestic industry."⁶³ In the Israeli case, net subsidies of only 2.02 percent were found.⁶⁴ Roses, Inc., appealed this final determination to the Court of International Trade (CIT) and subsequently, Agrexco, Agricultural Export Company, Ltd., filed a summons in the CIT contesting the validity of the final determination. These cases were then consolidated by the CIT.⁶⁵ The Department of Commerce in answer to these claims admitted that three of the programs should be reinvestigated by the ITA.⁶⁶ The ITA filed its determinations as to bounties and grants with the CIT. Although on February 1, 1985, the Court issued an opinion, the net result is that the court remanded the claims of bounties back to the Department of Commerce and the ITA for determination.⁶⁷

Notwithstanding a number of disappointments, the cut flower industry and Roses, Inc., continued its thorny battle. In August 1982, the ITA on petition initiated a new countervailing duty investigation on roses and other fresh cut flowers (excluding miniature carnations) from Colombia.⁶⁸ In November 1982, the ITA preliminarily determined that the Colombian government was subsidizing its flower growers by 5 percent of the value of the product exported to the United States.⁶⁹ In January 1983, however, the ITA again deprived the floriculture industries of relief from unfair competition by suspending the investigation.⁷⁰ It decided not to impose countervailing duties on the basis of a suspension agreement between the United States and Colombia.⁷¹ Colombian growers (accounting for 85 percent of exports to the United States) agreed to renounce the subsidy bene-

60. *Id.*, see also *supra* notes 52 and 15.

61. See *supra* note 40.

62. See *supra* notes 33 and 40.

63. See *supra* notes 163, at 59 and 52.

64. *Agrexco, Agricultural, Export Co., Ltd., ETAL v. United States*, 604 F. Supp. 1238.

65. *Agrexco*, 604 F. Supp. 1238.

66. *Agrexco*, 604 F. Supp. 1238 (Ct. Int'l. Trade) (1985).

67. *Agrexco*, 604 F. Supp. 1238 (Ct. Int'l. Trade) (1985).

68. See *supra* notes 52 and 16, 604 F. Supp. 1238 United States Ct. of Int'l. Trade Feb. 1, 1985.

69. See *supra* note 52.

70. *Id.*

71. *Id.*

fits.⁷² There is a serious question of whether the ITA can or will effectively monitor this agreement.⁷³ It seems likely that the United States growers will receive no corrective action to offset the unfair pricing advantage which foreign government subsidies confer upon exports of fresh cut flowers to the United States.⁷⁴

The most recent countervailing duty action was filed on September 30, 1983, by the California Floral Council, Floral Trade Council, and Roses, Inc. on behalf of the United States industry producing certain fresh cut flowers.⁷⁵ The petition alleged that producers or exporters in Mexico of certain fresh cut flowers received benefits or grants within the meaning of section 303 of the Tariff Act of 1930, as amended by the 1979 Act.⁷⁶ Mexico is not a country under the GATT Agreement, and therefore not subject to a "material injury" determination.⁷⁷

On January 26, 1984, the ITA's preliminary determination held that no benefits constituting bounties or grants within the meaning of section 303⁷⁸ were being provided by Mexican exporters or producers of fresh cut flowers.⁷⁹ However, one program was found to have been used by a floral exporter, but the ITA needed more information to determine whether the program is countervailable.⁸⁰ In conducting its preliminary investigation, the ITA presented a questionnaire to the government of Mexico which relied in detail on the allegations made in the petition.⁸¹ All other programs alleged to have made grants to the Mexican floral exporters were preliminarily found not to have been used.⁸² The final determination, made on April 10, 1984, was negative as to all Mexican producers or exporters of fresh cut flowers.⁸³

72. *Id.*

73. *Id.* Based upon their past performance offering little or no assistance to the grower's industry.

74. See *supra* note 52. See also, Wall Street Journal, February 13, 1984, at 1, col. 5. The ITC seems to be overworked and has numerous industries clamoring for attention.

75. 48 Fed. Reg. 49531 (1983). This investigation covered miniature carnations, standard carnations, pompom chrysanthemums, standard chrysanthemums, sweetheart roses, and hybrid tea and intermediate roses.

76. *Id.*, see also note 39.

77. 48 Fed. Reg. 49531 (1983).

78. 49 Fed. Reg. 4023 (1984).

79. *Id.*

80. *Id.* The FUNDS ESTABLISHED WITH RELATIONSHIP TO AGRICULTURE (FERA) program was found to have been used by flower exporters, however, more information is needed prior to the final determination. FERA's main objective is to develop Mexico's agricultural sector by providing short and long-term financing, loan guarantees and technical support to agricultural production firms.

81. 49 Fed. Reg. 4023 (1984).

82. *Id.*

83. 49 Fed. Reg. 15007 (1984).

Roses, Inc., also availed itself of the antidumping remedies in the hopes of obtaining relief from Colombian rose imports. Two actions have been initiated, the first in June, 1981.⁸⁴ The petition was based upon an independent market research study and information gathered from the domestic growers, Department of Agriculture production statistics and Department of Commerce import statistics.⁸⁵ The Department of Commerce, after *ex parte* conferences with representatives of the Colombian growers, dismissed the petition without investigation.⁸⁶ Roses, Inc. appealed the dismissal to the Court of International Trade, which in April 1982 ruled that the Commerce Department acted unlawfully in refusing to investigate the alleged dumping of Colombian roses into the United States market. Ordered to proceed with an investigation,⁸⁷ the Commerce Department appealed the decision to the Court of Appeals for the Federal Circuit.⁸⁸ The Court of Appeals upheld the decision of the Court of International Trade, in part, providing the petitioner the opportunity to refile.⁸⁹ On September 30, 1983, Roses, Inc. petitioned the ITA⁹⁰ for a preliminary antidumping investigation to determine whether fresh cut roses from Colombia were being, or were likely to be, sold at less than fair value.⁹¹ The final determination by the ITA on July 27, 1984, held that although the fresh cut roses were being sold at less than fair value, the circumstances were not deemed "critical."⁹² Pursuant to section 735 of the Tariff Act of 1930, as amended by the 1979 TAA, the ITC would ordinarily make a final determination whether to impose an antidumping order against the Colombian rose importers. However, prior to the ITC's determination, Roses, Inc. filed suit against the ITA in the Court of International Trade, where the suit is now pending.⁹³

84. See *supra* note 52, see also *supra* notes 15 and 16. At that time Colombia was not a member of GATT; therefore, the petition was filed under the Tariff Act of 1930, § 732(b)(1), as amended by the Trade Agreements Act of 1979, 19 U.S.C. § 1673(a)(b)(1) (1981).

85. See *supra* note 52.

86. *Id.*

87. *Roses, Inc., v. U.S.*, No. 81-7-00857, slip op. at 82-29 (April 28, 1982).

88. *U.S. v. Roses, Inc.*, 706 F. 2d 1563 (C.A. F.C. 1983).

89. 706 F. 2d 49530 (1983).

90. 48 Fed. Reg. 49530 (1983).

91. *Id.* The complaint that sales were made at less than fair value included an allegation that export sales are made at less than the cost of production in Colombia. See also, *Fresh Cut Flowers from Colombia Determination of the Comm. on Investigation No. 731-TA-148, Preliminary Under Tariff Act of 1930 Together with Information Obtained in Investigation*, U.S. Int'l Trade Comm. (Nov. 1983).

92. 48 Fed. Reg. 30765 (1984).

93. *Id.* Telephone conference with Mary White, Esq., Int'l. Trade Administration, Dept. of Commerce, Wash. D.C., Feb. 11, 1985.

V. LEGISLATIVE ASSISTANCE VERSUS ADMINISTRATIVE RESISTANCE

The battle continues over the cut flower imports but it appears to be more of a political than a foreign import battle. Unable to obtain any relief through the domestic law remedies available under the U.S. trade laws and thwarted at every turn by the Executive Branch and the International Trade Commission, the flower industry has turned to Congress for assistance through legislation amending the Tariff Schedules of the United States.⁹⁴ The amendment would provide for rates of duty on imported roses consistent with those maintained by the European Economic Community on imports of roses from nonmember nations.⁹⁵

Following introduction in the Senate, Senate Bill 1296⁹⁶ went to the subcommittee on trade where committee hearings were begun on October 21, 1983. No action was taken and the Bill died.⁹⁷ Similarly, the House of Representatives Bill 1146 was referred to the Committee on Ways and Means on February 1, 1983, where it died.⁹⁸ There are no plans to reintroduce these bills at the present time.⁹⁹

The Reagan Administration advocates a free market economy with no limits on the flow of flower imports into the United States.¹⁰⁰ This free market philosophy is not something new. In September 1978, a proposal was submitted to President Carter's Trade Policy Staff by the Dominican Republic, Panama and Singapore on behalf of 140 other countries and territories, asking that cut flower imports from developing countries be admitted into the United States on a

94. S.B. 1296, 98th Cong., 1st Sess. (1983) and H.R. 1146, 98th Cong. 1st Sess. (1983).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that (a) subpart G of part 15 of schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by striking out items 192.18 and inserting in lieu thereof the following:

Roses:

192.14 If entered during the period from November 1 of any year to May 31 of the following year, inclusive 24% ad val. 40% ad val.

192.16 If entered during the period from June 1 to October 31 of any year, inclusive 17% ad val. 40% ad val.

(b) Items 192.15 and 192.17 are redesignated as 192.11 and 192.13, respectively.

Sec. 2. The amendments made by the first section of the Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of the enactment of this Act.

95. *Id.*

96. Introduced by Senator Arlen Specter, PA, May 17, 1983. Telephone conference with Senator Specter's office, March 1, 1984 and February 18, 1985.

97. *Id.*

98. *Id.*

99. *Id.*

100. *See supra* note 16, at 63.

duty-free basis.¹⁰¹ If approved, these imports would be added to the Generalized System of Preferences.¹⁰² Those countries which qualify as less developed under the GSP status and which import cut flowers into the United States include Mexico and Israel. Though objected to by the growers, this proposal was approved by the retail florists and signed by President Carter in 1979.¹⁰³

The general trend in the United States government over the past 30 years has revealed little sympathy for limits on imports and continues to lean toward liberalism in trade.¹⁰⁴ That feeling certainly has not changed with a more conservative Republican administration.¹⁰⁵ In fact, at the November 1982 GATT meeting, the U.S. Trade Representative, Bill Brock, negotiated with other GATT members to halt protectionism in world trade.¹⁰⁶ The GATT members reached compromises to ensure more favorable treatment for developing countries which improves these countries' trade balances with more highly developed nations.¹⁰⁷

More recently, Vice President George Bush, speaking at a conference on International Trade, stated that the Administration's policy would continue to resist protectionist pressures, no matter how politically favorable a different attitude may appear. "Unless it is absolutely necessary to restrict imports, it is absolutely essential not to."¹⁰⁸

The Administration's strong position in favor of maintaining an open market in the United States and abroad appears to be balanced, to a degree, by Congress where the Ways and Means Trade Subcommittee has been examining the trade status and remedies offered to domestic industries seeking relief from unfair trade practices.¹⁰⁹ The House panel is working toward finding a faster, less expensive method of handling allegations of unfair practices, specifically seeking tighter rules on subsidized imports into the U.S. market.¹¹⁰

The recent flurry of petition filing with the Department of Commerce and the ITA by many domestic industries has prompted a discussion of linking import relief to promises of modernized facilities, modification of inefficient production processes, and various belt-

101. *Imports: The Issue That Won't Die*, Florist, March 1979, at 47.

102. *Id.*

103. *Id.*

104. *See supra* note 16, at 63. *See also* 18 U.S. Export Weekly (BNA) 1031 (March 29, 1983).

105. *Id.*

106. 18 U.S. Export Weekly (BNA) 1031 (March 29, 1983).

107. *Id.*

108. 20 U.S. Export Weekly (BNA) 563 (Jan. 24, 1984).

109. *Supra* note 16, at 1034.

110. *Id.*

tightening restrictions.¹¹¹ A bill, recently drafted to this effect¹¹² is generally supported by the Commerce Department and Trade Representative's office.¹¹³

VI. CONCLUSION AND RECOMMENDATION

It is easy to see why domestic industries, especially fairly small ones, are having such a difficult time obtaining relief from increased foreign imports. Petitions for assistance¹¹⁴ are expensive and unpredictable, with less tangible factors playing a vital role in the outcome of these actions:¹¹⁵ the economic significance of the industry, the number of jobs it represents, the importance of the product to national security and the domestic economy as a whole.¹¹⁶

The domestic cut flower industry is made up of small, independent owner/operators who find it difficult to unite on issues.¹¹⁷ The carnation and chrysanthemum industries have suffered such great losses that their national organizations disbanded, not for lack of interest but for lack of work.¹¹⁸ Many of the growers have had to switch to the production of other commodities.¹¹⁹ As a luxury item industry, it does not carry the weight of the national consciousness to protect its interests.¹²⁰ Despite the odds, the growers have waged a continuous and forceful battle against foreign competition. Their fate now rests with proposed legislation. In the meantime they must continue to lobby Congress to raise the tariff levels in an effort to recapture some of their lost profits.

Statistics can be interpreted to support opposite view points. There is no doubt that imports of cut flowers are taking a bigger bite out of the domestic market by offering a better buy to the wholesalers, retailers and ultimately the consumer. The consumer, though, appears to be the untapped remedy available to the domestic

111. Wall Street Journal, Feb. 13, 1984, at 1, col. 6.

112. *Id.* Sen. John Heinz (R-Pa.), drafted the bill.

113. *Id.* The bill died in committee.

114. *See supra* note 15, at 62.

115. *See Import Relief, supra* note 28, at 248.

116. *Id.*

117. *See supra* note 16, at 62.

118. Washington Post, May 2, 1982, § 1, at 1, col. 2.

119. Hughes, *ITC Begins Hearings on Cut Flower Imports*, Florist's Review, May 5, 1977, at 28. Though this might appear to be a solution, some of these growers started out in a family business. The soil may not be conducive to other types of agricultural products and the costs of crop-conversion may be too expensive.

120. New York Times, April 30, 1983, Washington Talk. The rose industry alone accounts for approximately \$6 billion.

grower.¹²¹ Growers blame the static market on the retailers, who argue in turn that the growers have been injured by their own lack of aggressiveness and adequate marketing techniques.¹²²

In Holland, for example, an extensive marketing network promotes the expansion of the market for flowers and plants through a check-off system to which all growers contribute.¹²³ This system acts as a public relations firm to advertise and keep flowers before the public on a daily basis, not merely on Valentine's Day or Mother's Day.¹²⁴ Increased consumption results from a cooperative effort between the growers and the retailers. One of the major reasons that the market in this country has not expanded is due to the low visibility of cut flowers.¹²⁵ Until recently, the only place one could buy flowers was in florist's shops, with the flowers locked up in coolers. Street vendors were nowhere in sight and open air markets, even in large metropolitan areas, were nonexistent.¹²⁶ All segments of the industry are going to have to meet together in a spirit of mutual assistance to overcome the industry's ills. By perfecting distribution, decreasing markups at all levels and offering a wider assortment of goods, the industry will give the elusive consumer more reasons to purchase a product that everybody loves.¹²⁷

In addition to raising the consciousness of the consumer, the growers' industry must begin to operate more efficiently. In the Netherlands and Israel, greenhouse mechanization is state-of-the-art.¹²⁸ Certainly, the technical knowledge for this type of mechanization and streamlined productivity is available in this country and the time has arrived for the growers to take advantage of the possibilities of this new technology. The entrepreneurs who own and operate these foreign production facilities concentrate on the business dimensions of the industry rather than on the horticultural aspects.¹²⁹ The U.S. industry, although not subsidized as such, does have some alternatives, such as receiving loans at low interest rates through the Small Business Administration (SBA).¹³⁰ It would be misleading to suggest that the SBA is handing out loans indiscriminately but op-

121. Leavitt, *Billions of Blossoms*, FORTUNE, May 18, 1981, at 73.

122. See *supra* note 16, at 60.

123. Smith, *Marketing Practices of European Flower Growers*, Proc. Fla. Stat. Hort. Soc. 186, 188 95:1982.

124. *Id.* at 188.

125. See *supra* note 121, at 73.

126. *Id.*

127. *Id.*

128. Staby, *The International Movement of Cut Flowers*, Florist's Review, April 29, 1982, at 10. Technology for a labor-intensive industry.

129. *Id.*

130. See *supra* note 16, at 61.

opportunities presently exist to expand production and increase efficiency for the grower.¹³¹

The international movement of cut flowers has become a severe problem,¹³² not only to the growers but to the entire floral industry and to the economy as a whole. The trickle-down effect of a lost industry will reach the entire economic structure, no matter how small the industry is in relation to the broader picture. However, the growers must begin to expend their energies and money on some of the alternatives mentioned, rather than demanding import quotas and restrictive tariffs. This country is not in the position to cut off or restrict trade with other nations, nor does it appear that any future administration is likely to feel that it should.

The best solution might be that currently under discussion in Washington: grant some relief to the beleaguered industry, and in exchange require the protected industry to become more efficient and to accept an adjustment plan to assist the industry in making the necessary changes to meet the demands of today's business.¹³³ This compromise would give the industry opportunities to try new and aggressive marketing tactics and promotion, time to start changing the way it uses labor and the possibility to work more efficiently with the other segments of the industry.

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131. See *supra* note 111.

132. In addition to economic problems, the importation of large quantities of drugs shipped with the cut flowers from Colombia has recently been reported.

133. See *supra* note 111. Following in the footsteps of the bail-out of Chrysler Corp. in exchange for government backing, proponents of this type of temporary relief believe that representatives from business, labor and government could be sent up to establish a plan to streamline the particular industry.

