TRADE ACT OF 1970

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 18970

TO AMEND THE TARIFF AND TRADE LAWS OF THE UNITED STATES, AND FOR OTHER PURPOSES

AUGUST 21, 1970.—Ordered to be printed

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August 21, 1970.—Ordered to be printed

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

REPORT

[To accompany H.R. 18970]

The Committee on Ways and Means, to whom was referred the bill (H.R. 18970) to amend the tariff and trade laws of the United States, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. PURPOSES

The general purposes of H.R. 18970 are:

(1) to extend the authority of the President to enter into foreign trade agreements through June 30, 1973, and to authorize the President to proclaim, subject to certain conditions and limitations, such modification or continuance of any existing duty or other import restriction or such additional import restrictions as he determines to be required or appropriate to carry out such trade agreements. The President would be granted the authority to reduce rates of duty by 20 percent or 2 percentage points below the level to which the United States was committed on July 1, 1967;

(2) to amend the tariff adjustment and adjustment assistance provisions of the Trade Expansion Act of 1962 (TEA) in order to assure that United States industries, firms, and workers who may be seriously injured or threatened with serious injury from increased imports may be provided with tariff adjustment or other adjustment assistance needed to remedy such injury;

(3) to provide for the imposition of temporary quantitative limitations on imports of certain textile and footwear articles and for authority to negotiate international agreements or arrangements with respect to such articles, in order to assure the nondisruptive marketing of the imports of such articles into the United States;

(4) to provide a deferral of United States tax for domestic corporations engaged in export sales in order to remove an income tax disadvantage to U.S. export sales of U.S. owned foreign subsidiaries; and

(5) to amend certain other provisions of the tariff and trade law in order to meet immediate trade problems.

II. SUMMARY AND GENERAL STATEMENT

H.R. 18970 represents many months of effort by your committee to bring to the House a trade proposal which will provide a sound base for the continuation of a long-range trade expansion policy and will meet the immediate need of United States producing and consuming interests, and other economic interests both in domestic markets and abroad. The bill incorporates in modified form the trade proposals made by the President to the Congress on November 18, 1969, some elements of many other trade proposals regarding orderly marketing of imports which had been referred to the committee, other suggestions for changes in our trade and tariff laws made during the course of the public hearings, and the domestic international sales corporation proposal made to the committee by the Secretary of the Treasury.

Your committee devoted over one month to public hearings, receiving testimony from 377 witnesses representing all segments of the United States economy. The printed record includes hundreds of written communications from interested persons and organizations from all parts of the country. The public hearings were in addition to similar hearings held by the committee in 1968. The extensive information and the individual views were helpful to the committee in its task of formulating the policies reflected in H.R. 18970.

Your committee met in executive sessions for over a month in developing the bill. Your committee believes H.R. 18970 deals with the basic issues presented by the many trade proposals brought to the committee's attention both in terms of the long-run interests of this country in economic cooperation and trade liberalization and the more immediate needs of ~~producing and consuming interests in the United States.~~

A. AMENDMENTS TO TRADE AGREEMENT AUTHORITY UNDER TITLE I OF THE TRADE EXPANSION ACT OF 1962

The President's trade agreements authority under the Trade Expansion Act of 1962 terminated at the close of June 30, 1967. The President has been without trade agreement authority since that time and in his trade message to the Congress, November 18, 1969, requested renewal of the trade agreement authority, including new authority to reduce duties.

Trade Agreement Authority

H.R. 18970 would extend the President's authority to enter into new trade agreements under the Trade Expansion Act of 1962 to July 1, 1973. The President is given new authority to reduce duties by 20 percent, or 2 percentage points below the rates of duty which will exist when the final stage of the Kennedy Round reduction is made effective on January 1, 1972. Should reductions in duty under the new authority be agreed to prior to the final stages of the Kennedy Round, the remaining stages of Kennedy Round reductions and the new reductions agreed to are to be aggregated and made effective in at least two stages.

Other Presidential Authority

Concern has been expressed with the growth in barriers to trade which have developed despite the Kennedy Round of trade negotiation. The bill amends section 252 of the Trade Expansion Act providing new authority and direction to the President to act against import restrictions or other acts of foreign countries which unjustifiably or unreasonably burden or discriminate against United States commerce.

The bill also amends the President's authority to safeguard the national security by providing that any adjustment of imports under the national security authority shall not be accomplished by the imposition or increase of any duty or of any fee or charge having the effect of a duty. In addition, time limitations are imposed on the Director of the Office of Emergency Preparedness in making determinations on applications for action under the national security provision.

B. TARIFF ADJUSTMENT AND ADJUSTMENT ASSISTANCE

The need for making less rigid the criteria for determining serious injury from increased imports is met in the bill both for tariff adjustment for industries and adjustment assistance in the case of firms or groups of workers.

Tariff Adjustment.—As in present law, the criteria for determining serious injury are the same for tariff adjustment for industries and for adjustment assistance for firms and workers. Under the new provisions, the Tariff Commission, in the case of tariff adjustment, or the President, in the case of adjustment assistance, is to determine whether increased imports "contribute *substantially*" toward causing or threatening serious injury.

If serious injury is found, an additional determination is to be made under a new provision. If the Commission makes an affirmative injury determination, those Commissioners finding injury are to make an additional determination under the new provision. In general, this additional determination will be in the affirmative if the Commissioners find that (1) the imported article substantially undersells the domestic article, constitutes an increasing share of domestic consumption and was produced at unit labor costs substantially below those of the domestic article; and that (2) *either* the import penetration of the article in the U.S. market is above a specified minimum level and is increasing at more than a specified minimum rate, *or* the domestic production of the article, and the employment or wages afforded by such production, are declining to a specified degree.

A majority of the Commissioners present and voting is to be required for an affirmative injury determination and a majority of those Commissioners finding injury under the criteria provided must determine the type of import restriction required to remedy the injury.

When the Commission finds and reports to the President an affirmative injury determination, the President is required to take such action as he deems necessary to prevent or remedy the injury so found unless he determines that such action is not in the national interest.

In the case of an additional affirmative determination the Commission, as to injury, the President is required to impose the import restrictions found by the Commission to be necessary to prevent or remedy the injury unless he determines that such action would not be in the national interest. As is presently provided, if the President does not make effective the remedy determined by the Tariff Commission, he must report to the Congress within 60 days of the receipt of the Tariff Commission's report and findings. In such case, the existing provisions of law with respect to Congressional implementation of the Tariff Commission finding as to the action necessary to prevent or remedy the injury would continue to apply.

Adjustment Assistance.—In addition to the amendment of the criteria for determining serious injury from increased imports in the case of adjustment assistance, the procedures for petitions by firms or groups of workers is amended. Under the bill, petitions by firms or groups of workers are to be made to the President rather than the Tariff Commission. The Tariff Commission will provide the President with a factual report to assist the President in making his determination as to eligibility of firms and groups of workers to apply for adjustment assistance.

The bill provides increased trade adjustment allowances payable to adversely affected workers. Under existing law, the allowance is 65 percent of the worker's average weekly wage or 65 percent of the average weekly manufacturing wage, whichever is lower. The bill increases each of these percentages to 75 percent.

The bill provides that if the President does not provide tariff adjustment for an industry after an affirmative injury determination by the Tariff Commission, he is required to provide that the firms and workers in that industry may request certification of eligibility for adjustment assistance.

Section 352 of the Trade Expansion Act with regard to orderly marketing agreements is amended to provide that the President may, at any time, negotiate such agreements on articles subject to tariff adjustment or upon which he has received an affirmative injury determination.

New review procedures on pending tariff adjustment action are provided. In any report by the Tariff Commission reviewing such tariff adjustment actions, it must include information on steps taken by firms in the industry to compete more effectively with imports. In addition, in any review of tariff adjustment actions by the Tariff Commission, as a result of which the President may determine to extend, in whole or in part, or terminate such action, the Commission will be required to determine whether the existing restrictions on imports are sufficient to prevent or remedy injury to the domestic industry.

C. QUOTAS ON CERTAIN TEXTILE AND FOOTWEAR ARTICLES

It is believed that the tariff adjustment amendments described above will be sufficient to deal with competitive situations facing many domestic producers in the economy. However, the effects of rapidly increasing imports on two basic industries are such as to require extraordinary measures. Title II of this bill deals with the extremely serious threat to the textile and apparel industry and the nonrubber footwear industry.

Under Title II, the total quantities of imports of certain textile and footwear articles are to be limited by category and by country beginning in the year 1971. For that year, imports are to be limited to the annual average quantities imported during the three calendar years 1967 through 1969. For the years after 1971, the total quantity of imports of each category of textile articles or footwear articles is to be limited to the quantity determined for the foreign country for the preceding year plus an increase determined by the President. Any such increase is to be limited to a percentage not over 5 percent of the total quantity permitted to be entered in the immediately preceding year as the President determines to be consistent with the purposes of the quota provisions.

The President is authorized to exempt from quotas imports of articles: (1) which he determines are not disrupting the United States market, (2) when he determines that the national interest requires such action, or (3) when he finds that the supply of such articles in the domestic market is insufficient to meet demand at reasonable prices.

In addition, the President is authorized to negotiate agreements under which imports of textiles and footwear would be controlled. Imports covered by such agreements would also be exempt from quantitative limitations as would imports of cotton textile articles as a result of the existing Long Term Arrangements on Cotton Textiles.

Determinations with respect to the establishment of or change in quantitative limitations or exemptions from such limitations, other than determinations made by the President for national interest reasons, would be subject to the rulemaking provisions of the Administrative Procedure Act.

The quota limitations provided in the bill would terminate on July 1, 1976, unless the President finds that the extension of the quantitative limitations for periods not to exceed 5 years would be in the national interest.

D. OTHER TARIFF AND TRADE PROVISIONS

The magnitude and the nature of United States foreign trade has changed remarkably over the past decade. Although both imports and exports separately account for about 4 percent of the gross national product, the importance of export sales to and the impact of imports on domestic producing interests have grown. Consistent with the changes in the tariff adjustment provisions in the Trade Expansion Act, the bill also amends other provisions of law affecting the conditions of trade insofar as imports are concerned. In particular the committee has tightened the domestic procedures with respect to such international trade practices as dumping and subsidization of exports. Greater recognition as to the role of the Tariff Commission as an arm of the Congress is emphasized in amendments made to the Tariff Act of 1930. A provision making possible the elimination of the American selling price system of valuation is included in the bill. Provision is also made for the solution of specific trade problems which cannot be remedied under existing provisions of law.

Antidumping Act of 1921

The Antidumping Act is amended to provide that the Secretary of the Treasury must take initial action within 4 months after the question of dumping has been presented to him. Under the bill, this would require the withholding of appraisement within that period should the Secretary of the Treasury have reason to suspect that sales at less than fair value are, or are likely to be, taking place. Should the Secretary of the Treasury's initial action involve a tentative negative determination, the Secretary would be authorized to withhold appraisement within three months after the notice of negative determination has been made. In addition, the Antidumping Act is amended to provide criteria for a determination of dumping with regard to imports from state-controlled economies. The amendment reflects existing Customs practices.

Countervailing Duty Provision

The countervailing duty provision is amended to require the Secretary of the Treasury to make a determination within 12 months after the question is presented to him as to whether a bounty or grant has been bestowed on imports into the United States.

Under the bill, subsidized duty-free imports are also to be subject to the countervailing duty provisions but only if the Tariff Commission should determine that such subsidized imports are injuring a domestic industry. The countervailing duty provision is also amended to provide the Secretary of the Treasury with discretionary authority with respect to the imposition of a countervailing duty on an article subject to quantitative limitation or subject to agreements under which the volume of exports to the United States is limited. Countervailing duties would be imposed when the Secretary determines that such limitations are not an adequate substitute for a countervailing duty with respect to the article in question.

Tariff Commission

In view of the added investigative and statutory burden of the Tariff Commission and in view of the amendments to the tariff adjustment provisions requiring a majority of the Commissioners present and voting to affirmatively determine injury or to make a remedy determination, which in some instances are binding on the President, the number of Commissioners is raised to 7. Conforming to that change, the terms of offices for prospective members are adjusted to a period of 7 years. Section 330(d) of the Tariff Act of 1930 with regard to the status of evenly split decisions by the Commission of findings respecting restrictions on imports would be repealed.

American Selling Price System of Valuation

The administration proposal to grant authority to the President to eliminate the American Selling Price system of valuation pursuant to agreements reached at the end of the Kennedy Round of trade negotiations represents a difficult decision involving the basic issue of reciprocity in our trade relations with other countries. All of the issues involved in the administration proposal have been carefully weighed.

Rather than providing the authority requested in the form proposed by the administration, the bill would authorize the President to proclaim modifications of the Tariff Schedules of the United States required or appropriate to carry out any international agreement (or agreements) which relates primarily to the elimination of the American Selling price method of customs valuation. Such authority is to be exercised only if the President determines that the concessions that would be granted with respect to products of the United States under such agreement fully compensate for the concessions which would be made by the United States under the agreement. Under the bill, the proclamation would be subject to a Congressional veto through the adoption of a concurrent resolution. Certain footwear presently subject to American selling price valuation is excepted from action under this authority.

Miscellaneous Trade Provisions

The bill also would provide certain tariff-rate quota controls on imports of glycine and related products and on mink furskins. In connection with the action on mink furskins, the bill would also repeal the embargo on certain types of furskins, including mink furskins, from the Soviet Union.

Other provisions of the bill would amend the Tariff Act by granting the Secretary of Agriculture final responsibility for determining which articles come within the import limitations imposed under section 22 of the Agricultural Adjustment Act.

Under the bill, additional invoice information will be required from foreign shippers for the purpose of statistical classification of imports.

A new provision of law would authorize the President to impose a suspension of trade with a nation which permits the uncontrolled or unregulated production of or trafficking in certain drugs in a manner to permit these drugs to fall into illicit commerce for ultimate disposition and use in this country.

E. DOMESTIC INTERNATIONAL SALES CORPORATIONS (DISC)

Your committee believes that expansion of exports is an important national goal and that our previous strong surplus in export trade must be restored if we are to find a long-range answer to our perennial balance-of-payments problem. It further believes that the U.S. income tax system and the tax provision of foreign countries with respect to exports place U.S. export sales at a disadvantage and as a result encourages the development of foreign subsidiaries and the location of manufacturing plants and related jobs overseas. The bill is designed to eliminate these undesirable results and to encourage export operations through domestic plants employing domestic personnel.

To achieve these objectives the bill provides for a new type of domestic export sales corporation known as a Domestic International Sales Corporation or "DISC." A DISC's qualified export profits are not to be subject to tax until distributed to its shareholders, at which time they are considered as fully taxable foreign income eligible for a foreign tax credit rather than the intercorporate dividends received deduction. This type of tax treatment is comparable to the treatment now accorded to export income by other countries.

III. REASONS FOR THE BILL

It has been eight years since the Congress has had the opportunity to fully review the foreign trade policy of the United States. The Kennedy Round of trade negotiations made possible by the Trade Expansion Act of 1962 was concluded on June 30, 1967, the date the President's trade agreement authority under that Act expired. The President has been without trade agreement authority since that time.

The preponderance of the economic strength of the United States in the early post-World War II period permitted this country to give freely of its economic resources to assist other countries in the free world in rebuilding and developing their war-torn economies. An important part of the foreign economic policy of the United States in that period was the leadership it was able to exert toward a liberalized and expanded system of world commerce.

In the mid-50's, as some of the countries in Europe were considering moving toward economic integration, the United States took further measures to liberalize trade in order that Japan might become a full partner among the trading nations of the world. In the late 50's and early 60's, as some of the countries in Europe took major steps toward economic integration, Congress recognized the need to keep countries looking outward in their trade relations by approving the Trade Expansion Act of 1962.

While successful in terms of completing agreement on significant reductions in tariffs among many of the industrialized countries, the Kennedy Round of trade negotiations had limited success in dealing with the problems of barriers to trade other than tariffs. The remaining task of economic integration in Europe and the development of regional trade blocks in other areas of the world blunted the thrust of the Kennedy Round toward further progress in trade liberalization.

During the 1960's, there has been a tremendous growth in productive capacity abroad. What has come to be recognized as the economic miracle in Japan has made that country the third largest industrial nation in the world. Not far behind in economic growth has been the development in Europe and in particular West Germany. Indeed, many of the development goals toward which the United States strived in the early post-World War II period are being realized. While the economies of the developing countries have not kept pace with the progress of the industrialized nations, many of these countries, particularly in the Far East, have developed new and modern industries. These industries, usually involving mass production techniques imposed on a low-wage base, in some instances an extremely low-wage base, have enabled some of the developing countries to assume a formidable competitive position in world markets.

At the same time as productive and therefore export capacities abroad have been expanding, the United States has continued to experience deficits in its balance of payments. In more recent years, due to a variety of factors, the balance of trade of the United States has also moved to a far less favorable position. One of the developments that has affected the efforts to improve the balance-of-payments position, and has worked to erode the traditional export surplus of the United States has been the pervasive influence of domestic inflation experienced by the United States, particularly since the mid-1960's.

A major factor in the trends in U.S. exports and imports over the past 5 years has been the long-term upward trend in prices, both at the wholesale and at the retail level. Between 1960 and 1969, the U.S. export prices in terms of unit values of manufactured exports increased by 18 percent, a rate of increase greater than that experienced by any other major industrialized country. In comparison, the unit value of manufactured exports from Japan experienced an overall decline during the decade.

Inflation in the United States has not only affected the competitive position of U.S. exporters; it has increased significantly the competitive impact of imports on domestic producers. The combination of increased productive capacity abroad and inflation in the United States has resulted in greatly increased imports. The rate of increase in imports in some product areas, if allowed to continue, would call for economic adjustments in the domestic ecomony which would be as undesirable as they are unacceptable.

The Committee believes that the United States economy and the world economy in general, have been well served by the leadership exerted by the United States in expanding world trade. The preponderance of the economic strength of the United States afforded this country the opportunity to exert such leadership in the anticipation that other countries would follow. However, the hope that other countries would move toward greater access to their own markets has been realized all too infrequently.

The stake that this country has in expanded world trade is, of course, still important. The interest of many other countries in expanded world trade is even greater. The time has come for other countries to realize that the United States alone can not accept all of the surplus production stemming from increased productivity abroad. Other industrialized countries must move much more rapidly to open their markets, not only to competitive products of other industrialized countries, but also to the exports of developing countries.

The United States remains the most accessible market to the effort of foreign producers. Despite the claims of our trade partners, United States duties, subject to continued reductions under the trade agreements program, are at the lowest average level of any major industrialized country. Aside from the agricultural area, in which some restrictions are necessary as a corollary of domestic agricultural policy, the United States quantitative restrictions on imports are few. In some cases, such as coffee and sugar, the quantitative restrictions for the most part serve the interests of developing couetires in contributing contributing to the stability of their export earnings.

This is in contrast to many other countries which have moved much more slowly in opening their markets. Situations have already arisen which make necessary extraordinary measures by the United States to protect its own producers when foreign markets are closed. The Meat Import Act of 1964 was made necessary primarily because other markets in Europe became suddenly closed to the major beef producers in the South West Pacific. Restraints maintained by many of the European countries on imports of textiles and apparel from countries in the Far East have added to the great increase in competitive pressures which have been borne by the United States textile industry since the late 1950's.

Trade policy in the national interest in the opinion of the committee requires continuing adjustments as economic conditions change. However, as expanding world trade calls for economic adjustments in a nation's economy, dynamic developments in the world economy sometimes necessitate temporary measures to avoid uneconomic and unwarranted adjustments.

Since the end of the Kennedy Round, the United States has continued to adhere to the principles of expanded world trade. However, it has become obvious that the remedial provisions in domestic trade law have not afforded domestic producers adequate opportunity to adjust to competitive forces, particularly during an inflationary period. For these reasons, the committee has provided measures that will afford domestic producers the time and opportunity to adjust to new competitive situations.

The changes made in the tariff adjustment and adjustment assistance provisions better recognize the adjustment process which must be followed if the United States is to continue an overall policy of liberal trade. Insofar as textiles and footwear are concerned, the committee believes that the temporary measures for providing quantitative limitations on imports of these articles are absolutely necessary and to ensure the viability of these basic industries, the existence of the companies in those industries, and the livelihood of over 2½ million workers those industries represent.

The hearing record is replete with the serious inroads imports of footwear and textiles have made in the domestic market. In the past 5 years the ratio of imports of footwear to domestic consumption has increased from 13 to 26 percent and in the first 4 months of 1970, imports were accounting for one-third of the domestic consumption of footwear. Stated in different terms, in the past five years imports of footwear more than doubled from 96 million pairs in 1965 to 202 million pairs in 1969. Imports thus far in 1970 were running at an annual rate of 282 million, three times the volume of imports in 1965.

Domestic production of footwear declined from 642 million pairs in 1968 to 581 million pairs in 1969. The annual rate of production thus far in 1970 is about the same as for 1969.

The rapidity of and the magnitude of increases in imports of footwear in recent years cannot be sustained if this country is to have a viable footwear industry. Unless and until firm measures are taken to arrest the sharp decline in the share of the domestic market available to domestic producers, there will continue to be a contraction in domestic production.

Job losses have been experienced in this industry for a number of years. The workers in the industry, and the communities throughout the Nation, who are dependent upon the shoe industry for their economic support, can ill-afford to suffer further economic dislocation, and what is worse the threat of ever greater loss of sales to imports. The temporary measures provided in the bill to limit the volume of injurious imports, either through quotas or agreements is essential. Such import restraint will remove a serious threat and permit time to adjust. Moreover, the various programs recently proposed by the

President for firms producing footwear and their employees can help to revitalize the industry and hasten the removal of the extraordinary relief provided in the bill.

The import problem of the textile industry has been a difficult trade problem for a number of years. The potentials of exporting textiles and apparel to the United States and the relative accessibility of this market resulted in the international arrangement for trade in cotton textiles in the early 1960's. As productive capacity developed abroad, the shift from cotton textiles, exports of which were subject to restraint, resulted in large annual increases in imports of manmade fiber textiles. Between 1965 imports of textiles of manmade fiber increased from 79 million pounds to 257 million pounds, over a threefold increase. Imports of wearing apparel of manmade fiber increased from 31 million pounds (raw-fiber equivalent) in 1965 to 144 million pounds (raw-fiber equivalent in 1969. The rate of increase in many product lines has been much more rapid.

For example, imports of sweaters of manmade fibers in 1965 were 501,000 dozen. By 1969 imports of such sweaters had increased to 6,974,000 dozen.

Such increases, in imports, year after year, particularly if imports are gaining a greater and greater share of the domestic market can have devastating impact on textile and apparel firms. The ability of foreign producers to shift product lines and to produce at short notice, large volumes of stylized merchandise at extremely low delivered cost, is beginning to result in an increase in plant closing. Thus, as a result, employment in both textile mills and apparel factories declined by 69,000 in the first 6 months of 1970, the first such decline in a number of years.

Given the great growth in plant capacity abroad, and taking into account plans for even greater production levels in a number of foreign countries the threat to the textile and apparel industry is extremely serious.

The lack of success in gaining the cooperation of textile exporting nations to restrain their exports of textiles of wool and of manmade fiber at reasonable levels is a cause of great concern to the committee. The problem of world trade in textiles is recognized by all concerned. Unfortunately, the ease of access to the U.S. markets, compared with the restraints on exports of textiles to other developed countries have placed the burden of action on the United States. For example, the United States imports over one-half of Japanese apparel exports; the European Community imports only 5 percent. The importance of the textile and apparel industry and its workers to the economy of this country is too great to permit further stalemate or further erosion of the industry's base. In this connection, it should be noted that the industry is playing a vital social role as a growing employer of Negroes, with over 14 percent of the total textile work force being Negro, a higher percentage than for manufacturing industry as a whole. The threat of import increases in some product lines spreading to all product lines makes industrywide action essential. Here, too, it is hoped that the measures provided in the bill will prove to be needed only temporarily.

There has been a tendency in the past to administer the antidumping act or countervailing duty provision as another facet of the trade agreements program under which proposed actions by the

United States are negotiable. These provisions of law need to be enforced if domestic producers are to be assured that they may compete with imports on the same basis and subject to the same requirements which domestic producers must meet under provisions of law covering business operations in this country. To this end, the committee believes that many of the changes made both in the trade agreement provisions and other domestic laws are necessary to restorate confidence on the part of the United States business, that it can expect effective action by the United States government in order to protect its interests and the interests of the country as a whole in carrying out the laws as intended by the Congress.

In all the measures the committee is concerned with developments that erode the productive base of our economy. It is necessary to face up frankly to the fact that unit wage-cost differentials can and do bear more heavily on U.S. producers and their workers than ever before due to the economic development abroad in particular industries. As indicated above, the United States cannot accept increases in imports that result in economic adjustments the costs of which are greater than the benefits derived from increased trade.

The committee believes that this bill meets the necessity of making a long-run commitment to a liberal trade policy. By enactment of the President's trade agreement authority, the Congress and the President will speak with one voice as to the direction of United States trade policy. The committee has faced up to the very difficult issue of the elimination of American selling price and has provided the President the authority to proclaim the elimination of American selling price evaluation. He is to exercise such authority only if he finds that the interest of the United States is reciprocally met by concessions granted to the United States by other countries. In all of these measures, the committee has attempted to provide the President flexibility to act in the national interest in implementing a trade policy which is responsive both to the productive needs of the United States economy and the position of this country in world trade.

United States Balance of Trade and Balance of Payments.

Balance of Payments.—In the 10-year period 1960 through 1969, our balance of payments has been in deficit in all but 1 year on a liquidity basis and in seven out of the 10 years on an official settlements basis.[1]

The deficits generally decreased somewhat in the period 1960 through 1966. For example, as is shown in table 1 over these years on a liquidity basis, the deficit shrank from $3.9 billion to $1.4 billion, while on an official settlements basis, a $3.4 billion deficit was converted to a $266 million surplus. Since 1966, however, the balance of payments on a liquidity basis has deteriorated markedly, and in 1969, the deficit on this basis exceeded $7.2 billion. For the first half of 1970, the seasonally adjusted deficit in the balance of payments, including receipts of special drawing rights, was $2.8 billion on a liquidity basis and $4.6 billion on an official settlements basis.

[1] The liquidity balance reflects changes in U.S. reserves and in all foreign holdings (both official and nonofficial) of liquid dollar liabilities which mature in 1 year or less. The official settlements basis reflects changes in U.S. reserves and in foreign official holdings of both liquid and nonliquid dollar liabilities.

TABLE 1.—U.S. BALANCE OF PAYMENTS, 1960-69

[In millions of dollars]

	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969
Merchandise trade [1]	4,906	5,588	4,561	5,241	6,831	4,951	3,926	3,860	624	638
Exports	19,650	20,107	20,779	22,252	25,478	26,447	29,389	30,681	33,588	36,473
Imports	−14,744	−14,519	−16,218	−17,011	−18,647	−21,496	−25,463	−26,821	−32,964	−35,835
Travel (including fares)	−1,238	−1,235	−1,444	−1,596	−1,499	−1,613	−1,627	−2,144	−1,872	−2,092
Receipts	1,025	1,057	1,070	1,133	1,357	1,545	1,785	1,881	2,035	2,363
Payments	−2,263	−2,292	−2,514	−2,729	−2,856	−3,158	−3,412	−4,025	−3,907	−4,445
Military	−2,752	−2,596	−2,449	−2,304	−2,133	−2,122	−2,935	−3,138	−3,140	−3,355
Receipts	335	402	656	657	747	830	829	1,240	1,395	1,515
Payments	−3,087	−2,998	−3,105	−2,961	−2,880	−2,952	−3,764	−4,378	−4,535	−4,850
Dividends and interest	2,689	3,398	3,889	3,984	4,686	5,088	5,140	5,646	6,000	5,744
Receipts	3,752	4,405	4,999	5,309	6,142	6,817	7,282	8,008	8,933	10,207
Payments	−1,063	−1,007	−1,110	−1,325	−1,456	−1,729	−2,142	−2,362	−2,933	−4,463
Other services and transfers, including Government grants	−1,730	−2,020	−2,023	−2,058	−2,003	−1,941	−2,011	−1,981	−1,947	−1,841
Current account total [2]	1,873	3,136	2,536	3,269	5,883	4,364	2,492	2,243	−336	−885
Direct investment	−1,674	−1,598	−1,654	−1,976	−2,328	−3,468	−3,661	−3,137	−3,209	−3,070
Bank claims	−1,148	−1,261	−450	−1,536	−2,465	93	253	−475	253	−541
Nonbank claims	−394	−558	−354	158	−1,108	340	−443	−760	−1,202	−269
U.S. transactions in foreign securities	−662	−762	−969	−1,105	−677	−759	−481	−1,266	−1,254	−1,494
U.S. Government capital, net excluding unscheduled repayments)	−1,158	−1,621	−1,774	−1,987	−1,799	−1,819	−1,963	−2,427	2,537	−2,097
Foreign capital	419	1,398	1,707	1,016	812	492	2,961	3,366	8,970	4,060
Errors and omissions	−1,156	−1,103	−1,246	−509	−1,118	−576	−514	−1,088	−514	−2,924
Balance on liquidity basis	−3,901	−2,371	−2,204	−2,670	−2,800	−1,335	−1,357	−3,544	171	−7,221
Balance on official reserve transactions basis	−3,403	−1,347	−2,702	−2,011	−1,564	−1,289	266	−3,418	1,641	2,708

[1] Balance-of-payments basis.
[2] Including unilateral transfers.

Source: Treasury Department.

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Our balance-of-payments position would have deteriorated much more rapidly in the past few years than it did were it not for the fact fact that high domestic interest rates and a shortage of investment funds in the United States attracted a high inflow of short-term money from abroad. Foreign capital inflow in 1960, for example, amounted to $419 million. By 1966, these inflows had grown to almost $3 billion and by 1967 to $3.4 billion. In 1968 they reached the unprecedented level of $9 billion. By 1969, they still amounted to $4.1 billion. This influx of foreign funds, however, cannot be expected to continue indefinitely. In fact, in 1970, there has already been some reversal of this pattern and withdrawal of capital funds from this country. This has contributed to the sizable deficit in our external accounts in the early months of this year.

Balance of Trade.—Traditionally, a substantial merchandise trade surplus has been a bulwark in maintaining a viable balance-of-payments position despite substantial deficits in travel, military, and nonliquid capital accounts. In 1960, the balance-of-trade surplus was $4.9 billion. A surplus near or above this level ($6.8 billion in 1964) continued through 1965. In 1966 and 1967, however, our trade surplus dwindled to $3.9 billion, and in 1968 and 1969 fell to between $600 and $700 million. In the first 6 months of 1970 the trade surplus amounted to about $1.4 billion. While this constitutes an improvement over the first 6 months of 1969 when the trade balance registered a $125 million deficit, it is still far below the level of the surpluses prevailing in the early sixties.

Examination of the decline in the merchandise surplus discloses that while exports have increased moderately over the period 1961–69, they have not nearly kept pace with the rapid growth in imports. This can be seen from table 2 which shows the percentage change in merchandise exports, imports, and balance in the period 1961–69. The most striking point shown in the table is the rapid increase in imports beginning in 1965. In that year they increased 15 percent over the prior year and in 1968, they increased 23 percent over the prior year, which resulted in a decline of nearly 84 percent in the balance. In 1969, the rate of increase in imports slowed down appreciably but still kept pace with the increase in exports occurring in that year.

In 1970, based upon experience in the first half, imports are increasing at a rate of somewhat over 9 percent while exports are increasing by over 14 percent. This, however, in no small part is due to the fact that the export level in 1969 was below what otherwise might have been expected because of the dock strikes in that year. Moreover, as a share of world exports, U.S. exports in the first quarter showed a continuation of the long term decline.

TABLE 2.—PERCENTAGE CHANGE IN MERCHANDISE EXPORTS, IMPORTS, AND BALANCE, 1961–69 [1]

	1961	1962	1963	1964	1965	1966	1967	1968	1969
Percentage change in—									
Exports	2.3	3.3	7.1	14.5	3.8	11.1	4.4	9.5	8.6
Imports	−1.5	11.7	4.9	9.6	15.3	18.5	5.3	22.9	8.6
Balance	13.9	−18.4	14.9	30.3	−27.5	−20.7	−1.7	−83.8	10.2

[1] From table 1. Percentage change from previous year.

The continuing balance-of-payments deficit has been of major concern to this committee, with regard to trade legislation and also with regard to other legislation with which the committee must deal and in particular, tax legislation which affects the competitive position of domestic producers, both in this market and abroad.

The committee is very much aware that the United States holds a unique position in the field of international financial and monetary policy. The responsibility that this country has in the world at large makes it essential that it have flexibility with regard to its international payments position.

Since the end of World War II, many countries have found it necessary to resort to quantitative limitations on their imports, or more recently import surcharges, as a means of dealing with particularly serious balance-of-payments difficulties. With one major exception, such trade restrictions imposed for balance-of-payments reasons have been eliminated by the major trading countries.

Despite its persistent balance-of-payments difficulties, the United States has chosen not to impose restrictions on imports as a means of relieving pressures stemming from the deficits in the international balance of payments. One of the reasons the United States has chosen not to impose such restrictions despite a serious balance-of-payments problem is the great degree of understanding and cooperation that have been extended in the international monetary sphere in treating with the balance-of-payments problems of other countries. The trade problems faced by the United States at this time call for the same degree of international understanding and cooperation.

Among those actions taken by the European Economic Community which have affected U.S. trade interest is the border tax system and the integration of the value added tax system among the member countries. These adjustments have to some degree negated the concessions granted to their countries in the Kennedy Round. As a result various proposals have been made aimed at offsetting or reducing the impact of the border tax system. For the reasons set forth below your committee determined that a tax deferral on export earnings was more responsive to a number of needs of U.S. producers with regard to encouragement of exports. One of the important benefits which must be considered is the encouragement given to retaining plants and operation in their country which means that job opportunities are created for U.S. workers.

Domestic International Sales Corporation

1. Removal of Competitive Disadvantages in Our Tax Structure.—An examination of our tax structure discloses that we generally treat U.S. companies engaged in export activities less favorably than those which manufacture abroad through the use of foreign subsidiary corporations. Generally, U.S. companies engaged in export activities (without the intervention of a foreign subsidiary) are taxed currently on their foreign earnings at the full U.S. corporation income tax rate (after the crediting of foreign income taxes) regardless of whether these earnings are kept abroad or are repatriated. In contrast, U.S. companies which produce and sell goods abroad through foreign subsidiaries generally can postpone payment of U.S. tax on these foreign earnings so long as they are kept abroad. This is because the foreign earnings of the subsidiary generally are not subject to U.S. tax until such time as they are brought back to the United States, generally as dividend payments to the parent corporation.

The result of this structural difference in the tax treatment of exporters through domestic corporations and those who use foreign subsidiaries to produce abroad is twofold. First, it discriminates against the exporter using the domestic corporation, since he must pay full U.S. taxes on a current basis. On the other hand, those who produce abroad through the use of foreign subsidiaries generally are required to pay only the foreign taxes on their income on a current basis. These foreign taxes vary substantially from country to country, but, on the average, amount to about 38 percent, some 10 percentage points less than the regular U.S. corporate income tax rate. Consequently, as a practical matter, the postponement of U.S. tax on the earnings of producers using foreign subsidiaries is of substantial importance, giving them a tax differential over the domestic exporter of as much as 10 percentage points.

Second, the present tax structure encourages the reinvestment of foreign earnings of foreign subsidiaries in plants or selling organizations located abroad, since this enables the parent corporation to postpone the payment of the U.S. tax which would result if the foreign earnings were remitted to the United States. Moreover, this problem is increased by the fact that most foreign countries impose a tax on dividends at the time they are paid by a foreign subsidiary to the U.S. parent corporation. As a result, the foreign tax burden itself is less if the funds are kept in the foreign country.

To remove the disadvantage imposed on U.S. exporters, your committee's bill provides a system whereby U.S. tax will not be imposed on them as long as they continue to use the income to expand their export sales organization or invest their export income in production facilities to the extent the facilities are used to produce goods in the United States for sale abroad. By postponing the U.S. tax on export income used for these purposes, your committee's bill removes the advantage of production through foreign subsidiaries and encourages the export through domestic corporations of products produced in the United States.

It is believed that the changes made by this bill through postponement of the U.S. tax as long as the income is used in export sales or production for export will encourage domestic companies to engage in export activities and also encourage those who, in any event, would engage in sales abroad to locate their manufacturing plants in the United States rather than in foreign countries.

2. *Tax Advantages Provided by Other Countries To Export Trade.*— Other major trading nations encourage foreign trade by domestic producers in one form or another. Where value added taxes or multistage sales taxes are used to any appreciable extent, the practice is to refund taxes paid by the exporter at the time of export and to impose these taxes on importers. Where indirect taxes represent a major portion of the tax structure, this can represent a significant inducement to exports and a significant inhibition to imports from other countries. Such taxes are generally used throughout the common market area as well as in numerous other foreign countries.

In the case of income taxes as well, however, most of the major trading nations have features in their tax laws which tend to encourage exports. A number of foreign countries, for example, have the so-called territorial concept of taxation under which they do not tax foreign source income at all. The manufacturing company in one of these countries can form a worldwide sales company in a low tax jurisdiction (like Liechtenstein or Panama) and pay virtually no tax on the export sales income. In many of these cases, the foreign governments involved are relatively liberal in how the profits are divided between manufacturing and selling businesses. In some cases, the foreign countries allow the products to be transferred from the manufacturer to the sales corporation at cost. In other cases, a 50-50 split of the profits between the sales and manufacturing corporations is permitted.

Moreover, some of these foreign countries provide special depreciation allowances for assets used in export production. Japan, for example, permits an export allowance of as much as 80 percent to be added on top of an already liberal depreciation allowance where assets are used in export production. A number of countries provide special deductions for reserves involved in export market development costs.

Finally, some countries provide special export exemptions. Ireland, for example, gives a total tax exemption with respect to exporting, while other countries such as Belgium and Italy provide tax holidays which clearly favor companies engaged in extensive export activity.

In view of these widely prevalent practices in foreign trading countries, your committee concluded that the deferral of U.S. tax for export companies was desirable so long as the use of the income in the export trade sales and production activities was continued. Your committee also believes that the need to make U.S. exporters more competitive with exporters from other countries justifies a clearer and more liberal allocation rule in determining the transfer price from domestic producers to export sales subsidiaries.

3. *General Form of Tax Relief Provided by Bill.*—In order to encourage exports, your committee has provided tax deferral for export-related profits. The proposal takes the form of a deferral from U.S. tax for profits so long as they are retained in a new type of U.S. corporation known as a Domestic International Sales Corporation or a "DISC." The requirements for qualification as a DISC are that substantially all of the corporation's gross receipts and assets must be export related. When the profits of the DISC are distributed to its shareholders, they are taxable to them in full at that time (without any intercorporate dividends received deduction but treated as foreign source income).

The bill provides certain tax advantages where a domestic corporation, which is either engaged in exporting or which hopes to enter into exporting, sets up a new corporation, a DISC, to carry on its export sales (individuals may also be shareholders of a DISC). Under the bill, the parent corporation in this case is allowed to sell its export products to the DISC at prices which permit the DISC to earn up to the greater of 4 percent on sales or 50 percent of the combined income from the manufacturing and selling of the exports (plus, in either case, an amount equal to 10 percent of export promotion expenses).

The payment of U.S. tax on the sales profits of the DISC is deferred so long as the profits are invested by it in specified types of export property. The types of export property in which the profits of a DISC may be invested include its export business—such as the working capital, equipment, and office facilities employed for the business, etc. In addition and probably more significantly, a DISC's profits may be loaned back to the parent manufacturing corporation (or any other U.S. corporation whose products are exported) without affecting the tax-deferred status of these profits (so long as the total loans bear no larger relationship to the borrower's total assets than the borrower's total export sales bear to his total sales). Foreign subsidiaries cannot make loans to a U.S. corporation without giving rise to U.S. tax since they are treated as making taxable distributions in such cases, although they may invest in foreign facilities or foreign assets. The reason for deferring tax on the DISC's income in the case of such investment is that this represents an investment in the facilities which give rise to the products that the DISC sells abroad in the same way as reinvestment of profits in a plant abroad in the case of a foreign subsidiary is a source of production of the products which the foreign subsidiary sells abroad.

4. Impact on Export Sales.—The tax measure provided by this bill can be expected to give rise to increased export sales in a number of ways. While it is difficult to predict the precise effects of the provision, the Treasury Department has estimated that overall the additional exports generated by the proposal, when it is fully effective, will increase by \$1¼ to \$1½ billion a year on the average, and, as indicated earlier, more optimistic assumptions would indicate an even more substantial improvement.

One way in which exports may be increased as a result of this bill is through the devotion of part of the deferred tax resulting from this provision to lower export prices. While estimates as to the expansion in export income vary somewhat in the case of the effect of price reductions of this type, significant increases in exports are expected as a result of selective price reductions in markets which are responsive to price differentials.

A second way in which exports may be increased is through increased promotional efforts on the part of U.S. business. Your committee believes that this is likely to be an even greater factor in increasing exports than price decreases. By increasing the profitability of exporting, it is believed that it will be possible to induce exporters to take positive actions to build up their export markets. In the past, because of the small size of the export sector as compared to the domestic market, top management in many companies has not been aware of, and has not given priority to, the development of export markets. Your committee believes that the DISC proposal will focus the attention of top management on this area of increased profitability. It is believed that this will induce management to direct more of its attention toward product development, promotion, financing, delivery services, and similar activities for the foreign market. Your committee agrees with Secretary Kennedy in his testimony before this committee when he said:

> . . . companies would be encouraged to develop long-range export strategies. Indeed, I believe this shift in taxation would help signal to industry that improved export performance is a national objective of high priority; it would help build the consciousness and attitudes toward exports that this country has been sorely lacking.

The possible magnitude of the effect of this increased attention to the export market is difficult to evaluate, but your committee believes that it will be substantial. This is evidenced by the testimony by many before your committee on this subject and by numerous statements submitted to the Treasury Department and to the committee to the effect that the DISC proposal will provide a significant incentive for export expansion and will substantially encourage export promotion efforts. One domestic company which has made an in-depth study in this regard indicates that the DISC provision will probably enable it to increase exports by $370 million over the next 10 years. The multifaceted impact of the DISC provision is suggested in this case by the fact that this company believes the anticipated increase in the level of its exports will come in part as a result of enabling it to cut prices on some products, in part because it will provide additional funds for more intensive selling and promotional efforts for other products and, in part because a combination of factors will justify expansion of manufacturing facilities in the United States for export purposes for still other products.

Another important effect of this bill will be to encourage plant locations in the United States rather than abroad. As stated by Secretary Kennedy:

> . . . our tax system does tend to create an unnecessary drag on exports and actually gives some incentive to manufacturing abroad rather than in the United States. . . . Perhaps more important over time, basic decisions on the location of new investment facilities at home or abroad would be affected and companies would be encouraged to develop long range export strategies.

Although a large number of factors determine whether a U.S. company will produce from a plant overseas or export from a U.S. plant, the DISC proposal will, in many cases, tip that balance toward exporting from a U.S. plant. While, of course, there will be cases where it still is more profitable to produce from plants located abroad, the DISC proposal should be an important factor in shifting the balance back toward domestic production and export. The DISC proposal should represent an encouragement for plant location in the United States, not only because of the postponement of the U.S. tax until such time as distributions are made by the DISC, but also because the DISC itself, by making loans to its parent without the current payment of tax, can aid substantially in the expansion of plant facilities in the United States to be used for production for exporting.

5. *Special Advantages for Small Business.*—The bill contains features especially designed to enable small business to take advantage of the DISC proposal. Provision is made, for example, for small business to set up DISC export corporations but to leave most of the selling arrangements in these cases to brokers who make the sales for them on a commission basis. This enables small companies to qualify under the DISC proposal while still obtaining the advantages of economy of size for their selling costs by arranging the sales through a broker handling the sales of many small DISC's on a consolidated basis. In addition, the bill enables two or more small companies to set up a commonly owned DISC to make their export sales or permits one DISC to sell to another and still qualify. The effect of these flexible rules is to provide as many alternative ways as possible by which small business may obtain the full advantage of the export incentives provided by this bill.

While larger companies will share with small- and medium-sized companies in the encouragement for exports provided by this provision, the stimulant in their case is likely to be less than that for the smaller companies. Many of the larger companies have already obtained the advantage of postponement of U.S. tax in the case of their sales abroad through the use of foreign subsidiaries or other arrangements. Thus, the tax deferral incentive is already available in these cases and will not represent a further advantage for these larger companies as a result of this bill.

6. *Revenue Effects.*—The DISC proposal, under your committee's bill, results in tax exemption (until distribution) of 50 percent of the income of a DISC in 1971 and 75 percent of the income in 1972 and 1973. In 1974 the plan becomes fully effective. Because of this and other factors, the estimates of the revenue loss involved in this proposal gradually increase over a period of years. The Treasury Department and staff of the Joint Committee on Internal Revenue Taxation have estimated the revenue loss on a calendar year liability basis as follows:

[In millions of dollars]

	Treasury Department estimates	Joint Committee staff estimates
1971	160	135-180
1972	400	270-355
1973	450	370-495
1974	630	720-955

Neither the Treasury Department nor the staff estimates take into account any possible offsetting factors, such as an improvement in general domestic economic conditions which might occur, for example, as a result of a lessening of balance-of-payments problems. Both sets of estimates increase over the period shown because it is assumed that greater use will be made of the DISC proposal as it becomes fully effective.[1] In later years, it is expected that taxes collected on the payment of dividends by DISC's to their parent companies will represent an offsetting factor. The staff estimates also assume a 10 percent rate of growth in export trade over the period.

IV. GENERAL DESCRIPTION OF BILL (INCLUDING SPECIFIC LEGISLATIVE INTENT)

A. FORM OF THE BILL

The bill can be generally divided into six major subjects:

1. The authority to enter into trade agreements and to proclaim changes in the tariff treatment of articles in order to carry out any such trade agreements;
2. The authority to adjust imports under the national security provision and other general provisions of the trade agreements authority;
3. The authority to assist those industries, firms and workers who may be seriously injured by increased imports;

[1] The staff estimates initially assume 80 percent utilization increasing to 90 percent utilization. The Treasury estimates assume 75 percent utilization.

4. The imposition of temporary quantitative limitations on imports of certain textile and footwear articles and the authority to negotiate international agreements with respect to such articles;
5. Other modifications of tariff and trade law; and
6. Deferral of United States income tax for a domestic corporation engaged in export sales.

B. TRADE AGREEMENT AUTHORITY

1. Basic Authority

The authority of the President to enter into trade agreements with foreign countries or instrumentalities thereof would be extended until July 1, 1973. This authority expired on July 1, 1967, and would be reinstated on the enactment of H.R. 18970. The President has been without authority to enter into trade agreements for over three years and your committee considers it essential for the conduct of our foreign trade relations that this authority be reinstated. Your committee is informed that the renewal of this authority until July 1, 1973, will provide the necessary time for the development and presentation to Congress of a long-range policy program which is under study by a Presidential commission.

2. Authority to Modify Tariff and Other Import Restrictions

The President is authorized to proclaim such modifications of "existing" import restrictions as are required or appropriate to carry out any new trade agreements. Under the bill he is authorized to reduce by 20 percent or by 2 percentage points, the rates of duty which will exist when the final stage of the Kennedy Round reductions is to be made effective on January 1, 1972. In providing this new authority, the committee understands that it will be used primarily to offer new tariff concessions to affected countries, when the President is required under the tariff adjustment provisions or otherwise to proclaim increased import restrictions on an article covered by concessions granted by the United States in trade agreements. The authority would not be used for any new major tariff negotiations. The President would be able to use the authority in limited negotiations on one or several products to resolve individual trade problems causing difficulties for United States exporters.

Use of the authority is subject to the termination and pre-negotiation safeguard procedures already prescribed in the Trade Expansion Act of 1962. In this regard, the committee considered amending the existing pre-negotiation safeguard procedures with respect to the participation in such procedures and in the actual negotiations by representatives of domestic producers. Under section 241(b) of the Trade Expansion Act of 1962, it was the intent of the Congress that those participating in trade negotiations under delegation of the President's authority should make maximum use of the advice of representatives of industry, agriculture, and labor during the course of the negotiations. After reviewing the procedures used in the negotiation of the Kennedy Round, the committee is of the opinion that increased participation by advisers from industry, agriculture and labor would be desirable.

Your committee did not renew or extend any of the other authorities to modify tariffs provided in sections 202, 211, 212, or 213 of the Trade Expansion Act of 1962.

3. Staging Requirements

This section of the bill is directed to the need to implement in two stages, tariff reductions to be made pursuant to trade agreements. The bill provides that the tariff concessions agreed to under this new authority shall be staged in at least two installments with one year intervening. It also provides that tariff reductions agreed to under the new authority may be combined with any remaining stages of earlier proclamations made pursuant to the Kennedy Round of trade negotiations.

The committee agreed to this arrangement recognizing that Kennedy Round tariff reductions will not be fully implemented until January 1, 1972. In practical effect, the last stage of those concessions is the only one which might be pending at the time of negotiations and implementation of new concessions which may be under the authority of this bill. Further, the committee assumes that the President would not stage any new concession concurrently unless he had previously determined that this could be done without detriment to the United States industry producing the article or articles affected by the tariff reduction.

C. OTHER PRESIDENTIAL AUTHORITY

1. Foreign Import Restrictions and Discriminatory Acts

The bill would amend section 252 of the Trade Expansion Act of 1962 and provide new authority and direction to the President to act against import restrictions or other acts of foreign countries which unjustifiably or unreasonably burden, or discriminate against United States commerce.

The bill would amend section 252(a) by removing the word "agricultural" so that the President is directed to take such action as he deems necessary and appropriate when a foreign country unjustifiably restricts "any" United States product. Such action under existing provisions of the law might include the imposition of duties or other import restrictions on products of the foreign country imported into the United States.

The committee amended section 252(b) of the Trade Expansion Act to direct that the President shall take certain actions whenever a foreign country whose products benefit from United States trade agreement concessions provides subsidies or other incentives to its exported products to other foreign markets so that United States sales of competitive products to those other markets are unfairly affected thereby. This amendment was recommended by the executive branch and approved by the committee as necessary to protect United States commercial interests.

In addition, the committee increased the authority of the President under section 252(b) of the Trade Expansion Act by enabling him to impose duties and other import restrictions whenever such a foreign country is maintaining non-tariff restrictions substantially burdening United States commerce, engaging in discriminatory acts which unjustifiably restrict United States commerce or providing such subsidies or other incentives for its exports.

Section 252(c) is amended by directing and authorizing the President to take action whenever a foreign country whose products benefit from United States trade agreement concessions maintains unreasonable import restrictions which substantially burden United States commerce. The President is authorized and directed to impose duties or other import restrictions on the products of such foreign country in such instances as well as suspending or withdrawing trade agreement concessions or refraining from proclaiming benefits to carry out trade agreements with such foreign countries.

Your committee determined that since subsections (a) and (b) of section 252 are both directed toward foreign import restrictions and discriminatory acts which are illegal, that the scope of Presidential authority to act to prevent the establishment or obtain the removal of such foreign import restrictions ought to be the same in both subsections. Consequently, a new subparagraph (C) to the latter subsection provides powers equal to that provided in existing (a)(3). Similarly it was deemed desirable that subsection (c)(1) be amended to give the President power to impose duties or other import restrictions against the unreasonable, though legal, foreign government practices to which that subsection is directed. Finally your committee deemed it desirable that the obligatory word "shall" used in both of the two first subsections, with regard to the President's action, should also be used in the third subsection in place of the existing "may," subject of course to his having "due regard for the international obligations of the United States."

These amendments provide important new direction and authority to the President to act to protect the interest of United States commerce in the face of unjustifiable import restrictions and other unreasonable import restrictions, including discriminatory acts which substantially burden United States commerce or unfairly restrict or affect market access for United States products. Your committee feels that not only should the President respond to this additional direction by the Congress to protect United States commercial interests, it is also incumbent on such domestic producing interests to use the provisions in section 252(d) to fully and accurately inform the President when action is taken or contemplated by foreign countries in order that the President and those to whom he has delegated this responsibility may act promptly and effectively.

It must be recognized that over the years, the United States has granted increased market access to foreign produced goods in order to gain greater access in foreign markets for goods produced in the United States. It is incumbent on both the government and United States producing interests to cooperate in the maintenance of access to foreign markets on a fair and reasonable basis for goods produced in the United States.

2. National Security Provision

The bill would amend section 232 of the Trade Expansion Act of 1962, the "national security provision," to provide that any adjustment of imports under that section shall not be accomplished by the imposition or increase of any duty, or of any fee or charge having the effect of a duty. The committee has reviewed the legislative history of section 232 of the Trade Expansion Act and its predecessor provisions in the trade agreements legislaion, and concludes that the delegation of authority to the President to adjust imports should be limited to the use of quantitative limitations.

The amendment to section 232 is not intended in any way to foreclose the President from adjusting imports to such levels as he deems necessary to prevent impairment to the national security. Nor does it affect the flexibility of the President to modify import limitations already imposed under section 232 to meet increased demands for raw materials or other emergency requirements which may arise from time to time.

The bill would also amend section 232 with respect to the time within which the Director of the Office of Emergency Preparedness is to make a determination with respect to applications for action under the national security provision. The committee's attention was called to the delays that often ensue in reaching determinations under this section. It therefore has provided that a determination on new applications shall be reached within one year after the date on which the investigation is requested. Determinations on active pending cases are to be made within 60 days of the date of enactment of this Act.

D. TARIFF ADJUSTMENT AND ADJUSTMENT ASSISTANCE

General

Chapter 2 of title I of the bill would amend the provisions of title III of the Trade Expansion Act of 1962 (TEA) relating to tariff adjustment for industries, and adjustment assistance for firms and workers. The primary purpose of the amendments is to liberalize the criteria that must be met before such relief may be afforded. Chapter 2 would also make certain other changes in related provisions of sections 311, 317, 323, 326, 351, and 352 of title III of the TEA.

Since the liberalization of criteria and the investigative procedures differ with respect to industry relief as distinguished from firm or worker relief, the two categories will be discussed separately.

Tariff Adjustment[1]

Sections 301, 302, 351, and 352 of the TEA set forth the current authority and procedures for an industry to obtain assistance in the form of proclaimed increases in the duty or other import restrictions applicable to articles on which concessions have been granted in trade agreements. Provision is also made therein (section 302) for such industry relief to be provided in combination with adjustment assistance to firms and workers, the terms of which are discussed in the next section of this report relating to adjustment assistance.

The bill would not change the status of petitioners for tariff adjustment. In other words, section 301(a)(1) would still permit petitions to be filed with the Tariff Commission by any trade association, firm, certified or recognized union, or other representative of industry so long as petitioners authority is drawn from firms or groups of workers embracing a substantial part of the industry involved.

Authority for Tariff Adjustment

Section 111 of the bill would amend section 301(b) of the TEA in a number of significant ways, viz.: (1) By liberalizing existing criteria for tariff adjustment; (2) by adding an additional determination as to the nature of the injury; (3) by including a definition of the term "domestic industry producing articles like or directly competitive with the imported article"; (4) by directing the Tariff Commission

[1] The term "tariff adjustment", as used in the TEA, refers not only to tariff rate increases but also to other import restrictions.

also to investigate factors which in its judgment may be contributing to increased imports of the article under investigation; (5) by changing the voting requirements of the Commission in regard to its determinations with respect to tariff adjustment remedies; and (6) by making the tariff adjustment procedures applicable to the products of all countries.

Relaxed criteria. The bill would accomplish liberalization of present tariff adjustment criteria basically by (a) eliminating the present causal connection between increased imports and trade-agreement concessions, and (b) by substituting for the present concept of "the major factor" (in existing paragraph (3)) the concept of section 7 of the Trade Agreements Extension Act of 1951, as amended. In reinstating the criteria of former section 7, amended section 301(b)(1) would provide that—

> * * * the Tariff Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities, either actual or relative, as to contribute substantially (whether or not such increased imports are the major factor or the primary factor) toward causing or threatening to cause serious injury to the domestic industry producing articles like or directly competitive with the imported article.

It will be observed that under the relaxed criteria it is sufficient that increased imports "contribute substantially (whether or not such increased imports are the major factor or primary factor)" toward causing or threatening to cause serious injury. The parenthetical language was inserted to contrast the proposed criteria with the existing concept of "the major factor" and the concept of "the primary factor" proposed by the Administration, and to show that these latter concepts were not in any sense controlling in the interpretation of the concept adopted by the committee. The committee's acceptance of the criteria of section 7 of the 1951 Extension Act was also based upon the fact that such criteria had previously been determined by the President to be compatible with our obligations under the GATT.

The term "like or directly competitive", used in the bill to describe the products of domestic producers that may be adversely affected by imports, was used in the same context in section 7 of the 1951 Extension Act and in section 301 of the Trade Expansion Act. The term was derived from the escape-clause provisions in trade agreements, such as article XIX of the GATT. The words "like" and "directly competitive", as used previously and in this bill, are not to be regarded as synonymous or explanatory of each other, but rather to distinguish between "like" articles and articles which, although not "like", are nevertheless "directly competitive". In such context, "like" articles are those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which made, appearance, quality, texture, etc.), and "directly competitive" articles are those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefor.

The elimination of the causal connection between increased imports and trade-agreement concessions will result in the necessity for the Commission to consider the impact of imports from all countries rather than from those entitled to the rates in rate column numbered 1 of the TSUS. This matter will be discussed further below.

Additional determination as to the nature of injury. If an affirmative injury determination is made under section 301(b)(1), an additional determination would have to be made under subsection (b)(5). The additional determination as to injury would be as to whether either of the conditions specified under (A) or (B) described below, in combination with the conditions specified in (C) below, exist:

(A) Imports of the article under investigation constituted more than 15 percent of apparent United States consumption of the article in the first calendar year preceding the calendar year in which the investigation was instituted, the ratio of imports of such article to consumption for such first preceding calendar year increased absolutely by at least 3 percentage points over the corresponding ratio for the second calendar year preceding the calendar year in which the investigation was instituted, and the ratio of imports of such article to consumption for such first preceding calendar year increased absolutely by at least 5 percentage points over the corresponding ratio for the third calendar year preceding the calendar year in which the investigation was instituted.

(B) As a result of increased imports (1) domestic production of the like or directly competitive product is declining or is likely to decline so as to substantially affect the ability of domestic producers to continue to produce the like or directly competitive product at a level of reasonable profit, and (2) production workers' jobs, man-hours worked, or wages paid production workers in the domestic production of the like or directly competitive product are declining substantially or are likely to decline substantially.

(C) (1) The imported article is offered for sale at prices which are substantially below those prevailing for like or directly competitive products of comparable quality produced in the United States and constitutes an increasing proportion of apparent domestic consumption, and (2) the unit labor costs attributable to producing the imported article are substantially below those attributable to producing like or competitive articles in the United States.

The Commission, in its determinations of the percentages of import penetration under (A), will follow its usual methods, taking into account conditions of competition, units of quantity, and values, depending upon the circumstances of each case. Ordinarily, such determinations are based on units of quantity, but may be based on both units of quantity or value, or on value alone.

In determining whether the imported article is offered for sale at prices which are substantially below the prices prevailing for a domestic product for purposes of section 301(b)(5)(C), the committee believes that the following principles should generally be observed. First, the prices to be considered should be the wholesale prices of the domestic and imported products to the same class of customer. Second, the prices to be considered should be those resulting from arms-length transactions. If either the domestic or imported articles are sold only (or nearly so) in non-arms-length situations, the Tariff Commission should, to the extent practicable, construct a delivered wholesale price in the United States. A constructed price for an imported product, for example, might be based on the dutiable value of the article plus all expenses (including duties incurred in placing the article at an appropriate delivery point in the United States. Third, the price comparisons should take into account any distinctive quality or characteristic which significantly affects the price of either the domestic or imported product, but not the other. For example, if the imported article is of lower price than the domestic article because of appearance, quality, more limited range of uses, or other commercially recognized physical characteristic, it is anticipated that allowances in price would be made in determining whether the imported article is offered for sale at prices substantially below those prevailing for the domestic article.

Definition of domestic industry. This definition of domestic industry, which appeared in former section 7 of the 1951 Extension Act, is the so-called segmentation concept. By virtue of this definition, the domestic industry will include the operations of those establishments in which the domestic article in question (i.e., the article which is "like," or "directly competitive with," the imported article, as the case may be) is produced. Where a corporate entity has several establishments (e.g., divisions or plants) in some of which the domestic article in question is not produced, the establishments in which the domestic article is not produced would not be included in the industry. The concern of the Tariff Commission would be with the question of serious injury to the productive resources (e.g., employees, physical facilities, and capital) employed in the establishments in which the article in question is produced. In the case of multiproduct establishments in which productive resources are devoted to producing products A, B, C, and D, of which only product A is suffering from import competition, it is not necessary that the Commission find that the resources engaged in the production of any one or more of the other products have been injured. However, the Tariff Commission should take into account other relevant factors including whether there has been a transfer of productive resources from A to B, C, or D for reasons other than the impact of imports. The extent to which the products of a multiproduct establishment can be so separately considered is necessarily affected by the accounting procedures that prevail in a given case and the practicability of distinguishing or separating the operations for each product line.

Factors causing increased imports. Subsection (b)(6) will require the Tariff Commission, in the course of any proceeding initiated under paragraph (1), to investigate any factors which may be contributing to increased imports of the article under investigation. Such factors would include the effect of tariff concessions, foreign wage rates, and also possible dumping, subsidization, or other forms of unfair competition. If the Tariff Commission has reason to believe that increased imports are attributable in part to circumstances which come within the purview of the Antidumping Act, 1921, section 303 or 337 of the Tariff Act of 1930, or other remedial provisions of law, it is directed to promptly notify the appropriate agency and to take such other action as it deems appropriate in connection therewith. There is no intention in this amendment to transfer to the Tariff Commission action responsibility for the implementation of statutory language falling within the purview of other agencies.

This provision is designed to assure that the United States will not needlessly invoke the escape-clause [article XIX of the GATT] and will not become involved in granting compensatory concessions or inviting retaliation in situations where the appropriate remedy may be action under one or more United States laws against unfair competition for which action no compensation or retaliation is in order.

Commission voting requirements. In accordance with subsection (b)(4) the remedy determination of a majority of the Commissioners voting for the affirmative injury determination shall be treated as the remedy determination of the Commission.

Tariff adjustment authorized for products of all countries. The elimination from section 301(b)(1) of the language "as a result in major part of concessions granted under trade agreements" would broaden the President's authority to proclaim increased import restrictions. At present, such authority applies only to products the subject of trade agreement concessions. The Tariff Commission, in making its report of investigations under section 301(b), will necessarily take into account the various rate levels associated with the so-called "preferential" and "M-F-N" rate treatments in rate column numbered 1 of the TSUS and with the generally higher rate treatment in column numbered 2 applicable to the products of designated Communist countries.

Presidential Action With Respect to Tariff Adjustment

The bill would amend section 351 of the TEA to provide that the President shall, upon receipt of an affirmative injury determination, proclaim such import restrictions as he determines to be necessary to prevent or remedy serious injury, unless he determines that it would not be in the national interest.

When the Tariff Commission makes an injury determination and makes the aforementioned additional determination provided for in section 301(b)(5), the President is directed to implement the remedy determination of the Commission unless he determines that such action would not be in the national interest.

The bill would make no change in the existing provisions for Congressional review which applies to those cases where the President does not carry out the remedy determination of the Commission.

Review of Adjustment Action

The review procedures on outstanding tariff adjustment actions are amended to provide that the Tariff Commission, in its reports on conditions in the industry concerned with the tariff adjustment, will include information on the steps taken by the firms in the industry to compete more effectively with imports.

The reporting requirements regarding such reviews of tariff adjustment actions are also amended to provide that the Tariff Commission will make findings similar to those in an original tariff adjustment investigation if it should determine in an investigation reviewing an outstanding tariff adjustment action that the existing restrictions on imports are insufficient to prevent or remedy serious injury to the domestic industry. Such finding would be in addition to that presently required with regard to the effect of a reduction or elimination of a tariff adjustment action.

Orderly Marketing Agreements

Section 352 of the Trade Expansion Act is amended to provide that the President may negotiate orderly marketing agreements at any time after an affirmative injury determination. Further, the amendment provides that such agreements may replace in whole or in part tariff adjustment actions. Under existing law, the negotiating authority under section 352 is to be used at the conclusion of the Tariff Commission investigation and the agreements are to be a substitute for tariff adjustment action.

Adjustment Assistance

Adjustment assistance for firms and workers injured by increased imports is made more readily available under this bill. Your committee believes that the criteria for determination of eligibility of firms and workers to apply for adjustment assistance contained in the Trade Expansion Act of 1962 are too strict. The bill therefore liberalizes these criteria. The bill also provides that the President, instead of the Tariff Commission, will make the substantive determinations of eligibility.

Under the bill, firms or workers may petition directly to the President rather than to the Tariff Commission as at present; also, firms and workers may apply directly to the Secretaries of Commerce or Labor, respectively, after Presidential action providing for such requests following a Tariff Commission finding of injury to an entire industry.

The basic formula for the weekly trade readjustment allowance payable to an adversely affected worker is increased in the bill to 75 percent of his average weekly wage or to 75 percent of the average weekly manufacturing wage, whichever is less, reduced by 50 percent of the amount of his remuneration for services performed during the week. The existing provisions affording training and other reemployment assistance to adversely affected workers is expanded to include supportive and other services provided for under any Federal law.

The changes in the bill will serve to make adjustment assistance more effective and more readily available to help individual firms or groups of workers cope with the impact of increased import competition.

Direct Petitions. The Trade Expansion Act of 1962 presently provides that petitions for a determination of eligibility to apply for adjustment assistance may be filed with the Tariff Commission by or on behalf of a firm or group of workers. These are petitions for determinations under section 301(c). H.R. 18970 amends this provision by requiring that the petitions be filed with the President rather than the Tariff Commission. It is intended that a group of three or more workers in a firm may qualify as a petitioner for adjustment assistance.

Your committee believes that affected workers have a responsibility to endeavor to give prompt notice of difficulties by applying for assistance as soon as they become unemployed or are threatened with unemployment. Section 301(a)(2) of the Trade Expansion Act has been amended to provide that petitions filed by or on behalf of a group of workers shall apply only with respect to individuals who are, or who have been within one year before the date of filing of such petition, employed regularly in the firm involved. Individuals who become unemployed or underemployed after the date of the filing of

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the petition may be eligible to apply under any certification issued if they are members of the group described therein.

The committee has amended the provisions of the existing Act with respect to the criteria to be applied in a determination of eligibility to apply for adjustment assistance by a firm or group of workers. It has provided that the President shall determine whether an article like or directly competitive with an article produced by the firm or an appropriate subdivision thereof is being imported in such increased quantities, either actual or relative, so as to contribute substantially toward causing or threatening to cause serious injury to such firm or subdivision or unemployment or underemployment of a significant number or proportion of the workers of a firm or appropriate subdivision thereof.

This amendment eliminates the former causal link between the increased imports and a trade agreement concession. It also changes the relationship between the increased imports and the injury or unemployment from "the major factor" to "contribute substantially (whether or not such increased imports are the major factor or the primary factor)."

It is intended that in most cases unemployment or underemployment of a significant number or proportion of the workers shall be found where the unemployment or underemployment, or both, in a firm, or an appropriate subdivision thereof, is the equivalent of a total unemployment of five percent of the workers or 50 workers, whichever is less. At the same time, there are many workers in plants employing fewer than 50 workers. Accordingly, there may be cases where as few as three workers in a firm, or an appropriate subdivision thereof, would constitute a significant number or proportion of the workers.

It is intended that an "appropriate subdivision" of a firm shall be that establishment in a multi-establishment firm which produces the domestic article in question. Where the article is produced in a distinct part or section of an establishment (whether the firm has one or more establishments), such part or section may be considered an appropriate subdivision. In the Trade Expansion Act, this concept was confined to groups of workers. This bill would extend the concept to firms as well.

Section 301(c) of the Trade Expansion Act as amended by your committee provides for reports from the Tariff Commission to assist the President in making determinations with respect to petitions filed by firms or groups of workers. The President is to transmit promptly to the Tariff Commission a copy of each petition filed with him by a firm or group of workers and not later than five days thereafter to request the Tariff Commission to conduct an investigation relating to questions of fact relevant to the President's determinations and to make a report of the facts disclosed by such investigation. In his request, the President may specify the particular kinds of data which he deems appropriate. This is not intended, however, to preclude the Tariff Commission from making an investigation of, and including in its report, such additional data as it considers relevant. Upon receipt of the President's request, it is required that the Tariff Commission promptly initiate the investigation and promptly publish notice thereof in the Federal Register.

It is intended that the President, and not the Tariff Commission, shall make the determinations under section 301 (c)(1) and (c)(2) with respect to firms and groups of workers. Accordingly, the Tariff

Commission is not to include in its report conclusions, opinions, or judgments which are tantamount to the determinations. Instead, it is to present the facts and in a manner which will render the report useful to the President. It is recognized that the Tariff Commission will have to reach conclusions with respect to such subsidiary questions as what constitutes the firm or an appropriate subdivision thereof, what product is like or directly competitive, and what is the appropriate base period, in order to gather the relevant facts. In any case, however, the President has the final authority to make a decision with respect to any element which enters into the determinations under section 301 (c)(1) and (c)(2), and section 302 (c), (d), and (e).

In the course of any such investigation, the Tariff Commission shall hold a public hearing if requested by the petitioner or any other interested person. However, such a request must be made not later than 10 days after the date of the publication of its notice of the investigation. It is understood that a public hearing may be held in any case on the Tariff Commission's own motion. The report of the Tariff Commission of the facts disclosed by its investigation with respect to a firm or group of workers is to be made at the earliest practicable time, but not later than 60 days after the date on which it receives the request of the President.

After receiving the Commission's report, the President has a maximum of 30 days in which to make his determination as to whether the firm or group of workers is eligible to apply for adjustment assistance. However, within this period he does have the authority to request additional factual information from the Tariff Commission. The Commission is then to furnish the additional information in a supplemental report within 25 days and the President is to make his final determination not later than 15 days after he receives such supplemental report (section 302(c)).

The President is required to publish in the Federal Register a summary of each determination made with respect to a petition for adjustment assistance filed by any firm or group of workers.

For transitional purposes, investigations relating to adjustment assistance under existing section 301(c) in progress immediately before the date of enactment of H.R. 18970 are to be continued as if the investigation had been instituted under the amended section 301(c) and the petition treated as filed as of the date of enactment. Tariff Commission determinations pending before the President on date of enactment are also to be subject to the amended criteria and procedures.

If the President makes an affirmative determination on a petition for adjustment assistance with respect to any firm or group of workers, he shall promptly certify that such firm or group of workers is eligible to apply for adjustment assistance. This certification permits the firm to apply to the Secretary of Commerce and individual workers to apply to the Secretary of Labor to seek the types and amounts of adjustment assistance provided for in Chapters 2 and 3 respectively of Title III of the Trade Expansion Act of 1962. Certifications of groups of workers specify the workers' firm or appropriate subdivision and, under section 302(d) of the Trade Expansion Act, the date on which the unemployment or underemployment began or threatens to begin.

Section 302(e) of the Trade Expansion Act provides that the President shall terminate the effect of any certification of eligibility of a group of workers whenever he determines that separations from the firm or subdivision thereof are no longer attributable to the conditions specified in section 301(c)(2) or section 302(b)(2). Such termination applies only with respect to separations occurring after the termination date specified by the President.

H.R. 18970 specifically authorizes the President to delegate any of his functions with regard to determinations and certifications of eligibility to apply for adjustment assistance. Authority to issue rules and regulations related to these delegated functions is provided for under section 401(2) of the Trade Expansion Act.

Presidential Action With Respect to Adjustment Assistance

Under the current law (Sec. 302(a)), whenever the Tariff Commission reports to the President a finding of serious injury or threat thereof to an industry, the President may take any of several courses of action. He may provide: (a) tariff adjustment on the imported product involved in the investigation; or (b) that the firms in the industry may request the Secretary of Commerce for certifications of eligibility to apply for adjustment assistance; or (c) that the workers in the industry may request the Secretary of Labor for certifications of eligibility to apply for adjustment assistance; or (d) he may take any combination of such actions. No order of priority among these various courses open to the President is established nor is there a requirement that the President must take some action.

Your committee is persuaded that provision for adjustment assistance should not be continued as a discretionary alternative action for the President in place of tariff adjustment action where the Tariff Commission has made an affirmative injury and remedy determination after an industry investigation. Your committee has amended section 302(a) to deal with Presidential actions after receiving a Tariff Commission report containing an affirmative injury determination for an industry. If the President provides tariff adjustment for an industry, he may also provide that its firms or workers (or both) may request the Secretaries of Commerce and Labor, respectively, for certifications of eligibility to apply for adjustment assistance. If the President does not provide tariff adjustment for the industry, he shall provide that both firms and workers may request the respective Secretaries for certifications. Notice must be published in the Federal Register of each such action taken by the President. As amended, section (302(a)) also requires that any request for such a certification must be made to the Secretary concerned within the one-year period (or such longer period as may be specified by the President) after the date on which the notice is published.

There currently are, and may be, outstanding escape clause actions with respect to a few industries under which the President has acted to authorize firms and workers to request certifications of eligibility to apply for adjustment assistance from the Secretary of Commerce or the Secretary of Labor. It is the committee's intention that the provisions of section 302(b) as amended should also apply to requests from individual firms or groups of workers in those few industries which may be pending on date of enactment of this bill or submitted thereafter.

Under section 302(a) a firm or group of workers is not automatically certified as eligible to apply for adjustment assistance. Following Presidential action upon request by a firm in the industry found to be seriously injured or threatened with such injury, the Secretary of

Commerce, in effect, must conclude whether the increased imports found by the Tariff Commission to have caused or threatened serious injury to the industry as a whole have also caused serious injury to the individual firm in question. Similarly, upon request by a group of workers in a firm in such industry, the Secretary of Labor must conclude whether the increased imports have caused or threatened unemployment or underemployment to a significant number or proportion of the workers of the firm or an appropriate subdivision thereof. In both situations, under existing provisions of 302(b), the increased imports must have been the major factor in causing or threatening to cause injury or unemployment. Your committee has amended these provisions to conform to the liberalized criteria in amended section 301(c).

This function given to the Secretaries of Commerce and Labor reflects the intention that adjustment assistance is not to be extended to a firm or group of workers which has not satisfied the conditions of eligibility. Under this procedure, these firms and workers are not required to wait upon a Tariff Commission investigation. It is expected that the Secretaries of Commerce and Labor will continue to make full use of Tariff Commission information derived from its investigation of the industry concerned.

The committee has added a requirement with respect to certifications made by the Secretary of Labor under section 302(b). Such certifications shall only apply with respect to individuals who are or who have been employed regularly in the firm involved within one year before the date of the institution of the Tariff Commission investigation relating to the industry. This refers to industry investigations instituted by the Commission whether by petition on behalf of the industry or by request, resolution, or motion, as the case may be, as provided in section 301(b). It is not intended that these certifications be limited to those individuals who are or who have been employed in the firm involved within the one-year period antedating the institution of the Tariff Commission investigation. Individuals who became or will become unemployed or underemployed (or threatened therewith) after the date of the institution of the investigation or after the date of the filing of the request with the Secretary of Labor may be eligible to apply under the certification if they are members of the group described therein.

Assistance for Individual Workers. Your committee has made several changes in the adjustment assistance program for workers directed at helping adversely affected workers adjust to the loss of employment and reenter the labor force as rapidly and efficiently as possible. When the worker assistance provisions of the Trade Expansion Act were enacted in 1962, the Congress recognized that the adversely affected workers would frequently need retraining in a new skill. Section 326 of the Act, therefore, now expressly provides that workers are to be afforded, where appropriate, testing, counseling, training, and placement services available under any Federal law.

The provisions were enacted at approximately the same time that the Federal Government was launching the first Manpower training programs under the Manpower Development and Training Act. Since that time it has been demonstrated that workers frequently need other services to prepare them effectively for full employment. The Congress recognized this by providing that workers enrolled in various Manpower programs, such as under the Manpower Development and Training Act and the Economic Opportunity Act, could be given what have come to be called "supportive services." (See Manpower Development and Training Act section 202 (j) and (k) and Economic Opportunity Act section 123(a)(6)).

Your committee's bill would amend the second sentence of section 326(a) of the Trade Expansion Act by adding the phrase "supportive and other services." This phrase includes, to the extent provided in Federal law, services such as work orientation, basic education, communication skills, employment skills, minor health services, and other services which are necessary to prepare a worker who is eligible for assistance under the Act for full employment in accordance with his capabilities and prospective employment opportunities. It is your committee's intention that the minor health services furnished under this section be limited to those which are necessary to correct a condition that would otherwise prevent a worker from being able to accept a training or employment opportunity.

Your committee also wishes to make it clear that the language of section 337 of the existing Trade Expansion Act authorizing appropriations to the Secretary of Labor to enable him to carry out his functions under the Act includes the authority to expend the funds appropriated thereunder for all programs that are provided to adversely affected workers under the Act, including training and supportive services, and that use of the funds is not limited to payment of the financial allowances to the eligible workers.

Your committee also considered the basic formula for the level of weekly trade readjustment allowances as provided in section 323(a)—65 percent of the worker's average weekly wage or 65 percent of the average weekly manufacturing wage, whichever is less, reduced by 50 percent of the amount of his remuneration for services performed during the week.

Your committee believes that this level of benefits is now inadequate and has increased it to a basic formula level of 75 percent of the worker's average weekly wage or 75 percent of the average weekly manufacturing wage, whichever is less, reduced by 50 percent of the amount of his remuneration for services performed during the week. If this provision had been in effect in the summer of 1970, the maximum payment would have been $98 per week.

This increase is based on the policy inherent in the Trade Expansion Act of 1962 that readjustment allowances are intended to do more for adversely affected workers than the compensation provided by unemployment insurance. The level of benefits available under state unemployment insurance has increased appreciably since 1962, and some states now provide unemployment compensation higher than the readjustment allowances established in the Trade Expansion Act of 1962. The President has also recommended that the States take action to assure that unemployment insurance be increased to a maximum representing not less than sixty-six and two-thirds percent of the average weekly wage in covered employment.

The increase in trade readjustment allowances recommended by the committee will serve to maintain the general 1962 relationship where such allowances were higher than unemployment compensation. Your committee believes that this relationship is appropriate in view of the fact that the finding that the unemployment was caused by increased imports implies that a lower level of imports would have resulted in full job maintenance. Worker assistance is, therefore, in the nature of adjustment to conditions resulting from actions taken for the benefit of the nation as a whole.

The basic amended formula for the level of trade readjustment allowances will apply for weeks of unemployment beginning on or after the date of enactment of the bill. The amended formula will thus also apply to workers who became eligible through a certification issued before enactment of H.R. 18970.

Your committee has maintained the standards of eligibility of the individual to receive adjustment assistance benefits which were established in the Trade Expansion Act of 1962. These standards are stricter than those under State law for eligibility for unemployment insurance or those under the Manpower Development and Training Act. In order to be eligible for assistance the individual worker must be a member of the group specified in the certification and must have been separated from adversely affected employment due to lack of work. That is, he must have been separated from a firm or subdivision for which a certification of worker eligibility has been issued. The worker must also have had a substantial employment history: he must have been gainfully employed (at weekly wage of $15 or more) for at least half of the weeks of the three years preceding his separation from adversely affected employment and in the 52 weeks immediately preceding his separation he must have had at least 26 weeks of employment in a firm or firms, the workers of which have been found adversely affected by imports. Your committee believes that these stricter standards of individual eligibility are justified by the scale of trade adjustment assistance compared with that available under other programs.

E. QUOTAS ON TEXTILES AND FOOTWEAR

Title II provides temporary measures to restrict imports and avoid the threat of serious injury to the textile and footwear industries and further deterioration in the domestic market for textiles and apparel and nonrubber footwear.

This is to be accomplished by—

(*a*) The establishment of annual quotas, based on imports during 1967–69, by category and by foreign country of production for all categories of textile articles and footwear articles which may be imported during each calendar year beginning after December 31, 1970;

(*b*) Authorizing exemptions from such quotas when the President determines that exemption will not disrupt the domestic market or that exemption is in the national interest; and

(*c*) Authorizing negotiation of agreements with foreign countries which would result in the regulation of imports into the United States of textile articles or footwear articles or both and would supersede the statutory quotas for the articles covered by the agreements.

Within this general framework, title II authorizes increased imports where the supply of articles subject to limitation is inadequate to meet domestic demand at reasonable prices; provides for certain exclusions with respect to noncommercial entries and to articles already subject to international agreement; and establishes the applicability of the rulemaking provisions of the Administrative Procedure Act to various actions under title II of the bill. Title II terminates at the close of July 1, 1976, unless extended in whole or in part by the

President following his determination that such extension is in the national interest.

These provisions are designed to provide a mechanism for establishing a reasonable and effective limitation on United States imports of textile products and of non-rubber footwear products for the broad purpose of remedying market disruption in those cases in which it now exists, and of preventing the spread of market disruption to other categories of articles. It is intended that, insofar as may be possible, the limitation of these imports will be accomplished through the negotiation of voluntary agreements provided for under section 202 and that the quota provisions of section 201 will assist in the negotiation of such agreements as well as to provide protection for the domestic market and workers in cases where such agreements are not concluded.

The quota, exemption, and agreement provisions of title II are intended to assure that all textile articles and all footwear articles, as defined, come within the scope of such provisions and may, at any point in time, be subject to quota or agreement if they are not at such time exempted.

A. Annual Quotas

Annual quotas are established by statute on the total quantity of each category of textile articles (defined in subsec. 206(1)), and of footwear articles (defined in subsec. 206(2)), produced in any foreign country which may be imported during 1971 and in each subsequent year. The limit for 1971 for each category of articles produced in each country is the average annual quantity of such articles from such country which was imported during the years 1967, 1968 and 1969.

1. Selection of Base Level

Textiles.—The average of imports from all countries of the principal textile articles not at present subject to import limitation (or to voluntary export restraint to the United States), i.e., principally wool and man-made fiber textile articles, amounted to an annual average of 1,390 million square yards equivalent in the 1967–1969 base period for man-mades, and 184.5 million square yards for wool textile products. (These figures include tops, yarns, fabrics, apparel, and made-up and miscellaneous textile products.) In 1969, imports were 1,782.6 million square yards equivalent for man-mades and 191.1 million for wool textiles. As of June 1970 imports are running at an annual and all time record rate of 2.4 billion square yards for man-made fiber textiles. However, wool textile imports are expected to total 150 million square yards.

At the same time, cotton textile imports, which are subject to the terms of the Long Term Arrangement Regarding International Trade in Cotton Textiles, are continuing at a high rate. They are expected to again reach more than 1.6 billion square yards in 1970.

Apparel, the most labor intensive sector of the textile-apparel industry is experiencing a continuing sharp increase i imports. At present rates, 1970 apparel imports will rise to 1.6 billion square yards equivalent, of which more than 1 billion yards will be manufactured from man-made fibers, 500 million will be cotton apparel and 50 million will be wool apparel.

The committee heard substantial testimony from industry and government witnesses about the damage these excessive imports are causing to American firms and workers and the disruption that already has been caused in the domestic market for these goods. These imports pose a threat to the future of a strong textile-apparel "industry" in the United States unless import growth is more closely brought into balance with growth in the domestic market and in domestic production.

Nonrubber Footwear.—United States imports of footwear (nonrubber) have also surged in recent years, from a 1961 level of 40 million pairs to a 1969 level of 202 million pairs. Each recent year has seen a sharp and substantial rise in these imports, from 133 million pairs in 1967, to 181 million in 1968 and to more than 200 million in 1969. 1970 imports are expected to exceed 260 million pairs. At the same time, United States production is declining in a number of key lines of products. The decline of employment opportunities for American shoe workers, the closing of shoe factories, and the serious damage done to this industry were amply reported to the committee by witnesses appearing in open session.

Accordingly, to relieve the market disruption and the dislocation to firms and workers in these industries, and to restore to them the possibilities for full and equitable participation in future market growth, the 1967—1969 average annual level base formula has been adopted as the base for the statutory quotas.

2. Growth in Base Level Quotas

The quantities provided for under the base level (1967–1969) formula may be increased annually beginning January 1, 1972 by not more than 5 percent of the amount authorized for the preceding calendar year if the President determines that an increase is consistent with the purposes of section 201 (section 201(b)(1) and (b)(2)(A)). Any percentage increase granted for a category of articles is to be the same for scuh category from all countries.

Section 201 also provides (subsection (b)(2)) that a yearly determination be made of the quotas which would apply for each category of articles from each country throughout the life of this title II, notwithstanding that such limitations may not, in fact, be in effect as a result of the operation of other provisions of this title (e.g. the exemption authority (sec. 201(d) or the agreements negotiated (sec. 202)). This requirement will assure that a continuing reference point is maintained enabling the comparison of statutory quotas with negotiated agreements and with actual trade which has been permitted to occur as a result of use of the exemption authority by the President.

Section 201(b)(3) provides that when a quota under this section begins or resumes after a period in which the article produced in a foreign country was exempted from quota as a result of a Presidential decision, or an agreement under section 202, and the President determines that imports of such article from such country during the 1967–69 period were insignificant, a more recent base period shall be used with respect to such article from such country if he finds that use of such more recent base period is consistent with the purpose of this section. In that event, the quota for such articles shall be an amount equal to the average annual imports of such article from such country during the three calendar years preceding the year in which the quota goes into effect. Under this provision the President will have flexibility in a case in which a given country's base period trade (i.e., U.S. imports from that country in the 1967–1969 period) was insignificant and the article has been the subject of an exemption by the President under section 201(d) or was exempted under an agreement provided for in section 202 or 204(b).

Section 201(c) further provides for the spacing of allowable annual quotas over the course of a calendar year as appropriate to carry out the purposes of section 201. Such spacing, taking seasonal factors in trade and production into account, would enable the President to avoid a heavy influx of quota goods in a short period of time at the beginning of a year, an influx which could disrupt the domestic market under some circumstances. Also, by requiring a re-opening of a divided annual quota, importers of smaller volumes of articles would be given several opportunities to participate in the entry of available quota articles. Section 201(c)(2) provides for the pro-rata adjustment of any annual quota which comes into effect after the beginning of a calendar year as the result of the termination of an exemption or other actions authorized by title II. At such time, in addition to the amounts actually entered during the calendar year up to the date the quota resumes, an additional quantity equal to the statutory quota adjusted pro rata according to the number of full months remaining in the calendar year after the date of such quota resumption is authorized to be imported.

B. Exemption of Articles from Quotas

Title II provides three mechanisms through which textile or foot wear articles may be exempted from the quotas imposed under subsections 201 (a), (b) and (c), in the absence of an international agreement concluded under section 202 (or the arrangement or agreement referred to in subsection 204(b)).

1. Non-Disruptive Imports

The President is authorized by section 201(d)(1) to exempt articles produced in any foreign country if he determines that imports of such article produced in such country are not contributing to, causing, or threatening to cause market disruption in the United States. These exemptions, which may be made for an initial one year period, and which may be extended for additional periods not to exceed one year each, and may be terminated by the President at any time upon his finding that the article in question is contributing to, causing, or threatening to cause market disruption in the United States.

In making the determinations under section 201(d)(1) and in making similar determinations under other provisions of title II, the President should consider market conditions in the United States for articles similar to the imported articles in question, taking particular account of the relevant market disruption standards set forth in Annex C of the Long Term Arrangement Regarding International Trade in Cotton Textiles (the arrangement referred to in section 204(b)). These market disruption standards are as follows: "these situations (market disruption) generally contain the following elements in combination:

(i) a sharp and substantial increase or potential increase of imports of particular products from particular sources;

(ii) these products are offered at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing country;

(iii) there is serious damage to domestic producers or threat thereof; . . ."

In applying market standards under title II, the President would be expected to consider factors affecting the level of employment, in the domestic industry, including the number of hours worked per week.

In many instances it is the cumulative effect on the market of articles produced in a number of countries which causes market disruption, although the committee recognizes that in some cases the market for a particular article may be disrupted by imports from one country alone.

The committee understands that disruptive conditions in the market for any product cannot in all cases be precisely measured. Thus, while the above quoted conditions are generally found in a circumstance of market disruption, it is not always the case and in other situations different elements may be considered in determining the state of the domestic market for the articles concerned.

It was brought to the committee's attention that certain articles of athletic footwear imports are selected by athletes because they feel that the design of the shoes, including a close fit and light weight, are particularly suited to their needs as a professional or amateur performer. The shoe is selected by the athlete for its suitability for the particular athletic event involved, and the price is generally higher than that charged for domestically produced athletic shoes of the same type. It is expected that the President would exercise his authority in this kind of a situation.

2. The National Interest

Title II also provides that the President may exempt articles from the quotas when he determines that such action would be "in the national interest" (Sec. 201(d)(2)).

The committee intends that the President have freedom in this regard and understands that he is not expected to indicate what particular reasons may have motivated his determination to act on the basis of the national interest criteria.

3. Supply at Reasonable Prices

The President is also authorized to provide for additional imports in excess of established quotas or in addition to the limitations provided in agreements whenever he finds that the total supply from domestic and foreign sources, of textile articles or footwear articles similar to those subject to limitations under such quotas or agreements will be inadequate to meet demands at reasonable prices. This standard is set forth in Section 203.

C. Negotiation of Agreements

Section 202 provides an alternative to the statutory quota provision of section 201. It authorizes the negotiation of voluntary agreements with the countries exporting textile articles, footwear articles, or both. These agreements would provide for the quantitative limitation by category of the textile articles and/or the footwear articles which these countries may export to the United States during each year of the agreement. Such agreements may be administered on the base of either import controls by the United States or export controls by the country concerned or a combination thereof. Whenever such agreements are in effect, the articles which are included under them are exempted from the quota provision of section 201. Both multilateral agreements and bilateral agreements and arrangements are provided for under section 202 and the President is authorized to issue regulations necessary to carry out such agreements.

Section 202(b) authorizes the President to issue regulations limiting the quantity of articles which may be imported from countries not participating in a multilateral agreement whenever such an agreement is in effect among countries, including the United States, accounting for a significant part of world trade in the article concerned, and such agreement contemplates the establishment of limitations on trade in such articles which are produced in countries which are not participating in such agreement. It is intended in this context that a "significant part of world trade" would be in excess of 50 percent of such world trade in the article concerned. The regulations issued by the President under section 202(b) may not provide for lesser quantities from such countries than would be applicable if the quota provision of section 201 applied to such articles.

A multilateral agreement or arrangement covering wool and/or manmade fiber textile products or footwear products could be implemented under this section with respect to imports from countries which did not participate in such an arrangement. The authority provided in section 202(b) is patterned after that provided under section 204 of the Agricultural Act of 1956, as amended in 1962. Any agreement, whether bilateral or multilateral, would be concluded under the authority of section 202(a); section 202(b) authorizes only the issuance of regulations governing imports from countries not participating in multilateral agreements. Section 202(a) authorizes the issuance of regulations covering imports of articles from countries participating in bilateral or multilateral agreements concluded thereunder.

In determining which articles are exempted from quotas as a result of the conclusion of an agreement under section 202, any article falling under the purview of such agreement, whether or not a specific ceiling or limitation has been established for such article in that agreement, is to be exempted from the quota provision provided that under the agreement a mechanism is established whereby the entry of such article into the United States can be limited. This applies with respect to multilateral as well as bilateral agreements or arrangements. In many U.S. bilateral agreements on cotton textiles, some articles are subject to specific limitation while others are subject to consultation provisions. These latter articles (in a similarly structured agreement pursuant to which limitation can be established) could be exempted from section 201 quotas.

Section 202(a) refers to agreements "regulating by category the quantities of * * * articles * * * which may be exported to the United States or entered. * * *" Thus, the basic thrust of the agreement must be to provide for a limitation of quantities of goods entering the domestic market, recognizing, however, that not all categories of goods from all countries are causing or threatening disruption of the domestic market, and recognizing that the pattern of such disruptive trade changes. In the case of a multilateral agreement implemented under section 202(b), the regulation of imports will also apply to articles from countries which are not party to such an agreement when the agreement provides a basis upon which imports of such articles from such countries can be controlled.

The bill provides that negotiated agreements with foreign countries will supersede the quotas that otherwise would be imposed. The existing multilateral cotton textile agreement is specifically given this same treatment by the exclusion of articles subject to it for such time as the United States remains a party to that agreement.

The committee recognizes that substantial administrative discretion is required in order to make possible a negotiation of voluntary agreements among a number of supplying countries. For that reason, the bill does not establish any limitation on the quantities of articles that may be exempted from quotas by reason of their inclusion in a bilateral or multilateral agreement. The direction to the President in this respect is contained in Section 202 which requires that in negotiation of agreements, the President take into account conditions in the U.S. market, the need to avoid disruption of that market, and such other factors as he deems appropriate in the national interest.

D. Administrative Provisions

Section 205 provides generally for the administration of title II. It incorporates by reference the rulemaking provisions of the Administrative Procedure Act (which has been codified in title 5 of the United States Code) with respect to all actions taken under certain specified provisions. Actions brought under these rulemaking procedures concern increases in the quotas, use of the more recent base quotas for countries whose exports were insignificant during the 1967–1969 base, exemptions and terminations of exemptions on the grounds of market disruption or the lack thereof in accordance with section 201(d)(1), the issuance of regulations affecting trade of non-participating countries (sec. 202(b)), and increases in imports authorized under section 203. Also subject to such rulemaking provisions are the issuance of regulations by the Secretary of Commerce, with respect to the exclusion of certain non-commercial articles, the issuance of determinations by the Secretary of Commerce that certain articles should be included in the definition of textile articles under section 206 notwithstanding that they have been classified elsewhere in the Tariff Schedules, and the determination by the Secretary of Commerce of the category systems for textile articles or footwear articles to be established for the purpose of the administration of title II. Application of the rulemaking procedures to these actions is intended to provide assurance of opportunity for public comment and notice of actions intended to be taken as well as of those which have been taken, and to provide for public hearings where that is deemed appropriate under the circumstances in accordance with that Act (subchapter II of chapter 5 of title 5 USC).

In addition, the bill requires that all quantitative limitations established under title II whether by statute or by agreement, all exemptions and terminations of exemptions, and all regulations issued to carry out title II be published in the Federal Register. Furthermore, to assure an additional comprehensive source of information regarding the state of quota limitations, exemptions, and limitations established under agreements, all of such information is to be included on a continuing basis as a part of the appendix to the Tariff Schedules of the United States. This publication will also include actions taken pursuant to the Long Term Cotton Textile Arrangement.

Your committee believes that the use of these rulemaking and notice procedures will provide a sound basis for the development of an effective public information program regarding the operation of this title II. The committee expects that public hearings will be held in connection with the establishment of the administrative machinery for the quota provisions of title II.

The committee gave careful consideration to the appropriate administration of quotas on textiles and footwear products. The committee concluded that the President should be given full flexibility and latitude to develop regulations providing for efficient and fair administration of the quotas. The committee expects that the President will, consistent with efficient administration and to the extent practical, use this authority to provide for administration of these provisions to insure against inequitable sharing of imports by a relatively small number of the larger importers. Additionally, if on the basis of the experience with administering these provisions, it is determined that additional legislative authority is required to provide for an efficient and fair administration, it is expected that legislative recommendations will be promptly made to the Congress.

Exclusions

Section 204 excludes from the import restrictions established in title II certain articles which would be covered by the definitions but which are imported under circumstances which the committee believes should not be subject to quota limitations. The provisions referred to in section 204(a) relate to such circumstances as the importation of personal belongings of persons who have lived overseas, articles brought back to the United States by returning tourists, and similar situations.

The Secretary of Commerce is authorized to issue regulations prescribing the circumstances under which articles imported in non-commercial quantities for non-commercial purposes may be entered free of quota restrictions (sec. 204(a)). In this regard care shall be taken not to exclude from the quotas samples shipments of which are in the nature of commercial sales. Your committee intends that such regulations may provide for quota free imports of samples which are not for sale or for use other than as samples, and of other articles imported in very small quantities for personal use. Section 204(b) excludes from title II all articles subject to the Long Term Cotton Textiles Arrangement so long as the United States is a party thereto. In addition, certain cordage which is subject to a quantitative limitation in the bilateral agreement with the Philippines (the Laurel-Langley Agreement) is exempted for such time as that agreement remains in effect.

Section 204(c) provides that section 22 of the Agricultural Adjustment Act, as amended, is not affected by title II.

Definitions

Section 206 of the bill defines the terms "textile article" and "footwear article" by reference to the applicable provisions of the TSUS.

Except as indicated below, the term "textile article" is limited to any article classified in schedule 3 of the TSUS, if such article is wholly or in part of cotton, wool or other animal hair, human hair, man-made fiber, or any combination or blend thereof, or cordage of hard (leaf) fibers. Specifically excepted from the term, are: raw cotton, cotton wastes and advanced wastes, and cotton processed but not spun; raw wool or hair, wastes and advanced wastes of wool or hair;

wastes and advanced wastes of man-made fiber; and scrap cordage and rags. In addition to articles classified under schedule 3, the term includes certain headwear and gloves provided for in schedule 7, parts 1B and 1C of the TSUS, if wholly or in chief value of cotton, wool, or man-made fiber.

In addition, the Secretary of Commerce is authorized to control under title II of the bill an article which would have been classified under one of the provisions of the Tariff Schedules referred to in section 206(1) but for the inclusion of some substance or because of processing which caused it to be classified elsewhere, in a provision of the Tariff Schedules designed to embrace nontextile articles. Your committee intends that this provision be used to prevent or remedy the abuse of the quotas or agreements by avoidance practices which, because of the requirements of Customs laws and interpretations, result in the article being classified as other than a textile article, even though it is fundamentally a textile article in use, purpose and design. The committee understands that a possible current example of such avoidance involves the inclusion of a small quantity of asbestos fiber in a fabric made in chief weight of reused or reprocessed wool. It is claimed by importers that this wool should be classified as an article in chief value of asbestos under item 518.21 of the Tariff Schedules. Such a classification, if sustained, would remove the article from the specified coverage of title II as defined in section 206. In such a situation, if the Secretary of Commerce determined that the article is, in a practical commercial sense, a wool textile fabric used interchangeably with articles classified as such by the Bureau of Customs, he could control the article under title II. Prior to making this determination, the Secretary must receive the advice of the Secretary of the Treasury with regard to such classification.

Any article included in the definition, "textile article" which is admitted under item 807.00 of the Tariff Schedules or under the appendix to the Tariff Schedules is also included. Thus, an article which, if wholly manufactured in a foreign country of foreign materials would be under quota, but which has been manufactured or assembled in part of American fabricated components and which is admitted under item 807.00 is covered by title II. The committee understands that cotton textile articles entered under item 807.00 are currently subject to the LTA and to U.S. bilateral agreements thereunder.

Also excluded by the definition of "textile article" are certain woven fabrics for use only in the manufacture of portions of neckties "other than the linings thereof". In the latter case the committee intends that a firm requirement be enforced to assure that manufacturers using such articles imported outside of the quota provisions of this bill do not divert such articles for a use different than that specified.

The term category is defined as a group of textile articles or of footwear articles as defined by the Secretary of Commerce using the applicable 5- and 7-digit item numbers of the Tariff Schedules of the United States, Annotated. The committee understands that with respect to textile articles, a category system is in use at the present time as the basis for the compilation of textile trade statistics by the Department of Commerce. The committee understands that this system will be proposed for public comment and that various changes in it may be developed as a result thereof. It is recognized that the development of such a category system can affect trade levels provided for in this title and it is intended by the committee that any changes in such a system will be carefully considered and that the public will have an opportunity to comment on them prior to their adoption. Under this definition, the Secretary of Commerce may revise the category system adopted initially for purposes of title II. The committee intends, however, that such revisions should be made as infrequently as practicable in light of trade conditions, recognizing the value of a continuing and consistent system. The committee notes that the category system used by the United States in its implementation of the Long Term Cotton Textile Arrangement has been revised only once since its original promulgation in 1961.

The term "produced" is defined to mean produced or manufactured, and as such incorporates the standard used in determining the country of origin of an imported article for U.S. customs purposes. Thus, in setting base levels, exemptions, or other controls "by country," title II relies on the existing U.S. customs determinations of country of origin of the articles in question.

Termination

Chapter 2 of title II provides that the title will expire at the close of July 1, 1976, unless the President extends it in whole or in part prior to such time.

The President is authorized to make such an extension for additional periods not to exceed more than 5 years at any one time if he determines that such extension is in the national interest. In making such determination, the President shall seek the advice of the Tariff Commission and of the Secretary of Commerce and the Secretary of Labor in addition to such other advice as he may wish to seek. The President is required to report to the Congress with respect to any action taken by him under this provision. Section 211(d) provides that arrangements or agreements included prior to the termination of title II shall remain in effect beyond such termination date if their terms so provide, and that any regulations issued under section 202 in connection with such agreements would similarly remain in effect.

F. ANTIDUMPING AND COUNTERVAILING DUTY PROVISIONS

1. Antidumping Procedures

Section 301 of the bill would amend procedures under the Antidumping Act to require the Secretary of the Treasury to decide, within four months after a question of dumping is properly raised by or presented to him, whether withholding of appraisement of affected merchandise should be ordered. The significance of withholding of appraisement is that, if there is later a finding of dumping, the assessment of dumping duties is effective as of the date of withholding.

If the Secretary's decision is affirmative, it will be published in the Federal Register and the withholding of appraisement made effective to affected merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of that notice in the Federal Register.

If the Secretary's decision is negative, it too will be published in the Federal Register. A negative decision in this respect will be accomplished by a tentative determination that the merchandise is not being or likely to be sold below its fair value. The bill provides that, within a period of up to three months after the tentative negative determination is published. the Treasury Department may order the withholding of appraisement if it has reason to believe or suspect that sales below fair value are taking place. Alternatively, the Treasury Department will publish a final negative determination of sales at less than fair value. Under the Treasury's present practice and that contemplated in the future, interested persons are given an opportunity to request an informal hearing on the merits of a withholding of appraisement or a tentative negative determination.

Your committee is informed that the Treasury regulations will be amended to provide that the Commissioner of Customs will decide, within 30 days after the information is first received, whether or not a formal investigation regarding alleged dumping should be opened. If he decides that a formal investigation should be opened, he will publish a notice to that effect in the Federal Register. The date of publication will constitute the date on which the question of dumping is raised or presented and trigger the commencement of the four-month period within which the Secretary must decide in the first instance whether or not to order the withholding of appraisement.

The foregoing changes will impose specific time limitations on the Treasury Department within which it must make a decision regarding sales below fair value. This is in sharp contrast with present procedures where such decisions sometimes take two years or even longer.

The committee recognizes that substantial Customs manpower will be needed to carry out the provisions of the Committee's amendments. Present preliminary estimates by Treasury call for about 40 more expert technicians, plus additional supporting personnel and the funding required for necessary office space, equipment, allowances for foreign and domestic travel and similar incidental administrative expenses. Moreover, extensive planning will be necessary to permit an orderly implementation of these amendments. For these reasons, your committee has determined that the amendments made by section 301(a) should not be effective until 180 days after the date of enactment of the bill.

The committee feels that these new abbreviated procedures are essential to protect effectively American industry from dumping. Under the current Treasury procedures which make possible long, drawn-out dumping investigations, the affected U.S. industry may be irreparably damaged before the dumping is halted. The committee, therefore, considers it imperative that the time taken by the Treasury in connection with its antidumping investigations be reduced.

At the same time the committee considers it important that procedures not be abbreviated to such a degree that would prevent the Treasury Department from reaching a sound and well-based decision. Deadlines for furnishing information, and rebutting information furnished, whether by American producers, foreign manufacturers or American importers will in many instances create hardships, but nevertheless will have to be adhered to strictly. If the Treasury fails to receive requested information within the prescribed time limits, it will be compelled to act on the basis of the best information available to it. The committee recognizes this as a price that will have to be paid for the changes in antidumping investigation procedures called for in the present bill. It is the opinion of the committee that the abbreviated procedures provided for in the bill represent a reasonable compromise of the interests involved.

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Section 301(b) would adopt in the law the substance of the existing Treasury Department practice, as reflected in section 153.3(b) of the Treasury regulations (19 CFR 153.5(b)), under which decisions regarding dumping are made with respect to merchandise from State-controlled economy countries. From time to time, a case arises in which the information indicates that the economy of the country, from which the merchandise is exported, is controlled to an extent that determinations cannot be made in accordance with the usual technical rules. Your committee's amendment would confirm the Treasury practice under which the Secretary makes the necessary dumping determinations with respect to state-controlled economy countries based on prices at which such or similar merchandise of a non-state-controlled economy country is sold either for consumption in its home market or to other countries, or based on the constructed value of such or similar merchandise in a non-state-controlled economy country.

2. Countervailing Duty Procedures

Section 302 of the bill would amend section 303 of the Tariff Act of 1930 in a number of important respects. Section 303 is the statute under which the Secretary of the Treasury determines whether imported foreign articles receive a "bounty or grant." The Secretary is required to ascertain and determine, or estimate the net amount of any bounty or grant, and is required to declare the net amounts so determined and order the imposition of countervailing duties.

Although the present statute is mandatory in terms, it does not compel the Secretary to act within any specified period of time. The committee's amendment to the existing law would impose on the Secretary of the Treasury the responsibility to make his determinations as to whether a bounty or grant exists within twelve months after the question is presented to him.

Existing Treasury regulations call for certain types of information to be presented by a person who alleges that an imported article is receiving a bounty or grant. The regulations provide that such communications should include a full statement of the reasons for the belief that a bounty or grant is being paid or bestowed, a detailed description or sample of the merchandise and all pertinent facts obtainable as to any bounty or grant alleged to be paid or bestowed with respect to the merchandise. The regulations go on to provide, among other things, that the Commissioner of Customs will review the information submitted, and if he determines that it is patently in error, he will so advise the person who submitted it and close the case; otherwise he will proceed with an investigation.

The committee is advised by the Treasury Department that its regulations will be amended to require the Commissioner of Customs to determine, within 30 days after the information is first received, whether the information submitted is adequate under the regulations to enable Customs to proceed with the matter. The new regulations will also provide that the person submitting the information will be advised in writing within the 30 days whether or not Customs will proceed with the inquiry. If the information submitted is inadequate, Customs' advice to the person furnishing it will include a statement of the reasons why. The date of affirmative advice would be "the date on which the question is presented" for purposes of triggering the commencement of the 12-month period within which your committee's amendment would require the Secretary to act.

The 12-month limitation would be applicable only with respect to questions presented on and after the date of enactment of the bill. Any inquiries relating to the application of countervailing duties which are already pending in the Treasury Department on the date of the enactment of the bill will not be affected by the 12-month limitation for action. However, the Treasury Department has agreed to make all reasonable efforts to proceed with such inquiries as promptly as possible.

The present statute is mandatory, in that the Secretary is required to apply countervailing duties to *dutiable* merchandise which benefits from a bounty or grant. Section 302(a) would extend the provisions of the statute to non-dutiable items. However, in the case of non-dutiable items, there will be an additional requirement of a determination by the Tariff Commission that an industry in the United States is being, or is likely to be, injured, or is prevented from being established, as a result of the importations benefiting from the bounty or grant. The Tariff Commission is required under the bill to make an injury determination with respect to non-dutiable imports within three months after the initial determination by the Secretary of the Treasury that a bounty or grant is being paid or bestowed. This language conferring jurisdiction on the Tariff Commission was derived verbatim from the Antidumping Act, 1921, and is intended to have the same meaning.

There is no requirement in the existing statute that a U.S. industry be injured as a result of imported foreign merchandise benefiting from a bounty or grant before countervailing duties are to be imposed. The committee determined that there should continue to be no such requirement at this time with respect to *dutiable* imports.

The bill also provides for suspension of liquidation in the event the Secretary of the Treasury determines a bounty or grant exists with respect to non-dutiable imports. The suspension would take effect with respect to merchandise entered, or withdrawn from warehouse for consumption, on or after the 30th day after publication in the Federal Register of the Secretary's determination of the existence of a bounty or grant. The significance of this suspension is that if there is later a determination of injury by the Tariff Commission, the subsequent countervailing duty order, requiring the assessment of duties equivalent to the amount of the bounty or grant, issued by the Secretary of the Treasury following the Tariff Commission's determination of injury, would be effective as of the date of suspension of liquidation.

Section 302 of the bill also provides that all determinations by the Secretary with respect to the existence of a bounty or grant and all determinations by the Tariff Commission with respect to injury will be published in the Federal Register. Under the current Treasury practice, countervailing duty orders become effective 30 days after publication in the Customs Bulletin. Accordingly, this new provision will advance by two or three weeks the date orders become effective by avoiding present printing lead time lags in publication of the Customs Bulletin.

As under existing practice countervailing duty orders issued by the Secretary of the Treasury with respect to dutiable items will apply to items entered or withdrawn on or after the 30th day after publication of the Secretary's affirmative determination of the existence of a bounty or grant. Such orders will so apply in the case of nondutiable items if an affirmative determination is made with respect to such items by the Tariff Commission under new section 303(b).

The committee amendment to the existing law would also add a new subsection (d) to section 303 of the Tariff Act having the effect of giving the Secretary of the Treasury some discretion in applying the countervailing duty law to an article which is subject to quota restrictions or to an article whose exportation to the United States is limited by an arrangement or agreement entered by the Government of the United States. The bill provides that no countervailing duty shall be imposed on such an article unless the Secretary determines, after seeking information and advice from such agencies as he may deem appropriate, that such quantitative limitation is not an adequate substitute for the imposition of the countervailing duty.

For purposes of the discretionary authority under the new subsection (d), the Secretary of the Treasury will make his determinations on an article-by-article basis, and not on the basis of overall class. For example, if dairy products as a class are subsidized by a particular country but all products in such class are not subject to U.S. quota restrictions, the discretionary authority under subsection (d) would be applicable only with respect to the dairy products described in the U.S. quota provisions of part 3 of the appendix to the TSUS. Thus, in the case of a quantitative limitation on a subsidized article which applies only if the price of the article does not exceed a stipulated value, the discretionary authority of the Secretary would not be applicable to imports of such article in cases where the price exceeds the stipulated value.

The committee recognizes that applicability of the countervailing duty law on a mandatory basis to foreign articles benefiting from the payment or bestowal of a bounty or grant by developing countries may present a special problem requiring further consideration. It plans to examine this question at a later date in connection with a general review of problems affecting the developing countries.

Your committee's amendments preserve the authority of the Secretary to meet situations where the net amount of a bounty or grant changes from time to time. As under present law the Secretary, having once determined that a bounty or grant exists and having declared the net amount of the bounty or grant, will continue to be authorized to order appropriate changes in the net amount, making the changes effective as the facts of the particular case dictate. For example, under present law there is no requirement that changed amounts of bounties or grants be made effective only after a 30-day delay. To the contrary, the changed net amount, whether an increase or decrease, would become effective as of the time the change occurred.

Similarly, in a situation where the Secretary has determined that non-dutiable merchandise benefits from a bounty or grant and the Tariff Commission has made an affirmative determination of injury in the case, and countervailing duties are being assessed, if subsequently the amount of the bounty, and therefore the amount of the countervailing duty changes, the Secretary is not required to refer the matter again to the Tariff Commission for a further injury determination. Instead, the countervailing duties may be assessed and collected at the new rate.

Your committee has determined that the effective date of the provisions of the bill amending the countervailing duty procedures should be the date of enactment of the bill.

G. TARIFF COMMISSION

The Tariff Commission, which was established in 1916, is a permanent independent nonpartisan body whose principal function is to provide technical and fact-finding assistance to the Congress and the President upon the basis of which trade policies may be determined. The committee seeks to strengthen the Commission by amending section 330 of the Tariff Act of 1930 to increase the number of Commissioners from six to seven and to change their terms from 6 years to 7 years. This amendment and the amendments to the tariff adjustment provision of the TEA would render unnecessary the "tie vote" provisions in section 330(d) which in practice have not proved entirely satisfactory. In conformity with this change in the size of the Commission, the bill also would provide that not more than four of the Commissioners should be of the same political party, rather than three as at present. It is not intended by this change to transform the Commission into a partisan body. The committee emphasizes that the Commission and its staff must be selected on the basis of merit. In this connection, the committee calls attention to the provision in section 330(a) that—

> No person shall be eligible for appointment as a commissioner unless he is a citizen of the United States and, in the judgment of the President, is possessed of qualifications requisite for developing expert knowledge of tariff problems and efficiency in administering the provisions of Part II of this title.

In addition, the committee finds that it is imperative that measures be taken at once to strengthen the Commission not only in the interest of assuring adequate staff and facilities to handle its current work load which is increasing considerably but also to prevent its inevitably being overwhelmed by the additional responsibilities imposed upon it by this bill. In this connection, the committee observes that, particularly during the past decade, the magnitude of U.S. foreign trade has grown tremendously, and with it the complexity of trade problems, both in terms of their scope and in terms of their nature. Along with this development, the overlapping of functions in the various agencies dealing with trade and trade problems has increased. From testimony received in the public hearings, from discussions in Executive session, as well as from other evidence, it is manifestly clear to the committee that, in making policy determinations respecting trade, the Congress and the Executive are far too often severely handicapped by the lack of the requisite relevant background information.

As indicated, the Tariff Commission was created by the Congress, for the very purpose of assisting the Congress and the Executive in their determinations with respect to foreign trade policy. The broad jurisdiction of the Commission in regard to the international trade of the United States is shown by section 332(b), Tariff Act of 1930, which provides—

> The Commission shall have power to investigate the tariff relations between the United States and foreign

countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.

Due to budgetary restrictions over a period of years, the Commission is not adequately staffed or equipped to exercise even in a modest way its statutory investigative powers. The committee notes with concern, for example, that, notwithstanding the fact that trade and trade problems are at a historic high point with resulting increased demands upon the Commission, its staff has been undergoing a systematic attrition by 28 percent since 1966 (from 278 to 200). This staffing contrasts with an average of 315 in the five-year period 1931–35 when imports under the Tariff Act of 1930 were at their lowest point. The committee has also been impressed with the inadequacy of the grade structure for the Commission's professional staff and the small number (5) of supergrade positions allowed—none in GS–18. The committee also has received observations from persons appearing before the Commission that its hearing room and facilities for housing its staff are inadequate. The consequences of this strict budgetary policy has been low staff morale, loss of staff by resignations and transfers, and extreme difficulties in recruiting.

In the interests of establishing a career-type service for professional employees of the Commission and to enable the Commission to be competitive with other agencies in hiring its staff, the committee is of the view that the Commission should be allocated a reasonable number of super-grade positions and should be provided with sufficient funds to the end that the Commission will have adequate staff, grade, structure, and facilities to carry out its assigned duties.

The enactment of the Trade Act of 1970 would add considerably to the Commission's work load. The relaxation of the criteria for tariff adjustment and for adjustment assistance for firms and workers will undoubtedly lead to numerous petitions being filed for investigations by the Tariff Commission. In tariff adjustment cases, the additional determination which would be required by section 301(b)(5) of the TEA greatly increases the Commission's investigative work load, and the consequences thereof in regard to Presidential action increases the Commission's responsibility. In addition, the bill imposes increased investigative work and responsibility in connection with the review of outstanding tariff adjustment actions made by the President. Moreover, additional work is expected from the tightening up of Treasury's procedures under the Antidumping Act, 1921, and the new investigative responsibilities given to the Commission in connection with section 303 of the Tariff Act relating to countervailing duties. The aforementioned changes and others made by the bill increasing the Commission's work load involve investigative assignments which must be performed within strict time deadlines.

The intelligent formulation of trade policy by the executive and the legislative branches is impossible without the development of the factual data on which these policies are based. The Tariff Commission is the agency primarily charged with this responsibility, and with staff expertise and continuity of personnel is ideally suited to do so.

Additionally, the Tariff Commission, through its hearing procedures, adjudicates cases of utmost importance to the parties concerned as well as the nation. Performance of these responsibilities in accordance with the highest professional standards is absolutely essential. The committee therefore strongly emphasizes the need to provide the Tariff Commission with the adequate staff and facilities to meet this high standard.

H. UNITED STATES CONTRIBUTIONS TO THE GATT

Pursuant to the request by the administration, the bill would provide a section in Title II of the Trade Expansion Act which would authorize the appropriations annually of such sums as may be necessary for the payment by the United States of its share of expenses of the contracting parties to the General Agreement on Tariffs and Trade. The U.S. contribution to the GATT in the past has been funded out of the International Conferences and Contingencies Appropriation of the Department of State budget under general provisional authority (see section 5 of Public Law 84–885, approved August 1, 1956).

In the case of most international organizations, funds for the United States' contribution are appropriated pursuant to a specific permanent Congressional authorization provided for in the form of legislation or Senate advice and consent to ratification of a treaty or convention. Since the GATT has the legal status of an executive agreement entered into pursuant to existing legislation authorizing the President to conclude trade agreements, specific authorization for funding the assessed contribution of the United States has not been provided in the usual manner. The committee believes that the requested specific authorization of appropriations would be desirable rather than funding the United States' contributions to GATT out of the International Conferences and Contingencies Appropriation of the Department of State. It has been made clear to the committee, however, that this provision in no way changes the United States' rights and obligations under the GATT which is in the nature of an executive agreement which the United States and other contracting parties are applying only provisionally.

The committee in other provisions of the bill and in other parts of this report has stressed the need for U.S. government representatives to pursue actively the protection and enhancement of United States commercial interests. In this regard, the committee intends that the executive branch take such action as is necessary to assure that obligations extended to the United States by parties to this agreement be carried out.

I. AMERICAN SELLING PRICE SYSTEM OF VALUATION

The administration had proposed that the committee approve the elimination of the American selling price (ASP) system of customs valuation in return for tariff and non-tariff concessions by other countries. The products now subject to the ASP system are benzenoid chemicals, canned clams, wool-knit gloves, and rubber-soled footwear. The Administration proposal would have been effected by having the Congress authorize the President to proclaim such modifications of the Tariff Schedules of the United States (TSUS) necessary to carry out two agreements concluded as part of the Kennedy Round of tariff negotiations: (1) the multilateral Agreement Relating Principally to Chemicals, Supplementary to the Geneva (1967) Protocol to the General Agreement on Tariffs and Trade; and, (2) bilateral agreement with Japan relating to canned clams and wool-knit gloves.

Rubber-soled footwear was not included in any Kennedy Round agreement. Accordingly the Administration proposed that Congress authorize the President to proclaim such changes in the TSUS as might be necessary to carry out an agreement he might enter into provided that the rates of duty to be substituted for the ASP rates for rubber-soled footwear were not less than a specified minimum.

Your committee deemed it preferable to authorize the President to proclaim the TSUS changes needed to eliminate ASP as are required or necessary to carry out any agreement he may have negotiated with one or more countries which relate primarily to ASP, if he determines that the agreement is fully reciprocal as to benefits and obligations. A proclamation or proclamations providing for the elimination of ASP on chemicals, canned clams, and wool-knit gloves must be submitted to each of the Houses of Congress and can only take effect 60 calendar days later, provided that both Houses of Congress do not adopt a concurrent resolution stating that Congress disapproves of the agreement.

This provision in the bill can only be used for the elimination of ASP on chemicals, canned clams and wool-knit gloves. Elimination of ASP on the remaining item, rubber-soled footwear, can only be achieved by submitting for Congressional approval any ad referendum agreement the President may negotiate.

It is the clear intention of the committee that the President may proclaim the 1967 agreements on chemicals, canned clams, and wool-knit gloves if he determines that they fully compensate for concessions to be granted thereunder by the U.S.

The converted rates of duty included in the original administration's proposal with respect to the elimination of American selling price valuation on certain rubber-soled footwear were later deemed by the administration, in the light of recent data, to be an inadequate conversion of the rates of duty based on imports subject to American selling price valuation. Consistent with the authority to be granted to the President in sections 331 and 332 of the bill, the committee believes that the administration should continue to seek a fully reciprocal agreement with the foreign countries exporting rubber-soled footwear to the United States. If such an arrangement can be reached it should be forwarded to the Congress for its approval and provide for the the final elimination of the American selling price from the U.S. customs law.

The committee recognized the desirability of maintaining a continuing surveillance for a period of 5 years of the results of the elimination of ASP as regards chemicals. It therefore provided that annual detailed reports on the production and sales of synthetic organic chemicals and imports thereof be provided by the Tariff Commission to the President for this purpose.

J. MISCELLANEOUS AMENDMENTS

1. Amendments to the Automotive Products Trade Act of 1965

Your committee has also amended the special adjustment assistance provisions of section 302 of the Automotive Products Trade Act of

1965. The time for filing petitions under these provisions expired at the close of June 30, 1968. The amendment, in effect, restores, without a specific termination date, the authority for filing petitions by firms and groups of workers for a determination of eligibility to apply for adjustment assistance. These determinations are related to dislocations resulting from the operation of the U.S.-Canadian Automotive Products Agreement.

Special assistance provisions were established in the Automotive Products Trade Act because of the unique characteristics of the U.S.-Canadian Agreement. The Agreement required immediate elimination of duties on new vehicles and original equipment parts imported into the United States. It was recognized that dislocations would result not only from increased imports but also from decreased exports, and from shifts in production and supply sources both within each country and between the two countries.

Since the Act was passed, two-way trade in automotive equipment has increased markedly and steadily indicating that the process of rationalization of the North American industry was of major magnitude. Adverse employment effects in the United States which may have been attributable to development under the agreement in the first years were largely masked by the general increase in employment in the U.S. automotive products industry, although there were a number of cases where assistance was provided to groups of workers under the transitional adjustment assistance. The authority to petition for such assistance under the Act terminated on July 1, 1968. Problems of worker dislocation may continue to arise. On the strength of more than four years of experience during the existence of the U.S.-Canadian Agreement the committee believes that it would be prudent to provide the means of responding to such dislocation.

Your committee has also changed the existing standard of "the primary factor" as the required causal link between dislocation and the operation of the Agreement to conform to the more liberal standard contained in the Trade Expansion Act as amended by H.R. 18970. The committee has substituted "a substantial factor" in place of "the primary factor" in sections 302 (c), (d), and (g) of the Automotive Products Trade Act of 1965. This new standard will apply to all petitions filed after the date of enactment of this Act including petitions with respect to dislocations which began after June 30, 1968. Your committee, however, included a requirement that petitions with respect to dislocations which began after June 30, 1968, and before July 1, 1970, must be filed on or before the 90th day after the date of enactment of this Act.

U.S.-Canadian automotive agreement. The committee expects that urgent attention will be given by our government to the attainment of the Agreement's objectives.

While our automotive exports to Canada have multiplied, imports have grown even more rapidly, and our bilateral surplus in this sector has disappeared.

The committee has noted that no steps have been taken which will assure attainment of the objective of the Agreement of allowing market forces to determine the most economic pattern of investment, production, and trade. For example, although the retail price differential between automobiles in the United States and Canada has been reduced, prices remain higher in Canada. The failure to eliminate the price differential is a consequence of the fact that under terms of the agreement market forces have not yet been allowed to operate freely. In this regard, the committee notes with concern that five years after the agreement was signed the Canadian duty remain virtually unchanged and Canadian citizens still cannot import automobiles duty-free from the United States, although there is no such restriction on imports from Canada. This Canadian restriction and other conditions frustrate the achievement of the free-trade objectives of the agreement. They artificially permit the continuation of a price differential and interfere with commercial decisions in an industry in which it has been agreed that market forces would be allowed to operate, and consequently narrow the overall market for automotive products.

Should there not be progress in attaining the agreement objectives, your committee believes that consideration should be given to the President's exercising his authority to terminate the agreement.

2. Certain Classifications by the Secretary of Agriculture

Section 342 provides that the Secretary of Agriculture rather than the Secretary of the Treasury shall have the final administrative responsibility for determinations as to whether or not any article or class of articles falls within one of the article descriptions under part 3 of the Appendix to the Tariff Schedules which contain the import restrictions proclaimed pursuant to Section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624).

Under this provision the Bureau of Customs would admit articles presented for entry, or withdrawal from warehouse, for consumption in accordance with general guidelines issued by the Department of Agriculture as to the applicability of the particular Section 22 quota restriction. It will thus not be necessary for the Department of Agriculture to maintain personnel at each port to pass on the classification of each article for purposes of Section 22 import restrictions. If, however, a question should arise regarding the admissibility of a particular item or class of items, the issue would be resolved administratively by the Department of Agriculture pursuant to procedures prescribed by the Secretary of Agriculture.

In making determinations as to whether an article presented for entry is subject to the Section 22 import restrictions, the Secretary is required to carry out the purposes for which the import restrictions were prescribed and it is recognized the determinations may differ from those made by the Treasury Department for tariff and other purposes.

In no event will the authority conferred on the Secretary of Agriculture by this provision affect in any way the authority of the Secretary of the Treasury to classify merchandise for valuation, duty assessment and other purposes.

3. Rates of duty on mink furskins; repeal of embargo on certain furs

Section 343 of the bill establishes separate provisions under which a tariff-rate quota system is imposed on furskins of mink whether or not dressed.

The mink growers have been adversely affected by imports of mink furskins principally from Scandinavia and Canada. At the present time, the demand for mink has declined and domestic production and imports are declining. The number of domestic ranchers is also declining. One of the largest auction houses, that provided substantial assistance to mink ranchers, has recently gone out of business.

The serious decline in the domestic industry is a cause for real concern. The aggregate annual quota quantity is established at 4.6 million skins or pieces of skins. This quota quantity, which approximates the annual average quantity of skins imported in the calendar years 1967–69, exceeds by approximately 1 million skins the quantity imported in 1969. The bill is designed to assist domestic producers in the efforts to rebuild the market for mink.

Imports of mink furskins within the quota quantity will continue to be dutiable at existing rates of duty except that such skins raw or undressed the product of Communist countries will become dutiable at the rate of 30% ad valorem. In determining the number of skins and pieces of skins for quota purposes, each of the individual pieces assembled into a plate, mat, lining, strip, cross, or similar form would be counted. In each calendar year when the quota has been filled, mink furskins would become dutiable for the rest of that calendar year at the rate of 25 percent ad valorem if imported from non-Communist countries and at the rate of 40 percent if imported from Communist countries. The bill would make the current rates of duty on certain wearing apparel of mink in schedule 7, part 13, subpart B, of the TSUS permanent rates of duty. Thus, the rates of duty on dressed mink furskins (dyed and not dyed) and on wearing apparel of mink, scheduled to be further reduced during the next two years under the Kennedy Round trade agreement, would be frozen at their present levels.

The bill would also repeal headnote 4 of subpart B of part 5 of schedule 1 of the TSUS. This headnote contains a provision, originally enacted as section 11 of the Trade Agreements Extension Act of 1951, under which ermine, fox, kolinsky, marten, mink, muskrat, and weasel furs and skins, dressed or undressed, the product of the USSR or of Communist China, are prohibited importation into the United States. Furskins, the product of Communist China, however, will continue to be subject to the Foreign Assets Control Regulations, which currently prohibit importation.

4. Rate of duty on glycine and certain related products

Section 344 of the bill establishes separate provisions under which a tariff-rate quota system would be imposed on aminoacetic acid (glycine) and salts thereof and certain mixtures of such acid or its salts.

This provision is designed to give special relief to an industry which is adversely affected by persistent dumping practices engaged in by foreign competitors. By reason of such practices, imports increased their penetration of the U.S. market from 25 to 70 percent during the period 1964–67, inclusive. Two of the three domestic producers have stopped production. The cessation of dumping by virtue of action taken under the Antidumping Act, 1921, has provided no relief for the damage already done to domestic producers.

Under the tariff-rate quota system, importers would still be allowed to import at the existing level with no increase in the current rate of duty. Imports in excess of this quantity, however, would be subject to an additional duty of 25 cents per pound. It is expected that this provision would allow domestic producers to recover from the damage caused by the dumped imports because of the advantage it would give them in producing to meet the increasing demand in the United States for this product.

The rates of duty on both the imports which are within the quota and those which are over-quota would become permanent statutory rates. Thus, they would not be subject to further reductions under the Kennedy Round trade agreement.

5. Invoice information

The committee is concerned about testimony received in Executive session and other indications showing that the official data collected and published with respect to U.S. imports, production, and exports are not adequate to meet the current and expanding needs of U.S. foreign trade policy. Basic to the problem is the fact that the various classification systems under which imports, production, and exports are collected are not generally concordant. These trade data are collected and published by a number of Federal agencies such as the Bureau of the Census, Business and Defense Services Administration, Bureau of International Commerce, Department of Agriculture, Bureau of Mines, Fish and Wildlife Service, Bureau of Customs, and the Tariff Commission.

The committee believes that it is important that the aforementioned trade data be collected and published regularly on a current basis and that they be accurate and in such detail as to be reasonably compatible with their anticipated uses in trade analysis and policy making. With a view to achieving this end, the committee urges each of the responsible government agencies to undertake promptly a review of its statistical programs and to institute at the earliest practicable time, under the coordination and guidance of the Office of Management and Budget, methods specifically for the purpose of establishing compatible classification systems for U.S. imports, production, and exports. It is recognized that the Bureau of the Census, which has primary responsibility for collection and publication of these statistics has for some years been issuing a report on U.S. exports and imports as related to output. This annual publication, however, is far from complete because of lack of comparability of import, production, and export data. Moreover, the publication is not current because of the lag in the availability of production data.

It is understood that methods of improving trade statistics can be developed and implemented without new legislation, except with respect to import statistics which are collected by the Bureau of Customs and reported to the Bureau of the Census for compilation and publication in accordance with the 7-digit statistical import classifications of the Tariff Schedules of the United States Annotated (TSUSA). These 7-digit classifications are established by the Departments of Commerce and Treasury and the Tariff Commission under authority of section 484(e) of the Tariff Act of 1930.

The customs entry form and its supporting invoice, which are filed by the importer or his broker with customs officers at the port of entry, are the basis for all import data collected at the time of entry. Customs officers have traditionally regarded their primary responsibility as being the enforcement of customs laws and the protection of the customs revenue. With the increasing workload and limited staff, the collection of trade data has become a secondary function. As a result import statistics do not receive proper attention from customs officers, foreign exporters, importers, and brokers.

The committee believes that the enforcement of the statistical requirements for imports, as set forth in the statistical headnotes and

7-digit classifications of the TSUSA, is a primary responsibility of customs officers and should be given attention by them accordingly. Such enforcement would be facilitated by the enactment of section 345 of the bill which would amend section 481(a) of the Tariff Act of 1930 to require invoices to provide a product description which would enable customs officers to classify imports for statistical as well as for duty purposes.

The committee recognizes that the provisions of H.R. 18970 will have a significant impact upon the Bureau of Customs, and that substantial additional staffing in customs will be necessary to assure the collection of accurate import trade data.

This new statistical requirement is in no way intended to be an impediment to trade. Rather, it is intended to provide necessary information as to trade that is taking place, to the long run interest of foreign exporting and domestic business, both importer and producer.

It is recognized that the information not previously required will entail some burden on those in the trade, at least initially. In this regard, the importer community can do much to mitigate the initial burden by informing their suppliers abroad of the types of information necessary for the purpose at hand, i.e., information sufficient to classify products according to the TSUSA.

6. Trade with foreign countries permitting uncontrolled production of or trafficking in certain drugs

Under section 346 the President would be authorized to impose an embargo or suspension of trade with a nation which permits uncontrolled or unregulated production or trafficking in opium, heroin, or other poppy derivatives in a manner to permit these drug items to fall into illicit commerce for ultimate disposition and use in this country.

The committee is greatly concerned that certain countries which commercially produce poppies for pharmaceutical uses, have not adequately controlled, regulated or otherwise policed surplus poppy crops which eventually have fallen into illicit commerce in a derivative form for ultimate disposition and use in the United States.

The language in this provision is designed to give the President the authority to restrain trade with any nation which does not exhibit a willingness to control illegal production or trafficking in opium or heroin. The testimony of John E. Ingersoll, Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice, established that the great preponderance of illicit heroin entering the U.S. results from diversion of Turkish produced opium and its processing into heroin in southern Europe and elsewhere in the Middle East.

We are pleased that on its own initiative, Turkey has set in train a series of actions aimed at minimizing, or eliminating, the harmful effects of Turkish opium in the world. The committee has been advised that by 1971 Turkey will have reduced to four (from 21 in 1967) the number of provinces where farmers may grow opium poppies, and that production will be limited to a more easily controlled area. The committee has also been advised that Turkey is making intensive efforts to keep its opium out of illicit channels, that the amounts should be substantially reduced this year, and that it is in the process of enacting legislation providing for better control.

It is noted that the French Government is also cooperating to bring a halt to the illicit processing and merchandizing of heroin on

French territory which eventually finds its way into the United States, creating a drug-abuse problem which is controllable with this kind of cooperation from abroad. The best place to control the critical drug problem in the United States is at the source of supply.

K. DOMESTIC INTERNATIONAL SALES CORPORATIONS

1. An Overall View

For the reasons discussed above, your committee's bill provides a system of tax deferral for a new type of U.S. corporation known as a Domestic International Sales Corporation, or a "DISC," and its shareholders. Under this tax system, the profits of a DISC are not to be taxed to the DISC but instead are to be taxed to the shareholders when distributed to them. The bill provides a 3-year phase-in period during which only a portion of a DISC's profits are relieved of current taxation, in order to give assurance of adequate "start up" time for those just beginning their export business. In the first year, 50 percent of a DISC's profits are not currently subject to taxation, and in the second and third years, 75 percent are not currently subject to taxation. In the fourth year and thereafter, 100 percent of a DISC's profits are not currently subject to taxation.

The deferral of tax accorded to profits earned by DISC ends not only when those profits are distributed to the DISC's shareholders but also when the DISC fails to continue qualifying as a DISC (in this case the profits are taxed to the shareholders as "deemed" distributions). For example, when a DISC's profits are distributed to a corporate shareholder, the shareholder is treated in most respects as if it were the initial recipient of the profits; as a result, no intercorporate dividends received deduction is available for these profits, but instead the profits are to be treated as foreign source income and the share-holder is to be allowed to credit against its tax liability on these profits any income taxes paid to a foreign country (by the DISC if the taxpayer is on the "per country" limitation or by the DISC or on income of the shareholder from other foreign sources if it is on the "overall limitation").

To qualify as a DISC, at least 95 percent of a corporation's gross receipts must arise from export sale or lease transactions and other export-related investments or activities. In addition, at least 95 percent of the corporation's assets must be export related. Included in export-related assets are "producer's loans" which are loans (subject to certain restrictions) made to the U.S. parent producer (or any other U.S. exporter) to the extent of the producer's assets used for export business. These loans by a DISC do not give rise to taxation of the DISC or the parent on the amounts loaned.

Although generally the income of a DISC is not to be subject to current taxation, each year a DISC is to be deemed to have distributed to its shareholders certain types of its income, thus, subjecting that income to current taxation in the shareholders' hands. The principal type of income falling in this category is the interest realized by the DISC on its "producer's loans."

Generally, present law requires sales between a parent corporation and its subsidiary to be made on an arm's length basis; that is, at the price the parent company would have charged an unrelated third party. Special pricing rules in the bill permit a DISC to earn a larger relative amount of the profits arising on sales by the DISC of its parent company's export products.

2. TREATMENT OF QUALIFYING CORPORATIONS

(a) Taxation of a DISC (sec. 402 of the bill and sec. 991 of the code)

As a general rule, the bill provides that a DISC is not to be subject to income taxes (or more specifically the taxes imposed by subtitle A). During a 3-year transition period, however, a portion of a DISC's profits are to remain subject to the regular corporate income tax.

After the end of the transition period (i.e., in the case of taxable years beginning after December 31, 1973), the profits of a DISC are to be fully free of tax in the hands of the DISC (as discussed subsequently, these profits will be subject to tax in the hands of the shareholders when distributed or deemed distributed). Both the determination of whether a corporation qualifies as a DISC and the tax deferral provided by the bill apply on a year-by-year basis. The taxes forgone in the case of a DISC include not only the regular corporate income tax, but also the minimum tax on tax preferences, the accumulated earnings tax, and the tax on transfers to avoid tax. Since a personal holding company cannot qualify as a DISC, the bill does not relieve a corporation from this tax (sec. 541 of the code).

As indicated above, the bill delays the granting of full deferral status to a DISC's profits until after the expiration of a 3-year transition period. In the first year of the transition, a DISC is to pay a tax equal to one-half of the regular corporate income tax (or alternative capital gains tax). During the second two years of the transition period, a DISC is to be subject to 25 percent of the corporate income taxes to which it otherwise would be subject. In other respects, however, the rules generally applicable to DISC's are to apply during the transition period. This means that during this period the profits of a DISC may be determined under the special pricing rules, and that during this period a DISC which otherwise would qualify as a Western Hemisphere trade corporation or possessions' corporation is not to be allowed the special Western Hemisphere trade corporation deduction or the special possessions' corporation treatment. Similarly, if a DISC is a member of a controlled group of corporations, it is not to receive a surtax exemption in computing its taxable income during the transition period. A DISC which is a member of a controlled group of corporations claiming only one surtax exemption for the group will not receive any portion of the surtax exemption. However, the portion otherwise allocable to the DISC may be reallocated among the other members of the controlled group.

Except as noted above, a DISC is to compute its taxable income during the transition period and the tax it would owe in accordance with the generally applicable rules. For example, if a DISC incurred foreign income taxes during the phase-in period, it could credit those taxes against the total taxes it otherwise would owe under the usual foreign tax credit rules.[1]

(b) Requirements of a DISC (sec. 402 of the bill and sec. 992 of the code)

Definition of "DISC" and "former DISC".—The bill provides that a corporation will qualify as a DISC for a taxable year if four require-

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[1] As discussed subsequently, foreign taxes paid by a DISC which reduce its tax liability during the transition period, however, cannot be used again by corporate shareholders of the DISC (under the deemed paid foreign tax credit rules) to offset their tax liability on dividend distributions by the DISC.

ments are satisfied with respect to the taxable year: the gross receipts test, the assets test, the capitalization requirement, and the election requirement. A DISC, also, must be an incorporated entity (under the laws of any State or the District of Columbia) and, thus, associations otherwise treated as corporations under the code may not qualify as a DISC.

First, at least 95 percent of a corporation's gross receipts (defined in sec. 993(f)) for the taxable year must be composed of qualified export receipts. As discussed subsequently, qualified export receipts include receipts arising on the sale or lease of export products as well as receipts from other specified export-related activities. In addition, where a corporation seeking to qualify as a DISC sells products of a U.S. manufacturer on a commission basis (rather than on a purchase and resale basis), the amount of gross receipts arising on the commission sale is to be the gross receipts from the sale of the property which gave rise to the commission.

Second, at least 95 percent of the assets of a corporation at the close of its taxable year must be qualified export assets. Qualified export assets are to be taken into account at their adjusted basis and nonqualified assets are to be taken into account at their fair market value. This valuation rule insures that almost all of a qualifying corporation's assets are, in fact, export related and limits the ability of a corporation to hold nonqualified assets which have a high market value but a low basis.

Third, to qualify as a DISC, a corporation must have at least $2,500 of capital (on each day of the taxable year as measured by the par or stated value of its outstanding stock). This test is designed to make sure that a corporation may qualify as a DISC even though it has relatively little capital. It is recognized that this rule constitutes a relaxation of the general rules of corporate substance. The separate incorporation of a DISC is required to make it possible to keep a better record of the export profits to which tax deferral is granted, but this does not necessitate in all other respects the separate relationships which otherwise would exist between a parent corporation and its subsidiary. This, however, is not intended to lessen the general rules of corporate substance required for other corporations in other contexts.

The capitalization requirement also precludes a DISC from having more than one class of stock. This requirement is included in view of the complexity which would result under a deferral system of taxation if the corporation were allowed to have more than one class of stock. For example, if more than one class of stock were allowed where the DISC's earnings must be deemed paid to its shareholders, it would be necessary to include in the bill a special set of rules specifying how the earnings would be allocated to each class of stock.

Fourth, to qualify as a DISC for any year, a corporation must have elected to be treated as a DISC.

The rules provided by the bill are to apply to a corporation and its shareholders for any year in which it is a DISC and for any year in which, although it is not a DISC for that year, there are potential tax consequences arising from the fact that it was a DISC for a prior year. In the latter case the corporation is considered a "former DISC." There are two potential tax consequences resulting from the fact that the corporation was a DISC in a preceding taxable year: the corporation may have undistributed amounts of tax deferred income which are to be taxed to its shareholders or it may have undistributed amounts of income which previously had been taxed to the shareholders but not actually distributed to them.

In addition, provision is made for a corporation which has not indicated more than 30 days before the running of the statute of limitations for the year that it is not a DISC and has filed a tax return as if it were a DISC. In this case, if the Internal Revenue Service has not issued a notice of deficiency based upon a determination that the corporation was not a DISC, then the corporation (and its shareholders with respect to distributions or deemed distributions from the corporation) is to be treated as if it were a DISC for the year in question.

Election to be treated as a DISC.—For a corporation to qualify as a DISC under the election referred to above, it must make the election during the 90-day period immediately prior to the beginning of the taxable year. In addition, for the election to be valid, all of the persons who are shareholders on the first day of the initial election year must consent to the election. The requirement that the shareholders consent to the election need not be satisfied on the first day of the first taxable year for which the election is effective. It is anticipated the corporation will be given a reasonable period of time to obtain these consents. However, if it fails to obtain all of these consents within the time specified, except where the statute has run and it has not been determined that the corporation was not a DISC (sec. 992(A)(2)), the corporation will not be treated as a DISC.

Once made, an election continues in effect for subsequent years whether or not the corporation actually qualifies as a DISC in a given subsequent year, until such time as the election is either revoked or is terminated by reason of a continued failure over a 5-year period of the corporation to qualify as a DISC. The purpose of this provision is to make it unnecessary for a corporation to make a new election each year to qualify as a DISC. If a corporation makes a valid election to be treated as a DISC, the rules provided by the bill apply to the corporation and to all persons who are shareholders of the corporation at any time on and after the election becomes effective (i.e., not only the initial shareholders but their successors in interest as well).

An election to be treated as a DISC may be revoked at any time after the first year it is in effect. For a revocation to be effective for a given year, however, it must be made within the first 90 days of that year. A revocation made after the expiration of the 90-day period will not take effect until the following year. The bill also provides for the automatic termination of an election where the corporation does not qualify as a DISC for a period of five consecutive taxable years.

An election to be a DISC has continuing effect except where it is discontinued or where the corporation fails to qualify for a five-year period, in order to prevent the termination of the election inadvertently through unintentional disqualification in one or more years. However, even where a DISC election has been terminated voluntarily or under the five-year rule, the corporation would be permitted to make a new election in the future to be treated as a DISC if it so desires.

Distribution to meet qualification requirements.—The bill provides two situations under which a corporation may distribute its nonqualified receipts or assets after the end of the taxable year, in order to satisfy the 95-percent gross receipts and 95-percent assets tests for a year. The purpose of this is to prevent a corporation from failing to qualify for DISC treatment in a year merely because of its inadvertent failure to meet the gross receipts or assets test.

The amount a corporation must distribute under both of the two distribution rules set out below is the sum of (A) the portion of its taxable income attributable to its nonqualified gross receipts (if it fails to satisfy the gross receipts test) plus (B) the fair market value of the nonqualified export assets held by it on the last day of the taxable year (if it fails to satisfy the assets test for the year). In either case the entire nonqualified amount must be distributed and not merely an amount equal to the extent to which the corporation failed to satisfy the test or tests in question. In determining the portion of a corporation's taxable income attributable to nonqualified gross receipts, the entire amount of the gross income from nonqualified receipts to which expenses are not definitely allocable, such as dividends, will be taken into account. On the other hand, where expenses are properly allocable to income, the expenses are to be considered as reducing the nonqualified gross income.

Also, under both rules a distribution will not cause a corporation to qualify as a DISC unless it is a pro rata distribution to the shareholders with respect to their stock and is specifically designated when made as a distribution to meet qualification requirements. In other words, a corporation which made a normal dividend distribution and which subsequently discovered that it did not qualify as a DISC for the preceding year is not to be permitted to redesignate the initial dividend distribution as a distribution to enable the corporation to qualify as a DISC.

As subsequently discussed, distributions to meet qualification requirements will be fully taxable to the shareholders of the corporation. The dividends received deduction is not to be available with respect to these distributions and, in addition, the distributions are to be treated as U.S. source income (since they are not attributable to qualified export receipts) and thus will not have foreign tax credit consequences.

The first distribution rule is designed to apply in those cases where a corporation comes relatively close to satisfying the gross receipts or assets test (and does not come under the second distribution rule described below). This rule applies only if at least 70 percent of the corporation's gross receipts for the year are qualified export receipts and at least 70 percent of the assets held by the corporation on the last day of each month of the year are qualified export assets. For this purpose qualified export assets are taken into account at their adjusted basis and nonqualified assets at their fair market value. Where these conditions are satisfied a corporation will be treated as having satisfied the gross receipts and the assets test for the taxable year, if it makes a distribution of the appropriate amount within 8½ months after the close of the taxable year.

The second distribution rule is designed to deal with the situation where there is reasonable cause for a corporation's failure to meet the gross receipts or assets test. Where there is a reasonable cause, the required distribution may be made whether or not less than 70 percent of the corporation's gross receipts or assets were qualified.

In addition, in this situation, the corporation is not required to make the distribution within the 8½ months after the end of the year, as *(c) Definitions and special rules (sec. 402 of the bill and sec. 993 of the code)*

Qualified export receipts.—As previously discussed, for a corporation to qualify as a DISC 95 percent of its gross receipts must consist of receipts which are considered to be export related—i.e., qualified export receipts. The bill specifies that the following are qualified export receipts—

(1) Receipts from the sale of export property (as discussed subsequently, this generally means property such as inventory manufactured or produced in the United States) which is sold for direct use, consumption or disposition outside the United States or to an unrelated DISC for such a purpose. (Thus, a sale of property to an American manufacturer for incorporation in a product to be exported would not be considered for this purpose as an export sale.)

(2) Receipts from the leasing (including subleasing) or rental of export property for use by the lessee outside of the United States. (Whether leased property satisfies the usage test is to be determined on a year-by-year basis. Thus, the receipts on a lease of export property might qualify in some years and not in other years depending on the lessee's usage of the property in the years involved.) However, a *de minimis* use of the property in the United States is permissible.

(3) Receipts from services rendered in connection with a qualified export sale, lease or rental transaction if the services are related and subsidiary to the basic export transaction. In general, a service is related to a sale, lease or rental if it is of the type customarily and usually furnished with that type of transaction in the trade or business in which the transaction arose and the contract to furnish these services is connected with the sale, lease or rental. A service is subsidiary if it is of less importance and value as compared to the sale or lease. (Transportation services or services related to the installation or maintenance of export property would generally qualify as related and subsidiary to the sale, etc.) [3]

(4) Gains from the sale of qualified export assets (i.e., plant and equipment used in the corporation's export business but not inventory).

(5) Dividends (and amounts considered as distributed under subpart F) from a related foreign export corporation (generally a foreign selling subsidiary of the corporation seeking to qualify as a DISC).

(6) Interest on obligations which are qualified export assets, such as accounts receivable arising in connection with qualified export sale, lease or rental transactions, and obligations issued or insured by the Export-Import Bank.

(7) Receipts from management services provided for other DISC's (in most cases a series of small DISC's) to aid those DISC's in deriving qualified export receipts. (These would include the various managerial, staffing, and operational services necessary to operate a DISC.)

[3] For example, if a corporation sells a business machine which is export property and contracts to service the machine, the gross receipts from the services are qualified export receipts. However, if a corporation is engaged to render services and as an incidental part of the services sells export property, the gross receipts from the services are not qualified export receipts since such services are not subsidiary although they are related to such sale.

(8) Receipts from engineering or architectural services on foreign construction projects which either are located abroad or proposed for location abroad. These services would include design, engineering and construction supervision. They would not include the provision of technical assistance or know-how or services connected with the exploration for oil.[3]

To limit the application of the deferred tax treatment provided by the bill to situations which in fact involve export transactions, receipts from six types of transactions, not really export transactions, are excluded from the category of qualified export receipts. These include, first, receipts from the sale of agricultural products under the P.L. 480 program and, second, receipts from direct or indirect sales or rentals to the United States Government. An example of an indirect sale to the United States Government resulting in a nonqualified receipt would be a sale of products to a foreign wholesaler who it is known in turn resells the products to the United States Army in the foreign country.

A third category of excluded receipts are those arising from the sale or rental of property for ultimate use in the United States. Generally, property is to be considered sold or rented for ultimate use in the United States either if it is sold (or otherwise transferred) to a related person who uses or resells the property (whether or not incorporated into other property) in the United States or, in the case of a sale to an unrelated person, if the sale is pursuant to an agreement or understanding that the property will be used in (or resold for use in) the United States or if a reasonable person would have known that the property would be used in (or resold for use in) the United States. For example, if property were sold to a foreign wholesaler and it was known in trade circles that the wholesaler, to an appreciable extent, supplied the U.S. retail market, the sale would not be a qualified export sale.

A fourth type of receipts which does not qualify are receipts from another member of the same controlled group of corporations as the recipient corporation where the corporation involved is itself a DISC. A fifth type of transaction which does not qualify is the rental or licensing of intangibles (other than films, tapes, or records for commercial motion pictures, radio or television broadcasting or to provide background music which do qualify for use outside the United States). A final category of nonqualified receipts is receipts arising from services provided in connection with any sale, lease or rental which itself is excluded in any of the above described categories.

Qualified export assets.—As previously indicated, 95 percent of a corporation's assets must be export related if the corporation wishes to qualify as a DISC. The types of assets classified as qualified export assets are—

(1) export property (i.e., inventory meeting certain tests described below);

[3] Examples of services that qualify under this provision are architectural services in connection with the design of a building or civil engineering services in connection with the erection of a public project such as a bridge. The receipts derived from these services are qualified export receipts whether or not they are related and subsidiary to the sale of export property. If an engineering firm is engaged in a turn-key project or sole responsibility project performed abroad, the gross receipts derived from the engineering and architectural services are qualified export receipts. If the engineering firm also sells export property for installation in the project, the sale also produces qualified export receipts. However, the sale of foreign made goods does not generate qualified export receipts.

(2) facilities primarily for the sale, rental, storage, handling, transportation, packaging, assembly or servicing of export property;

(3) accounts receivable and evidences of indebtedness of the corporation (or if the corporation acts as agent, the principal) held by the corporation which arose in connection with qualified export sale, lease or rental transactions (including related and subsidiary services) by the corporation;

(4) money and temporary investments, such as bank deposits needed for the working capital requirements of the corporation;

(5) obligations arising in connection with producer's loans (as defined below, generally loans of the DISC's profits to its parent company or other U.S. export manufacturer);

(6) stock or securities of a related foreign export corporation;

(7) obligations issued, guaranteed or insured (including reinsurance) by the Export-Import Bank or the Foreign Credit Insurance Association (such as, interest participation certificates and certificates of beneficial ownership) if the obligations are acquired from the Bank or Association or from the person selling the goods or services giving rise to the obligations;

(8) obligations of a domestic corporation organized solely to finance sales of export property under an agreement with the Export-Import Bank, where the loans are guaranteed by that bank; and

(9) amounts deposited in banks at the end of its taxable year but which are in excess of the working capital needs of the corporation which are invested in qualified export assets within a specified period of time after the end of the taxable year.

Where a DISC performs assembly operations in connection with the export property which it sells, the facilities used for this purpose are to constitute qualified export assets if the operations represent assembly operations but not if they constitute manufacturing. Generally, if the property sold by the DISC is substantially transformed by it prior to sale, the property is to be treated as having been manufactured by the DISC. In addition, a DISC generally is to be considered as having manufactured property which it sells, if the operations performed by the DISC in connection with that property are substantial in nature and are generally considered to constitute the manufacture, production, or construction of property. Operations performed by a DISC will be considered to be manufacturing if the value added to the product sold by reason of the operations of the DISC accounts for 20 percent or more of the total cost of goods sold.

As indicated above, bank deposits of a DISC which are in excess of its working capital needs are to be considered as qualified export assets if the funds are invested in other qualified export assets within a specified period of time. This provision is designed to allow a DISC some flexibility in its operations, for example, in the case where it receives a repayment of a producer's loan or a substantial income item in the latter part of its taxable year and does not have sufficient time in which to convert the amount into a qualified export asset prior to the end of the year. In such a case the excess cash on hand at the end of the taxable year in the form of bank or similar deposits is to be considered a qualified export asset as of that time, if the following test is met: By the last day of the sixth, seventh, and eighth months after the end of the year, the DISC has increased the amount of its other types of qualified export assets to a level which is at least 95 percent of the amount of the total assets it held on the last day of that year. In other words, it is not required that there be a tracing of the excess bank deposits into specific qualified export assets. Rather, if by the last days of the three months mentioned, the level of the DISC's other types of qualified assets has increased to the point where the DISC would have satisfied the 95 percent assets test, if it had held those assets on the last day of the taxable year in question, then the excess bank deposits are to be considered as qualified export assets on the last day of the year in question.

Export property.—Generally the principal function of a DISC will be the selling, leasing or renting of export property for use outside the United States. The type of property which is considered export property is property which—

(1) has been manufactured, produced, grown or extracted in the United States by someone other than a DISC;

(2) is held by the DISC primarily for sale, lease, or rental in the ordinary course of business for use, consumption or disposition outside the United States, or which is held by the DISC for sale, lease or rental to another DISC for such a purpose; and

(3) not more than 50 percent of the fair market value of which is attributable to imported articles.

As discussed previously, a DISC may perform assembly operations in connection with the products which it sells. It may not, however, engage in manufacturing or construction activities with respect to those products. If the activities performed by a DISC in connection with the products represent the manufacture of property, then the products will not be considered export property and the gross receipts from the sale of the products will not be qualified receipts.

In determining whether property which is sold to another DISC is sold for direct use, consumption or disposition outside the United States, the fact that the purchasing DISC holds the property in inventory prior to the time it sells it for use, etc., outside the United States will not affect the characterization of the property as export property.

In determining whether a product has a sufficient amount of U.S. components so as to be eligible for classification as export property, any foreign components imported into the United States and incorporated in the product are to be taken into account at their fair market value upon importation (i.e., at what would be their full dutiable value in the absence of any special provisions in the tariff laws which result in a lower dutiable value). For example, the fact that imported foreign goods contain some U.S. components, which reduces the value upon which duty is assessed upon importation, is not to be taken into account in determining the amount of the value which the imported property contributes to the property which is to be exported. In other words, in these cases, even though the imported article has some U.S. content, it is to be treated as if it were 100 percent foreign content.

It is contemplated that the customs invoice on the importation of goods into the United States would be used in evidencing the value of the imported goods for purposes of this test. When a U.S. manufacturer sold goods with foreign components to a DISC, it would furnish a certificate to the DISC regarding the amount of the foreign content in the product which would be based on the information on the customs invoice forms.

Although the foreign content test generally is to be applied on an article-by-article basis, it would be permissible to apply the test on a mass account basis where the goods taken into account for this purpose are essentially identical.[4]

Where a category of property is not in sufficient supply to meet the demands of the domestic economy, even though it would be considered export property under the requirements discussed above, your committee believes it would be inappropriate to make the tax deferral provided by the bill available. In such cases there is no reason to encourage exports. In view of this, the bill provides the President with authority to exclude from the category of export property any property which he determines is not in sufficient supply to meet the requirements of the domestic economy. If the President makes a determination of this nature by the issuance of an Executive Order, the property involved will not be treated as export property during the period for which the President determines and designates it to be in short supply.

The bill also contains a provision designed to prevent U.S. corporations from using a DISC to convert substantial amounts of what otherwise would be manufacturing or operational, as distinct from selling, income into tax deferred income. This could occur if property, which otherwise would be used outside of the United States in the parent's operations, were sold by the parent to a DISC subsidiary and then rented back from the DISC, since this would permit taxable operational profits to be converted into tax-deferred rental income. To prevent this result, the bill provides that any property leased to a corporation which is a member of the same group of controlled corporations as the DISC is not to be considered export property in the hands of the DISC. For this purpose, it does not matter whether the related corporation leases the property directly from the DISC or indirectly from a lessee of the DISC. In either case, the property is not to be considered export property.

Producer's loans.—As indicated previously, a DISC is to be permitted to loan its tax deferred profits back to its parent manufacturing company (or any other U.S. export manufacturing corporation), generally, as long as the cumulative amount loaned to any one borrower does not exceed the amount of the borrower's assets considered as being related to its export sales. This in essence is the same proportion of the borrower's assets that its export sales are of its total sales. These loans—termed "producer's loans"—are to constitute qualified export assets of a DISC and the interest arising on the loans is to represent a qualified export receipt of a DISC.

For a loan of a DISC's tax deferred profits to constitute a producer's loan, the loan must be made to a borrower who is engaged in the manufacturing, production, growing, or extraction of export property in the United States and at the time the loan is made it must be designated as a producer's loan. In addition, the loan must

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[4] Where identical components of domestic and foreign source are used interchangeably, the limitation on foreign content is to be applied on a substitution basis as in the case of the rules relating to drawback accounts under the customs laws. For example, assume that a manufacturer produces a total of 20,000 electronic devices, 10,000 of which are exported. Assume also that the major single component in each device is a tube which represents 60 percent of the value of the device. Assume further that the manufacturer imports 10,000 of these tubes and the remaining 10,000 were manufactured in the United States. In accordance with the substitution principle used in the customs drawback laws, each of the 10,000 exported devices is considered as containing a tube of foreign origin equal to 60 percent of its total value. As a result, since the 50 percent U.S. content requirement is not met, the exported goods are not export property.

be evidenced by a note (or some other evidence of indebtedness) and must have a stated maturity of not more than 15 years. If a loan which qualifies as a producer's loan is not collected by the DISC when it matures or is extended at maturity for a period which does not have a fixed time limit, the loan is to cease to qualify as a producer's loan at its original maturity.

To qualify as a producer's loan, a loan must be made out of the DISC's tax deferred profits—its accumulated DISC income. A loan is to be considered as made out of accumulated DISC income if at the beginning of the month in which the loan is made, the amount of the loan, when added to the unpaid balance of all other producer's loans previously made by the DISC, does not exceed the DISC's accumulated DISC income.

As indicated above, a limitation is placed on the amount of a DISC's tax deferred profits which may be loaned to any one borrower, which in general is the amount of the borrower's assets treated as export related. To the extent a loan exceeds the borrower's limitation, it is not to be considered a producer's loan. Whether a loan of a DISC's tax deferred profits to a borrower is within the borrower's limitation is to be tested at the time the loan is made by adding the amount of the loan to the unpaid balance of all other producer's loans of the borrower outstanding at that time and comparing this amount to the borrower's limitation.

The limitation imposed on the amount of loans which a borrower may receive during a taxable year of the borrower is to be determined by applying the percentage, which the borrower's qualified export receipts arising from its sale of export property during the three prior taxable years is of its aggregate gross receipts from the sale of inventory property during that period, to the total of the borrower's assets taken into account for this purpose. In no event, however, are the receipts of a taxable year beginning before 1971 to be taken into account in determining this percentage.

There are three categories of a borrower's assets which are taken into account in determining this limitation for a year: (1) the amount of the borrower's investment in plant, machinery, equipment and supporting production facilities in the United States as of the beginning of its taxable year (taken into account at its adjusted basis at that time); (2) the amount of the borrower's inventory at the beginning of the taxable year (taken into account in the manner in which the borrower normally values its inventory); and (3) the aggregate of the borrower's research and experimental expenditures in the United States during all preceding years of the borrower which began after 1970.

If a loan of a DISC's accumulated DISC income qualifies as a producer's loan under the requirements and limitations described above at the time when the loan is initially made, it is to remain a producer's loan until its maturity. If at its maturity the borrower's limitation is sufficient to permit a new loan in the amount of the old loan, then the old producer's loan could be renewed for an additional stated period of up to 15 years and then would qualifiy as a producer's loan for that period. The fact that a borrower's allowable level of producer's loans decreases after the time it received a particular producer's loan does not affect the qualified status of that loan. On the other hand, a loan which does not qualify as a producer's loan at the time it is made does not subsequently become a producer's loan by reason of an increase in the borrower's limitation.

Where a borrower is a member of a controlled group of corporations, the limitation may be determined at the borrower's election by taking into account the export sales and export-related assets of the group of corporations (other than any member of the group which is a DISC).

Related foreign export corporations.—To take account of the fact that a DISC may find it helpful or even necessary in conducting its exporting business to have certain types of foreign investments, the bill provides that a DISC is to be permitted to own stock or securities in three types of foreign corporations. In other words, stock or securities of this type are to be qualified export assets and the dividends or interest arising on the investment are to be qualified export receipts.

The three types of foreign corporations in which a DISC may own stock or securities are—

(1) a foreign international sales corporation (or FISC), which in essence is a foreign selling arm of the DISC principally engaged in marketing export property;

(2) a real property holding company, which in general is a foreign company that holds title to real property used by the DISC which the DISC cannot own directly because of the requirements of the applicable foreign law; and

(3) an associated foreign corporation, which generally is a foreign customer of the DISC in which it must invest as a means of extending to the customer the export credit which is needed to effect the export sale or sales.

For a foreign corporation to qualify as a FISC, more than 50 percent of its voting power must be directly owned by the DISC and 95 percent of its gross receipts and assets must be related to U.S. exports. For this purpose, the foreign corporation's U.S. export-related receipts consist only of its gross receipts from qualified export sale, lease, or rental transactions and related and subsidiary services, and receipts from the sale of other qualified export assets. The corporation's export-related assets consist only of its inventory of export property, its facilities for the sale, lease, rental, assembly, etc., of export property, its accounts receivable which arise by reason of qualified export sales, leases, rentals, or related and subsidiary services, and its working capital related to its export business and represented by money, bank deposits, and other similar investments.

A real property holding company is a foreign corporation in which a DISC directly owns more than 50 percent of the voting power and the exclusive function of which is to hold real property for the exclusive use of the DISC. The real property may be used by the DISC under a lease or other type of arrangement.

For a foreign corporation to qualify as an associated foreign corporation, the DISC's ownership of stock or securities in the foreign corporation must be reasonably in furtherance of transactions which produce qualified export receipts for the DISC (as determined under regulations prescribed by the Secretary of the Treasury).[8] In addition,

[8] Generally, this ownership will be considered as being in furtherance of transactions giving rise to a qualified export receipt if the ownership is necessary to maintain or obtain a customer or is to aid the sales distribution system of the domestic corporation. However, the investment in the foreign corporation must be reasonable in amount as compared to the value of the business which can be expected to be derived due to such ownership.

for a foreign corporation to qualify as an associated foreign corporation, the portion of its voting power which is owned either by the DISC or by a controlled group of corporations which includes the DISC must be less than 10 percent. In determining the amount of voting power in the foreign corporation which is owned by the DISC or controlled group for this purpose, the attribution rules of section 1563 (d) and (e) are to apply.

Gross receipts.—The bill provides that the term gross receipts means in the case of sales, leases or rentals of inventory, the total receipts arising on the sale, lease or rental. In the case of other types of transactions, gross receipts is to include only the gross income arising on the transaction. For example, in the case of a sale by a DISC of an export-related asset (other than inventory), the gross receipts arising on the sale would be the gain realized.

To make the treatment of sales (leases or rentals) which the DISC makes on a commission basis comparable to the treatment of sales (leases or rentals) by the DISC of property which it has purchased, it is provided that in the case of a commission sale, the DISC's gross receipts are to be the gross receipts on the sale (lease or rental) of the property to which the commission relates, rather than just the amount of the commission. The time when the receipts on a commission sale (lease or rental) arise is to be determined under the commission arrangement and the accounting method otherwise employed by the DISC. For example, in the case of a deferred payment sale, if under the DISC's accounting method it would be considered as having received the entire commission in the year of sale, then the entire amount of gross receipts to which the commission relates is to be considered as received in that year, even though actual payment is not made until subsequent years. On the other hand, if under the DISC's method of accounting, it would be considered as having received the commission only as the payments for the property sold were received in future years, then the gross receipts on the sale are to be considered as received in each subsequent year to the extent they relate to the commission which the DISC is considered as receiving in that year.

United States defined.—The bill provides that for purposes of the new DISC provisions, the term United States is to include possessions of the United States. In other words, for this purpose, the United States includes Puerto Rico, American Samoa, Guam and the Virgin Islands. As a result, property "exported" to U.S. possessions is not to be considered as export property and a related foreign export corporation may not be organized in a possession. On the other hand, property imported into the United States from a U.S. possession, which is subsequently incorporated in property to be exported, is not to be considered a foreign item in determining the foreign content of the property exported.[5]

(d) *Intercompany pricing rules (sec. 402 of the bill and sec. 994 of the code)*

Under the intercompany pricing rules of present law, a sale to a related person generally must be made on an arm's length basis (i.e., the price charged the related person must be essentially the same as that which would be charged an unrelated third person). As indicated in a previous section of this report, your committee believes it is

[5] Since a DISC must be organized under the laws of a State, a corporation is not a DISC for purposes of U.S. taxes if it is organized under the laws of a possession.

desirable to avoid the complexities of the present pricing rules in the case of sales by a domestic parent corporation (or other entity considered related under section 482) to a DISC and also to provide encouragement for the operation of DISC's. In view of this, your committee has provided two pricing rules which may be used in determining the permissible profits—although in excess of profit under arm's length rules and regardless of the sales price actually charged—which a DISC may earn on products which it purchases from a related company and then resells for export. Of course, in any case where the arm's length pricing rule would allow a greater allocation of profit to the DISC than would the new rules, that rule will continue to be applicable.

Under the first of the two new rules, a DISC may earn that portion of the combined income arising on the sale by a DISC of export property purchased from a related person which does not exceed 4 percent of the qualified export receipts from the sale, plus 10 percent of the DISC's export promotion expenses attributable to the sale. Income may not, however, be allocated to the DISC under this (or the second) rule to the extent it would result in the related person who sold the products to the DISC incurring a loss on the sale.[7]

Under the second pricing rule provided by the bill, a DISC may earn up to 50 percent of the combined taxable income of the DISC and the related person arising from the sale of the property, plus an additional amount equal to 10 percent of the DISC's export promotion expenses attributable to the sale. For this rule, the combined taxable income from the sale of the export property is to be determined by deducting from the DISC's qualified export receipts the related person's cost of goods sold determined on the same basis as the related person uses in the case of sales to unrelated persons. Other expenses attributable both to the DISC and the related person would be allocated between the sales of the DISC and the related person on the basis of the net sales from each of these sources.[8]

Although both of the pricing rules provided by the bill generally are to be applied on a product-by-product basis, the rules may be applied on the basis of product lines.

Where a DISC is attempting to establish a market abroad, or seeking to maintain a market abroad, for exports, the Secretary of the Treasury may prescribe by regulations special rules governing the allocation of expenses incurred on the sale of the export property for purposes of determining the combined taxable income of the related person and the DISC. It is expected that in the appropriate cases the regulations will allow, for purposes of applying the second pricing

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[7] The pricing rule described above can be illustrated by a DISC which sold export property it purchased from a related person for $100, and incurred export promotion expenses attributable to that sale of $10. In this case, there could be allocated to the DISC that part of the combined taxable income arising with respect to the export property which did not exceed $5 (4 percent of $100 plus 10 percent of $10). This profit element of $5 plus the promotion expenses of $10 indicate that the transfer price of the related person to the DISC in this case could be $85 ($100 less the $10 of promotion expenses and the $5 of DISC profit). If the combined taxable income arising on the sale (i.e., the receipts of the DISC on the sale less the parent's cost of goods sold for the property and the applicable other expenses of the parent company and the DISC) were only $4, then the amount of profit allocated to the DISC on the sale may not exceed $4.

[8] For example, assume the DISC's selling price was $1,000, the cost of sales of the related person $650, and the selling and general administrative expenses $180, including $90 of export promotion expenses incurred by the DISC. This indicates a combined taxable income of $170 ($1,000 less $650 and $180). In this case, the DISC would be allowed a taxable income of $94 (50 percent of the combined taxable income of $170 or $85 plus $9, representing 10 percent of the export promotion expenses it incurred). This indicates that the related person could charge a transfer price to the DISC of $816, reflecting the $90 selling and general administrative expenses it incurred. This means the related person would have a taxable income of $76 ($816 less $650 cost of goods sold and $90 of selling, etc., expenses). This represents one-half of the profit of $170 less the $9 allocated to the DISC because of its export promotion expenses. The DISC would realize a gross profit of $184 and after deduction of the $90 export promotion expenses, a deferred taxable income of $94. This is one-half of the taxable income of $170 plus the $9 profit on the export promotion expenses.

rule, the combined taxable income on the sale of export property to reflect a profit equal to that which the DISC and a related party would earn if they took into account only the marginal costs of producing the property. The production expenses not considered marginal costs in this case would, of course, be allocable to the production of the related party which is not sold to the DISC.

These rules do not apply to sales to a DISC by a person who is not a related person (within the meaning of sec. 482), nor do they apply to sales by a DISC to another person. As a result, sales by a DISC to a foreign person will be subject to the regular pricing rules (sec. 482). This will insure that income is not diverted to foreign subsidiaries by underpricing on sales by a DISC to foreign affiliates.

The bill also provides that the Secretary of the Treasury may prescribe by regulations intercompany pricing rules, consistent with those provided by the bill, in the case of export transactions where the DISC does not take title to the property, but instead, acts as commission agent for the sale, or is a lessee of the property which it then subleases to its customers.

As indicated above, a DISC under either of the pricing rules may earn additional profit on the sale of export property purchased from a related person equal to 10 percent of the DISC export promotion expenses attributable to the sale. This rule is designed to encourage the transfer of a greater amount of selling functions and activities to DISC's. For purposes of this rule, export promotion expenses include a DISC's ordinary and necessary expenses paid or incurred to obtain the qualified export receipts. These expenses include advertising, salaries, rentals, sales commissions, warehousing and other selling expenses. They do not, however, include income taxes or any expenses which do not further the distribution or sale of export property for use or consumption abroad.

3. Treatment of Distributions to Shareholders

(a) *Taxation of DISC income to shareholders (sec. 402 of the bill and sec. 995 of the code)*

This provision deals with the basic rules for taxing the shareholders of a DISC. In general, it provides that shareholders are to be taxed on the income of the DISC when it is actually distributed. There also is income taxed to the shareholders even though not distributed: these are referred to as "deemed distributions." In addition, the shareholders may be taxed on the DISC income when they sell the stock of a DISC.

There are two types of deemed distributions taxed to the shareholders when the income is earned even though not distributed. The first type of deemed distributions is income earned by the DISC but not classified as DISC income, since it does not arise from export activities. This is interest income derived from producer's loans, and certain gain realized by a DISC on property transferred to it in a transaction where gain was not recognized. Treating these types of income as deemed distributions has the effect of denying them tax deferral treatment—which is appropriate since the income is not export related.

The second type of deemed distribution arises in situations where a corporation no longer qualifies as a DISC—because the corporation terminates its election or fails to meet the qualification requirements with respect to any year. In these cases, the DISC income on which tax has previously been deferred is deemed distributed, generally in equal installments over 10 years (or such shorter period of time as the corporation was a DISC). The intent of this is to terminate tax deferral when a corporation no longer qualifies as a DISC.

A third category of income is also taxed to the shareholders of a DISC. This is income which arises when a shareholder disposes of stock in a corporation with tax deferred DISC income. Under usual rules he would be treated as having a capital gain in such a case to the extent the amount he receives exceeds his cost or other basis in the stock. However, in this case, since the tax on the DISC income has been deferred, the value of the stock at the time of sale reflects this tax deferred income. To prevent this tax deferred income from being converted into capital gain in these cases, the bill provides that this gain is to be classified as ordinary income to the extent of the tax deferred DISC income attributable to the stock. Similarly, where stock in a corporation which is, or was, a DISC is disposed of in a transaction in which the existence of the corporation is terminated, gain is to be recognized (even though it would otherwise be tax free) and the gain is to be ordinary income to the extent of the tax deferred DISC income attributable to the stock.

General rule.—The income of a DISC is to be taxed to its shareholders when it is actually distributed, deemed distributed, or in effect realized by a shareholder through a transaction such as a sale of his stock at a gain which reflects the accumulated income.

Deemed distributions in qualified years.—Although the bill generally provides for the deferral of tax on the profits of a DISC until an actual distribution is made, in the case of two types of income received by a DISC, tax is imposed currently. The current taxation is accomplished, however, not by taxing the income to the DISC but rather by taxing it to the shareholders of the DISC as if the income had been distributed to them. These deemed distributions for a year, however, are not to exceed the DISC's earnings and profits for the year. When amounts which are deemed distributed to a DISC's shareholders are actually distributed to them, the actual distributions are to be tax free.

First, each shareholder of a DISC is deemed to receive an annual distribution equal to his pro rata share (based upon his ownership of DISC stock) of the gross interest income received by the DISC on its producer's loans.

Second, a DISC's shareholders are to be deemed to have received a pro rata distribution upon the sale by the DISC of depreciable or other property (other than inventory) which it received in a tax-free transaction. The distribution in this case is equal to the amount of the gain realized by the DISC, but only to the extent there would have been ordinary income if the property had been sold by the person who transferred it to the DISC at the time of the transfer. This rule basically is designed to prevent the transfer of depreciable property to a DISC in a transaction in which gain is not recognized followed by the sale by the DISC of the property. In the absence of this rule, the DISC would not be taxed on the sale and the depreciation recapture effect (as provided for in sections 1245 and 1250), which would give rise to ordinary income treatment if the sale had been made by the transferor, would be avoided.

This latter deemed distribution rule is to apply where property is contributed to a DISC as a contribution to capital and also in the case of other nonrecognition exchanges.[9] In addition, if a transferor recognizes any gain as the result of the transfer of property to a DISC (due, for example, to the receipt of "boot" in a section 351 exchange), that recognized gain is to be taken into consideration in determining the amount of the deemed distribution resulting from the sale by the DISC of the transferred property.[10]

As indicated subsequently, deemed distributions in qualified years (interest on producer's loans and the ordinary income portion of the gain on the sale of property transferred to a DISC in a nonrecognition exchange) are not to be eligible for the dividends received deduction since the income will not have been taxed to the DISC. These deemed distributions to a DISC's shareholders are to be treated as received by the shareholders on the last day of the taxable year of the DISC in which the income in question was derived (according to the DISC's method of accounting).

Deemed distributions upon termination or disqualification.—The deferral of tax on a DISC's income provided by the bill continues as long as the corporation is a DISC. However, when the corporation terminates its DISC election or fails to qualify as a DISC, the bill provides that its accumulated DISC income (its earnings and profits accumulated while it was a DISC) are to be deemed distributed pro rata to its shareholders.

Following termination or disqualification each shareholder is deemed to receive a distribution equal to his pro rata share of the DISC income of the corporation accumulated during the immediately preceding consecutive years for which the corporation was a DISC.

To avoid the taxation in one year of income accumulated over a period of years, the bill provides that amounts deemed distributed to the shareholders of a DISC which terminates its election or disqualifies are to be treated as received in equal installments over a 10-year period beginning with the year following the year of termination or disqualification. If the number of consecutive years during which the corporation qualified as a DISC immediately prior to the termination or disqualification was less than 10, then the deemed distributions are to be treated as received over that smaller number of years. These deemed distributions are considered received by the shareholders on the last day of the corporation's taxable year in which they are deemed made. For example, if a corporation qualifies as a DISC for the taxable years 1972 through 1975, but disqualifies in 1976, its shareholders are to treat their deemed distribution as received in equal installments on the last day of the four taxable years of the corporation beginning with the year 1977.

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[9] For example, assume a U.S. corporation acquires data processing equipment at an original cost of $150,000 After leasing the equipment for two years and taking depreciation deductions, assume the corporation transfers the equipment to its wholly owned DISC, as a contribution to capital, when the adjusted basis of the equipment is $110,000 and its fair market value is $120,000. Assume further that the DISC leases the equipment for an additional two years, during which time it is entitled to depreciation deductions of $40,000. At the end of the two year period, the DISC sells the equipment for $120,000 and as a result realizes a gain of $50,000 ($120,000 less $70,000). If the equipment had been sold by the parent at the time of the transfer, instead of transferred to the DISC, it would have realized $20,000 ordinary income pursuant to the depreciation recapture rules (sec. 1245). Accordingly, $20,000 of the $50,000 gain realized by the DISC on the sale of the equipment is to be treated as a deemed distribution to the parent.

[10] For example, if section 1245 property with an adjusted basis to the transferor of $80 and a fair market value of $100 is transferred to a DISC in return for stock and "boot" in the amount of $10, the subsequent sale of the transferred property by the DISC for $105 will result in a realized gain to the DISC of $15 (assuming it took no depreciation deductions with respect to the property) of which $10 will be considered a deemed distribution.

Deemed distributions upon termination or disqualification are to continue and are to be included in income by the shareholders even though the corporation subsequently requalifies as a DISC. For example, if the corporation in the above illustration requalifies as a DISC for the calendar year 1977, this is not to affect the deemed distributions occurring as a result of the prior termination or disqualification.

If during the period the DISC income is being deemed distributed, an actual distribution of that DISC income is made, it is to first reduce the last installment of the deemed distributions, and then the preceding installments in reverse order.[11] If deemed distributions are being received for two or more disqualifications, an actual distribution affects the deemed distribution resulting from the earlier disqualification first.

Deemed distributions resulting from disqualification or termination are includible in a shareholder's income only while he continues to hold stock in the corporation. In other words, if the shareholder disposes of his stock, the distributions after the disposition will be deemed received by the shareholder's successor in interest, rather than the shareholder. As discussed subsequently, the disposition itself may result in the taxation of the DISC income to the shareholder and also render future deemed distributions to his successor in interest nontaxable.

Gain on the disposition of DISC stock.—Your committee's bill provides that when stock in a DISC (or former DISC) is disposed of in either of two types of transactions, the disposing shareholder is to be taxed on his share of the accumulated DISC income, generally to the extent of the gain realized on the disposition. The amount attributable to the DISC income is to be treated as ordinary income.

The first type of transaction covered by this provision is one in which the shareholder disposes of his stock in a DISC (or former DISC) where gain is recognized. The second type is a nonrecognition of gain transaction (such as a parent-subsidiary liquidation) in which the DISC (or former DISC) ceases to exist as a separate corporate entity. In these cases, the shareholder of the DISC, by realizing gain on the disposition of his stock in an amount which reflects the accumulated DISC income is, in effect, in much the same position as if he had actually received that income.

The first type of transaction—disposition of stock where gain is recognized—includes, of course, the sale of stock of a DISC (or former DISC). In such a case, the gain realized by the seller is to be treated as ordinary income to the extent of the corporation's accumulated DISC income attributable to the stock sold. Thus, if a shareholder, whose share of the corporation's accumulated DISC income is $30, sells his DISC stock, which has a basis of $50, for $100, $30 of the realized gain of $50 is to be treated as ordinary income. If the stock had been sold for $70, the entire realized gain of $20 would be treated as ordinary income. In determining the accumulated DISC income attributable to the stock disposed of, it is intended that the DISC

[11] For example, assume that as a result of the disqualification of a DISC in 1976 after four years of qualification, a shareholder is to be deemed to receive $5,000 in each of the four succeeding taxable years (1977, 1978, 1979 and 1980). If the shareholder receives a $6,000 actual distribution during 1977 out of DISC income accumulated during the consecutive years immediately prior to the disqualification, the distribution is to be treated as follows. First, it is to eliminate the 1980 deemed distribution and then it is to reduce the 1979 deemed distribution to $4,000. Thus, in 1977, the shareholders will include $11,000 in gross income (the $5,000 deemed distribution for 1977 and the $6,000 actual distribution). In 1978, the shareholder will be taxed on the $5,000 deemed distribution for that year, and in 1979 will be taxed on the final deemed distribution of $4,000.

income for the year of disposition, although determined at the close of the DISC's taxable year, is to be prorated over the year and only that portion attributable to the period prior to the disposition is to be taken into account in determining the amount attributable to the shares disposed of.

Gifts during lifetime of DISC stock or transfers by reason of death of DISC stock are not to result in ordinary income treatment to the transferor since there is no gain realized on the disposition. On the other hand, gain on the redemption of a shareholder's stock by a DISC (e.g., one that is in complete termination of the shareholder's interest or one that is substantially disproportionate) is to be treated as ordinary income (rather than capital gain) to the extent of the DISC income attributable to the shares redeemed. Transactions which produce partial recognition, such as the transfer of DISC stock to a corporation in exchange for stock and "boot," also are within this category. In this case, the gain recognized as a result of the receipt of "boot" is to be treated as ordinary income to the extent of the DISC income attributable to the transferred DISC stock.

Among the transactions within the second type which result in ordinary income to the shareholders of a DISC are "A" or "C" reorganizations where the DISC ceases to exist as a separate entity. For example, if a corporation acquires the assets of a DISC in an "A" or "C" reorganization and the shareholders of the DISC exchange their stock for stock of the acquiring corporation (with the DISC ceasing to exist as a separate entity), the gain realized on the transaction by the DISC shareholders is to be recognized and taxed as ordinary income (notwithstanding the nonrecognition treatment otherwise accorded to these transactions) to the extent of the accumulated DISC income attributable to their stock. The liquidation of a DISC subsidiary is another example of a transaction which falls within the second type of transactions which results in ordinary income treatment. Thus, if a parent corporation liquidates its wholly owned DISC (which would normally be entitled to nonrecognition under section 332), gain is to be recognized and treated as ordinary income to the extent of the subsidiary's accumulated DISC income.

A "B" reorganization, on the other hand, usually will not be within the second category since the DISC usually will remain in existence. Accordingly, the shareholders of a DISC who exchange their stock for the stock of an acquiring corporation in a "B" reorganization would be entitled to the generally applicable nonrecognition of gain treatment. The acquiring corporation would step into the shoes of the former DISC shareholders and the DISC (the acquired corporation) would maintain its status as a DISC.

There are other types of corporate adjustments generally accorded nonrecognition treatment in which the DISC will survive and thus will not have ordinary income tax consequences for the DISC shareholders. For example, assume a DISC is "split-up" into two corporate entities, in a manner which would be treated as a tax-free reorganization. Since the DISC survives (although as two separate DISC's), the shareholders of the DISC who exchange their stock for stock in one of the two surviving corporations (each of which will qualify as a DISC) will not, as a result of the split-up, be treated as having ordinary income by reason of the DISC rules. The accumulated DISC income of the DISC, and other attributes, will be allocated among the surviving corporations in accordance with regulations promulgated by the Treasury. In addition, the bill provides that a mere change in a DISC's place of incorporation (which would constitute a tax-free "F" reorganization) is not to be considered as terminating the DISC existence and thus is not to have ordinary income tax consequences for the DISC's shareholders. The newly incorporated DISC would step into the shoes of the DISC incorporated in the other jurisdicition.

The ordinary income treatment provided by the bill on the disposition of stock in a DISC is intended to apply only to the extent that the recognized gain is not, under another provision of the code, treated as a dividend or as gain from the sale of an asset which is not a capital asset. For example, assume that a shareholder of a DISC exchanges his stock in a "C" reorganization for stock of the acquiring corporation and receives "boot" which causes a portion of the shareholder's gain to be treated as a dividend (under the "boot dividend" rule of section 356(a)(2)). The ordinary income treatment provided by the bill is to apply to the shareholder's gain on the exchange of his stock only to the extent the gain realized exceeds the amount treated as a dividend under the "boot dividend" rule.

(b) Special rules (sec. 402 of the bill and sec. 996 of the code)

A DISC corporation may have three different kinds of earnings and profits: the tax deferred income, called DISC income; income already taxed to the shareholders because of deemed distributions, called previously taxed income; and, then earnings and profits taxable to both the corporation and the shareholders, called other earnings and profits, which were earned when the corporation was not in a DISC status (at least with respect to these earnings). This section is largely concerned with determining in the case of any particular distribution which of these types of income is to be considered as being distributed and how the distribution is to be treated.

Most actual distributions are considered as made first out of previously taxed income (to the extent of that income), then out of deferred DISC income (again, to the extent of this income), and, finally, out of other earnings and profits. Since the previously taxed income has already been taxed to the shareholders in deemed distributions, it is considered as distributed before the tax deferred DISC income. While this priority appears appropriate in the case of most actual distributions, it does not appear so in the case of distributions made to qualify for the 95 percent gross receipts or asset tests. To permit these qualifying distributions to be made out of previously taxed income would be inappropriate, since these are required because the receipts or assets involved are not export related. These distributions, therefore, are first considered as made out of the deferred DISC income and, only after other earnings and profits are distributed, as out of previously taxed income. Rules also are needed to determine which of these types of earnings and profits are absorbed by losses. These, of course, may, or may not, arise in a year in which a corporation is a DISC. When they arise in a non-DISC year, under the regular rules they reduce other earnings and profits. The bill, therefore, provides that losses are first to reduce other earnings and profits, then DISC income, and only finally income which has previously been taxed to the shareholders.

This section also contains a number of other rules necessary to the taxation of distributions to shareholders. It provides, for example, that deemed distributions are to be taxed to shareholders, and for an increase in the previously taxed income of the corporation to the extent of these amounts taxed to the shareholders. It also provides, in the case of deemed distributions of amounts initially considered as part of DISC income, for the decrease in DISC income to the extent of the increase in the previously taxed income.

A second rule provides for the order in which distributions are to be considered as made during the year. The first distributions made are deemed distributions. Next in order of priority are those made to provide qualification for the gross receipts and assets tests. This maximizes the likelihood of these being taxed to the shareholder. Last in order of priority are other actual distributions.

A third rule is necessary where ordinary income is taxed to a shareholder because of the sale of stock (or in the case of a taxable redemption of stock). As previously indicated, an ordinary income tax is imposed on the shareholder in such a case commensurate with the portion of his gain representing deferred DISC income at the corporate level. A rule is provided which, on an individual basis, in effect, to the extent of the ordinary income taxed to the shareholder, shifts DISC income to previously taxed income so the successor in interest of this stock will not be taxed on this income again when it is actually distributed by the corporation. In the case of the redemption of stock, essentially the same rule applies, except that because the payments are made by the corporation there is no need to transfer an amount to previously taxed income.

A fourth rule provides for the necessary change in basis for stock when a shareholder is taxed on a distribution which he does not receive and, subsequently, when he receives a distribution on which he is not taxed. In the first case, the basis for his stock goes up, since this is the equivalent of receiving the income and having contributed it back to the corporation. In the second case, the basis of his stock goes down, since this is the equivalent of "a return of capital" from the corporation which is not taxed to the shareholder.

A fifth rule spells out the fact that earnings and profits consist of three divisions: DISC income, which is all of the earnings and profits for the year in which a corporation is a DISC (except interest on producer's loans and certain gains arising from tax-free contributions to the corporation); previously taxed income, which, as its name implies, represents the deemed distributions already taxed to the shareholder; and, then, other earnings and profits which arise in a year or to the extent the corporation was treated as an ordinary corporation rather than a DISC.

Finally, a rule provides that where a nonresident alien or foreign corporation receives a distribution from a DISC or has gain taxed as ordinary income on the sale of stock, it is to be taxed in the same manner as if the individual were a resident or domestic corporation—otherwise, the deferred income in such cases might escape tax entirely. This is accomplished by designating this income as "effectively connected" to the conduct of a trade or business within the United States.

Treatment of actual distributions.—The bill provides that actual distributions by a DISC (or former DISC) to shareholders out of earnings and profits are to be considered as made, to the extent thereof, first out of previously taxed income, then out of accumulated DISC income and finally out of other earnings and profits of the corporation.

The type of actual distribution referred to here does not include a distribution made in order to qualify as a DISC (sec. 992(c)).[12]

Accordingly, to the extent a DISC (or former DISC) has previously taxed income as a result of deemed distributions being taxed to shareholders, actual distributions are first considered as being made from this source (and, as subsequently indicated, to that extent are to be excluded from the shareholder's gross income [13] and are to reduce the basis of his DISC stock). Of course, amounts distributed out of previously taxed income reduce the amount of previously taxed income of the corporation.

To the extent a distribution to a DISC's (or former DISC's) shareholders exceeds the previously taxed income, the distribution is to be treated as out of the accumulated DISC income (and as subsequently discussed, is not eligible for the dividends received deduction, but is generally treated as foreign source income).

The priority rules provided by the bill assure that, in the case of actual distributions, shareholders of a DISC (or former DISC) will be able to receive from the DISC amounts attributable to the deemed distributions, on which they previously have been taxed, prior to receiving taxable distributions. On the other hand, the rules insure that the shareholders must pay a tax on the DISC's tax-deferred income before they may receive dividends from the other earnings and profits of a corporation which are eligible for the dividends received deduction.

Distributions to meet qualification requirements.—As previously indicated, a corporation seeking to qualify as a DISC which has an excess amount of nonqualified gross receipts or nonqualified assets, is nevertheless permitted to qualify as a DISC if it makes a distribution of the nonqualified amounts. Since these distributions are viewed as consisting of nonqualified receipts or assets, it is thought they should be currently subject to taxation. As a result, it is necessary to provide a different priority rule for this type of distribution than that which applies in the case of other types of actual distributions to a DISC's shareholders.

To insure that these distributions are currently subject to taxation, they are treated as made, first out of accumulated DISC income, then out of other earnings and profits, and finally out of previously taxed income, to the extent of each of these amounts.

Treatment of losses.—The bill provides that if a DISC (or former DISC) incurs a deficit in earnings and profits as a result of a loss, the deficit is to be charged first to the DISC's other earnings and profits, then to its accumulated DISC income, and finally to its previously taxed income, to the extent of each of these types of earnings. Since the DISC's other earnings and profits have already borne tax at the corporate level, the deficit is charged against those earnings and profits

[12] Actual distributions for this purpose also do not include distributions to which section 995(c) applies (e.g., a distribution in redemption of stock).

[13] However, to the extent the previously taxed income would reduce the shareholders basis below zero, capital gain is recognized.

before it reduces the accumulated DISC income which has not yet been subjected to tax.[14]

Because it is desired that each period of qualification as a DISC be treated separately, and that the deemed distribution resulting from a disqualification or termination not be diminished by a deficit in earnings and profits occurring subsequent to the period of previous qualification, the bill provides that a deficit occurring subsequent to a period of qualification is not to be applied against the DISC income which it has been determined is to be deemed distributed to the shareholders as a result of disqualification or termination.[15]

Treatment of deemed distributions.—Any deemed distribution to shareholders of a DISC (or former DISC) is to be included in the shareholders' gross income as a dividend and increase the corporation's previously taxed income. This treatment applies to deemed distributions during qualified years as well as deemed distributions occurring upon the termination or disqualification of a DISC.

The amount of a deemed distribution made by a DISC's shareholders, if it is a deemed distribution upon disqualification or termination, also reduces accumulated DISC income. However, there is no similar reduction in accumulated DISC income for amounts which are deemed distributions during qualified years since these were taxed currently and not initially included in accumulated DISC income.

For example, assume an existing corporation (with earnings and profits of $200) becomes a DISC effective for the year 1975. Assume in that year, and the two following years, the corporation has DISC income (as of the end of the year) and deemed distributions as follows:

	1975	1976	1977
DISC income	$50	$70	[illegible]
Deemed distributions (resulting in previously taxed income)	10	15	20

Assume further that during 1977 the DISC makes a cash distribution to its shareholders in the amount of $280. (As discussed below, the bill provides that deemed distributions are considered to have been made prior to any actual distributions during the year.) Thus, for the year 1977, the shareholders will be deemed to have received a distribution of $20, which will be taxable as a dividend. Accordingly, as of the end of 1977, before taking the actual distribution into account, the DISC has previously taxed income of $45 resulting from the distributions

[14] For example, assume a corporation, which elected to be taxed as a DISC beginning in 1976, has the following earnings record:

1975—$50 of earnings and profits (prior to becoming a DISC)
1976—$10 of DISC income
$2 of previously taxed income
1977—$10 of DISC income
$2 of previously taxed income
1978—$10 of DISC income
$2 of previously taxed income

In 1979, assume that the DISC incurs a deficit in earnings and profits of $70. This deficit is charged first against other earnings and profits (exhausting that account) and next against DISC income. Thus the DISC, as of the beginning of 1980, would have DISC income of $10 and previously taxed income of $6.

[15] For example, if a corporation became disqualified as a DISC for 1979, at which time it had $30 of accumulated DISC income accumulated over the prior 3 years, the shareholders would be deemed to have received distributions equal to their pro rata share of the accumulated DISC income ratably over the following 3 years, or a total deemed distribution of $10 per year. If the corporation incurred a deficit in earnings and profits for 1979, the deficit would not affect the status of the three-$10 deemed distributions resulting from the disqualification. Instead, the deficit would be charged first to other earnings and profits of the corporation, if any, and then to the previously taxed income. Any amount of the deficit then remaining would be available to reduce earnings and profits arising in future years.

deemed made by the corporation during the years in which it was a DISC. Since the actual distribution of $280 made during 1977 is considered to have been made first from previously taxed income, the shareholders will be entitled to exclude $45 of the distribution from income. The remaining portion of the distribution ($235) is considered to consist of $200 of DISC income, and finally of $35 of other earnings and profits.

Priority of distributions.—The bill provides that deemed distributions are considered to have been made prior to actual distributions made during the same taxable year. Insofar as actual distributions are concerned, distributions to qualify the corporation as a DISC are considered to have been made prior to any other actual distributions made during the same taxable year.[16]

Subsequent effect of previous disposition of DISC stock.—As discussed above, the bill provides that a shareholder who disposes of his stock in a DISC (or former DISC) must, in certain instances, treat his gain realized as ordinary income to the extent of the accumulated DISC income attributable to the shares disposed of. Thus, to the extent of the gain treated as ordinary income the shareholder is treated as if he had received an actual distribution of accumulated DISC income. Since this ordinary income treatment arises only with respect to one shareholder, however, no adjustment is made at the corporate level to the accumulated DISC income or previously taxed income of the DISC. Adjustments at the corporate level reflect events affecting all the shareholders on a pro rata basis, rather than just one shareholder.

To provide appropriate treatment in the situation where only one shareholder is taxed on a portion of the corporation's accumulated DISC income by reason of a disposition of his stock the bill provides a special rule. Under this rule a subsequent holder of the stock is to have a special adjustment which, in effect, permits him to treat the receipt of a subsequent actual distribution (or a deemed distribution occurring as a result of the disqualification or termination of the DISC) of accumulated DISC income as if the distribution were made out of previously taxed income (and thus nontaxable) to the extent gain on the previous dispositions of the stock was taxed as ordinary income.[17]

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[16] To illustrate the application of these priority rules, assume an existing corporation (owned by a single shareholder), with accumulated earnings and profits of $10, elects to be treated as a DISC. At the end of its first year of operation as a DISC, it has DISC income of $4 and previously taxed income of $2. In its next year of operation, it earns DISC income of $4. In April of that year, the DISC makes a qualifying distribution of $6 for the preceding year. In June, the stock of the DISC is acquired by another corporation in a tax-free "B" reorganization, which results neither in the recognition of gain nor in ordinary income treatment for the disposing shareholder. In September, the DISC makes an actual distribution to its new shareholder, the acquiring corporation, in the amount of $8. During the year the DISC derived $2 of interest on producer's loans which is deemed to be distributed on the last day of the year. Of the three distributions (the $6 qualifying distribution to the first shareholder, the $8 actual distribution to the new shareholder, and the $2 deemed distribution to the new shareholder), the $2 deemed distribution is considered to have been made first. The deemed distribution thus is ordinary income to the new shareholder and increases previously taxed income by the same amount. The $6 qualifying distribution is considered to have been made next, and is considered to be entirely out of accumulated DISC income (sec. 996(a)(2)). Thus, the prior shareholder of the DISC will have ordinary income in the amount of the distribution and will not be entitled to the dividends received deduction with respect to such amount. The $8 actual distribution is considered to have been made last in order and is considered first out of previously taxed income, of which the DISC has $4, next out of accumulated DISC income of which the DISC has $2, and last out of other earnings and profits, of which the DISC has a sufficient amount to cover this portion of the actual distribution. Accordingly, the new shareholder would be considered, insofar as the actual distribution of $8 is concerned, as having received $4 tax-free from previously taxed income, $2 from DISC income (which would not be eligible for the dividends received deduction) and $2 from other earnings and profits (which would be eligible for the dividends received deduction).

[17] For example, assume that a shareholder in a DISC is required to treat $20 of his gain on the sale of his DISC stock as ordinary income. Although the accumulated DISC income and the previously taxed income of the corporation are not adjusted to reflect this ordinary income treatment, the purchaser is to treat up to $20 of a subsequent actual distribution (or a deemed distribution resulting from termination or disqualification) out of accumulated DISC income in the same manner as a tax-free distribution from previously taxed income. Thus, if the corporation made an actual distribution to the purchaser of $15 out of accumulated DISC income, he would not be taxed on this amount, even though the corporation itself had no previously taxed income.

This special adjustment rule continues to apply even though the stock is again transferred to another person.[18] It does not, however, apply with respect to gain on an acquisition by a DISC or former DISC of its stock or, in the event of such an acquisition, to gain on a transaction prior to the acquisition.

Since a redemption by a DISC of its stock is economically equivalent to the acquisition of the DISC stock by the remaining DISC shareholders, the bill provides in this case for a reduction in the corporation's accumulated DISC income to the extent of the ordinary income realized (as a result of sec. 995(c)) by the redeemed shareholder upon the redemption. If the redeemed shareholder was entitled to the special adjustment rule, the corporation's accumulated DISC income also is to be reduced by the amount of the special adjustment, i.e., the amount of the DISC income which the redeemed shareholder could have received tax-free.[19]

Adjustments to basis.—When a shareholder of a DISC (or former DISC) is taxed on a deemed distribution of an amount which remains in the corporation, it is in essence as if there had been an actual distribution of the amount to the shareholder followed by a contribution by him of the amount to the corporation's capital. In the latter case, the basis of the shareholder's stock in the corporation would be increased by the amount of the capital contribution. To provide the same treatment in the case of deemed distributions, the bill provides that the basis of a shareholder's stock in the corporation is to be increased by the amount taxed to him as a deemed distribution.

On the other hand, the tax-free receipt by a shareholder of a DISC or former DISC of an actual distribution out of previously taxed income is the equivalent of a tax-free distribution of capital which under normal rules would result in a reduction of the basis of his stock. Accordingly, it is provided that the basis of the shareholder's stock in the DISC is to be reduced by the amount received by him tax free from previously taxed income (including amounts received tax free pursuant to the special adjustment rule). If a distribution of previously taxed income exceeds the basis of the shareholder's stock, it is to be treated by him as gain from the sale or exchange of property.

Definitions of divisions of earnings and profits; treatment of deemed distributions.—The bill provides that the earnings and profits of a DISC (or former DISC) are to be divisible into three separate categories.

The first division, DISC income, consists of those earnings and profits on which tax has been deferred because of the corporation's classification as a DISC in the year the income was earned. Thus, DISC income for a taxable year is the earnings and profits of a DISC during that year before reduction for any actual distributions made during the year but after reduction for interest on producer's loans and

[18] For example, if the purchaser, in the example in the preceding footnote, transferred his DISC stock by gift to his son after having received the $15 distribution from the DISC which was tax-free to him under the special adjustment rule, the son would become entitled to the special adjustment rule. The amount of the special adjustment, however, would only be the excess of the gain treated as ordinary income to the original seller upon the sale, $20, over the amount previously treated as if it were from previously taxed income ($15). Consequently, an actual distribution by the DISC to the son of an amount up to $5 would be treated as tax-free to him.

[19] For example, assume a DISC with $100 of accumulated DISC income redeems the stock of a shareholder who treats $25 of his recognized gain as ordinary income. Assume also that the redeemed shareholder, because of the special adjustment rule, could have received $30 of DISC income from the DISC tax-free. In this case, the accumulated DISC income of the corporation is to be reduced to $45 ($100 minus $55) as a result of the redemption.

the ordinary income portion of the gain on the sale of property previously transferred to a DISC in a nonrecognition exchange (sec. 995(b)(1)) which is deemed distributed currently to shareholders. These latter amounts are omitted from DISC income, since they are taxed currently to the shareholders of a DISC and, therefore, do not represent earnings of a DISC on which tax has been deferred. If a DISC, because of its ownership of stock in a controlled foreign corporation, must include any amounts in its gross income, as a result of the application of subpart F, these amounts also are to be included in the DISC income division of earnings and profits for the year included in the DISC's taxable income.

In the phase-in years, since the DISC itself is to be subject to a partial tax liability, the corporation is not to include in the DISC income division those earnings and profits on which the DISC itself must pay tax. For example, assume that during the first year of its DISC election a corporation had taxable income and earnings and profits of $200,000. If this was a taxable year beginning in 1971, its tax liability would be 50 percent of the tax liability which would be imposed if it were not a DISC. (Its tax liability as a DISC, assuming a 50-percent rate, would thus be one-half of $100,000, or $50,000.) In computing the DISC income attributable to 1971, it would be necessary, therefore, to allocate one-half of the corporation's earnings and profits before tax to the DISC income division and the remaining half (reduced for the tax paid) to the division of "other earnings and profits". Accumulated DISC income is the aggregate of DISC income for the current and all prior years reduced by actual distributions (to the extent these distributions are treated as made out of DISC income) and deemed distributions attributable to disqualification or termination of an election (sec. 995(b)(2)).

The second division of a DISC's earnings and profits is previously taxed income. The amounts in this division represent the total of the amounts previously taxed to shareholders as deemed distributions (under sec. 995(b)), including both distributions when the corporation was and was not qualified as a DISC. Thus, if a shareholder is deemed to have received a distribution as a result of the termination of a DISC election, or the failure of the corporation to qualify as a DISC, or if he received a deemed distribution related to a qualified year of a DISC, the amount of any such deemed distribution is to increase previously taxed income and, in the case of a deemed distribution resulting from termination or disqualification, reduce accumulated DISC income.

The third division of a DISC's earnings and profits, is referred to as "other earnings and profits." This has reference to those earnings and profits of a DISC which were accumulated while the corporation was not taxed as a DISC (i.e., in a year prior to the corporation's election, or subsequent to the election if it did not qualify for the year) and to those earnings and profits which it earned during the phase-in period to the extent they were taxed currently. These are the "normal" earnings and profits of a DISC which are the same as the earnings and profits of an ordinary corporation which never was a DISC. As a result, these earnings and profits when distributed are eligible for the dividends received deduction and are not treated as foreign source income.

Effectively connected income.—The bill treats all actual and deemed distributions and gains which are taxed as ordinary income, insofar as shareholders of a DISC who are nonresident aliens or foreign corporations are concerned, as effectively connected with the conduct of a trade or business conducted through a permanent establishment by the shareholder within the United States. The effect of this provision is to place distributions from a DISC (both deemed and actual) and gains on the disposition of DISC stock treated as ordinary income (pursuant to sec. 995(c)) in the category of income which is subject to U.S. tax, when received by nonresident aliens and foreign corporations, on a net income basis and at the regular rate of tax.

(c) *Special subchapter C rules (sec. 402 of the bill and sec. 997 of the code)*

The amount distributed in the case of a distribution of property (as distinct from money) to a corporate distributee usually is measured by reference to the basis of the property distributed, rather than its fair market value as is the case with distributions to individuals. In addition, the basis of property received by a corporate distributee usually is the adjusted basis of property distributed in the hands of the distributing corporation. (See secs. 301(b)(1)(B), and 301(d)(2)). However, since the distribution of property from a DISC, out of DISC income or previously taxed income, is includable in the income of the recipient in full (or, in the case of previously taxed income, has previously been so included), without benefit of the dividends received deduction, it is more appropriate to treat the distributions under the same rules as apply to distributions to individuals. In this case, there is not the possibility of two taxes as there usually is where the dividends received deduction is not available and one corporation makes a distribution to another corporation.

Consequently, the bill provides that the rules applicable to distributions to an individual are to apply to distributions by a DISC to the extent they are out of DISC income or previously taxed income (but not to the extent they are out of other earnings and profits where there is the possibility of a double tax). Thus, the amount of these distributions in property are to be measured by the fair market value of the property distributed and the basis of the property distributed in the hands of the corporate distributee is to be its fair market value at the time of the distribution. To the extnet that the distribution is out of the other earnings and profits of a DISC, the normal rules of section 301 are to apply.

The special rule described above, of course, has application to distributions by a former DISC to a corporate distributee, to the extent the distributions are out of the corporation's accumulated DISC income or previously taxed income.

4. Miscellaneous Provisions

(a) *Dividends received deduction (sec. 403(a) of the bill and sec. 246(d) of the code)*

Generally, a corporation receiving a dividend from a domestic corporation is entitled to a deduction (usually equal to 85 percent of the dividend) in computing its taxable income. This intercorporate dividends received deduction is designed to prevent, for the most part, the multiple taxation of corporate earnings as they pass from one corporation to another. Since a DISC is not, however, subject to taxation on its earnings and profits as a DISC, there is no reason to provide for an intercorporate dividends received deduction for dividends distributed to corporate shareholders of a DISC.

As a result, the bill provides that the dividends received deduction is not to be available to corporate distributees to the extent dividends from a DISC (or former DISC) are out of accumulated DISC income, or previously taxed income, or are a deemed distribution in a year in which a corporation qualifies as a DISC (under sec. 995(b)(1)).

If, however, the dividend is made out of other earnings and profits, a corporate distributee is to be entitled to a dividends received deduction in the same manner and to the same extent as under the rules applicable to a distribution from a regular corporation under existing law.

(b) Foreign tax credit (sec. 403(b) of the bill and sec. 901(d) of the code)

The bill makes the foreign tax credit available to shareholders of a DISC (or former DISC) for any foreign income taxes paid by the corporation with respect to certain distributions (whether deemed or actual). This is accomplished by providing that dividends from a DISC (or former DISC) are to be treated as dividends from a foreign corporation to the extent the dividends are treated as from sources without the United States. An amendment to the source rules (adding sec 861 (a)(2)(D) to the code), provides that dividends from a DISC are to be considered to be from sources without the United States to the extent attributable (as determined under regulations to be prescribed) to qualified export receipts (other than interest from U.S. sources) of the DISC.

By treating dividends from a DISC (or former DISC) as from a foreign corporation, to the extent the dividends are attributable to qualified export receipts (other than United States source interest), a corporate shareholder becomes entitled to the "deemed paid" foreign tax credit (section 902 of the code) with respect to any foreign income taxes paid by the DISC (or former DISC).

The classification of dividends as from sources without the United States (to the extent attributable to qualified export receipts other than United States source interest), will allow a shareholder of a DISC to take such amounts into consideration in computing the shareholder's applicable limitation on the foreign tax credit. Thus, a DISC shareholder, electing the overall limitation provided for by section 904(a)(2), may treat dividends from a DISC, including deemed distributions, made out of DISC income and attributable to qualified export receipts (other than interest from U.S. sources), as from sources without the United States in computing the numerator of the fraction which imposes the overall limitation on the foreign tax credit.

(c) Western Hemisphere Trade Corporations (sec. 403(c) of the bill and sec. 922 of the code)

The bill provides that a corporation which is a DISC for a taxable year and which also would otherwise qualify as a Western Hemisphere trade corporation for the year is not to be allowed the special Western Hemisphere trade corporation deduction (which is equivalent to a 14 percentage point rate reduction) for that year. Moreover, this deduction is not to be available during the transition period for a corporation electing DISC treatment even though in the transition years it is also partially subject to the regular corporate tax. Denial of the deduction will insure that during this period a DISC does not receive the double benefit of Western Hemisphere trade corporation treatment and DISC treatment. The special deduction is available to a former DISC if it otherwise qualifies for the deduction.

In addition, the bill also provides that a corporation may not receive the special Western Hemisphere trade corporation treatment for any year for which it owns stock in a DISC or former DISC. It would be inappropriate to accord tax-deferred status to a DISC's profits when earned by the DISC and, in addition, the special Western Hemisphere trade corporation tax rates on those profits when they are distributed by the DISC.

(*d*) *Possessions' corporations (sec. 403(d) of the bill and sec. 931(a) of the code)*

Under present law, a U.S. corporation is treated as a possessions' corporation if most of its income is derived from a possession. A possessions' corporation is taxable by the United States only on its U.S. source income. If a possessions' corporation were allowed this special treatment for a taxable year in which it was a shareholder in a DISC or former DISC, the tax-deferred profits of the DISC or former DISC which were distributed or deemed distributed to the possessions' corporation would be free of tax in the possessions' corporation's hands, since they are not treated as U.S. source income. To prevent this result, the bill provides that the special possessions' corporation treatment is not to be available to a corporation for any year in which it owns stock in a DISC or former DISC. The bill also provides that the special treatment is not to be available to a corporation for any year in which it, itself, is a DISC.

(*e*) *Consolidated tax returns (sec. 403(e) of the bill and sec. 1504(b) of the code)*

The bill provides that a DISC or former DISC may not be included in a group of affiliated corporations electing to file a consolidated tax return. An affiliated group of corporations which files a consolidated tax return, in effect, is allowed a 100 percent dividends received deduction on dividends flowing from one member of the group to another. The allowance of this treatment, like the allowance of the general dividends received deduction, is not compatible with the principle that earnings of a DISC are not to be taxed in the hands of the DISC but rather are to be taxed in the hands of its shareholders.

(*g*) *Special rule with respect to DISC stock acquired from a decedent (sec. 403(f) of the bill and sec. 1014(d) of the code)*

In order to prevent the possibility of a DISC shareholder, who receives stock of a DISC (or former DISC) from a decedent, from escaping taxation on the DISC income attributable to those shares when they are disposed of by him, your committee has provided a special basis rule with respect to such stock when acquired from a decedent.

An amendment to the general basis rule relating to property acquired from a decedent (sec. 1014) provides that the basis ascribed stock of a DISC (or former DISC) acquired from a decedent is to be the basis of the property determined under the general rule in such cases (fair market value upon the applicable estate tax valuation date) but reduced by the amount which would have been treated as ordinary income (under sec. 995(c)) had the decedent lived and sold the DISC stock at its fair market value on the applicable estate tax valuation date. Thus, the basis of DISC stock in the hands of an individual acquiring such stock from a decedent is still to reflect the potential taxation to such individual (as ordinary income) of the DISC income attributable to the acquired shares.

This rule can be illustrated by assuming that A, possessing DISC stock with a basis of $60 in his hands, dies when the stock has a fair market value of $100. Assume further that A's fiduciary elects the date of death valuation for Federal estate tax purposes. If the DISC income attributable to the inherited shares is $30, the basis of such stock to the legatee (B) would be $70 (the fair market value at death, $100, reduced by the amount, $30, which would have been treated as ordinary income if the stock had been sold by the decedent on the date of death). Consequently, the subsequent sale of the inherited DISC stock by B for $100 would (assuming no decrease in the DISC income attributable to such shares) generate $30 of ordinary income to B.

The rule provided by your committee has application whenever stock of a DISC (or former DISC) is included in the decendent's gross estate for Federal estate tax purposes. For example, if the DISC stock in the above example had been transferred by A to B in contemplation of death, the property would have been included in the decedent's gross estate and the basis in B's hands would be determined under the DISC rules in the same manner as if the stock had been acquired by B as a result of A's death.

Where the decedent's fiduciary elects the alternate valuation date for Federal estate tax purposes (pursuant to sec. 2032), in computing the gain which the decedent would have had if he had sold the DISC stock on the alternate valuation date, his basis is to be determined with reduction for any distributions which may have been made, after the date of the decedent's death and before the alternate valuation date, from the DISC's previously taxed income. By providing that the decedent's basis in the hypothetical sale is reduced by post-death distributions from previously taxed income, it is insured that the basis of the beneficiary will reflect the fact that a distribution has been made from previously taxed income during administration and prior to the alternate valuation date. For example, assume that A dies possessing DISC stock with a basis of $100, which stock is bequeathed to B. If the stock has a value of $110 on the alternate valuation date, its basis to B (assuming that the corporation has $50 of DISC income and $10 of previously taxed income) would be $100 ($110 less $10, the amount which would have been treated as ordinary income if the decedent had lived and sold the stock on the alternate valuation date). On the other hand, if a distribution of $10 had been made from previously taxed income prior to the alternate valuation date, B's basis would be $90 ($100, the fair market value of the stock on the alternate valuation date, less $10, the amount which would have been treated as ordinary income if the decedent had lived and sold the stock on the alternate valuation date).

(h) *Procedure and administration (sec. 405 of the bill and secs. 6011, 6072, 6501, and 6686 of the code)*

The bill provides various reporting and recordkeeping procedures for corporations which are or were DISC's. A DISC is to file a tax return for its taxable year on or before the 15th day of the 9th month following the close of the taxable year on such forms as are prescribed by the Treasury. A DISC or former DISC also must furnish for a taxable year such information to the Internal Revenue Service, and to any persons who were shareholders of the corporation at any time during the taxable year, as the Treasury requires by regulations. In addition, a DISC or former DISC must keep such records as are required by Treasury regulations.

Generally, the statute of limitations on the assessment of tax by the Internal Revenue Service against a corporation begins to run on the due date for the corporation's tax return (if the return is filed by that time). For purposes of applying this rule, the bill provides that if a corporation in good faith determines it is a DISC and files a DISC tax return for a taxable year, that tax return is to be considered as a regular corporate tax return. Thus, if the corporation subsequently is held not to be a DISC for the year, the filing of the DISC tax return will have started the statute of limitations running for purposes of assessments of tax against the corporation.

Penalties (which are in addition to the penalties provided in section 7203 regarding willful failures to file returns, supply information, or pay taxes) are provided for a failure to file a DISC tax return or to supply the information required under the bill. In the case of a failure to supply information, the penalty is to be $100 for each failure but the total penalty imposed for a calendar year with respect to failures to supply information may not exceed $25,000. In the case of a failure to file a DISC tax return, a penalty of $1,000 is imposed. These penalties, however, are not to apply in any case where the faulure to supply information or file a DISC tax return is due to reasonable cause.

5. Export Trade Corporations (Sec. 407 of the Bill)

Under present law, a U.S. parent corporation of a controlled foreign subsidiary is subject to tax currently on the foreign subsidiary's subpart F income (generally its trading, etc., income). If the foreign subsidiary, however, derives its trading income from the sale of U.S. exports and invests that income in export trade assets, then the tax liability of the parent company on a subsidiary's income is deferred as long as it remains invested in the export trade assets. To a large extent, the export trade corporation provisions of present law serve the same objective which the DISC treatment provided by your committee's bill is designed to serve. Since there is a substantial overlap between these two sets of provisions, your committee believes it is appropriate to repeal the export trade corporation provisions of present law after the expiration of the transition period under the DISC program and, in addition, to allow a parent corporation to transfer assets from its export trade corporation subsidiary to a DISC subsidiary without immediate tax consequences.

The bill provides that if a parent corporation directly owns all the outstanding stock of an export trade corporation and all the outstanding stock of a DISC, then no gain or loss or immediate income tax consequences are to result to any of the corporations involved, if the export trade corporation contributes property to the DISC in situations where the following three conditions are satisfied. First, the amount transferred to the DISC must be at least equal to the amount of the export trade corporation's untaxed subpart F income (i.e., the previously earned subpart F income on which tax has been deferred by virtue of export trade corporation treatment). Second, the transfer must occur on the last day of a taxable year of the export trade corporation which begins before 1975. Finally, at the time of the transfer, the export trade corporation may not have any earnings and profits which although previously taxed under subpart F to its parent company have not yet been distributed to the parent company.

If the above described conditions are satisfied with respect to a transfer of property from an export trade corporation to a DISC, the bill provides that a series of adjustments are to be made with respect to the export trade corporation and the DISC to reflect the fact that the export trade corporation's tax deferred earnings have been transferred to the DISC. First, the earnings and profits of the DISC and its accumulated DISC income (i.e., its tax deferred income) are to be increased by the amount of any earnings and profits transferred to it (and the export trade corporation's earnings and profits are to be reduced by the same amount). This is to occur even if the amount transferred to the DISC is in excess of the export trade corporation's untaxed subpart F income, since the excess represents other untaxed foreign earnings. These amounts are to be treated as foreign source income when distributed by the DISC and the taxes paid by the export trade corporation on its earnings which are transferred to the DISC, in effect, are to be considered as paid by the DISC for purposes of determining the allowable deemed paid foreign tax credit which a corporate shareholder of the DISC is entitled to when it receives a dividend from the DISC.

Adjustments to the basis of the parent company's stock in the export trade corporation and the DISC also are provided by the bill so as to take account of the fact that all, or a portion, of the parent company's investment in its export trade corporation subsidiary has been transferred to its DISC subsidiary. It is provided that the basis of the parent's stock in the export trade corporation is to be reduced proportionately by the percentage of the export trade corporation's assets (measured by their adjusted basis) transferred to the DISC. For example, if 25 percent of an export trade corporation's assets were transferred to a DISC and the parent company's basis for its stock in the export trade corporation was $1 million, then that basis is to be reduced to $750,000. The amount by which the basis of the parent company's stock in its export trade corporation subsidiary is reduced is to be added to the basis of its stock in its DISC subsidiary.

In determining the amount of property transferred from an export trade corporation subsidiary to a DISC subsidiary, the bill provides that the amount transferred is to be the adjusted basis of the transferred property with proper adjustment being made for any indebtedness secured by the property or assumed by the DISC in connection with the transfer.

The rules discussed above apply in the situation where the parent company directly owns all of the stock of both its export trade corporation subsidiary and its DISC subsidiary. In situations where either the 100 percent ownership requirement is not met or the direct ownership requirement is not met, the bill provides that the rules discussed above are to be applicable to the extent, and in accordance with such rules, as the Secretary of the Treasury provides by regulations.

As indicated above, the export trade corporation provisions of present law are to be repealed for taxable years beginning after 1974.

It is possible that an export trade corporation at the time of the repeal will still have untaxed subpart F income. It may not have transferred its untaxed subpart F income by that time to a DISC under the rules discussed above. In such a case, it would appear that the corporation no longer intends to use the income in the export business and, accordingly, the bill provides that the corporation's untaxed subpart F income is to be taxed as if it had been ratably withdrawn from the export business over a 10-year period. In such a case, the amount of the former export trade corporation's untaxed subpart F income which it has at the end of its last taxable year to which the export trade corporation provisions apply (i.e., its last taxable year beginning before 1975) is to be ratably taxed to the shareholders of the corporation as subpart F income over the 10-year period beginning with its first taxable year after 1974. These amounts are to be included in the shareholders' gross income, whether or not the foreign corporation makes a minimum distribution election, in the same manner as would occur under present law if the untaxed income were withdrawn from investment in export trade assets.

6. Submission of Annual Reports to Congress (Sec. 408 of the Bill)

In order that the Congress may be apprised of the effects of the DISC treatment provided by the bill, it is provided that the President is to submit an annual report to Congress setting forth an analysis of the operation and effect of the DISC system of taxation. Among other things, the report is to include an analysis of the revenue effects of the DISC system as well as its effects on the balance of trade of the United States.

These reports, which are to begin with the report for calendar year 1971, are to be submitted to the Congress within 15½ months following the close of each calendar year.

L. OTHER TRADE MATTERS

There are a number of trade issues which were presented to the Committee during the course of its public hearing and in the executive sessions on which the committee has no legislative proposal at this time, but on which the committee does have certain views.

U.S. Agricultural Exports

Your committee was seriously disturbed by testimony respecting trade problems created for American agriculture by the agricultural policies of some of our trading partners. These policies are hurting U.S. farm product exports in two major ways. First, variable levies and/or import quotas—both particularly burdensome forms of nontariff trade barriers—insulate the markets of the protecting countries from the competition of more efficient suppliers and thus reduce or eliminate imports. Second, surpluses stimulated by high prices in the protected countries are being moved into world trade channels through use of heavy subsidies.

The failure of others to mitigate the impact their agricultural policies are having on the world is a matter of deep concern. U.S. exports of variable levy products to the European Community have fallen by 40 percent since 1967. Total U.S. agricultural exports to the European Community dropped by 14 percent. On the other hand, U.S. imports of competitive agricultural products over the same period have increased by 15 percent. European Community grain policies have resulted in a drop in European Community net imports from 12 million tons to less than 2 million tons over the last 3 years. This has had significant repercussions on world trade. Moves by the United Kingdom toward increased agricultural protectionism and the prospect of increased reliance on a variable levy system have also contributed to growing world agricultural isolationism. We cannot hope for a better climate until the current trends in agricultural policy are arrested. Specifically, the price of grains in Europe needs to be significantly reduced and subsidies need to be limited. The further extension of restrictionist policies to other products would be very damaging. Any impediment to access for soybeans and soybean products would be of great concern.

Voluntary Steel Arrangement

Among those industry situations reviewed by the committee in terms of rapidly increasing imports and rising proportion of domestic market accounted for by imports is the position of the domestic steel industry. The attention of your committee has been called to the fact that the voluntary arrangements entered into by the European Coal and Steel Community and Japanese steel producers are to remain in effect until the end of 1971. It is understood that these arrangements provide for annual increases in exports to the U.S. and involve a commitment to maintain both product and geographic distribution patterns based on trade prior to the undertaking by the foreign steel producers. Your committee believes that this arrangement was necessary to forestall a serious deterioration in the domestic steel market insofar as domestic steel producers are concerned. Accordingly, it is the sentiment of the committee that the administration should endeavor to have these voluntary undertakings extended and improved in order to assure a stable domestic steel industry and an adequate supply of steel for the American economy in the future. It is hoped that the problems of international marketing of steel as recognized by the voluntary arrangement, would also be recognized by the steel industries in countries not party to the agreement, particularly those which export substantial quantities of carbon and specialty steel products to the United States.

International Labor Standards

Your committee is very much aware of the employment problems that can result from economic adjustments created by present trends both in imports into the United States and foreign investment decisions involving shifts of productive capacity abroad. These problems were reviewed by the committee in its consideration of H.R. 14188 concerning U.S. components and articles assembled abroad, which is commented on below.

In the bill the committee has adhered to the concept that differentials in labor costs must be viewed within the context of labor costs involved in a unit of production. Nevertheless, the huge differentials which exist between United States wage costs and those of many other countries pose extremely difficult competitive problems for some domestic industries, as the committee has recognized in the temporary measures provided for in Title II with regard to textile and footwear.

The committee has in its amendments of the tariff adjustment provisions also provided means whereby serious injury stemming from such wage differentials can be dealt with on a temporary basis giving time for the adjustment process. For the long run, however, the committee feels that it is in the interest of trade liberalization and expansion that the trade agreements program include formal procedures under which unfair labor conditions can be dealt with.

Your committee is of the opinion that the President as soon as practicable should take steps with respect to trade agreements which would lead to the elimination of unfair labor conditions which substantially disrupt international trade. Machinery should be set up in trade agreements to which the United States is a party which would include: (1) the recognition of principles with respect to earnings, hours, and conditions of employment of workers; (2) the development of a complaint procedure under which situations of unfair labor conditions affecting international trade could be brought before the parties to the agreement for appropriate remedial action; and (3) the establishment of a system of periodic reports by all parties to the agreements on earnings, hours, and conditions of employment for the workers in the exporting industries of the countries involved.

Articles Assembled Abroad With U.S. Components

Your committee received a great deal of testimony with respect to the issues involved in H.R. 14188, the purpose of which is to provide for the repeal of item 807.00 of the tariff schedules. H.R. 14188 provides for the termination of the reduced duty status of imported articles which contain U.S. components exported abroad for the purpose of assembly and return to the United States. During the period 1966 through 1969, the total value of imports under item 807.00 and 806.30, a similar provision which provides for a partial exemption from duty for U.S. articles of metal exported for processing and reimported for further processing, rose from $953 million to $1.8 billion. Such a growth in the use of these tariff provisions is an indication of the economic force at work, particularly with regard to labor costs in labor intensive operations.

The committee recognizes that in some United States firms the provisions, which have the effect of providing a tariff preference for products containing U.S. materials, improve the competitive position of the U.S. firms vis-a-vis products of wholly foreign origin. In some respects the competitive position of the domestic firms can be improved to the extent of providing an encouragement to United States exports. On the other hand, the committee is seriously concerned that the duty advantage may have the effect of encouraging the exports of job opportunities from the United States, particularly in those operations which are labor intensive.

The President requested last year that the U.S. Tariff Commission make a study of these two provisions, and the results of that study are to be sent to the President by August 31, 1970. In view of the Tariff Commission study, the committee has determined not to propose any changes in the existing provisions until the results of the Tariff Commission study become available. At the same time, the committee would urge that those appropriate agencies in the executive branch promptly review the Tariff Commission report and submit to the Congress such recommendation as may be needed to assure that the use of these provisions will not endanger the overall job opportunities of United States workers, or encourage working conditions abroad inconsistent with the improvement of labor standards in the United States and in other countries.

Other Barriers to Trade

Further trade liberalization is dependent upon the dismantling of the many unjustifiable and uneconomic burdens on world commerce. The failure to deal with non-tariff barriers is threatening the basic foundation of reciprocity and what the United States believed to be a mutually beneficial exchange of tariff concessions in past negotiations. Despite continued efforts in the General Agreement on Tariffs and Trade and other international forums, including the OECD, and in bilateral discussions, insufficient progress is being made in reducing or eliminating such barriers to international trade. The committee has recognized this growing problem in its amendments to section 252 of the Trade Expansion Act.

There is much that can and should be done in lifting the burdens from United States exports, and the administration should vigorously pursue this goal in discussions with our trading partners.

Unlike tariffs, prior Congressional delegation of authority to the President to reduce barriers to trade, other than tariffs, is difficult to embody in legislation because these restrictions often have their roots in purely domestic concerns that are only indirectly related to foreign trade and are imbedded in domestic laws and practices. Many such barriers would require legislative action to accomplish their removal. To some degree, the nature of such actions might not finally be clear until negotiations had shown what is possible.

In view of these difficulties, your committee does not consider it appropriate or feasible to consider legislation regarding the international negotiations on barriers to trade other than tariffs until the specific details of such legislation are clear. In this respect, representatives of the executive branch should consult with this committee and such other committees of the Congress, as may be appropriate, in the examination of possible changes in domestic law which might be called for as a result of international negotiations in order to benefit from Congressional views on the future development of acceptable standards of conduct in international trade practices. Subject to such consultation and in consideration of the subsequent enactment of any necessary implementing legislation, the President should continue to discuss with other countries the means by which barriers to trade, other than tariffs, can be reduced or eliminated.

In addition, the committee believes that the international harmonization of standards for industrial and agricultural products and the adoption of common quality assurance and certification schemes merit immediate consideration. Decisions being made today with respect to international harmonization of product standards are extremely important to the future growth of U.S. exports. Producers, for example, can manufacture a single model that will meet the requirements of many countries instead of having to manufacture several models to meet varying national standards requirements. And mutual recognition of quality testing saves producers the expense and time involved in undergoing tests in each market. But if these arrangements are exclusive, they become trade barriers by discriminating against the product of third countries. To prevent such discrimination and to fully enjoy their benefits countries willing and able to assume the responsibilities of membership should be free to join in these undertakings.

In order for the United States to effectively participate in international harmonization and certification schemes there must be full cooperation and coordination between government and industry in standard matters.

Both government and industry should now take whatever steps are necessary to ensure that U.S. exports are not denied the opportunities offered by international efforts directed toward standards harmonization and certification. In particular, this will require adequate funding of U.S. participation in international standards writing and insuring that the United States possesses the institutional facilities necessary to take part in testing and certification arrangements. The Department of Commerce is the logical agency within the U.S. Government to initiate and coordinate these efforts as they relate to industrial products.

Study of Meat Imports

During the course of testimony presented to the committee, on meat importation and the laws related thereto, there appeared to be some controversy as to whether there is a change in the composition of beef imports. The Tariff Commission is presently working on a survey of markets for imported beef. Since information will be available to the Department of Agriculture from the Commission, and other sources, the committee requests that the Department of Agricu'ture provide it with a study on imported meat.

V. TECHNICAL EXPLANATION OF THE BILL

Section 1. Short title

Section 1 of the bill provides that the bill when enacted may be cited as the "Trade Act of 1970".

TITLE I—AMENDMENTS TO THE TRADE EXPANSION ACT OF 1962

Chapter 1—Trade Agreements

Section 101. Basic Authority for Trade Agreements

Section 101(a) of the bill amends section 201(a)(1) of the Trade Expansion Act of 1962 (hereinafter in this explanation referred to as "1962 Act") so as to extend until the close of June 30, 1973, the period during which the President may enter into trade agreements with foreign countries and instrumentalities under the 1962 Act.

Section 101(b) of the bill amends section 201(b)(1) of the 1962 Act to provide that no proclamation made by the President to carry out any trade agreement entered into during the period July 1, 1967, through June 30, 1973, may decrease any rate of duty to a rate below the lower of (1) the rate 20 percent below the rate existing on July 1, 1967 (as defined in section 101(d) of the bill); or (2) the rate 2 percent ad valorem (or ad valorem equivalent) below the rate existing on July 1, 1967.

Section 101(c) amends sections 202, 211 (a) and (e), 212, 213(a), and 221 of the 1962 Act. These sections provided that the limits on the authority contained in section 201(b)(1) of the 1962 Act were not to apply in specified cases (so that the rate of duty could have been reduced to zero). The specified cases were articles having a 1962 rate of duty of 5 percent ad valorem or less, articles in any category for which the United States and the European Economic Community accounted for 80 percent or more of the aggregated world export value of all such articles, and certain agricultural, tropical agricultural, and forestry commodities. These amendments make it clear that these exceptions waiving the limitations on the decreases in duty will not apply to the new authority granted by the bill.

Section 101(d) of the bill amends section 256 of the 1962 Act to provide that the rate of duty "existing on July 1, 1967" which may be reduced for the purposes of carrying out a trade agreement entered into on or after such date is the lowest nonpreferential rate of duty (however, established, and even though temporarily suspended by Act of Congress or otherwise) existing on such date or (if lower) the lowest nonpreferential rate to which the United States was committed on July 1, 1967, and with respect to which a proclamation was in effect on July 1, 1970.

Section 102. Staging Requirements

Subsections (a) and (b) of section 102 of the bill amend subsections (a) and (c) of section 253 of the 1962 Act so as to apply the staging requirements therein only to rate reductions made pursuant to trade agreements entered into under such Act before July 1, 1967.

Section 102(c) of the bill redesignates subsection (d) of such section 253 as subsection (e) and adds a new subsection (d) which provides that any rate reduction made pursuant to a trade agreement entered into under the amendment made by section 101(a) of the bill cannot take effect more rapidly than if it took effect in two equal installments with 1 year intervening between the installments. New section 253(d) also provides that in applying such staging requirements, any reductions with respect to an article made under a trade agreement entered into before July 1, 1967 and which have not taken effect on the date of the first proclamation under a new agreement are to be included within the aggregate duty reduction made with respect to such article under the new agreement.

Section 102(d) of the bill makes technical amendments to section 253(e) (as redesignated by section 102(c) of the bill).

Section 103. Foreign Import Restrictions and Discriminatory Acts

Section 252(a)(3) of the 1962 Act is amended by section 103(a) of the bill to strike out the word "agricultural" each place it appears in the phrase "United States agricultural products". The effect of this change is to provide that the President may, without regard to any provision of a trade agreement, impose duties or other import restrictions on the products of a foreign country in order to obtain the removal, or prevent the establishment, of unjustifiable import restrictions imposed by such country against any type of United States product (whether or not agricultural) and to provide access for any such product to the markets of such country on an equitable basis.

Section 103(b) of the bill amends section 252(b) of the 1962 Act to provide that the action provided for in such section 252(b) (that is, the suspension, withdrawal, or prevention of the application of the benefits of trade agreement concessions; the refraining from proclaiming the benefits of such concessions; or the imposition of duties or other import restrictions under the amendment made by section 103(c) of the bill) is to apply in the case of any foreign country the products of which receive the benefits of trade agreement concessions, if such country provides subsidies (or other incentives having the effect of subsidies) on its exports of one or more products to other foreign markets which unfairly affect the sales of the competitive United States product or products to those other foreign markets.

Section 103(c) of the bill further amends such section 252(b) to include within the action of the President covered by section 252(b) the imposition of duties or other import restrictions on the products of any foreign country or instrumentality which (1) maintains nontariff trade restrictions, (2) engages in discriminatory acts or policies which substantially or unjustifiably burden United States commerce, or (3) provides subsidies of the type discussed in the preceding paragraph of this explanation, when the President deems such duties and other import restrictions to be necessary and appropriate to prevent the establishment, or obtain the removal, of such restrictions, acts, policies, or subsidies and to provide access for United States products to foreign markets on an equitable basis.

Section 103(d) of the bill amends section 252(c) of the 1962 Act to require (rather than to permit, as is the case under existing section 252(c)) the President to take action (to the extent that such action is consistent with the purposes of section 102 of the 1962 Act) under section 252(c) if a foreign country maintains unreasonable import restrictions which directly or indirectly substantially burden United States commerce.

The amendment by section 103(e) of the bill to such section 252(c) makes the imposition of duties or other import restrictions on the products of the foreign country concerned a third alternative course of action which the President may choose to use in the case of such country. The two alternative courses available under present law are (1) to suspend, withdraw, or prevent the application of benefits of trade agreement concessions to products of such country, or (2) to refrain from proclaiming benefits of trade agreement concessions to carry out a trade agreement with such country.

Section 103(f) amends the heading for such section 252 to read "Foreign Import Restrictions and Discriminatory Acts".

Section 104. Determinations and Import Adjustments for Safeguarding National Security

Section 104(a) of the bill amends section 232(b) of the 1962 Act to provide that any adjustment of imports under section 232 of such Act is not to be accomplished by the imposition or increase of any duty, or of any fee or charge having the effect of a duty.

Section 104(b) of the bill requires the Director of the Office of Emergency Preparedness to make a determination as to whether an article is being imported in such quantities or under such circumstances as to threaten to impair the national security within 1 year after receiving a request or application for such a determination.

Section 104(c) applies the 1-year limitation discussed in the preceding paragraph to requests or applications received by the Director of the Office of Emergency Preparedness on or after January 1, 1968; except that a determination with respect to a request or application received after that date and more than 1 year before the date of the enactment of this bill must be made by the Director not later than 60 days after such date of enactment.

Chapter 2—Tariff Adjustment and Adjustment Assistance

Section 111. Petitions and Determinations

Section 111(a) of the bill amends section 301 of the 1962 Act in its entirety.

Section 301(a)(1) of the 1962 Act, as amended by the bill, is the same as existing section 301(a)(1) which provides that a petition for tariff adjustment under section 351 of the Act of 1962 may be filed with the Tariff Commission by a trade association, firm, certified or recognized union, or other industry representative.

Section 301(a)(2) of such Act, as amended by the bill, provides that petitions for determination of eligibility to apply for adjustment assistance under chapter 2 (firm assistance) or chapter 3 (worker assistance) of title III of the 1962 Act may be filed with the President. Under existing law, such petitions are filed with the Tariff Commission. Section 301(a)(2) as amended by the bill also provides that a petition filed by or on behalf of a group of workers shall apply only with respect to individuals who are, or who have been within 1 year before the date on which such petition is filed, employed regularly in the firm involved as full-time or part-time employees.

Subsection (b)(1) of section 301, as amended by the bill, provides that upon the request of the President, upon resolution of either the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives, upon its own motion, or upon the filing of a petition under section 301(a)(1), the Tariff Commission is to promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities, either actual or relative, as to contribute substantially (whether or not such increased imports are the major factor or the primary factor) toward causing or threatening to cause serious injury to the domestic industry producing articles like or directly competitive with the imported article.

The criterion in subsection (b)(1), as amended, for determining whether a domestic industry is being injured by imports differs from that in existing law in that the Tariff Commission presently must determine whether as a result of concessions granted under trade agreements, the article in question is being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the domestic industry producing an article which is like or directly competitive with such imported article. Paragraph (3) of existing section 301(b) provides that for purposes of existing paragraph (1) increased imports are to be considered to cause (or threaten to cause) serious injury when the Tariff Commission finds that such increased imports have been the major factor in causing (or threatening to cause) such injury.

Section 301(b)(2), as amended by the bill, provides that in making an injury determination under section 301(b)(1), the Tariff Commission, without excluding other factors, is to take into consideration a downward trend of production, prices, profits, or wages in the domestic industry concerned, a decline in sales, an increase in unemployment or underemployment, an increase in imports, either actual or relative to domestic production, a higher or growing inventory, and a decline in the proportion of the domestic market supplied by domestic producers.

Section 301(b)(3) sets forth a definition of "domestic industry producing articles like or directly competitive with the imported article" for purposes of applying subsection (b)(1). For purposes of applying the definition, the Tariff Commission is required (insofar as practicable) to distinguish or separate the operations of producing organizations involving like or directly competitive articles from the operations of such organizations involving other articles.

Section 301(b)(4), as amended by the bill, provides that if a majority of the Commissioners of the Tariff Commission who are present and voting on the issue of injury under section 301(b)(1) make an affirmative injury determination, then the Commissioners making such affirmative injury determination are also required to determine the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy the injury to the industry. Any such remedy determination by a majority of the Commissioners making the affirmative injury determination is treated as the remedy determination of the Tariff Commission for the purposes of title III of the 1962 Act (principally for purposes of any tariff adjustment action taken under section 351).

Section 301(b)(5), as amended by the bill, sets forth procedures whereby if an affirmative injury determination is made by the Tariff Commission under section 301(b)(1), the Commissioners voting for such determination are required to make an additional determination. In making this additional determination, such Commissioners look to see if—

> (1)(A) imports of the article under investigation constituted more than 15 percent of apparent United States consumption of the article in the first calendar year preceding the calendar year in which the investigation was instituted, (B) the ratio of imports of such article to consumption for such first preceding calendar year increased absolutely by at least 3 percentage points over the corresponding ratio for the second calendar year preceding the calendar year in which the investigation was instituted, and (C) the ratio of imports of such article to consumption for such first preceding calendar year increased absolutely by at least 5 percentage points over the corresponding ratio for the third calendar year preceding the calendar year in which the investigation was instituted, or
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> (2) as a result of increased imports (A) domestic production of the like or directly competitive product is declining or is likely to decline so as to substantially affect the ability of domestic producers to continue to produce the like or directly competitive product at a level of reasonable profit, and (B) production workers' jobs, man-hours worked, or wages paid production workers in the domestic production of the like or directly competitive product are declining substantially or are likely to decline substantially.

If a majority of the Commissioners voting for the affirmative injury determination under section 301(b)(1) find that the criteria in either paragraph (1) or paragraph (2) above are met, and further find that the imported article is offered for sale at prices which are substantially below those prevailing for like or directly competitive products of comparable quality produced in the United States and constitutes an increasing proportion of apparent domestic consumption, and that the unit labor costs attributable to producing the imported article are substantially below those attributable to producing like or competitive articles in the United States, the Tariff Commission is deemed for purposes of section 351(a) of the 1962 Act (relating to tariff adjustment) to have made an additional affirmative determination.

Section 301(b)(6), as amended by the bill, provides that if the Tariff Commission, in the course of any 301(b) investigation, has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of the Antidumping Act, 1921, section 303 or 337 of the Tariff Act of 1930, or other remedial provisions of law, it shall promptly notify the appropriate agency and take such other action as it deems appropriate.

Sections 301(b) (7), (8), and (9) under the bill are the procedural and reporting requirements pertaining to section 301(b)(1) investigations and determinations. They replace similar requirements contained in existing section 301(d)(1), the first sentence of section 301(f)(1), and section 301(f)(2).

Section 301(b)(10) provides that no investigation under section 301(b) may be undertaken by the Tariff Commission, on the basis of any petition filed under section 301(a)(1) of the 1962 Act, with respect to any subject matter which has previously been investigated by it under section 301(b) unless at least 1 year has elapsed since the Commission reported the results of such previous investigation to the President.

Section 301(c)(1) of the 1962 Act, as amended by the bill, provides that in the case of a petition by a firm for a determination of eligibility to apply for adjustment assistance, the President is to determine whether an article like or directly competitive with an article produced by the firm, or an appropriate subdivision thereof, is being imported into the United States in such increased quantities, either actual or relative, as to contribute substantially (whether or not such increased imports are the major factor or the primary factor) toward causing or threatening to cause serious injury to such firm or subdivision.

The President, in making such a determination with respect to a firm, is required to take into account all economic factors which he considers relevant, including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment.

Section 301(c)(2) states that the President is to determine, in the case of a petition by a group of workers for a determination of eligibility to apply for adjustment assistance, whether an article like or directly competitive with an article produced by such workers' firm, or an appropriate subdivision thereof, is being imported into the United States in such increased quantities, either actual or relative, as to contribute substantially (whether or not such increased imports are the major factor or the primary factor) toward causing or threatening to cause unemployment or underemployment of a significant number or proportion of the workers of such firm or subdivision.

The President is required under section 301(c)(3) as amended by the bill to transmit promptly to the Tariff Commission a copy of each firm or worker petition filed under section 301(a)(2) and to request the Commission, not later than 5 days after the date of filing of the petition, to make an investigation of facts relevant to the determinations involved. The Commission must promptly institute, and publish notice in the Federal Register of, an investigation with respect to the petition.

Section 301(c)(4) provides that in the course of any firm or worker petition investigation, the Tariff Commission shall, after reasonable notice, hold a public hearing, if such hearing is requested (which request must be made not later than 10 days after the date of the publication of notice under section 301(c)(3)) by the petitioner or any other interested person, and shall afford interested persons an opportunity to be present, to produce evdience, and to be heard at such hearing.

Section 301(c)(5) requires that the report of the Tariff Commission of the facts disclosed by its investigation under section 301(c)(3) with respect to a firm or group of workers is to be made at the earliest practicable time, but not later than 60 days after the date on which it receives the request of the President for such investigation.

Section 111(b)(1) of the bill provides that the report of any industry injury investigation by the Tariff Commission under section 301(b)(1) of the 1962 Act during the 1-year period ending on the date of the enactment of the bill is to be treated as made more than 1 year before such date for purposes of the requirement of a 1-year interval between investigations of the same matter contained in section 301(b)(10).

Section 111(b)(2) of the bill provides that any industry, firm, or worker investigation under existing section 301 (b) or (c) which is pending before the Tariff Commission immediately before the date of enactment of the bill will be continued as an investigation instituted under section 301 (b) or (c), as amended by the bill, and for purposes of the time periods within which reports by the Tariff Commission with respect to such investigations must be filed, petitions therefor shall be deemed to have been filed on the date of enactment of the bill.

Section 111(b)(3) of the bill provides that any report of an affirmative determination by the Tariff Commission with respect to a firm or worker petition under existing section 301(c) (1) or (2) of the 1962 Act on which the President has not acted by the date of the enactment of the bill is to be treated by him as a report received under section 301(c)(5), as amended by the bill, on such date of enactment.

Section 112. Presidential Action with Respect to Adjustment Assistance

Section 112(a) of the bill amends section 302(a) of the 1962 Act to provide, under subsection (a)(1) thereof, that the President, if he provides tariff adjustment under section 351 or 352 after receiving an affirmative injury determination under section 301(b), may provide, with respect to such industry, that its firms may request the Secretary of Commerce for certification of eligibility to apply for firm adjustment assistance, that its workers may request the Secretary of Labor for certification of eligibility to apply for worker adjustment assistance, or that both the firms and workers may request such certifications.

Under paragraph (2) of such section 302(a), if the President does not provide tariff adjustment for an industry under section 351 or 352 after receiving an affirmative injury determination under section 301(b), he shall promptly provide that both firms and workers of such industry may request certifications of eligibility for adjustment assistance.

Paragraph (3) of such section 302(a) provides that notice of each action taken by the President under section 302(a) must be published in the Federal Register, and that any request by a firm or group of workers for certification must be made to the Secretary of Commerce or Labor, as the case may be, within the 1-year period after the date on which notice is so published (unless the President specifies a longer period).

Section 112(b) of the bill makes certain conforming amendments to section 302(b) of the 1962 Act to reflect the amendments made to section 302(a) by section 112(a) of the bill. Section 112(b) also amends paragraph (2) of section 302(b) to provide that a certification of eligibility by the Secretary of Labor shall apply only to workers who are, or who have been, employed regularly (on a full-time or part-time basis) in the firm involved within 1 year before the date of the institution of the applicable Tariff Commission investigation under section 301(b).

Section 112(c) of the bill amends section 302(c) of the 1962 Act to provide under paragraph (1) thereof that after receiving a report of the Tariff Commission of the facts disclosed by its investigation under section 301(c)(3) with respect to any firm or group of workers, the President is to make his determination (with respect to the eligibility of such firm or group to apply for adjustment assistance) not later than 30 days after the date on which he receives such report, unless, within such period, the President requests additional factual information from the Tariff Commission. In that event, the Tariff Commission must, not later than 25 days after the date on which it receives the President's request, furnish such additional factual information in a supplemental report, and the President must make his determination not later than 15 days after the date on which he receives such supplemental report.

Under paragraph (2) of section 302(c), the President is required to publish promptly in the Federal Register a summary of each determination under section 301(c) with respect to any firm or group of workers.

Under paragraph (3) of section 302(c), the President is required to certify promptly that a firm or group of workers is eligible to apply for adjustment assistance if he makes an affirmative determination under section 301(c) with respect to the firm or group.

Paragraph (4) of such section authorizes the President to delegate to any agency or other instrumentality of the United States any of his functions with respect to determinations and certifications of eligibility of firms or workers to apply for adjustment assistance under sections 301 and 302.

Section 112(d) amends the heading of section 302 to read "Presidential Action with Respect to Adjustment Assistance."

Section 113. Tariff Adjustment

Section 113(a) of the bill amends paragraph (1) of section 351(a) of the 1962 Act to provide, under subparagraph (A) thereof, that after receiving an affirmative injury determination of the Tariff Commission under section 301(b)(1), which is not combined with an additional affirmative determination of the Commission under section 301(b)(5), the President is to proclaim such increase in, or imposition of, any duty or other import restriction on the article concerned as he determines to be necessary to prevent or remedy serious injury to the industry, unless he determines that such action would not be in the national interest.

Under paragraph (1)(B) of such section 351(a), as amended by the bill, if the President receives an affirmative injury determination of the Tariff Commission under section 301(b)(1) which is combined with an affirmative additional determination of the Commission under section 301(b)(5), he shall proclaim the increase in, or imposition of, any duty or other import restriction on the article concerned determined and reported by the Commission pursuant to section 301(b), unless he determines that such action would not be in the national interest.

Section 113(a) of the bill also makes certain conforming amendments to paragraph (2) of section 351(a). Paragraph (2) sets forth procedures whereby, if the President does not proclaim the increase in, or imposition of, any duty or other import restriction on the article concerned determined and reported by the Tariff Commission under section 301(b), the Congress can (by the adoption of a concurrent resolution) cause such increase or imposition to take effect. Such paragraph (2) is also amended to provide that if the President does not proclaim the remedy determined by the Tariff Commission because of considerations of national interest, he is not required to state the considerations on which his decision was based.

Subsections (b) and (c) of such section 113 make certain conforming amendments to paragraphs (3) and (4) of section 351(a).

Section 113(d) of the bill makes certain amendments to section 351(d)(1) which provides that the Tariff Commission must keep under review developments with respect to the industry concerned after tariff adjustment for such industry is proclaimed. One amendment requires that the Commission, in making such review, take into account the specific steps taken by firms in the industry to enable them to compete more effectively with imports. Another amendment requires the Commission to take such steps into account when, at the request of the President, it advises him under section 351(d)(2) of the probable economic effect on the industry concerned of the reduction or termination of the increase in, or imposition of, any duty or other import restriction previously proclaimed under section 351. Such section 351(d) is further amended by the addition of a new paragraph (6) which provides that the Tariff Commission, in making any investigation initiated under paragraph (2) or (3) of section 351(d), shall also determine and report to the President if the termination of the proclaimed increase or imposition threatens to cause serious injury to the industry concerned, and if such determination is affirmative, (1) the limit to which such increase or imposition may be reduced without threatening to cause serious injury to the industry concerned, and (2) whether, in lieu of such termination, additional increases or impositions of duties and other import restrictions are required to prevent or remedy serious injury to the industry concerned.

Section 114. Orderly Marketing Agreements

Section 114 of the bill amends section 352(a) to provide that the President may at any time after receiving an affirmative injury determination of the Tariff Commission with respect to an industry negotiate international agreements with foreign countries to limit the export to, and import into, the United States of the article causing or threatening to cause serious injury to such industry. Any such agreement may replace in whole or part any tariff adjustment action taken by the President under section 351, but any such agreement entered into before such time as the Congress takes action under section 351(a)(2) which has the result of placing the Tariff Commission remedy in effect must terminate on the date the President proclaims such remedy pursuant to section 351(a)(3).

Section 115. Increased Assistance for Workers

Section 115(a) amends section 323(a) of the 1962 Act to provide that the trade readjustment allowance payable under such section 323(a) to workers found eligible for adjustment assistance is an amount equal to 75 percent of his average weekly wage or to 75 percent of the average weekly manufacturing wage, whichever is less, reduced by 50 percent of the amount of his remuneration for services performed during such week. Under existing law the applicable percentage of his weekly wage or the weekly manufacturing wage is 65 percent.

Section 115(b) of the bill amends section 326(a) of the 1962 Act so as to make it clear that "supportive and other services" provided for under any Federal law are among the services which can be afforded to adversely affected workers in order to prepare them for full employment.

Under section 115(c) of the bill, the increased trade readjustment allowances provided for under the amendment made by section 115(a) applies with respect to weeks of unemployment beginning on or after the date of enactment of the bill.

Section 116. Conforming Amendments

Section 116 of the bill makes conforming amendments to sections 242(b)(2), 302(b), 311(b)(2), and 317(a)(2) of the 1962 Act.

TITLE II—QUOTAS ON CERTAIN TEXTILE AND FOOTWEAR ARTICLES

CHAPTER 1—TEXTILE AND FOOTWEAR ARTICLES

Section 201. Annual Quotas

Section 201(a) of the bill establishes a statutory quota for calendar year 1971 under which the total quantity of each category of textile articles, and the total quantity of each category of footwear articles, produced in any foreign country which may be entered for consumption in the United States during such year may not exceed the average annual quantity of such category produced in such country and entered during 1967, 1968, and 1969.

Paragraph (1) of section 201(b) of the bill provides that the statutory quota applicable to each category of textile articles and to each category of footwear articles produced in any foreign country which may be entered in the United States during 1972 and any calendar year thereafter may not exceed the total quantity determined for such category for such country under section 201(a), as increased by the President for any calendar year after 1971 and before the current calendar year under paragraph (2)(A) of section 201(b), plus any further increase in such quantity for the current calendar year which may be provided for by the President under such paragraph (2)(A).

Paragraph (2)(A) of section 201(b) provides that the President may increase the total quantity of each category of textile articles, and the total quantity of each category of footwear articles, produced in any foreign country which may be entered during any calendar year after 1971 by such percentage (but not exceeding 5% of the total quantity determined for such category for such country under section 201(a) or section 201(b) for the immediately preceding calendar year) as he determines to be consistent with the purposes of section 201.

Paragraph (2)(B) provides that any annual increase in any category authorized by the President under paragraph (2)(A) for any calendar year must be the same percentage for all foreign countries.

Paragraph (2)(C) requires that a determination of the total quantity of each category of articles for each foreign country be made under section 201(a) and (b) for each calendar year after 1971 notwithstanding the fact that the statutory quota provided for therein may not apply during the whole or part of such year by reason of the application of other provisions of title II of the bill or the provisions of the Arrangement or the Agreement referred to in section 204(b) of the bill. Where any category of articles for a foreign country is affected by the nonapplication of the statutory quota to one or more articles falling within such category, for purposes of subsections (a) and (b) of section 201 the remaining articles in such category shall, for purposes of that country and for the period of such nonapplication of the statutory quota, be treated as having constituted a separate category for such country for all years after 1966. The application of the preceding sentence would yield, of course, to a change in the category or categories concerned effected under paragraph (3) of section 206 of the bill after compliance with section 205(a) of the bill (relating to rulemaking procedures).

Paragraph (3) of section 201(b) provides that if (1) the statutory quota does not apply (for any of the reasons mentioned in the preceding paragraph of this explanation) with respect to any textile article or footwear article produced in a foreign country, but (2) at any time after 1971 a statutory quota begins to apply to, or resumes in application to, such article produced in such country, and (3) the President determines (A) that the average annual quantity of the article, produced in such country, and entered in the United States during 1967, 1968, and 1969 was insignificant, and (B) that the application of section 201(b)(3) to the category which includes such article for such country is consistent with the purposes of section 201, then for the calendar year in which such termination occurs, the statutory quota applicable with respect to the quantity of the category including such article, produced in such country, shall be deemed to be the annual average quantity (of such category) which was entered during the 3 calendar years immediately preceding such calendar year of termination (rather than during the 1967–69 base period provided for in section 201(a)) plus any applicable yearly increases for periods after 1971.

Section 201(c)(1) of the bill provides that any annual quantitative limitation under section 201(a) or (b) shall be applied on a calendar quarter or other intra-annual basis if the President determines that such application is necessary or appropriate to carry out the purposes of section 201.

Paragraph (2) of section 201(c) of the bill provides that if the application of section 201 (a) or (b) to any category for any foreign country begins or resumes after the first day of any calendar year, then the amount of the quota for such category for such country for the remainder of such calendar year shall be the annual amount determined under section 201 (a) or (b), adjusted pro rata according to the number of full months remaining in the calendar year after the date of such beginning or such resumption.

Under section 201(d)(1) of the bill the President may exempt from the statutory quota determined under section 201 (a) and (b) for an initial period of not to exceed 1 year any textile article or footwear article produced in any foreign country if he determines that imports of such article produced in such country are not contributing to, causing, or threatening to cause market disruption in the United States. Any such exemption may be extended by the President for one or more additional periods of not in excess of 1 year each if he makes a new determination (before each such extension) that imports of such article produced in such country are not contributing to, causing, or threatening to cause market disruption in the United States.

The President may terminate an exemption made under paragraph (1) of section 201(d) of the bill at any time upon his finding that the article covered by such exemption is contributing to, causing, or threatening to cause market disruption in the United States.

Paragraph (2) of section 201(d) provides that the President may exempt from section 201 (a) and (b) any textile article or footwear article produced in any foreign country whenever he determines that such an exemption is in the national interest, and the President may terminate any such exemption whenever he determines that such termination is in the national interest.

Paragraph (3) of section 201(d) provides that no exemption, extension of an exemption, or termination of an exemption under section 201(d) (1) or (2) may take effect sooner than the 30th day after the day on which notice of such exemption, extension, or termination is published in the Federal Register.

Under paragraph 201(e) of the bill, the Secretary of Commerce is required to compute quantities under the statutory quotas provided for in section 201 (a) and (b) of the bill.

Section 202. Arrangement or Agreements Regulating Imports

Section 202(a) of the bill authorizes the President to conclude bilateral or multilateral arrangements or agreements with the governments of foreign countries for the purpose of regulating, by category, the quantities of textile articles or footwear articles, or both, produced in those countries which may be exported to, or entered for consumption in, the United States. The President is authorized to issue regulations necessary to carry out the terms of such arrangements or agreements. The President is required, in concluding any such arrangement or agreement, to take into account conditions in the United States market, the need to avoid disruption of that market, and such other factors as he deems appropriate in the national interest.

Section 202(b) of the bill provides that whenever a multilateral arrangement or agreement concluded under section 202(a) is in effect among the countries, including the United States, which account for a significant part of world trade in the article concerned and such arrangement or agreement contemplates the establishment of limitations on the trade in the article produced in countries not parties to such arrangement or agreement, the President may by regulation establish the total quantity of the article produced in each country not a party to such arrangement or agreement which may be entered for consumption in the United States. Section 202(b) provides, however, that such regulations may not have the effect of reducing the total quantity for any category for any country for any calendar year to an amount less than the total quantity which would be permitted to be entered if section 201 (a) and (b) (the statutory quota) applied to such category for such country for such year.

Section 202(c) of the bill states that neither the statutory quota nor exemption provisions of section 201 of the bill are to apply to imported articles which are subject to an arrangement or agreement entered into under section 202(a) or to regulations issued under section 202(b).

Section 203. Increased Imports Where Supply Is Inadequate To Meet Domestic Demand at Reasonable Prices

Section 203 of the bill permits the President, in carrying out sections 201 and 202, to authorize increased exports to the United States or increased entries in the United States of textile articles or footwear articles of any category if he determines that the supply of textile articles or footwear articles similar to those subject to limitation under such sections will be inadequate to meet domestic demand at reasonable prices.

Section 204. Exclusions

Section 204(a) of the bill exempts from the import restrictions provided for in title II of the bill any article exempted from duty under part 2 of schedule 8 of the Tariff Schedules of the United States (personal exemptions) and any article the entry of which is regulated pursuant to paragraph (4), (5), (6), or (7) of section 498(a) of the Tariff Act of 1930 (relating to household effects, gifts from abroad, tools of trade, and certain other personal articles). Section 204(a) also provides that, to the extent provided in regulations prescribed by the Secretary of Commerce, the import restrictions provided for in title II of the bill will not apply to other articles imported in noncommercial quantities for noncommercial purposes. Such regulations may include provision for the nonapplication of quotas to commercial samples, not for sale or use other than as samples, under safeguards which will ensure that such provision will not be used to weaken the effectiveness of title II of the bill.

Section 204(b) exempts from the application of title II (1) articles subject to the Long-Term Arrangement Regarding International Trade in Cotton Textiles, so long as the United States is a party thereto, and (2) articles produced in the Philippines provided for in item B (cordage) in the schedule to paragraph 1 of article II of the 1955 Agreement With the Philippines Concerning Trade and Related Matters, so long as such Agreement remains in effect.

Section 204(c) of the bill provides that nothing in title II affects the authority provided for under section 22 of the Agricultural Adjustment Act of 1933, as amended.

Section 205. Administration

Section 205(a) of the bill applies the rulemaking provisions of subchapter II of chapter 5 of title 5, United States Code, to section 201(b)(2) (yearly increases in statutory quota amounts); 201(b)(3) (application of special statutory quota base in the case of countries providing insignificant imports during 1967–69); 201(d)(1) (exemptions from statutory quota for articles not causing market disruption); 202(b) (regulations limiting imports from countries not party to certain multilateral arrangements or agreements entered into under section 202(a)); 203 (increased imports in cases where supply is inadequate to meet domestic demand at reasonable prices); 204(a) (regulatory determination of articles excluded from quota if imported in noncommercial quantities for noncommercial purposes); and 206 (article and category definitions).

Section 205(b) of the bill requires that all quantitative limitations established under title II of the bill or pursuant to any arrangement or agreement entered into under such title, all exemptions established under such title and all extensions or terminations thereof, and all regulations promulgated to carry out such title be published in the Federal Register.

Under section 205(b), the Secretary of Commerce is required to certify to the Secretary of the Treasury for each period the total quantity of each textile article and footwear article produced in each foreign country the entry of which is affected by any such quantitative limitation on importation; and the Secretary of the Treasury is directed to take such action as may be necessary to ensure that the total quantity so entered during such period does not exceed the total quantity so certified.

Section 205(c) requires that all quantitative limitations and exemptions established under title II or pursuant to any arrangement or agreement entered into under such title and all quantitative limitations established pursuant to the Long-Term Arrangement Regarding International Trade in Cotton Textiles be promulgated as a part of the appendix to the Tariff Schedules of the United States, Annotated.

Section 206. Definitions

Section 206 of the bill contains six definitions which are applicable for purposes of title II of the bill.

Section 206(1) of the bill defines "textile article" to include—

(1) any article if wholly or in part of cotton, wool or other animal hair, human hair, man-made fiber, or any combination or blend thereof, or cordage of hard (leaf) fibers, classified under schedule 3 of the Tariff Schedules of the United States;

(2) any article classified under subpart B or C of part 1 of schedule 7 of such schedules if wholly or in chief value of cotton, wool, or man-made fiber;

(3) any other article specified by the Secretary of Commerce which he has been advised by the Secretary of the Treasury would be classified under any of the provisions of the schedules referred to in paragraph (1) or (2) above but for the inclusion of some substance, material, or other component, or because of its processing, which causes the article to be classified elsewhere; and

(4) any article provided for under paragraph (1), (2), or (3) above if entered under item 807.00 of such schedules (relating to

articles assembled abroad in whole or in part of certain components fabricated in the United States), or under the appendix to such schedules.

Such section 206(1) does not include within the term "textile article" any article classified under any of items 300.10 through 300.50, 306.00 through 307.40, 309.60 through 309.75, and 390.10 through 390.60, inclusive, of the Tariff Schedules. Such term also does not include any woven fabric 20 inches or over but not over 46 inches in width, in the piece, bleached or colored, whether or not ornamented, for use only in the manufacture of portions of neckties other than the linings therefor. The procedures established to safeguard this end use provision with respect to neckties may include a requirement by the Secretary of the Treasury that an appropriate customs bond be given.

Section 206(2) defines the term "footwear article" to include footwear provided for in any of items 700.05 through 700.45, inclusive, item 700.55, items 700.66 through 700.80, inclusive, and item 700.85 of the Tariff Schedules of the United States.

Section 206(3) defines the term "category" to mean a grouping of textile articles, or a grouping of footwear articles, as the case may be, as determined by the Secretary of Commerce, for the purposes of title II of the bill, using the five-digit and seven-digit item numbers applied to such articles in the Tariff Schedules of the United States, Annotated.

Section 206(4) defines the term "entered" as meaning entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

Section 206(5) defines the term "produced" to mean manufactured or produced.

Section 206(6) defines the term "foreign country" to include a foreign instrumentality. For this purpose the term "country" is used in an all inclusive sense; a dependency or colony which is not treated as part of another country is to be treated as a separate country.

Chapter 2—Effective Period

Section 211. Termination of Title, Extension Under Certain Conditions

Section 211(a) of the bill provides that title II of the bill which establishes quotas on certain textile and footwear articles is to terminate at the close of July 1, 1976, unless extended under section 211(b).

Section 211(b) provides that the effective period of title II of the bill may be extended in whole or in part by the President after July 1, 1976, for such periods (not to exceed 5 years at any one time) as he may designate if after seeking advice of the Tariff Commission and of the Secretary of Commerce and of the Secretary of Labor, the President determines that such extension is in the national interest.

Under section 211(c) the President is required to report promptly to Congress with respect to any action taken by him to extend the effective period of title II.

Section 211(d) states that nothing in section 211 affects the validity of any arrangement or agreement entered into under section 202(a) before the termination of title II or of any regulations issued under subsection (a) or (b) of section 202 in connection with any arrangement or agreement entered into under section 202(a) before such termination.

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TITLE III—OTHER TARIFF AND TRADE PROVISIONS

CHAPTER 1—AMENDMENTS TO THE ANTIDUMPING AND COUNTERVAILING DUTY LAWS

Section 301. Antidumping Act, 1921

Section 301(a) of the bill amends section 201(b) of the Antidumping Act, 1921, to provide that the Secretary of the Treasury or his delegate must, within 4 months after a question of dumping is raised by or presented to him, make the determination required under present law as to whether there is reason to believe or suspect that the purchase price of imported merchandise is less, or the exporter's sales price is less or likely to be less, than the foreign market or constructed value of the merchandise. If the Secretary's determination is in the affirmative, then under paragraph (2) of such section 201(b), as amended by the bill, he must publish notice thereof in the Federal Register and require the withholding of appraisement of any such merchandise entered on or after such date of publication. Such paragraph (2) also retains the present provision in the Antidumping Act which authorizes the Secretary to order that such withholding be made effective with respect to merchandise entered on or after an earlier date, but in no case may the effective date of withholding be earlier than the 120th day before the question of dumping was raised by or presented to him.

Paragraph (3) of such section 201(b) provides that if the Secretary's determination is negative, notice thereof must be published in the Federal Register, but the Secretary may within 3 months thereafter order the withholding of appraisement if he then has reason to believe or suspect that dumping is involved; an order of withholding of appraisement in that case is treated in the same manner as is a withholding under paragraph (2) of section 201(b). Such section 201(b) as amended by the bill also provides that the question of dumping is deemed to have been raised by or presented to the Secretary on the date on which a notice is published in the Federal Register that information relating to dumping has been received in accordance with regulations prescribed by him.

Section 301(b) of the bill adds a new subsection (b) to section 205 of the Antidumping Act, 1921, which provides that if available information indicates to the Secretary of the Treasury that the economy of the country from which merchandise is exported is state-controlled to an extent that sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under section 205(a) of such Act, he shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either (1) the prices at which such or similar merchandise of a non-state-controlled-economy country is sold either for consumption in the home market of that country, or to other countries, including the United States; or (2) the constructed value of such or similar merchandise in a non-state-controlled-economy country as determined under section 206 of the Antidumping Act, 1921.

Section 301(c) of the bill makes the amendment made by section 301(a) of the bill effective on the 180th day after the date of enactment of the bill.

Section 302. Countervailing Duties

Section 302(a) of the bill amends section 303 of the Tariff Act of 1930 in its entirety, although retaining many of the provisions of existing section 303. Subsection (a)(1) of the amended section 303 provides that whenever any country or other governmental entity or private entity, pays or bestows any bounty or grant upon the manufacture, production, or export of any article or merchandise manufactured or produced in such country or subdivision thereof, then upon the importation of such article or merchandise into the United States, whether imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported or has been changed in condition by remanufacture or otherwise, there is to be levied and paid with respect to such article or merchandise, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant. The bill adds the requirement that the Secretary of the Treasury must determine, within 12 months after the date on which the question is presented to him, whether any bounty or grant is being paid or bestowed.

Section 303(a)(2) as added by the bill requires that in the case of any imported article or merchandise which is free of duty, duties may be imposed under section 303 only if there is an affirmative determination by the Tariff Commission under section 303(b)(1).

Section 303(a)(3) retains the requirement in existing section 303 that the Secretary from time to time must ascertain and determine, or estimate, the net amount of each such bounty or grant, and declare the net amount so determined or estimated.

Under section 303(a)(4) the Secretary is required to make all regulations he may deem necessary for the identification of articles and merchandise covered by section 303 and for the assessment and collection of the duties thereunder. Such paragraph (4) also provides that all determinations by the Secretary under section 303(a), and all determinations by the Tariff Commission under section 303(b)(1), whether affirmative or negative, are to be published in the Federal Register.

Under section 303(b)(1), as added by the bill, the Secretary of the Treasury must, whenever he determines that a bounty or grant is being paid with respect to duty-free merchandise, advise the Tariff Commission which shall determine within 3 months thereafter, and after such investigation as it deems necessary, whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States and notify the Secretary of that determination. The Secretary is further required, under such regulations as he may prescribe, to suspend liquidation of any such article or merchandise which is entered, or withdrawn from warehouse, for consumption, on or after the 30th day after the date of the publication in the Federal Register of his determination under section 301(a)(1), and such suspension will continue until further order of the Secretary.

New section 303(b)(2) provides that if the determination of the Tariff Commission under section 303(b)(1) is affirmative, the Secretary is to make public an order directing the assessment and collection of duties in the amount of such bounty or grant as is from time to time ascertained and determined, or estimated, under section 303(a).

Subsection (c) of the amended section 303 provides, that an affirmative determination by the Secretary of the Treasury under section 303(a)(1) with respect to any imported article or merchandise which (1) is dutiable, or (2) is free of duty but with respect to which the Tariff Commission has made an affirmative determination under section 303(b)(1), applies with respect to articles entered, or withdrawn from warehouse, for consumption on or after the 30th day after the date of the publication in the Federal Register of such determination by the Secretary.

Section 303(d) as added by the bill provides that no countervailing duty is to be imposed with respect to any article which is subject to a quantitative limitation imposed by the United States on its importation, or subject to a quantitative limitation on its exportation to or importation into the United States imposed under an agreement to which the United States is a party, unless the Secretary of the Treasury determines, after seeking information and advice from such agencies as he deems appropriate, that such quantitative limitation is not an adequate substitute for the imposition of a countervailing duty. This determination is to be made on an article-by-article basis. Furthermore, in the case of a quantitative limitation with respect to an article which applies only if the article does not exceed a stated value, the determination shall be made as if the article, when valued below the stated amount, constituted a separate article.

Section 302(b) of the bill provides that the amendment made by section 302(a) takes effect on the date of the enactment of the bill, except that the last sentence of section 303(a)(1) of the Tariff Act of 1930 (requiring that bounty determinations be made within 12 months after presented) applies only with respect to questions regarding bounties presented on or after such date of enactment.

Chapter 2—Tariff Commission

Section 311. Tariff Commission Membership

Section 311(a)(1) of the bill amends section 330(a) of the Tariff Act of 1930 to increase the membership of the United States Tariff Commission from six to seven Commissioners.

Section 311(a)(2) of the bill amends such section 330(a) to increase from three to four the number of Commissioners who may have the same political party affiliation.

Section 311(b) of the bill amends section 330(b) of such Act of 1930 to increase the terms of office of the Commissioners from six years to seven years and provides for an orderly phasing in of the term of the seventh Commissioner added under section 311(a)(1) of the bill.

Section 311(c) of the bill repeals existing section 330(d) of such Act of 1930 which provides for the President certain discretion in the case of divided votes among Commissioners with respect to investigations and determinations by the Tariff Commission related to certain import restrictions. Such repealed section 330(d) also provides that investigations and hearings which are authorized to be undertaken by the Commission may be instituted upon the affirmative vote of half of the Commissioners voting with respect to the issue.

Chapter 3—Authorization of Appropriations for United States Share of the Expenses of the General Agreement on Tariffs and Trade

Section 321. Authorization

Section 321 of the bill adds a new section 244 to the Trade Expansion Act of 1962 to authorize the appropriation annually of such sums as may be necessary for the payment by the United States of its share of the expenses of the Contracting Parties to the General Agreement on Tariffs and Trade.

CHAPTER 4—AMERICAN SELLING PRICE SYSTEM OF VALUATION

Section 331. In general

Section 331(a) of the bill authorizes the President to proclaim such modifications of the Tariff Schedules of the United States as are required or appropriate to carry out any bilateral or multilateral agreement (with one or more foreign countries, or with an instrumentality of one or more foreign countries, such as the European Economic Community) which relates primarily to the elimination of the American selling price system of valuation, if he determines that the concessions which would be granted under the agreement with respect to the products of the United States fully compensate for the concessions which would be made by the United States under the agreement. Any proclamation issued to carry out an agreement which the President determines meets the requirements of the first sentence of section 331(a) of the bill may take effect only as provided in section 331(b) of the bill.

Paragraph (1) of section 331(b) provides that no proclamation referred to in section 331(a) may be delivered to the Congress before January 3, 1971, and that, when delivered, such a proclamation must be delivered to both Houses on the same day and to each House while it is in session.

Paragraph (2) of section 331(b) provides the general rule that a proclamation referred to in section 331(a) is to take effect at the end of the first period of 60 calendar days of continuous session of Congress after the date on which such proclamation is transmitted to the Congress, unless the Congress, during that 60-day period, adopts a concurrent resolution stating in substance that the Congress does not favor the taking effect of such proclamation. Under paragraph (4) of the proposed section 331(b), any provision of the proclamation may take effect at a time later than at the end of the 60-day period referred to in paragraph (2), if the proclamation provides for such later effective date.

Paragraph (3) of section 331(b) of the bill provides rules for the computation of the 60-day period referred to in paragraph (2).

Subsection (c) of section 331 provides that nothing in section 331(a) authorizes the issuance of a proclamation with respect to certain footwear provided for, on the date of the enactment of the bill, in item 700.60 of the Tariff Schedules of the United States.

Subsection (d) of section 331 authorizes the President, at any time, to terminate in whole or in part any proclamation which has taken effect pursuant to section 331.

Subsection (e) of section 331 provides that during the period of 5 years immediately after the taking effect of a proclamation referred to in section 331(a) which relates to chemicals, the Tariff Commission, for the purpose of insuring a continuing surveillance of the effects of that proclamation, is to complete and transmit to the President, on the most current basis possible, annual detailed reports on United States production and sales of synthetic organic chemicals and United States imports of synthetic organic chemicals.

Section 332. Related Amendments

Subsection (a) of section 332 of the bill provides that for purposes of general headnote 4 of the Tariff Schedules of the United States a rate of duty proclaimed pursuant to section 331 is to be treated as a rate of duty proclaimed pursuant to a concession granted in a trade agreement. Under the rule of subdivision (b) of such headnote 4, a rate of duty proclaimed pursuant to a concession granted in a trade agreement is to be reflected in column numbered 1 of the Tariff Schedules and, if higher than the then existing rate in column numbered 2, also in column 2, and is to supersede but not terminate the then existing rates in such columns.

Subsection (b) of section 332 provides a column 2 rate for the articles (canned clams, chemicals, and knit gloves) which may be affected by proclamations issued pursuant to section 331(a), and makes it clear that, on the changeover from the American selling price system of valuation with respect to such items, values are to be determined in accordance with the methods of valuation provided for in subsections (a) through (d) of section 402 of the Tariff Act of 1930. Paragraph (1) of section 332(b) relates to canned clams, paragraph (2) relates to chemicals, and paragraph (3) relates to gloves. Each amendment made by section 332(b) (whether to column 2, or to the headnotes, of the Tariff Schedules) is to take effect as of the effective date of the relevant provision of the proclamation issued pursuant to section 331(a). In most cases, for each column 2 change this will be the day on which the change in column 1 is effective for the item concerned.

Chapter 5—Miscellaneous Provisions

Section 341. Amendments to Automotive Products Trade Act of 1965

Section 341(a) of the bill amends section 302(a) of the Automotive Products Trade Act of 1965 to authorize the filing of petitions by firms or groups of workers with the President for certifications of eligibility to apply for adjustment assistance under title III of the 1962 Act. Under existing law, the last day on which such petitions could be filed was June 30, 1968.

Section 341(b) amends the side heading of section 302 of such Act of 1965 to read "Special Authority".

Section 341(c) amends subsections (c) and (d) of such section 302 to provide that in determining whether groups of workers or firms are eligible to apply for adjustment assistance, the President is to consider whether or not the operation of the Agreement Concerning Automotive Products Between the Government of the United States of America and the Government of Canada has been a substantial factor (rather than the primary factor, as under existing law) in causing or threatening to cause dislocation of the firm or group of workers.

Section 341(c) also makes a conforming change in section 302(g)(2) of such act of 1965.

Section 341(d) provides that the amendments made by section 341 apply with respect to petitions for certification of eligibility filed after the date of the enactment of the bill, except that such amendments will apply only with respect to dislocations which began after June 30, 1968. Where such a dislocation began after June 30, 1968, and before July 1, 1970, such amendments will apply only if the petition concerned is filed on or before the 90th day after such date of the enactment.

Section 342. Certain Classifications by the Secretary of Agriculture

Section 342 of the bill amends part 3 (containing quotas proclaimed under section 22 of the Agricultural Adjustment Act of 1933) of the appendix to the Tariff Schedules of the United States by adding a new headnote providing that any determination as to whether or not any article or class of articles falls within one of the article descriptions in such part 3 is the final administrative responsibility of the Secretary of Agriculture. The Secretary of Agriculture is required, in making any such determination, to carry out the purposes for which the import restrictions provided for in such part were prescribed, notwithstanding the fact that the determination may differ from that made for tariff and other purposes. It is further provided that nothing in the headnote is deemed to affect in any manner the authority of the Secretary of the Treasury over merchandise for tariff or other purposes.

Section 343. Rates of Duty on Mink Furskins; Repeal of Embargo on Certain Furs

Section 343(a)(1) of the bill adds new items to schedule 1, part 5, subpart B of the Tariff Schedules to establish a tariff rate quota on mink furskins. A quota of 4,600,000 skins is established for each calendar year. Raw or not dressed skins entered within the quota are duty free (as at present) if the column 1 rate applies and dutiable at 30% ad valorem if the column 2 rate (rate applied if the article is the product of a designated Communist country) applies. Dressed furskins entered within the quota, if in the form of plates, mats, linings, strips, crosses, or similar forms, are dutiable at 12% ad valorem if not dyed (35% ad valorem if the column 2 rate applies) and at 14% ad valorem if dyed (40% ad valorem under column 2). Other dressed furskins entered within quota if not dyed are dutiable at 3.5% ad valorem (25% ad valorem under column 2) and if dyed are dutiable at 5.5% ad valorem (30% ad valorem under column 2). Any furskin, whether or not dressed and whether dyed or not dyed, which is entered in a calendar year after the quota for that year is filled is dutiable at 25% ad valorem under column 1 and 40% ad valorem under column 2.

Section 343(a)(2) adds a new item 791.12 to schedule 7, part 13, subpart B of the Tariff Schedules making garments of mink dutiable at 14% ad valorem under column 1 and at 50% ad valorem under column 2.

Section 343(b) repeals the existing embargo in headnote 4 to schedule 1, part 5, subpart B of the Tariff Schedules on ermine, fox, kolinsky, marten, mink, muskrat, and weasel furskins, raw or not dressed or dressed, which are the product of the Soviet Union or Communist China.

Section 343(c) makes the amendments and the repeal effected by section 343 of the bill applicable with respect to articles entered, or withdrawn from warehouse, for consumption on or after January 1, 1971.

Section 344. Rate of Duty on Glycine and Certain Related Products

Section 344(a) of the bill amends schedule 7 part 13 subpart B of the Tariff Schedules to provide a tariff rate quota on glycine (aminoacetic acid) and salts thereof, and certain mixtures of glycine or its salts. Under the quota, the first 1,500,000 pounds of the articles entered during any calendar year, and the first 375,000 pounds entered during any calendar quarter are dutiable at 8.5% ad valorem if the column 1 rate applies and at 25% ad valorem if the column 2 rate applies. Glycine, salts, and mixtures entered after the annual quota is filled in a calendar year or the quarterly quota is filled in a calendar quarter are dutiable at 8.5% ad valorem plus 25 cents per pound under column 1 and at 25% ad valorem plus 25 cents per pound under column 2.

Section 344(b) makes the tariff rate quota established in section 344(a) effective with respect to articles entered on or after January 1, 1971.

Section 345. Invoice Information

Section 345 of the bill amends section 481(a) of the Tariff Act of 1930 (relating to information required on invoices of imported merchandise) to require that such invoices contain such information as to product description as is required to be made a part of the entry by provisions of the Tariff Schedules of the United States, Annotated.

Section 346. Trade With Foreign Countries Permitting Uncontrolled Production of or Trafficking in Certain Drugs

Section 346 of the bill authorizes the President of the United States to impose an embargo or suspension of trade with a nation which permits the uncontrolled or unregulated production of or trafficking in opium, heroin, or other poppy derivatives in a manner to permit these drug items to fall into illicit commerce for ultimate disposition and use in the United States.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TRADE EXPANSION ACT OF 1962

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TITLE II—TRADE AGREEMENTS

Chapter 1—General Authority

SEC. 201. BASIC AUTHORITY FOR TRADE AGREEMENTS.

(a) Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that any of the purposes stated in section 102 will be promoted thereby, the President may—

(1) after June 30, 1962, and before July 1 [1967,] *1973*, enter into trade agreements with foreign countries or instrumentalities thereof; and

(2) proclaim such modification or continuance of any existing duty or other import restriction, such continuance of existing duty-free or excise treatment, or such additional import restrictions, as he determines to be required or appropriate to carry out any such trade agreement.

(b) Except as otherwise provided in this title, no proclamation pursuant to subsection (a) shall be made—

[(1) decreasing any rate of duty to a rate below 50 percent of the rate existing on July 1, 1962; or]

(1) decreasing any rate of duty—

(A) in order to carry out a trade agreement entered into before July 1, 1967, to a rate below 50 percent of the rate existing on July 1, 1962; or

(B) in order to carry out a trade agreement entered into after June 30, 1967, and before July 1, 1973, to a rate below the lower of—

(i) the rate 20 percent below the rate existing on July 1, 1967; or

(ii) the rate 2 percent ad valorem (or ad valorem equivalent) below the rate existing on July 1, 1967; or

(2) increasing any rate of duty to (or imposing) a rate more than 50 percent above the rate existing on July 1, 1934.

SEC. 202. LOW-RATE ARTICLES.

SECTION 201(b)(1)*(A)* shall not apply in the case of any article for which the rate of duty existing on July 1, 1962, is not more than 5 percent ad valorem (or ad valorem equivalent). In the case of an article subject to more than one rate of duty, the preceding sentence shall be applied by taking into account the aggregate of such rates.

Chapter 2—Special Provisions Concerning European Economic Community

SEC. 211. IN GENERAL.

(a) In the case of any trade agreement with the European Economic Community, section 201(b)(1)*(A)* shall not apply to articles in any category if, before entering into such trade agreement, the President determines with respect to such category that the United States and all countries of the European Economic Community together accounted for 80 percent or more of the aggregated world export value of all the articles in such category.

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(e) The exception to section 201(b)(1)*(A)* provided by subsection (a) shall not apply to any article referred to in Agricultural Handbook No. 143, United States Department of Agriculture, as issued in September 1959.

SEC. 212. AGRICULTURAL COMMODITIES.

In the case of any trade agreement with the European Economic Community, section 201(b)(1)(*A*) shall not apply to any article referred to in Agricultural Handbook No. 143, United States Department of Agriculture, as issued in September 1959, if before entering into such agreement the President determines that such agreement will tend to assure the maintenance or expansion of United States exports of the like article.

SEC. 213. TROPICAL AGRICULTURAL AND FORESTRY COMMODITIES.

(a) Section 201(b)(1)(*A*) shall not apply to any article if, before entering into the trade agreement covering such article, the President determines that—

(1) such article is a tropical agricultural or forestry commodity;

(2) the like article is not produced in significant quantities in the United States; and

(3) the European Economic Community has made a commitment with respect to duties or other import restrictions which is likely to assure access for such article to the markets of the European Economic Community which—

(A) is comparable to the access which such article will have to the markets of the United States, and

(B) will be afforded substantially without differential treatment as among free world countries of origin.

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Chapter 3—Requirements Concerning Negotiations

SEC. 221. TARIFF COMMISSION ADVICE.

(a) In connection with any proposed trade agreement under this title, the President shall from time to time publish and furnish the Tariff Commission with lists of articles which may be considered for modification or continuance of United States duties or other import restrictions, or continuance of United States duty-free or excise treatment. In the case of any article with respect to which consideration may be given to reducing the rate of duty below the 50 percent limitation contained in section 201(b)(1)(*A*), the list shall specify the section or sections of this title pursuant to which such consideration may be given.

(b) Within 6 months after receipt of such a list, the Tariff Commission shall advise the President with respect to each article of its judgment as to the probable economic effect of modifications of duties or other import restrictions on industries producing like or directly competitive articles, so as to assist the President in making an informed judgment as to the impact that might be caused by such modifications on United States industry, agriculture, and labor.

(c) In preparing its advice to the President, the Tariff Commission shall, to the extent practicable—

(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles in question and the domestic industries producing the like or directly competitive articles;

(2) analyze the production, trade, and consumption of each like or directly competitive article, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production;

(3) describe the probable nature and extent of any significant change in employment, profit levels, use of productive facilities and such other conditions as it deems relevant in the domestic industries concerned which it believes such modifications would cause; and

(4) make special studies (including studies of real wages paid in foreign supplying countries), whenever deemed to be warranted, of particular proposed modifications affecting United States industry, agriculture, and labor, utilizing to the fullest extent practicable the facilities of United States attachés abroad and other appropriate personnel of the United States.

(d) In preparing its advice to the President, the Tariff Commission shall, after reasonable notice, hold public hearings.

Chapter 4—National Security

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SEC. 232. SAFEGUARDING NATIONAL SECURITY.

(a) No action shall be taken pursuant to section 201(a) or pursuant to section 350 of the Tariff Act of 1930 to decrease or eliminate the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Director of the Office of Emergency Planning (hereinafter in this section referred to as the "Director") shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from other appropriate departments and agencies, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. If, as a result of such investigation, the Director is of the opinion that the said article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall promptly so advise the President, and, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security as set forth in this section, he shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not so threaten to impair the national security: *Provided, however, That any adjustment of imports shall not be accomplished by the imposition or increase of any duty, or of any fee or charge having the effect of a duty. In the case of any investigation under this subsection initiated by request or application, the Director shall make and announce the determination required by this subsection not later than 1 year after the date on which such request or application was made.*

Chapter 5—Administrative Provisions

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SEC. 242. INTERAGENCY TRADE ORGANIZATION.

(a) The President shall establish an interagency organization to assist him in carrying out the functions vested in him by this title and sections 351 and 352. Such organization shall, in addition to the Special Representative for Trade Negotiations, be composed of the heads of such departments and of such other officers as the President shall designate. It shall meet at such times and with respect to such matters as the President or the chairman of the organization shall direct. The organization may invite the participation in its activities of any agency not represented in the organization when matters of interest to such agency are under consideration.

(b) In assisting the President, the organization shall—

(1) make recommendations to the President on basic policy issues arising in the administration of the trade agreements program,

(2) make recommendations to the President as to what action, if any, he should take on reports with respect to tariff adjustment submitted to him by the Tariff Commission under section 301 [e] *(b)*,

(3) advise the President of the results of hearings concerning foreign import restrictions held pursuant to section 252(d), and recommend appropriate action with respect thereto, and

(4) perform such other functions with respect to the trade agreements program as the President may from time to time designate.

(c) The organization shall, to the maximum extent practicable, draw upon the resources of the agencies represented in the organization, as well as such other agencies as it may determine, including the Tariff Commission. In addition, the President may establish by regulation such procedures and committees as he may determine to be necessary to enable the organization to provide for the conduct of hearings pursuant to section 252(d), and for the carrying out of other functions assigned to the organization pursuant to this section.

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SEC. 244. AUTHORIZATION FOR CERTAIN EXPENSES.

There are hereby authorized to be appropriated annually such sums as may be necessary for the payment by the United States of its share of the expenses of the contracting Parties to the General Agreement on Tariffs and Trade.

Chapter 6—General Provisions

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SEC. 252. FOREIGN IMPORT RESTRICTIONS *AND DISCRIMINATORY ACTS.*

(a) Whenever unjustifiable foreign import restrictions impair the value of tariff commitments made to the United States, oppress the commerce of the United States, or prevent the expansion of trade on a mutually advantageous basis, the President shall—

(1) take all appropriate and feasible steps within his power to eliminate such restrictions,

(2) refrain from negotiating the reduction or elimination of any United States import restriction under section 201(a) in order to obtain the reduction or elimination of any such restrictions, and

(3) notwithstanding any provision of any trade agreement under this Act and to the extent he deems necessary and appropriate, impose duties or other import restrictions on the products of any foreign country or instrumentality establishing or maintaining such foreign import restrictions against United States [agricultural] products, when he deems such duties and other import restrictions necessary and appropriate to prevent the establishment or obtain the removal of such foreign import restrictions and to provide access for United States [agricultural] products to the markets of such country or instrumentality on an equitable basis.

(b) Whenever a foreign country or instrumentality the products of which receive benefits of trade agreement concessions made by the United States—

(1) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, [or]

(2) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce, *or*

(3) provides subsidies (or other incentives having the effect of subsidies) on its exports of one or more products to other foreign markets which unfairly affect sales of the competitive United States product or products to those other foreign markets,

the President shall, to the extent that such action is consistent with the purposes of section 102—

(A) suspend, withdraw, or prevent the application of benefits of trade agreement concessions to products of such country or instrumentality, [or]

(B) refrain from proclaiming benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality[.], *or*

(C) notwithstanding any provision of any trade agreement under this Act and to the extent he deems necessary and appropriate, impose duties or other import restrictions on the products of any foreign country or instrumentality maintaining such nontariff trade restrictions, engaging in such acts or policies, or providing such incentives when he deems such duties and other import restrictions necessary and appropriate to prevent the establishment or obtain the removal of such restrictions, acts, policies, or incentives and to provide access for United States products to foreign markets on an equitable basis.

(c) Whenever a foreign country or instrumentality, the products of which receive benefits of trade agreement concessions made by the United States, maintains unreasonable import restrictions which either directly or indirectly substantially burden United States commerce, the President [may] *shall*, to the extent that such action is consistent with the purposes of section 102, and having due regard for the international obligations of the United States—

[(1) suspend, withdraw, or prevent the application of benefits of trade agreement concessions to products of such country or instrumentality, or]

(1) impose duties or other import restrictions on, or suspend, withdraw, or prevent the application of trade agreement concessions to, products of such country or instrumentality, or

(2) refrain from proclaming benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality.

(d) The President shall provide an opportunity for the presentation of views concerning foreign import restrictions which are referred to in subsections (a), (b), and (c) and are maintained against United States commerce. Upon request by any interested person, the President shall, through the organization established pursuant to section 242(a), provide for appropriate public hearings with respect to such restrictions after reasonable notice and provide for the issuance of regulations concerning the conduct of such hearings.

SEC. 253. STAGING REQUIREMENTS.

(a) Except as otherwise provided in this section and in section 254, the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement *entered into before July 1, 1967*, under this title shall not exceed the aggregate reduction which would have been in effect on such day if—

(1) one-fifth of the total reduction under such agreement for such article had taken effect on the date of the first proclamation pursuant to section 201(a) to carry out such trade agreement, and

(2) the remaining four-fifths of such total reduction had taken effect in four equal installments at 1-year intervals after the date referred to in paragraph (1).

(b) Subsection (a) shall not apply to any article with respect to which the President has made a determination under section 213(a).

(c) In the case of an article the rate of duty on which has been or is to be reduced pursuant to a prior trade agreement, no reduction shall take effect pursuant to a trade agreement entered into [under section 201(a)] *before July 1, 1967, under this title* before the expiration of 1 year after the taking effect of the final reduction pursuant to such prior agreement.

(d) Except as otherwise provided in section 254, the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement entered into under this title after June 30, 1967, and before July 1, 1973, shall not exceed the aggregate reduction which would have been in effect on such day if—

(1) one-half of the aggregate reduction under such agreement for such article had taken effect on the date of the first proclamation pursuant to section 201(a) to carry out such trade agreement, and

(2) the remaining one-half of such aggregate reduction had taken effect 1 year after the date referred to in paragraph (1).

In applying the preceding sentence to any article, if, on the date referred to in paragraph (1) of the preceding sentence, there remained reductions pursuant to a prior trade agreement which had not yet taken effect, such remaining reductions shall be deemed to be included within the aggregate reduction under the trade agreement entered into after June 30, 1967, and before July 1, 1973.

[(d)] *(e)* If any part of a reduction *under any trade agreement entered into under this title* takes effect, then any time thereafter during which such part of the reduction is not in effect by reason of legislation of the United States or action thereunder shall be excluded in determining—

(1) the 1-year intervals referred to in subsection *(a)(2)*, and

(2) the expiration of the 1 year referred to in subsection (c) *or (d)(2)*.

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SEC. 256. DEFINITIONS.

For purposes of this title—

(1) The term "European Economic Community" means the instrumentality known by such name or any successor thereto.

(2) The countries of the European Economic Community as of any date shall be those countries which on such date are agreed to achieve a common external tariff through the European Economic Community.

(3) The term "agreement with the European Economic Community" means an agreement to which the United States and all countries of the European Economic Community (determined as of the date such agreement is entered into) are parties. For purposes of the preceding sentence, each country for which the European Economic Community signs an agreement shall be treated as a party to such agreement.

(4) The term "existing on July 1, 1962", as applied to a rate of duty, refers to the lowest nonpreferential rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on such date or (if lower) the lowest nonpreferential rate to which the United States is committed on such date and which may be proclaimed under section 350 of the Tariff Act of 1930.

(5) The term "existing on July 1, 1934", as applied to a rate of duty, refers to the rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on such date.

(6) The term "existing" without the specification of any date, when used with respect to any matter relating to entering into, or any proclamation to carry out, a trade agreement, means existing on the day on which such trade agreement is entered into, and, when referring to a rate of duty, refers to the rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on such day.

(7) The term "ad valorem equivalent" means the ad valorem equivalent of a specific rate or, in the case of a combination of rates including a specific rate, the sum of the ad valorem equivalent of the specific rate and of the ad valorem rate. The ad valorem equivalent shall be determined by the President on the basis of the value of imports of the article concerned during a period determined by him to be representative. In determining the value of imports, the President shall utilize, to the maximum extent practicable, the standards of valuation contained in section 402 or 402a of the Tariff Act of 1930 (19 U.S.C., sec. 1401a or 1402) applicable to the article concerned during such representative period.

(8) The term "existing on July 1, 1967," as applied to a rate of duty, refers to the lowest nonpreferential rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on such date or (if lower) the lowest nonpreferential rate to which the United States was committed on July 1, 1967, and with respect to which a proclamation was in effect on July 1, 1970.

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TITLE III—TARIFF ADJUSTMENT AND OTHER ADJUSTMENT ASSISTANCE

Chapter 1—Eligibility for Assistance

SEC. 301. [TARIFF COMMISSION INVESTIGATIONS AND REPORTS.] *PETITIONS AND DETERMINATIONS.*

(a)(1) A petition for tariff adjustment under section 351 may be filed with the Tariff Commission by a trade association, firm, certified or recognized union, or other representative of an industry.

(2) A petition for a determination of eligibility to apply for adjustment assistance under chapter 2 may be filed with the [Tariff Commission] *President* by a firm or its representative, and a petition for a determination of eligibility to apply for adjustment assistance under chapter 3 may be filed with the [Tariff Commission] *President* by a group of workers or by their certified or recognized union or other duly authorized representative. *A petition filed under this paragraph by or on behalf of a group of workers shall apply only with respect to individuals who are, or who have been within 1 year before the date of filing of such petition, employed regularly in the firm involved.*

[(3) Whenever a petition is filed under this subsection, the Tariff Commission shall transmit a copy thereof to the Secretary of Commerce.]

(b)(1) Upon the request of the President upon resolution of either the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives, upon its own motion, or upon the filing of a petition under subsection (a)(1), the Tariff Commission shall promptly make an investigation to determine whether [, as a result in major part of concessions granted under trade agreements,] an article is being imported into the United States in such increased [quantities as to cause, or threaten to cause,] *quantities, either actual or relative, as to contribute substantially (whether or not such increased imports are the major factor or the primary factor) toward causing or threatening to cause* serious injury to the domestic industry producing [an article which is] *articles* like or directly competitive with the imported article.

[(2) In making its determination under paragraph (1), the Tariff Commission shall take into account all economic factors which it considers relevant, including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment.

[(3) For purposes of paragraph (1), increased imports shall be considered to cause, or threaten to cause, serious injury to the domestic industry concerned when the Tariff Commission finds that such increased imports have been the major factor in causing, or threatening to cause, such injury.

[(4) No investigation for the purpose of paragraph (1) shall be made, upon petition filed under subsection (a)(1), with respect to the same subject matter as a previous investigation under paragraph (1), unless one year has elapsed since the Tariff Commission made its report to the President of the results of such previous investigation.]

(2) In arriving at a determination under paragraph (1), the Tariff Commission, without excluding other factors, shall take into consideration a downward trend of production, prices, profits, or wages in the domestic industry concerned, a decline in sales, an increase in unemployment or underemployment, an increase in imports, either actual or relative to domestic production, a higher or growing inventory, and a decline in the proportion of the domestic market supplied by domestic producers.

(3) For purposes of paragraph (1), the term "domestic industry producing articles like or directly competitive with the imported article" means that portion or subdivision of the producing organizations manufacturing, assembling, processing, extracting, growing, or otherwise producing like or directly competitive articles in commercial quantities. In applying the preceding sentence, the Tariff Commission shall (so far as practicable) distinguish or separate the operations of the producing organizations involving the like or directly competitive articles referred to in such sentence from the operations of such organizations involving other articles.

(4) If a majority of the Commissioners present and voting make an affirmative injury determination under paragraph (1), the Commissioners voting for such an affirmative injury determination shall also determine the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such injury. For purposes of this title, a remedy determination by a majority of the Commissioners voting for the affirmative injury determination shall be treated as the remedy determination of the Tariff Commission.

(5) If a majority of the Commissioners present and voting make an affirmative injury determination under paragraph (1), the Commissioners voting for such affirmative injury determination shall make an additional determination under this paragraph which shall consist of determining (i) whether either the criteria in subparagraph (A) or the criteria in subparagraph (B) are met, and, if so, (ii) whether the criteria in subparagraph (C) are met.

(A) Imports of the article under investigation constituted more than 15 percent of apparent United States consumption of the article in the first calendar year preceding the calendar year in which the investigation was instituted, the ratio of imports of such article to consumption for such first preceding calendar year increased absolutely by at least 3 percentage points over the corresponding ratio for the second calendar year preceding the calendar year in which the investigation was instituted, and the ratio of imports of such article to consumption for such first preceding calendar year increased absolutely by at least 5 percentage points over the corresponding ratio for the third calendar year preceding the calendar year in which the investigation was instituted.

(B) *As a result of increased imports (i) domestic production of the like or directly competitive product is declining or is likely to decline so as to substantially affect the ability of domestic producers to continue to produce the like or directly competitive product at a level of reasonable profit, and (ii) production workers' jobs, man-hours worked, or wages paid production workers in the domestic production of the like or directly competitive product are declining substantially or are likely to decline substantially.*

(C)(i) *The imported article is offered for sale at prices which are substantially below those prevailing for like or directly competitive products of comparable quality produced in the United States and constitutes an increasing proportion of apparent domestic consumption, and (ii) the unit labor costs attributable to producing the imported article are substantially below those attributable to producing like or competitive articles in the United States.*

For purposes of section 351(a), the Tariff Commission shall be deemed to have made an additional affirmative determination under this paragraph if a majority of the Commissioners voting for the affirmative injury determination under paragraph (1) determine that (i) the criteria in subparagraph (A) or the criteria in subparagraph (B) are met, and (ii) the criteria in subparagraph (C) are met.

(6) *In the course of any proceeding initiated under paragraph (1), the Tariff Commission shall investigate any factors which in its judgment may be contributing to increased imports of the article under investigation; and, whenever in the course of its investigation the Tariff Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of the Antidumping Act, 1921, section 303 or 337 of the Tariff Act of 1930, or other remedial provisions of law, the Tariff Commission shall promptly notify the appropriate agency and take such other action as it deems appropriate in connection therewith.*

(7) *In the course of any proceeding initiated under paragraph (1), the Tariff Commission shall, after reasonable notice, hold public hearings and shall afford interested parties opportunity to be present, to present evidence, and to be heard at such hearings.*

(8) *The Tariff Commission shall report to the President the determinations and other results of each investigation under this subsection, including any dissenting or separate views, and any action taken under paragraph (6).*

(9) *The report of the Tariff Commission of its determinations under this subsection shall be made at the earliest practicable time, but not later than 6 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Tariff Commission shall promptly make public such report, and shall cause a summary thereof to be published in the Federal Register.*

(10) *No investigation for the purposes of this subsection shall be made, upon petition filed under subsection (a)(1), with respect to the same subject matter as a previous investigation under this subsection, unless 1 year has elapsed since the Tariff Commission made its report to the President of the results of such previous investigation.*

[(c)(1) In the case of a petition by a firm for a determination of eligibility to apply for adjustment assistance under chapter 2, the Tariff Commission shall promptly make an investigation to determine whether, as a result in major part of concessions granted under trade agreements, an article like or directly competitive with an article produced by the firm is being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to such firm. In making its determination under this paragraph, the Tariff Commission shall take into account all economic factors which it considers relevant, including idling of productive facilities of the firm, inability of the firm to operate at a level of reasonable profit, and unemployment or underemployment in the firm.

[(2) In the case of a petition by a group of workers for a determination of eligibility to apply for adjustment assistance under chapter 3, the Tariff Commission shall promptly make an investigation to determine whether, as a result in major part of concessions granted under trade agreements, an article like or directly competitive with an article produced by such workers' firm, or an appropriate subdivision thereof, is being imported into the United States in such increased quantities as to cause, or threaten to cause, unemployment or underemployment of a significant number or proportion of the workers of such firm or subdivision.

[(3) For purposes of paragraphs (1) and (2), increased imports shall be considered to cause, or threaten to cause, serious injury to a firm or unemployment or underemployment, as the case may be, when the Tariff Commission finds that such increased imports have been the major factor in causing, or threatening to cause, such injury or unemployment or underemployment.]

(c)(1) In the case of a petition by a firm for a determination of eligibility to apply for adjustment assistance under chapter 2, the President shall determine whether an article like or directly competitive with an article produced by the firm, or an appropriate subdivision thereof, is being imported into the United States in such increased quantities, either actual or relative, as to contribute substantially (whether or not such increased imports are the major factor or the primary factor) toward causing or threatening to cause serious injury to such firm or subdivision. In making such determination the President shall take into account all economic factors which he considers relevant, including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment.

(2) In the case of a petition by a group of workers for a determination of eligibility to apply for adjustment assistance under chapter 3, the President shall determine whether an article like or directly competitive with an article produced by such workers' firm, or an appropriate subdivision thereof, is being imported into the United States in such increased quantities, either actual or relative, as to contribute substantially (whether or not such increased imports are the major factor or the primary factor) toward causing or threatening to cause unemployment or underemployment of a significant number or proportion of the workers of such firm or subdivision.

(3) In order to assist him in making the determinations referred to in paragraphs (1) and (2) with respect to a firm or group of workers, the President shall promptly transmit to the Tariff Commission a copy of each petition filed under subsection (a)(2) and, not later than 5 days after the date on which the petition is filed, shall request the Tariff Commission to conduct an investigation relating to questions of fact relevant to such determinations and to make a report of the facts disclosed by such investigation. In his request, the President may specify the particular kinds of data which he deems appropriate. Upon receipt of the President's request, the Tariff Commission shall promptly institute the investigation and promptly publish notice thereof in the Federal Register.

(4) In the course of any investigation under paragraph (3), the Tariff Commission shall, after reasonable notice, hold a public hearing, if such hearing is requested (not later than 10 days after the date of the publication of its notice under paragraph (3)) by the petitioner or any other interested person, and shall afford interested persons an opportunity to be present, to produce evidence, and to be heard at such hearing.

(5) The report of the Tariff Commission of the facts disclosed by its investigation under paragraph (3) with respect to a firm or group of workers shall be made at the earliest practicable time, but not later than 60 days after the date on which it receives the request of the President under paragraph (3).

[(d)(1) In the course of any investigation under subsection (b)(1), the Tariff Commission shall, after reasonable notice, hold public hearings and shall afford interested parties opportunity to be present, to produce evidence, and to be heard at such hearings.

[(2) In the course of any investigation under subsection (c)(1) or (c)(2), the Tariff Commission shall, after reasonable notice, hold public hearings if requested by the petitioner, or if, within 10 days after notice of the filing of the petition, a hearing is requested by any other party showing a proper interest in the subject matter of the investigation, and shall afford interested parties an opportunity to be present, to produce evidence, and to be heard at such hearings.

[(e) Should the Tariff Commission find with respect to any article, as the result of its investigation, the serious injury or threat thereof described in subsection (b), it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such injury and shall include such finding in its report to the President.

[(f)(1) The Tariff Commission shall report to the President the results of each investigation under this section and include in each report any dissenting or separate views. The Tariff Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

[(2) The report of the Tariff Commission of its determination under subsection (b) shall be made at the earliest practicable time, but not later than 6 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Tariff Commission shall promptly make public such report, and shall cause a summary thereof to be published in the Federal Register.

[(3) The report of the Tariff Commission of its determination under subsection (c)(1) or (c)(2) with respect to any firm or group of workers shall be made at the earliest practicable time, but not later than 60 days after the date on which the petition is filed.

[(g) Except as provided in section 257(e)(3), no petition shall be filed under subsection (a), and no request, resolution, or motion shall be made under subsection (b), prior to the close of the 60th day after the date of the enactment of this Act.]

SEC. 302. PRESIDENTIAL ACTION [AFTER TARIFF COMMISSION DETERMINATION.] *WITH RESPECT TO ADJUSTMENT ASSISTANCE.*

[(a) After receiving a report from the Tariff Commission containing an affirmative finding under section 301(b) with respect to any industry, the President may—

[(1) provide tariff adjustment for such industry pursuant to section 351 or 352,

[(2) provide, with respect to such industry, that its firms may request the Secretary of Commerce for certifications of eligibility to apply for adjustment assistance under chapter 2,

[(3) provide, with respect to such industry, that its workers may request the Secretary of Labor for certifications of eligibility to apply for adjustment assistance under chapter 3, or

[(4) take any combination of such actions.]

(a)(1) If after receiving a report from the Tariff Commission containing an affirmative injury determination under section 301(b) with respect to any industry, the President provides tariff adjustment for such industry pursuant to section 351 or 352, he may—

(A) provide, with respect to such industry, that its firms may request the Secretary of Commerce for certifications of eligibility to apply for adjustment assistance under chapter 2,

(B) provide, with respect to such industry, that its workers may request the Secretary of Labor for certifications of eligibility to apply for adjustment assistance under chapter 3, or

(C) provide that both firms and workers may request such certifications.

(2) If after receiving a report from the Tariff Commission containing an affirmative injury determination under section 301(b) with respect to any industry the President does not provide tariff adjustment for such industry pursuant to section 351 or 352, he shall promptly provide that both firms and workers of such industry may request certifications of eligibility to apply for adjustment assistance under chapters 2 and 3.

(3) Notice shall be published in the Federal Register of each action taken by the President under this subsection in providing that firms or workers may request certifications of eligibility to apply for adjustment assistance. Any request for such a certification must be made to the Secretary concerned within the 1-year period (or such longer period as may be specified by the President) after the date on which such notice is published.

(b)(1) The Secretary of Commerce shall certify as, eligible to apply for adjustment assistance under chapter 2, any firm in an industry with respect to which the President has acted under subsection (a)

[(2)], upon a showing by such firm to the satisfaction of the Secretary of Commerce that the increased imports [(which the Tariff Commission has determined to result from concessions granted under trade agreements) have caused serious injury or threat thereof to such firm] *have contributed substantially toward causing or threatening to cause serious injury to such firm.*

(2) The Secretary of Labor shall certify, as eligible to apply for adjustment assistance under chapter 3, any group of workers in an industry with respect to which the President has acted under subsection (a)[(3)], upon a showing by such group of workers to the satisfaction of the Secretary of Labor that the increased imports [(which the Tariff Commission has determined to result from concessions granted under trade agreements) have caused or threatened] *have contributed substantially toward causing or threatening* to cause unemployment or underemployment of a significant number or proportion of workers of such workers' firm or subdivision thereof. *A certification under this paragraph shall apply only with respect to individuals who are, or who have been, employed regularly in the firm involved within 1 year before the date of the institution of the Tariff Commission investigation under section 301(b) relating to the industry with respect to which the President has acted under subsection (a).*

[(c) After receiving a report from the Tariff Commission containing an affirmative finding under section 301(c) with respect to any firm or group of workers, the President may certify that such firm or group of workers is eligible to apply for adjustment assistance.]

(c)(1) After receiving a report of the Tariff Commission of the facts disclosed by its investigation under section 301(c)(3) with respect to any firm or group of workers, the President shall make his determination under section 301(c)(1) or (c)(2) at the earliest practicable time, but not later than 30 days after the date on which he receives the Tariff Commission's report, unless, within such period, the President requests additional factual information from the Tariff Commission. In this event, the Tariff Commission shall, not later than 25 days after the date on which it receives the President's request, furnish such additional factual information in a supplemental report, and the President shall make his determination not later than 15 days after the date on which he recieves such supplemental report.

(2) The President shall promptly publish in the Federal Register a summary of each determination under section 301(c) with respect to any firm or group of workers.

(3) If the President makes an affirmative determination under section 301(c) with respect to any firm or group of workers, he shall promptly certify that such firm or group of workers is eligible to apply for adjustment assistance.

(4) The President is authorized to exercise any of his functions with respect to determinations and certifications of eligibility of firms or workers to apply for adjustment assistance under section 301 and this section through such agency or other instrumentality of the United States Government as he may direct.

(d) Any certification under subsection (b) or (c) that a group of workers is eligible to apply for adjustment assistance shall specify the date on which the unemployment or underemployment began or threatens to begin.

(e) Whenever the President determines, with respect to any certification of the eligibility of a group of workers, that separations from the firm or subdivision thereof are no longer attributable to the conditions specified in section 301(c)(2) or in subsection (b)(2) of this section, he shall terminate the effect of such certification. Such termination shall apply only with respect to separations occurring after the termination date specified by the President.

Chapter 2—Assistance to Firms

SEC. 311. CERTIFICATION OF ADJUSTMENT PROPOSALS.

(a) A firm certified under section 302 as eligible to apply for adjustment assistance may, at any time within 2 years after the date of such certification, file an application with the Secretary of Commerce for adjustment assistance under this chapter. Within a reasonable time after filing its application, the firm shall present a proposal for its economic adjustment.

(b) Adjustment assistance under this chapter consists of technical assistance, financial assistance, and tax assistance, which may be furnished singly or in combination. Except as provided in subsection (c), no adjustment assistance shall be provided to a firm under this chapter until its adjustment proposal shall have been certified by the Secretary of Commerce—

(1) to be reasonably calculated materially to contribute to the economic adjustment of the firm,

(2) to give adequate consideration to the interests of the workers of such firm adversely affected [by actions taken in carrying out trade agreements, and] *by the increased imports identified by the Tariff Commission under section 301(b)(1) or by the President under section 301(c)(1), as the case may be, and*

(3) to demonstrate that the firm will make all reasonable efforts to use its own resources for economic development.

(c) In order to assist a firm which has applied for adjustment assistance under this chapter in preparing a sound adjustment proposal, the Secretary of Commerce may furnish technical assistance to such firm prior to certification of its adjustment proposal.

(d) Any certification made pursuant to this section shall remain in force only for such period as the Secretary of Commerce may prescribe.

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SEC. 317. TAX ASSISTANCE.

(a) If—

(1) to carry out an adjustment proposal of a firm certified pursuant to section 311, such firm applies for tax assistance under this section within 24 months after the close of a taxable year and alleges in such application that it has sustained a net operating loss for such taxable year,

(2) the Secretary of Commerce determines that any such alleged loss for such taxable year arose predominantly out of the carrying on of a trade or business which was seriously injured,

during such year, by the increased imports [which the Tariff Commission has determined to result from concessions granted under trade agreements] *identified by the Tariff Commission under section 301(b)(1) or by the President under section 301(c)(1), as the case may be,* and

(3) the Secretary of Commerce determines that tax assistance under this section will materially contribute to the economic adjustment of the firm,

then the Secretary of Commerce shall certify such determinations with respect to such firm for such taxable year. No determination or certification under this subsection shall constitute a determination of the existence or amount of any net operating loss for purposes of section 172 of the Internal Revenue Code of 1954.

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Chapter 3—Assistance to Workers

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Subchapter A—Trade Readjustment Allowances

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SEC. 323. WEEKLY AMOUNTS.

(a) Subject to the other provisions of this section, the trade re adjustment allowance payable to an adversely affected worker for a week of unemployment shall be an amount equal to [65] *75* percent of his average weekly wage or to [65] *75* percent of the average weekly manufacturing wage, whichever is less, reduced by 50 percent of the amount of his remuneration for services performed during such week.

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Subchapter B—Training

SEC. 326. IN GENERAL.

(a) To assure that the readjustment of adversely affected workers shall occur as quickly and effectively as possible, with minimum reliance upon trade readjustment allowances under this chapter, every effort shall be made to prepare each such worker for full employment in accordance with his capabilities and prospective employment opportunities. To this end, and subject to this chapter, adversely affected workers shall be afforded, where appropriate, the testing, counseling, training, and placement services *and supportive and other services* provided for under any Federal law. Such workers may also be afforded supplemental assistance necessary to defray transportation and subsistence expenses for separate maintenance when such training is provided in facilities which are not within commuting distance of their regular place of residence. The Secretary of Labor in defraying such subsistence expenses shall not afford any individual an allowance exceeding $5 a day; nor shall the Secretary authorize any transportation expense exceeding the rate of 10 cents per mile.

(b) To the extent practicable, before adversely affected workers are referred to training, the Secretary of Labor shall consult with such workers' firm and their certified or recognized union or other duly authorized representative and develop a worker retraining plan which provides for training such workers to meet the manpower needs of such firm, in order to preserve or restore the employment relationship between the workers and the firm.

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Chapter 4—Tariff Adjustment

SEC. 351. AUTHORITY.

[(a)(1) After receiving an affirmative finding of the Tariff Commission under section 301(b) with respect to an industry, the President may proclaim such increase in, or imposition of, any duty or other import restriction on the article causing or threatening to cause serious injury to such industry as he determines to be necessary to prevent or remedy serious injury to such industry.]

(1)(A) After receiving an affirmative injury determination of the Tariff Commission under paragraph (1) of section 301(b), which is not combined with an additional affirmative determination of the Tariff Commission under paragraph (5) of section 301(b), the President shall proclaim such increase in, or imposition of, any duty or other import restriction on the article concerned as he determines to be necessary to prevent or remedy serious injury to the industry, unless he determines that such action would not be in the national interest.

(B) After receiving an affirmative injury determination of the Tariff Commission under paragraph (1) of section 301(b) which is combined with an additional affirmative determination of the Tariff Commission under paragraph (5) of section 301(b), the President shall proclaim the increase in, or imposition of, any duty or other import restriction on the article concerned determined and reported by the Tariff Commission pursuant to section 301(b), unless he determines that such action would not be in the national interest.

(2) If the President does not, within 60 days after the date on which he receives [such affirmative finding,] *an affirmative injury determination,* proclaim the increase in, or imposition of, any duty or other import restriction on such article [found and] *determined and* reported by the Tariff Commission pursuant to section 301[(e)]*(b)*—

(A) he shall immediately submit a report to the House of Representatives and to the Senate stating why he has not proclaimed such increase or imposition, and

(B) such increase or imposition shall take effect (as provided in paragraph (3)) upon the adoption by both Houses of [the] Congress (within the 60-day period following the date on which the report referred to in subparagraph (A) is submitted to the House of Representatives and the Senate), by the yeas and nays by the affirmative vote of a majority of the authorized membership of each House, of a concurrent resolution stating in effect that the Senate and House of Representatives approve the increase in, or imposition of, any duty or other import restriction on the article [found] *determined* and reported by the Tariff Commission *pursuant to section 301(b).*

Nothing in subparagraph (A) shall require the President to state considerations of national interest on which his decision was based. For purposes of subparagraph (B), in the computation of the 60-day period there shall be excluded the days on which either House is not in session because of adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die. The report referred to in subparagraph (A) shall be delivered to both Houses of the Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House of Representatives is not in session and to the Secretary of the Senate if the Senate is not in session.

(3) In any case in which the contingency set forth in paragraph (2)(B) occurs, the President shall (within 15 days after the adoption of such resolution) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was [found] *determined* and reported by the Tariff Commission pursuant to section 301[(c)] *(b)*.

(4) The President may, within 60 days after the date on which he receives an affirmative [finding] *injury determination* of the Tariff Commission under section 301(b) with respect to an industry, request additional information from the Tariff Commission. The Tariff Commission shall, as soon as practicable but in no event more than 120 days after the date on which it receives the President's request, furnish additional information with respect to such industry in a supplemental report. For purposes of paragraph (2), the date on which the President receives such supplemental report shall be treated as the date on which the President received the affirmative [finding] *injury determination* of the Tariff Commission with respect to such industry.

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(d)(1) So long as any increase in, or imposition of, any duty or other import restriction pursuant to this section or pursuant to section 7 of the Trade Agreements Extension Act of 1951 remains in effect, the Tariff Commission shall keep under review developments with respect to the industry concerned, *including the specific steps taken by the firms in the industry to enable them to compete more effectively with imports*, and shall make annual reports to the President concerning such developments.

(2) Upon request of the President or upon its own motion, the Tariff Commission shall advise the President of its judgment, *in the light of specific steps taken by the firms in such industry to enable them to compete more effectively with imports and all other relevant factors*, as to the probable economic effect on the industry concerned, *and (to the extent practicable) on the firms and workers therein* of the reduction or termination of the increase in, or imposition of, any duty or other import restriction pursuant to this section or section 7 of the Trade Agreements Extension Act of 1951.

(3) Upon petition on behalf of the industry concerned, filed with the Tariff Commission not earlier than the date which is [9 months,] *1 year*, and not later than the date which is [6] *9* months, before the date any increase or imposition referred to in paragraph (1) or (2) of subsection (c) is to terminate by reason of the expiration of the

applicable period prescribed in paragraph (1) or an extension thereof under paragraph (2), the Tariff Commission shall advise the President of its judgment as to the probable economic effect on such industry of such termination. *The report of the Tariff Commission on any investigation initiated under this paragraph shall be made not later than the 90th day before the expiration date referred to in the preceding sentence.*

(4) In advising the President under this subsection as to the probable economic effect on the industry concerned [,] the Tariff Commission shall take into account all economic factors which it considers relevant, including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment.

(5) Advice by the Tariff Commission under this subsection shall be given on the basis of an investigation during the course of which the Tariff Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(6) In the course of any investigation under this subsection, the Tariff Commission shall also determine and report to the President—

(A) if the termination of the increase or imposition referred to in paragraph (1) or (2) of subsection (c) threatens to cause serious injury to the industry concerned, and

(B) if the determination under subparagraph (A) is affirmative—

(i) the limit to which such increase or imposition may be reduced without threatening to cause serious injury to the industry concerned, and

(ii) whether, in lieu of such termination, additional increases or impositions of duties and other import restrictions are required to prevent or remedy serious injury to the industry concerned.

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SEC. 352. ORDERLY MARKETING AGREEMENTS.

[(a) After receiving an affirmative finding of the Tariff Commission under section 301(b) with respect to an industry, the President may, in lieu of exercising the authority contained in section 351(a)(1) but subject to the provisions of sections 351(a) (2), (3), and (4), negotiate international agreements with foreign countries limiting the export from such countries and the import into the United States of the article causing or threatening to cause serious injury to such industry, whenever he determines that such action would be more appropriate to prevent or remedy serious injury to such industry than action under section 351(a)(1).]

(a) If the President has received an affirmative injury determination of the Tariff Commission under section 301 (b) with respect to an industry, he may at any time negotiate international agreements with foreign countries limiting the export from such countries and the import into the United States of the article causing or threatening to cause serious injury to such industry whenever he determines that such action would be appropriate to prevent or remedy serious injury to such industry. Any agreement concluded under this subsection may replace in whole or in part any action taken pursuant to the authority contained in paragraph (1) of section 351(a); but any agreement concluded under this subsection

before the close of the period during which a concurrent resolution may be adopted under paragraph (2) of section 351(a) shall terminate not later than the effective date of any proclamation issued by the President pursuant to paragraph (3) of section 351(a).

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INTERNAL REVENUE CODE OF 1954

SEC. 246. RULES APPLYING TO DEDUCTIONS FOR DIVIDENDS RECEIVED.

(a) DEDUCTION NOT ALLOWED FOR DIVIDENDS FROM CERTAIN CORPORATIONS.—The deductions allowed by sections 243, 244, and 245 shall not apply to any dividend from—

(1) a corporation organized under the China Trade Act, 1922 (see sec. 941); or

(2) a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is—

(A) a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations); or

(B) a corporation to which section 931 (relating to income from sources within possessions of the United States) applies.

(b) LIMITATION ON AGGREGATE AMOUNT OF DEDUCTIONS.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the aggregate amount of the deductions allowed by sections 243(a)(1), and 244(a), and 245 shall not exceed 85 percent of the taxable income computed without regard to the deductions allowed by sections 172, 243(a)(1), 244(a), 245, and 247, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1).

(2) EFFECT OF NET OPERATING LOSS.—Paragraph (1) shall not apply for any taxable year for which there is a net operating loss (as determined under section 172).

(c) EXCLUSION OF CERTAIN DIVIDENDS.—

(1) IN GENERAL.—No deduction shall be allowed under section 243, 244, or 245, in respect of any dividend on any share of stock—

(A) which is sold or otherwise disposed of in any case in which the taxpayer has held such share for 15 days or less, or

(B) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make corresponding payments with respect to substantially identical stock or securities.

(2) 90-DAY RULE IN THE CASE OF CERTAIN PREFERENCE DIVIDENDS.—In the case of any stock having preference in dividends, the holding period specified in paragraph (1)(A) shall be 90 days in lieu of 15 days if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days.

(3) DETERMINATION OF HOLDING PERIODS.—For purposes of this subsection, in determining the period for which the taxpayer has held any share of stock—

(A) the day of disposition, but not the day of acquisition, shall be taken into account.

(B) there shall not be taken into account any day which is more than 15 days (or 90 days in the case of stock to which paragraph (2) applies) after the date on which such share becomes ex-dividend, and

(C) paragraph (4) of section 1223 shall not apply.

The holding periods determined under the preceding provisions of this paragraph shall be appropriately reduced (in the manner provided in regulations prescribed by the Secretary or his delegate) for any period (during such holding period) in which the taxpayer has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially identical stock or securities.

(d) DIVIDENDS FROM A DISC OR FORMER DISC.—No deduction shall be allowed under section 243 in respect of a dividend from a corporation which is a DISC or former DISC (as defined in section 992(a)) to the extent such dividend is made out of the corporation's accumulated DISC income or previously taxed income, or is a deemed distribution pursuant to section 995(b)(1).

[(d)] *(e)* CROSS REFERENCE.—For special rule relating to mutual savings banks, etc., to which section 593 applies, see section 596.

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SEC. 861. INCOME FROM SOURCES WITHIN THE UNITED STATES.

(a) GROSS INCOME FROM SOURCES WITHIN UNITED STATES.—The following items of gross income shall be treated as income from sources within the United States:

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(2) DIVIDENDS.—The amount received as dividends—

(A) from a domestic corporation other than a corporation entitled to the benefits of section 931, and other than a corporation less than 20 percent of whose gross income is shown to the satisfaction of the Secretary or his delegate to have been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or

(B) from a foreign corporation unless less than 50 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period which was effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources; but dividends (other than dividends for which a deduction is allowable under section 245(b)) from a foreign corporation shall, for purposes of subpart A of part III (relating to foreign tax credit), be treated as income from sources without the United States to the extent (and only to the extent) exceeding the amount which is 100/85th of the amount of the deduction allowable under section 245 in respect of such dividends, or

(C) from a foreign corporation to the extent that such amount is required by section 243(d) (relating to certain dividends from foreign corporations) to be treated as dividends from a domestic corporation which is subject to taxation under this chapter, and to such extent subparagraph (B) shall not apply to such amount[.], *or*

(D) from a DISC or former DISC (as defined in section 992(a)) except to the extent attributable (as determined under regulations prescribed by the Secretary or his delegate) to qualified export receipts described in section 993(a)(1) (other than interest from sources within the United States).

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SEC. 901. TAXES OF FOREIGN COUNTRIES AND OF POSSESSIONS OF UNITED STATES.

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(d) Corporations Treated as Foreign.—For purposes of this subpart, the following corporations shall be treated as foreign corporations:

(1) a corporation entitled to the benefits of section 931, by reason of receiving a large percentage of its gross income from sources within a possession of the United States; and

(2) a corporation organized under the China Trade Act, 1922 (15 U.S.C., chapter 4), and entitled to the deduction provided in section 941.

For purposes of this subpart, dividends from a DISC or former DISC (as defined in section 992(a)) shall be treated as dividends from a foreign corporation to the extent such dividends are treated under part I as income from sources without the United States.

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SEC. 922. SPECIAL DEDUCTION.

In the case of a Western Hemisphere trade corporation there shall be allowed as a deduction in computing taxable income an amount computed as follows—

(1) First determine the taxable income of such corporation computed without regard to this section.

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the sum of the normal tax rate and the surtax rate for the taxable year prescribed by section 11.

No deduction shall be allowed under this section to a corporation for a taxable year for which it is a DISC or in which it owns at any time stock in a DISC or former DISC (as defined in section 992(a)).

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SEC. 931. INCOME FROM SOURCES WITHIN POSSESSIONS OF THE UNITED STATES.

(a) GENERAL RULE.—In the case of citizens of the United States or domestic corporations, gross income means only gross income from sources within the United States if the conditions of both paragraph (1) and paragraph (2) are satisfied:

(1) THREE-YEAR PERIOD.—If 80 percent or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section) for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) TRADE OR BUSINESS.—If—

(A) in the case of such corporation, 50 percent or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(B) in the case of such citizen, 50 percent or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

This section shall not apply in the case of a corporation for a taxable year for which it is a DISC or in which it owns at any time stock in a DISC or former DISC (as defined in section 992(a)).

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Subchapter N—Tax Based on Income From Sources Within or Without the United States

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PART IV—DOMESTIC INTERNATIONAL SALES CORPORATIONS

Subpart A—Treatment of Qualifying Corporations

SEC. 991. TAXATION OF A DOMESTIC INTERNATIONAL SALES CORPORATION.

(a) GENERAL RULE.—Except as provided in this section, a DISC (as defined in section 992(a)) shall not be subject to the taxes imposed by this subtitle.

(b) TAXABLE YEARS BEGINNING BEFORE 1974.—

(1) TRANSITION.—In the case of a taxable year beginning before January 1, 1974, a DISC shall be subject to the tax imposed by section 11 or 1201(a) but the amount of the tax liability shall be—

(A) in the case of a taxable year beginning in 1971, 50 percent of the amount determined under paragraph (2), and

(B) in the case of a taxable year beginning in 1972 or 1973, 25 percent of the amount determined under paragraph (2).

(2) TAX LIABILITY.—For purposes of paragraph (1), the amount determined under this paragraph, with respect to any taxable year, is the amount by which—

(A) the tax imposed by section 11 or 1201(a) for the taxable year determined without regard to subsection (a), exceeds

(B) the sum of the credits against such tax allowable for the taxable year.

If a DISC is a member of a controlled group of corporations (within the meaning of section 1563) for the taxable year, no surtax exemption shall be allowed in applying this paragraph for such year.

SEC. 992. REQUIREMENTS OF A DOMESTIC INTERNATIONAL SALES CORPORATION.

(a) DEFINITION OF "DISC" AND "FORMER DISC".—

(1) DISC.—For purposes of this title, the term "DISC" means, with respect to any taxable year, a corporation which is incorporated under the laws of any State and satisfies the following conditions for the taxable year:

(A) 95 percent or more of the gross receipts (as defined in section 993(f)) of such corporation consist of qualified export receipts (as defined in section 993(a)),

(B) the adjusted basis of the qualified export assets (as defined in section 993(b)) held by the corporation at the close of the taxable year equals or exceeds 95 percent of the sum of such adjusted basis and the fair market value of all other assets held by the corporation at the close of the taxable year,

(C) such corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least $2,500 on each day of the taxable year, and

(D) the corporation has made an election pursuant to subsection (b) to be treated as a DISC and such election is in effect for the taxable year.

(2) STATUS AS DISC AFTER HAVING FILED A RETURN AS A DISC.—If—

(A) a corporation does not notify the Secretary or his delegate, before the 30-day period ending with the expiration of the period of limitation on assessment for underpayment of tax, that it is not a DISC for a taxable year for which it filed a return as a DISC under section 6011(e)(2), and

(B) the Secretary or his delegate has not, within the period of limitation prescribed in subparagraph (B), issued a notice

of deficiency based on a determination that the corporation is not a DISC for such year,

then, notwithstanding any other provision of this part, for purposes of this title the corporation is a DISC with respect to such taxable year and shall be deemed to have satisfied the conditions of paragraph (1) for such year.

(3) FORMER DISC.—For purposes of this title, the term "former DISC" means, with respect to any taxable year, a corporation which is not a DISC for such year but was a DISC in a preceding taxable year and at the beginning of the taxable year has undistributed previously taxed income or accumulated DISC income.

(b) ELECTION.—

(1) ELECTION.—An election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year and shall be made in such manner as the Secretary or his delegate shall prescribe. Such election shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

(2) EFFECT OF ELECTION.—If a corporation makes an election under paragraph (1), then the provisions of this part shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years and shall apply to each person who at any time is a shareholder of such corporation for all periods on or after the first day of the first taxable year of the corporation for which the election is effective.

(3) TERMINATION OF ELECTION.

(A) REVOCATION. An election under this subsection made by any corporation may be terminated by it for any taxable year of the corporation after the first taxable year of the corporation for which the election is effective. A termination under this paragraph shall be effective with respect to such election—

(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days,

and for all succeeding taxable years of the corporation. Such termination shall be made in such manner as the Secretary or his delegate shall prescribe by regulations.

(B) CONTINUED FAILURE TO BE DISC. If a corporation is not a DISC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.

(c) DISTRIBUTIONS TO MEET QUALIFICATION REQUIREMENTS.—

(1) IN GENERAL. Subject to the conditions provided by paragraphs (2) and (3), a corporation which for a taxable year does not satisfy a condition specified in paragraph (1)(A) (relating to gross receipts) or (1)(B) (relating to assets) of subsection (a) shall nevertheless be deemed to satsify such condition for such year if it makes a pro rata distribution of property after the close of the taxable year to its share-

holders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(A) if the condition of subsection (a)(1) (A) is not satisfied, the portion of such corporation's taxable income attributable to its gross receipts which are not qualified export receipts for such year,

(B) if the condition of subsection (a)(1)(B) is not satisfied, the fair market value of those assets which are not qualified export assets on the last day of such taxable year, or

(C) if neither of such conditions is satisfied, the sum of the amounts required by subparagraphs (A) and (B).

(2) DISTRIBUTIONS MADE WITHIN 8½ MONTHS AFTER CLOSE OF TAXABLE YEAR.—In the case of a distribution made on or before the 15th day of the 9th month after the close of the taxable year, if the failure of a corporation to satisfy a condition specified in subsection (a)(1) (A) or (B) is not due to reasonable cause, paragraph (1) applies only if—

(A) at least 70 percent of the gross receipts of such corporation for such taxable year consist of qualified export receipts, and

(B) the adjusted basis of the qualified export assets held by the corporation on the last day of each month of the taxable year equals or exceeds 70 percent of the sum of (i) such adjusted basis, and (ii) the fair market value of all other assets held by the corporation on such day.

(3) DISTRIBUTIONS MADE MORE THAN 8½ MONTHS AFTER CLOSE OF TAXABLE YEAR.—In the case of a distribution made after the 15th day of the 9th month following the close of the taxable year, paragraph (1) applies only if—

(A) the failure to make the distribution within the time prescribed by paragraph (2) and before the time the distribution is made is due to reasonable cause,

(B) the distribution is made before the earlier of (i) the expiration of the period of limitation prescribed by section 6501 for assessment of the tax for the taxable year with respect to which the distribution is made, or (ii) the expiration of the period ending 90 days after the day on which the corporation is notified by the Secretary or his delegate that the corporation has failed to satisfy either the gross receipts or gross assets test of subsection (a)(1) (A) or (B) (extended by any period in which a deficiency cannot be assessed under section 6213(a) and any other period which the Secretary or his delegate determines is reasonable and necessary to permit the distribution), and

(C) the corporation, within the 30-day period beginning with the day on which the distribution is made, pays to the Secretary or his delegate an amount determined by multiplying (i) the amount equal to 4½ percent of the distribution, by (ii) the number of its taxable years which begin after the taxable year with respect to which the distribution is made and before the distribution is made.

For purposes of this title, any payment made pursuant to subparagraph (C) shall be treated as interest.

(d) *Ineligible Corporations.—The following corporations shall not be eligible to be treated as a DISC—*

(1) a corporation exempt from tax by reason of section 501,

(2) a personal holding company (as defined in section 542),

(3) a financial institution to which section 581 or 593 applies,

(4) an insurance company subject to the tax imposed by subchapter L,

(5) a regulated investment company (as defined in section 851(a)),

(6) a China Trade Act corporation receiving the special deduction provided in section 941(a), or

(7) an electing small business corporation (as defined in section 1371(b)).

SEC. 993. DEFINITIONS AND SPECIAL RULES.

(a) Qualified Export Receipts.—

(1) General rule.—For purposes of this part, subject to the exceptions in paragraph (2), the qualified export receipts of a corporation are—

(A) gross receipts from the sale, exchange, or other disposition of export property—

(i) for direct use, consumption, or disposition outside the United States (as defined in subsection (g)), or

(ii) to a DISC for such direct use, consumption, or disposition,

(B) gross receipts from the leasing or rental of export property which is used by the lessee of such property outside the United States,

(C) gross receipts with respect to services which are related and subsidiary to any sale, exchange, lease, rental, or other disposition of export property by such corporation,

(D) gross receipts derived from the sale, exchange, or other disposition of qualified export assets (other than export property),

(E) dividends (or amounts includible in gross income under section 951) with respect to stock of a related foreign export corporation (as defined in subsection (e)),

(F) interest on any obligation which is a qualified export asset,

(G) gross receipts derived in connection with the performance of managerial services in furtherance of the production of qualified export receipts of a DISC, and

(H) gross receipts with respect to engineering or architectural services for construction projects located (or proposed for location) outside the United States.

(2) Exceptions.—For purposes of this part, the term "qualified export receipts" does not include receipts—

(A) from the direct or indirect sale, exchange, lease, rental, or other disposition of export property to the United States or any agency or instrumentality thereof,

(B) from the sale of agricultural commodities under the Agricultural Trade Development and Assistance Act of 1954 (Public Law 480, 83d Congress; 7 U.S.C., sec. 1691 and fol.),

(C) from a corporation which (i) is a member of a controlled group of corporations (within the meaning of section 1563) which includes the recipient corporation, and (ii) is a DISC for its taxable year in which the receipts arise,

(D) from the renting or licensing for the use of, or for the privilege of using, without the United States, patents, copyrights (other than films, tapes, or records for the commercial showing of motion pictures or used for radio or television broadcasting or to provide background music), secret processes and formulas, good will, trademarks, trade brands, franchises, and other like properties,

(E) from the sale, exchange, lease, rental, or other disposition of export property for ultimate use in the United States, or

(F) from services which are related and subsidiary to any sale, exchange, lease, rental, or other disposition described in this paragraph.

(b) Qualified Export Assets.—For purposes of this part, the qualified export assets of a corporation are—

(1) export property (as defined in subsection (c));

(2) facilities primarily for the sale, lease, rental, storage, handling, transportation, packaging, assembly, or servicing of export property;

(3) accounts receivable and evidences of indebtedness which arise by reason of transactions of such corporation described in subparagraph (A), (B), or (C) of subsection (a)(1);

(4) money, bank deposits, and other similar temporary investments, which are necessary to meet the working capital requirements of such corporation;

(5) obligations arising in connection with a producer's loan (as defined in subsection (d));

(6) stock or securities of a related foreign export corporation (as defined in subsection (e));

(7) obligations issued, guaranteed, or insured, in whole or in part, by the Export-Import Bank of the United States or the Foreign Credit Insurance Association in those cases where such obligations are acquired from such Bank or Association or from the seller of the goods or services with respect to which such obligations arose;

(8) obligations issued by a domestic corporation organized solely for the purpose of financing sales of export property pursuant to an agreement with the Export-Import Bank of the United States under which such corporation makes export loans guaranteed by such bank; and

(9) amounts (other than working capital) on deposit in the United States if, on the last day of the 6th, 7th, and 8th months following the close of the taxable year, the adjusted basis of the qualified export assets held by the corporation on each such last day equals or exceeds 95 percent of the sum of—

(A) the adjusted basis of the qualified export assets (determined without regard to this paragraph) held by the corporation at the close of the taxable year, and

(B) the fair market value of all other assets held by the corporation at the close of the taxable year.

For purposes of paragraph (9), an amount is on deposit in the United States if (and only if) it is on deposit or in a withdrawable account in the United States with a person carrying on the banking business or with a savings institution chartered and supervised as a savings and loan or similar association under Federal or State law.

(c) Export Property.—

(1) In general.—For purposes of this part, the term "export property" means any property—

(A) manufactured, produced, grown, or extracted in the United States by a person other than a DISC,

(B) held primarily for sale, lease, or rental in the ordinary course of trade or business for, or to a DISC for, direct use, consumption, or disposition outside the United States, and

(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

In applying subparagraph (C), the fair market value of any article imported into the United States shall be taken to be its appraised value, as determined by the Secretary or his delegate under section 402 or 402a of the Tariff Act of 1930 (19 U.S.C., sec. 1401a or 1402) in connection with its importation.

(2) Excluded property.—The term "export property" does not include property leased or rented by a DISC for use by any member of a controlled group of corporations (within the meaning of section 1563) which includes the DISC.

(3) Property in short supply.—If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive Order designate the property as in short supply. Any property so designated shall be treated as property not described in paragraph (1) during the period beginning with the date specified in the Executive Order and ending with the date specified in an Executive Order setting forth the President's determination that the property is no longer in short supply.

(d) Producer's Loans.—

(1) In general.—An obligation, subject to the limitation provided in paragraph (2), shall be treated as arising out of a producer's loan if—

(A) the loan, when added to the unpaid balance of all other producer's loans made by the DISC, does not exceed the accumulated DISC income at the beginning of the month in which the loan is made;

(B) the loan is evidenced by a note (or other evidence of indebtedness) with a stated maturity date not more than 15 years from the date of the loan;

(C) the loan is made to a person engaged in the United States in the manufacturing, production, growing, or extraction of export property (referred to hereinafter as the "borrower"); and

(D) at the time of such loan it is designated as a producer's loan.

(2) Limitation.—An obligation shall be a producer's loan to the extent that such loan, when added to the unpaid balance of all other producer's loans of the borrower outstanding at the time of such loan, does not exceed an amount determined by multiplying the sum of—

(A) the amount of the borrower's adjusted basis determined at the beginning of the borrower's taxable year in which the loan is made, in plant, machinery, and equipment, and supporting production facilities in the United States;

(B) the amount of the borrower's property held primarily for sale, lease, or rental to customers in the ordinary course of trade or business at the beginning of such taxable year; and

(C) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during all preceding taxable years beginning after December 31, 1970;

by the percentage which the borrower's qualified export receipts from the sale of export property during the 3 taxable years immediately preceding the taxable year in which the loan is made is of the gross receipts from the sale of property held by such borrower primarily for sale to customers in the ordinary course of the trade or business of such borrower during such 3 taxable years. In computing such percentage, the receipts of a taxable year beginning before January 1, 1971, shall not be taken into account. The limitation under this paragraph may be computed at the borrower's election on the basis of a controlled group of corporations (within the meaning of section 1563) but without taking into account any corporation which is a DISC.

(e) RELATED FOREIGN EXPORT CORPORATION.—In determining under section 992 whether a corporation (hereinafter in this subsection referred to as "the domestic corporation") is a DISC—

(1) FOREIGN INTERNATIONAL SALES CORPORATION.—A foreign corporation is a related foreign export corporation for purposes of this part if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation;

(B) 95 percent or more of such foreign corporation's gross receipts for its taxable year ending with or within the taxable year of the domestic corporation consist of qualified export receipts described in subparagraphs (A), (B), (C), and (D) of subsection (a)(1), and

(C) the adjusted basis of the qualified export assets (described in paragraphs (1), (2), (3), and (4) of subsection (b)) held by such foreign corporation at the close of such taxable year equals or exceeds 95 percent of the sum of such adjusted basis and the fair market value of all other assets held by it at the close of such taxable year.

(2) REAL PROPERTY HOLDING COMPANY.—A foreign corporation is a related foreign export corporation for purposes of this part if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation; and

(B) its exclusive function is to hold real property for the exclusive use (under a lease or otherwise) of the domestic corporation.

(3) ASSOCIATED FOREIGN CORPORATION.—A foreign corporation is a related foreign export corporation for purposes of this part if—

(A) less than 10 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation is owned (within the meaning of section 1563 (d) and (e)) by the domestic corporation or by a controlled group of corporations (within the meaning of section 1563) of which the domestic corporation is a member, and

(B) the ownership of stock or securities in such foreign corporation by the domestic corporation is determined (under

regulations prescribed by the Secretary or his delegate) to be reasonably in furtherance of a transaction or transactions giving rise to qualified export receipts of the domestic corporation.

(f) GROSS RECEIPTS.—For purposes of this part, the term "gross receipts" means the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and gross income from all other sources. In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this part as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

(g) UNITED STATES DEFINED.—For purposes of this part, the term "United States" includes the possessions of the United States.

SEC. 994. INTER-COMPANY PRICING RULES.

(a) IN GENERAL.—In the case of a sale of export property to a DISC by a person described in section 482, the taxable income of such DISC and such person shall be based upon a transfer price which would allow such DISC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount which does not exceed the greatest of:

(1) 4 percent of the qualified export receipts on such property plus 10 percent of the export promotion expenses of such DISC attributable to such receipts;

(2) 50 percent of the combined taxable income of such DISC and such person which is attributable to the qualified export receipts on such property plus 10 percent of the export promotion expenses of such DISC attributable to such receipts, or

(3) taxable income based upon the sales price actually charged (but subject to the rules provided in section 482).

(b) RULES FOR COMMISSIONS, RENTALS, AND MARGINAL COSTING.—The Secretary or his delegate shall prescribe regulations setting forth—

(1) rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and

(2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a DISC is seeking to establish or maintain a market for export property.

(c) EXPORT PROMOTION EXPENSES.—For purposes of this section, the term "export promotion expenses" means all the ordinary and necessary expenses of the DISC paid or incurred for the production of qualified export receipts, including advertising, salaries, rentals, commissions, and other selling expenses, but not including income taxes, or any expense that does not advance the distribution or sale of export property for use, consumption, or distribution outside of the United States.

Subpart B—Treatment of Distributions to Shareholders

SEC. 995. TAXATION OF DISC INCOME TO SHAREHOLDERS.

(a) GENERAL RULE.—A shareholder of a DISC or former DISC shall be subject to taxation on the earnings and profits of a DISC in accordance with the provisions of this subpart.

(b) DEEMED DISTRIBUTIONS.—

(1) *Distributions in qualified years.—A shareholder of a DISC shall be treated as having received a distribution with respect to his stock in an amount which is equal to his pro rata share of the sum (or, if smaller, the earnings and profits for the taxable year) of—*

(A) the gross interest derived during the taxable year from producer's loans, and

(B) the gain realized by the DISC during the taxable year on the sale or exchange of property previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferror's gain on the previous transfer was not recognized and would have been treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 if the property had been sold or exchanged rather than transferred to the DISC. This subparagraph shall not apply to property which in the hands of the DISC is stock in trade or other property described in section 1221(1).

Distributions described in this paragraph shall be deemed to be received on the last day of the taxable year of the DISC in which the gross income was derived.

(2) *Distributions upon disqualification.—*

(A) A shareholder of a corporation which terminated its election to be treated as a DISC or failed to satisfy the conditions of section 992(a)(1) for a taxable year shall be deemed to have received (at the time specified in subparagraph (B)) a distribution equal to his pro rata share of the DISC income of such corporation accumulated during the immediately preceding consecutive taxable years for which the corporation was a DISC.

(B) Distributions described in subparagraph (A) shall be deemed to be received in equal installments on the last day of each of the 10 taxable years of the corporation following the year of the termination or disqualification described in subparagraph (A) (but in no case over more than the number of immediately preceding consecutive taxable years during which the corporation was a DISC). Proper adjustment shall be made for actual distributions after the beginning of the year of the termination or disqualification out of the accumulated DISC income referred to in subparagraph (A), by reducing the number of deemed installments rather than the amount of such installments (other than the last installment).

(c) *Gain on Disposition of Stock in a DISC.—If a shareholder disposes of stock in a DISC or former DISC, any gain recognized on such disposition shall be treated as gain on the sale or exchange of property which is not a capital asset to the extent of the accumulated DISC income of such DISC or former DISC attributable to such stock. If stock of the DISC or former DISC is disposed of in a transaction in which the corporate existence of the DISC or former DISC is terminated (other than by a mere change in place of organization, however effected), any gain realized on the disposition of such stock in the transaction shall be recognized notwithstanding any other provision of this title, to the extent of the accumulated DISC income of such DISC or former DISC attributable to such stock, and such gain shall be treated as gain from the sale or exchange of property which is not a capital asset.*

SEC. 996. SPECIAL RULES.

(a) TREATMENT OF ACTUAL DISTRIBUTIONS.—

(1) IN GENERAL.—Any actual distribution (other than a distribution described in paragraph (2) or to which section 995(c) applies) to a shareholder by a DISC (or former DISC) which is made out of earnings and profits shall be treated as made—

(A) first, out of previously taxed income, to the extent thereof,

(B) second, out of accumulated DISC income, to the extent thereof, and

(C) finally, out of other earnings and profits.

(2) QUALIFYING DISTRIBUTIONS.—Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements) shall be treated as made—

(A) first, out of accumulated DISC income, to the extent thereof,

(B) second, out of the earnings and profits described in paragraph (1)(C), to the extent thereof, and

(C) finally, out of previously taxed income.

(3) finally, to previously taxed income,

distributed out of previously taxed income shall be excluded by the distributee from gross income except to the extent provided in subsection f(2), and shall reduce the amount of the previously taxed income.

(b) TREATMENT OF LOSSES.—If for any taxable year a DISC, or a former DISC, incurs a deficit in earnings and profits, such deficit shall be chargeable—

(1) first, to earnings and profits described in subsection (a)(1)(C), to the extent thereof,

(2) second, to accumulated DISC income, to the extent thereof and

(3) finally, to previously taxed income,

except that a deficit in earnings and profits shall not be applied against accumulated DISC income which, in any prior year, has been determined is to be deemed distributed to the shareholders (pursuant to section 995(b)(2)(A)) as a result of a disqualification.

(c) TREATMENT OF DEEMED DISTRIBUTIONS.—Each shareholder shall include in gross income, as a dividend, any deemed distribution in a taxable year. An amount equal to such distribution shall increase previously taxed income, and the amount of any deemed distribution under section 995(b)(2) shall reduce accumulated DISC income.

(d) PRIORITY OF DISTRIBUTIONS.—Any actual distribution made during a taxable year shall be treated as being made subsequent to any deemed distribution made during such year. Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements) shall be treated as being made before any other actual distributions during the taxable year.

(e) SUBSEQUENT EFFECT OF PREVIOUS DISPOSITION OF DISC STOCK.—

(1) SHAREHOLDER PREVIOUSLY TAXED INCOME ADJUSTMENT.—If—

(A) gain with respect to a share of stock of a DISC or former DISC is treated under section 995(c) as gain from the sale or exchange of property which is not a capital asset, and

(B) any person subsequently receives an actual distribution made out of accumulated DISC income, or a deemed distribution made pursuant to section 995(b)(2), with respect to such share,

such person shall treat such distribution in the same manner as a distribution from previously taxed income to the extent that (i) the gain referred to in subparagraph (A), exceeds (ii) any other amounts with respect to such share which were treated under this paragraph as made from previously taxed income. In applying this paragraph with respect to a share of stock in a DISC or former DISC, gain on the acquisition of such share by the DISC or former DISC or gain on a transaction prior to such acquisition shall not be considered gain referred to in subparagraph (A).

(2) CORPORATE ADJUSTMENT UPON REDEMPTION.—If section 995(c) applies to a redemption of stock in a DISC or former DISC, the accumulated DISC income shall be reduced by an amount equal to the gain described in section 995(c) with respect to such stock which is (or has been) treated as gain from the sale or exchange of property which is not a capital asset, except to the extent distributions with respect to such stock have been treated under paragraph (1).

(f) ADJUSTMENT TO BASIS.—

(1) ADDITIONS TO BASIS.—Amounts representing deemed distributions as provided in section 995(b) shall increase the basis of the stock with respect to which the distribution is made.

(2) REDUCTIONS OF BASIS.—The portion of an actual distribution made out of previously taxed income shall reduce the basis of the stock with respect to which it is made, and to the extent that it exceeds the adjusted basis of such stock, shall be treated as gain from the sale or exchange or property. In the case of stock includible in the gross estate of a decedent for which an election is made under section 2032 (relating to alternate valuation), this paragraph shall not apply to any distribution made after the date of the decedent's death and before the alternate valuation date provided by section 2032.

(g) DEFINITIONS OF DIVISIONS OF EARNINGS AND PROFITS.—For purposes of this part:

(1) DISC INCOME.—The earnings and profits derived by a corporation during a taxable year in which such corporation is a DISC, before reduction for any distributions during the year, but reduced by amounts deemed distributed under section 995(b)(1) shall constitute the DISC income for such year. The earnings and profits of a DISC for a taxable year include any amounts includible in such DISC's gross income pursuant to section 951(a) for such year. Proper reduction of DISC income shall be made for earnings and profits attributable to amounts taxed by reason of section 991(b).

(2) PREVIOUSLY TAXED INCOME.—Earnings and profits deemed distributed under section 995(b) for a taxable year shall constitute previously taxed income for such year.

(3) OTHER EARNINGS AND PROFITS.—The earnings and profits for a taxable year which are described in neither paragraph (1) nor (2) shall constitute the other earnings and profits for such year.

(h) EFFECTIVELY CONNECTED INCOME.—All distributions and gains referred to in section 995 shall be treated as distributions and gains, in the case of a shareholder who is a nonresident alien or a foreign corporation, which are effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States.

SEC. 997. SPECIAL SUBCHAPTER C RULES.

For purposes of applying the provisions of subchapter C of chapter 1, any distribution in property to a corporation by a DISC or former DISC which is made out of previously taxed income or accumulated DISC income shall—

(1) be treated as a distribution in the same amount as if such distribution of property were made to an individual, and

(2) have a basis, in the hands of the recipient corporation, equal to the amount determined under paragraph (1).

* * * * * * *

SEC. 1014. BASIS OF PROPERTY ACQUIRED FROM A DECEDENT.

(a) In General.—Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be the fair market value of the property at the date of the decedent's death, or, in the case of an election under either section 2032 or section 811 (j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections.

(b) Property Acquired From the Decedent.—For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

(1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;

(2) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(5) In the case of decedents dying after August 26, 1937, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;

(6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share

of community property held by the decedent and the surviving spouse under the community property laws of any State, Territory, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

(7) In the case of decedents dying after October 21, 1942, and on or before December 31, 1947, such part of any property, representing the surviving spouse's one-half share of property held by a decedent and the surviving spouse under the community property laws of any State, Territory, or possession of the United States or any foreign country, as was included in determining the value of the gross estate of the decedent, if a tax under chapter 3 of the Internal Revenue Code of 1939 was payable on the transfer of the net estate of the decedent. In such case, nothing in this paragraph shall reduce the basis below that which would exist if the Revenue Act of 1948 had not been enacted;

(8) In the case of decedents dying after December 31, 1950, and before January 1, 1954, property which represents the survivor's interest in a joint and survivor's annuity if the value of any part of such interest was required to be included in determining the value of decedent's gross estate under section 811 of the Internal Revenue Code of 1939;

(9) In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent Such basis shall be applicable to the property commencing on the death of the decedent This paragraph shall not apply to—

(A) annuities described in section 72;

(B) property to which paragraph (5) would apply if the property had been acquired by bequest; and

(C) property described in any other paragraph of this subsection.

(c) PROPERTY REPRESENTING INCOME IN RESPECT OF A DECEDENT.—This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691.

(d) SPECIAL RULE WITH RESPECT TO DISC STOCK.—If stock owned by a decedent in a DISC or former DISC (as defined in section 992(a)) acquires a new basis under subsection (a), such basis (determined before the application of this subsection) shall be reduced by the amount

(if any) which would have been treated under section 995(c) as gain from the sale of property which is not a capital asset if the decedent had lived and sold the stock at its fair market value on the estate tax valuation date. In computing the gain the decedent would have had if he had lived and sold the stock, his basis shall be determined without regard to the last sentence of section 996(f)(2) (relating to reductions of basis of DISC stock). For the purposes of this subsection, the estate tax valuation date is the date of the decedent's death or, in the case of an election under section 2032, the applicable valuation date prescribed by that section.

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SEC. 1504. DEFINITIONS.

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(b) DEFINITION OF "INCLUDIBLE CORPORATION".—As used in this chapter, the term "includible corporation" means any corporation except—

(1) Corporations exempt from taxation under section 501.

(2) Insurance companies subject to taxation under section 802 or 821.

(3) Foreign corporations.

(4) Corporations entitled to the benefits of section 931, by reason of receiving a large percentage of their income from sources within possessions of the United States.

(5) Corporations organized under the China Trade Act, 1922.

(6) Regulated investment companies and real estate investment trusts subject to tax under subchapter M of chapter 1.

(7) A DISC or former DISC (as defined in section 992(a)).

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SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) GENERAL RULE.—When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) IDENTIFICATION OF TAXPAYER.—The Secretary or his delegate is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper indentification of such persons.

[Sec. 6011(c)—Repealed]

(d) INTEREST EQUALIZATION TAX RETURNS, ETC.—

(1) IN GENERAL.—

(A) Every person shall make a return for each calendar quarter during which he incurs liability for the tax imposed by section 4911, or would so incur liability but for the provisions of section 4918. The return shall, in addition to such other information as the Secretary or his delegate may by regulations require, include a list of all acquisitions made by such person during the calendar quarter for which exemption is claimed under section 4918 accompanied by a copy of any return made during such quarter shall be required under this paragraph, in connection with any acquisition with respect to which—

(i) an IET clean confirmation is obtained in accordance with the provisions of section 4918(b),

(ii) a validation certificate described in section 4918(b) issued to the person from whom such acquisition was made is obtained, and such certificate was filed in accordance with the requirements prescribed by the Secretary or his delegate, or

(iii) a validation certificate was obtained by the acquiring person after such acquisition and before the date prescribed by section 6076(a) for the filing of the return,

nor shall any such acquisition be required to be listed in any return made under this paragraph.

(B) Every person who incurs liability for the tax imposed by section 4911 shall, if he disposes of the stock or debt obligation with respect to which such liability was incurred prior to the filing of the return required by subparagraph (A) (unless such disposition is made under circumstances which entitle such person to a credit under the provisions of section 4919), make a return of such tax.

(2) INFORMATION RETURNS OF COMMERCIAL BANKS.—Every United States person (as defined in section 4920(a)(4)) which is a commercial bank shall file a return with respect to loans and commitments to foreign obligors at such times, in such manner, and setting forth such information as the Secretary or his delegate shall by forms and regulations prescribe.

(3) REPORTING REQUIREMENTS FOR CERTAIN MEMBERS OF EXCHANGES AND ASSOCIATIONS.—Every member or member organization of a national securities exchange or of a national securities association registered with the Securities and Exchange Commission, which is not subject to the provisions of section 4918(c), shall keep such records and file such information as the Secretary or his delegate may by forms or regulations prescribe in connection with acquisitions and sales effected by such member or member organization, as a broker or for his own account, of stock of a foreign issuer or debt obligations of a foreign obligor—

(A) with respect to which a validation certificate described in section 4918(b)(1)(A) has been received by such member or member organization; or

(B) with respect to which an acquiring United States person is subject to the tax imposed by section 4911.

(e) RETURNS, ETC., OF DISCS AND FORMER DISCS.—

(1) RECORDS AND INFORMATION.—A DISC or former DISC shall for the taxable year—

(A) furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary or his delegate, and

(B) keep such records,

as may be required by regulations prescribed by the Secretary or his delegate.

(2) RETURNS.—A DISC shall file for the taxable year such return as may be prescribed by the Secretary of his delegate by forms or regulations.

[(e)] *(f)* INCOME, ESTATE, AND GIFT TAXES.—
For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see sections 6012 to 6019, inclusive.

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SEC. 6072. TIME FOR FILING INCOME TAX RETURNS.

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(b) RETURNS OF CORPORATIONS.—Returns of corporations under section 6012 made on the basis of the calendar year shall be filed on or before the 15th day of March following the close of the calendar year, and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the third month following the close of the fiscal year. *Returns required for a taxable year by section 6011(e)(2) (relat ng to returns of a DISC) shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year.*

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SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

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(g) CERTAIN INCOME TAX RETURNS OF CORPORATIONS.—

(1) TRUSTS OR PARTNERSHIPS.—If a taxpayer determines in good faitn that it is a trust or partnership and files a return as such under subtitle A, and if such taxpayer is thereafter held to be a corporation for the taxable year for which the return if filed, such return shall be deemed the return of the corporation for purposes of this section.

(2) EXEMPT ORGANIZATIONS.—If a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

(3) DISC.—If a corporation determines in good faith that it is a DISC (as defined in section 992(a)) and files a return as such under section 6011(e)(2), and if such corporation is thereafter held to be a corporation which is not a DISC for the taxable year for which the return is filed, such return shall be deemed the return of a corporation which is not a DISC for purposes of this section.

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Chapter 68—Additions to the Tax, Additional Amounts, and Assessable Penalties

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Subchapter B—Assessable Penalties

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SEC. 6686. FAILURE OF DISC TO FILE RETURNS.

In addition to the penalty imposed by section 7203 (relating to willful failure to file return, supply information, or pay tax) any person required to supply information or to file a return under section 6011(e) who fails to supply such information or file such return at the time prescribed by *the Secretary or his delegate, or who files a return which does not show the information required, shall pay a penalty of $100 for each failure to supply information (but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $25,000) or a penalty of $1,000 for each failure to file a return, unless it is shown that such failure is due to reasonable cause.*

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TARIFF ACT OF 1930

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TITLE III—SPECIAL PROVISIONS

Part I—Miscellaneous

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SEC. 303. COUNTERVAILING DUTIES.

(*a*) *Levy of Countervailing Duties.*—(*1*) Whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government [and such article or merchandise is dutiable under the provisions of this Act], then upon the importation of [any] such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to [the] *any* duties otherwise [imposed by this act, an additional] *imposed, a* duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. [The Secretary of the Treasury shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated. The Secretary of the Treasury shall make all regulations he may deem necessary for the identification of such articles and merchandise and for the assessment and collection of such additional duties.] *The Secretary of the Treasury shall determine, within 12 months after the date on which the question is presented to him, whether any bounty or grant is being paid or bestowed.*

(2) In the case of any imported article or merchandise which is free of duty, duties may be imposed under this section only if there is an affirmative determination by the Tariff Commission under subsection (b)(1).

(3) The Secretary of the Treasury shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated.

(4) The Secretary of the Treasury shall make all regulations he may deem necessary for the identification of such articles and merchandise and for the assessment and collection of the duties under this section. All determinations by the Secretary under this subsection and all determina-

tions by the Tariff Commission under subsection (b)(1), whether affirmative or negative, shall be published in the Federal Register.

(b) INJURY DETERMINATIONS WITH RESPECT TO DUTY-FREE MERCHANDISE; SUSPENSION OF LIQUIDATION.—(1) Whenever the Secretary of the Treasury has determined under subsection (a) that a bounty or grant is being paid or bestowed with respect to any article or merchandise which is free of duty, he shall—

(A) so advise the United States Tariff Commission, and the Commission shall determine within 3 months thereafter, and after such investigation as it deems necessary, whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States; and the Commission shall notify the Secretary of its determination; and

(B) require, under such regulations as he may prescribe, the suspension of liquidation as to such article or merchandise entered, or withdrawn from warehouse, for consumption, on or after the 30th day after the date of the publication in the Federal Register of his determination under subsection (a)(1), and such suspension of liquidation shall continue until the further order of the Secretary or until he has made public an order as provided for in paragraph (2) of this subsection.

(2) If the determination of the Tariff Commission under subparagraph (A) is in the affirmative, the Secretary shall make public an order directing the assessment and collection of duties in the amount of such bounty or grant as is from time to time ascertained and determined, or estimated, under subsection (a).

(c) APPLICATION OF AFFIRMATIVE DETERMINATION.—An affirmative determination by the Secretary of the Treasury under subsection (a)(1) with respect to any imported article or merchandise which (1) is dutiable, or (2) is free of duty but with respect to which the Tariff Commission has made an affirmative determination under subsection (b)(1), shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the 30th day after the date of the publication in the Federal Register of such determination by the Secretary.

(d) SPECIAL RULE FOR ANY ARTICLE SUBJECT TO A QUANTITATIVE LIMITATION.—No duty shall be imposed under this section with respect to any article which is subject ot a quantitative limitation imposed by the United States on its importation, or subject to a quantitative limitation on its exportation to or importation into the United States imposed under an agreement to which the United States is a party, unless the Secretary of the Treasury determines, after seeking information and advice from such agencies as he may deem appropriate, that such quantitative limitation is not an adequate substitute for the imposition of a duty under this section.

* * * * * * *

Part II—United States Tariff Commission

SEC. 330. ORGANIZATION OF THE COMMISSION.

(a) MEMBERSHIP.—The United States Tariff Commission (referred to in this [title] *Act* as the "Commission") shall be composed of [six] *seven* commissioners [to be hereafter] appointed by the President by and with the advice and consent of the Senate [, but each member now in office shall continue to serve until his successor (as designated by the President at the time of nomination) takes office, but in no event for longer than ninety days after the effective date of this Act]. No person shall be eligible for appointment as a commissioner unless he is a citizen of the United States, and, in the judgment of the President, is possessed of qualifications requisite for developing expert knowledge of tariff problems and efficiency in administering the provisions of Part II of this title. Not more than [three] *four* of the commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable.

[(b) TERMS OF OFFICE.—Terms of office of the commissioners first taking office after the date of the enactment of this Act, shall expire, as designated by the President at the time of nomination, one at the end of each of the first six years after the date of the enactment of this Act. The term of office of a successor to any such commissioner shall expire six years from the date of the expiration of the term for which his predecessor was appointed, except that any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term.]

(b) TERMS OF OFFICE.—Terms of office of the Commissioners which begin after the date of the enactment of the Trade Act of 1970 shall be for 7 years; except that the first term of office for the seventh Commissioner shall expire on June 16, 1977. The term of office of a successor to any Commissioner appointed to a term of office beginning after the date of the enactment of the Trade Act of 1970 shall (except as provided in the preceding sentence) expire 7 years from the date of the expiration of the term for which his predecessor was appointed. Any Commissioner appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

* * * * * * *

[(d) EFFECT OF DIVIDED VOTE IN CERTAIN CASES.—

[(1) Whenever, in any case calling for findings of the Commission in connection with any authority conferred upon the President by law to make changes in import restrictions, a majority of the commissioners voting are unable to agree upon findings or recommendations, the findings (and recommendations, if any) unanimously agreed upon by one-half of the number of commissioners voting may be considered by the President as the findings and recommendations of the Commission: *Provided*, That if the commissioners voting are divided into two equal groups each of which is unanimously agreed upon findings (and recommendations, if any) the findings (and recommendations, if any) of either group may be considered by the President as the findings (and recommendations, if any) of the Commission. In any case of a divided vote referred to in this paragraph the Commission shall transmit to the President the findings (and recommendations, if any) of each group within the Commission with respect to the matter in question.

[(2) Whenever, in any case in which the Commission is authorized to make an investigation upon its own motion, upon complaint, or upon application of any interested party, one-half of the number of commissioners voting agree that the investigation should be made, such investigation shall thereupon be carried out in accordance with the statutory authority covering the matter in question. Whenever the Commission is authorized to hold hearings in the course of any investigation and one-half of the number of commissioners voting agree that hearings should be held, such hearings shall thereupon be held in accordance with the statutory authority covering the matter in question.]

* * * * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

* * * * * * *

Part III—Ascertainment, Collection, and Recovery of Duties

SEC. 481. INVOICE—CONTENTS.

(a) IN GENERAL.—All invoices of merchandise to be imported into the United States shall set forth—

(1) The port of entry to which the merchandise is destined;

(2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if to be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;

(3) A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

(4) The quantities in the weights and measures of the country or place from which the merchandise is shipped, or in the weights and measures of the United States;

(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;

(7) The kind of currency, whether gold, silver, or paper;

(8) All charges upon the merchandise, itemized by name and amount when known to the seller or shipper; or all charges by name (including commissions, insurance, freight, cases, containers, coverings, and cost of packing) included in the invoice

prices when the amounts for such charges are unknown to the seller or shipper;

(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise; [and]

(10) Such information as to product description as is required to be made a part of the entry by provisions of the Tariff Schedules of the United States Annotated issued pursuant to section 484(e) of this Act; and

[(10)] *(11)* Any other facts deemed necessary to a proper appraisement, examination, and classification of the merchandise that the Secretary of the Treasury may require.

* * * * * * *

TARIFF SCHEDULES OF THE UNITED STATES

* * * * * * *

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS

* * * * * * *

Item	Articles	Rates of Duty	
		1	2
	PART 5.—HIDES, SKINS, AND LEATHER; FURSKINS		
	* * * * * * *		
	SUBPART B.—FURSKINS		
	Subpart B headnotes:		
	* * * * * * *		
	[4. The entry, or withdrawal from warehouse, for consumption of ermine, fox, kolinsky, marten, mink, muskrat, and weasel furskins, raw or not dressed, or dressed, which are the product of the Union of Soviet Socialist Republics or of Communist China, is prohibited.]		
	* * * * * * *		
123.50	Furskins of the silver, black, or platinum fox (including those of any fox which is a mutation, or type developed, from silver, black, or platinum foxes), whether or not dressed	26% ad val.	50% ad val.
	Furskins of mink, whether or not dressed:		
	For an aggregate quantity of not over 4,000,000 skins (or pieces of skins) entered during any calendar year:		
123.60	*Raw or not dressed*	*Free*	*30% ad val.*
	Dressed:		
	Plates, mats, linings, strips, crosses, or similar forms:		
123.62	*Not dyed*	*12% ad val.*	*35% ad val.*
123.63	*Dyed*	*14% ad val.*	*40% ad val.*
	Other:		
123.65	*Not dyed*	*3.5% ad val.*	*25% ad val.*
123.66	*Dyed*	*5.5% ad val.*	*30% ad val.*
123.68	*Other*	*20% ad val.*	*40% ad val.*
	* * * * * * *		

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS

* * * * * * *

Item	Articles	Rates of Duty	
		1	2
	PART 13.—FATTY SUBSTANCES, CAMPHOR, CHARS AND CARBONS, ISOTOPES, WAXES, AND OTHER PRODUCTS		
	* * * * * * *		
	SUBPART B.—CAMPHOR, CHARS AND CARBONS, ISOTOPES, WAXES, AND OTHER PRODUCTS		
	* * * * * * *		
493.35	Fibrin	Free	Free.
493.37	*Aminoacetic acid (glycine) and salts thereof, and mixtures containing such acid or its salts if such acid or salts individually or in combination are the chief component by weight of such mixtures, all the foregoing however provided for elsewhere in this schedule.*		
	For an aggregate quantity of not over 1,500,000 pounds entered during any calendar year of which an aggregate quantity of not over 375,000 pounds may be entered during any calendar quarter	*8.5% ad val*	*35% ad val.*
	Other	*8.5% ad val plus 25¢. per lb.*	*35% ad val. plus 25¢ per lb.*
	* * * * * * *		

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS

* * * * * * *

Item	Articles	Rates of Duty	
		1	2
	PART 13.—PRODUCTS NOT ELSEWHERE ENUMERATED		
	* * * * * * *		
	SUBPART B.—ARTICLES OF FUR AND OF LEATHER		
	Subpart B headnote: 1. For the purposes of the tariff schedules (except part 5A of schedule 1)— (a) the term "leather" includes "leather", as defined in headnote 1(a), part 5A, schedule 1, and also includes rawhide, parchment, and vellum.		
	Wearing apparel not specially provided for, of fur on the skin:		
791.06	Of silver, black, or platinum fox	20% ad val	50% ad val.
791.10	Of dog, goat, or kid	12% ad val	35% ad val.
791.12	*Of mink*	*11% ad val*	*50% ad val.*
791.15	Other	14% ad val	50% ad val.
	* * * * * * *		

* * * * * * *

Item	Articles	Quota Quantity
	PART 3.—ADDITIONAL IMPORT RESTRICTIONS PROCLAIMED PURSUANT TO SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED *Part 3 headnotes:* 1. This part covers the provisions proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 USC 624), imposing import fees, herein referred to as duties, and quantitative limitations on articles imported into the United States. The duties provided for in this part are cumulative duties which apply in addition to the duties, if any, otherwise imposed on the articles involved. Unless otherwise stated, the duties and quantitative limitations provided for in this part apply until suspended or terminated. * * * * * * * *(4) Any determination as to whether or not any article or class of articles falls within one of the article descriptions under this part 3 shall be the final administrative responsibility of the Secretary of Agriculture. In making any such determination, the Secretary of Agriculture shall carry out the purposes for which the import restrictions provided for in this part were prescribed, notwithstanding the fact that such determination may differ from that made for tariff and other purposes. Nothing in this headnote shall be deemed to affect in any manner the authority of the Secretary of the Treasury over merchandise for tariff or other purposes.* * * * * * * *	

Note: Section 332 of the bill contains amendments to the Tariff Schedules of the United States (specifically, amendments to part 3E of schedule 1, to part 1 of schedule 4, and to part 1C of schedule 7) which are related to the provisions of section 331 of the bill which authorize the President to proclaim such modifications of the Tariff Schedules as are required or appropriate to carry out any bilateral or multilateral agreement with foreign countries or instrumentalities thereof which relates primarily to the elimination of the American selling price system of valuation, if he determines that the concessions which would be granted with respect to the products of the United States under such agreement fully compensate for the concessions which would be made by the United States under the agreement. Any proclamation issued under these provisions would take effect only as provided in such section 331.

Since the taking effect of these amendments to the Tariff Schedules is contingent (as explained above), the changes which would be made in existing law if they take effect are not shown.

ANTIDUMPING ACT, 1921

DUMPING INVESTIGATION

SEC. 201.* * *

* * * * * * *

[(b) Whenever, in the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, the Secretary has reason to believe or suspect, from the invoice or other papers or from information presented to him or to any person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, than the constructed value), he shall forthwith publish notice of that fact in the Federal Register and shall authorize, under such regulations as he may prescribe, the withholding of appraisement reports as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping has been raised by or presented to him or any person to whom authority under this section has been delegated, until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subdivision (a) in regard to such merchandise.]

(b) In the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, he shall, within 4 nonths after the question of dumping was raised by or presented to him or any person to whom authority under this section has been delegated—

(1) determine whether there is reason to believe or suspect, from the invoice or other papers or from information presented to him or to any other person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, than the constructed value); and

(2) if his determination is affirmative, publish notice of that fact in the Federal Register, and require, under such regulations as he may prescribe, the withholding of appraisement as to such merchandise entered, or withdrawn from warehouse for consumption, on or after the date of publication of that notice in the Federal Register (unless the Secretary determines that the withholding should be made effective as of an earlier date in which case the effective date of the withholding shall be not more than 120 days before the question of dumping was raised by or presented to him or any person to whom authority under this section has been delegated), until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subsection (a) in regard to such merchandise; or

(3) if his determination is negative, publish notice of that fact in the Federal Register, but the Secretary may within 3 months thereafter order the withholding of appraisement if he then has reason to believe or suspect, from the invoice or other papers or from information presented to him or to any other person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, then the constructed value) and such order of withholding of appraisement shall be subject to the provisions of paragraph (2).

For purposes of this subsection, the question of dumping shall be deemed to have been raised or presented on the date on which a notice is published in the Federal Register that information relating to dumping has been received in accordance with regulations prescribed by the Secretary.

* * * * * * *

FOREIGN MARKET VALUE

SEC. 205. (a) For the purposes of this title, the foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207, the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.

(b) If available information indicates to the Secretary that the economy of the country from which the merchandise is exported is state-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under subsection (a), the Secretary shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either—

(1) the prices at which such or similar merchandise of a non-state-contolled-economy country is sold either (A) for consumption in the home market of that country, or (B) to other countries, including the United States; or

(2) the constructed value of such or similar merchandise in a non-state-controlled-economy country as determined under section 206 of this Act.

* * * * * * *

AUTOMOTIVE PRODUCTS TRADE ACT OF 1965

* * * * * * *

SPECIAL AUTHORITY [DURING TRANSITIONAL PERIOD UNDER THE AGREEMENT]

Sec. 302. (a) [After the 90th day after the date of the enactment of this Act and before July 1, 1968, a] *A* petition under section 301 of this Act for a determination of eligibility to apply for adjustment assistance may be filed with the President by—

(1) a firm which produces an automotive product, or its representative; or

(2) a group of workers in a firm which produces an automotive product, or their certified or recognized union or other duly authorized representative.

* * * * * * *

(c) If the President makes an affirmative determination under paragraphs (1), (2), and (3) of subsection (b), with respect to a firm or group of workers, he shall promptly certify that as a result of its dislocation the firm or group of workers is eligible to apply for adjustment assistance, unless the President determines that the operation of the Agreement has not been [the primary] *a substantial* factor in causing or threatening to cause dislocation of the firm or group of workers.

(d) If the President makes an affirmative determination under paragraph (1) but a negative determination under paragraph (2) or (3) of subsection (b), with respect to a firm or group of workers, the President shall determine whether the operation of the Agreement has nevertheless been [the primary] *a substantial* factor in causing or threatening to cause dislocation of the firm or group of workers. If the President makes such an affirmative determination, he shall promptly certify that as a result of its dislocation the firm or group of workers is eligible to apply for adjustment assistance.

* * * * * * *

(g) Any certification with respect to a group of workers made by the President under this section shall—

(1) specify the date on which the dislocation began or threatens to begin; and

(2) be terminated by the President whenever he determines that the operation of the Agreement is no longer [the primary] *a substantial* factor in causing separations from the firm or subdivision thereof, in which case such determination shall apply only with respect to separations occurring after the termination date specified by the President.

* * * * * * *

DISSENTING VIEWS OF HON. AL ULLMAN, HON. CHARLES A. VANIK, HON. JAMES C. CORMAN, HON. WILLIAM J. GREEN, HON. SAM GIBBONS, HON. BARBER B. CONABLE, JR., AND HON. JERRY L. PETTIS

This is a bad bill. It should be defeated.

We feel that this bill is restrictive, ill-timed, and provincial. It will provide artificial market controls and increase prices. It is inflationary. It decidedly reflects a lack of confidence in the basic worth of our own competitive system. It would be a backward step for America and for the world.

AL ULLMAN.
CHARLES A. VANIK.
JAMES C. CORMAN.
WILLIAM J. GREEN.
SAM GIBBONS.
BARBER B. CONABLE, Jr.
JERRY L. PETTIS.

SEPARATE DISSENTING VIEWS OF HON. CHARLES A. VANIK

I cannot support a trade bill which takes a regressive step in trade policy.

I cannot support a trade bill which provides a new tax loophole to export-oriented businesses which will cost the Treasury up to $650 million per year in lost revenues, particularly since the tax incentive will provide a taxsaving bonanza for export businesses presently being carried on.

I cannot support a trade bill which freezes in the oil quota system which costs the consumers of America $5 to $7 billion annually in increased prices for oil. It also provides the beneficiaries of the quota with a windfall of up to $1.50 a barrel based on the differential between domestic and imported oil under customary market conditions. The Federal Treasury would lose $1½ billion per year if a tariff were substituted for the quota plan.

The long-range incalculable harm of this legislation far outweighs any technical trading advantages which may be provided by this legislation. It would be the better side of wisdom to rewirte this legislation in the new Congress.

CHARLES A. VANIK.

SEPARATE DISSENTING VIEWS OF HON. JAMES C. CORMAN AND HON. SAM GIBBONS

The undersigned members of the committee regret that the tremendous amount of time and effort that has been expended on this trade legislation has not produced a bill that would promote the commercial interest and indeed the national interest of the United States. The bill protects those who need it the least. It also contributes to our inflationary spiral and adds yet another unnecessary cost to the already overburdened American consumer. A brief summary of our objections to this unfortunate piece of legislation follows:

Title I of the bill would tie the President's hands in dealing with an important aspect of petroleum resources. If passed, this piece of legislation would retain the multi-billion dollar oil quota system that would cost the consumer between $5 and $7 billion per year.

Title II would impose quotas on imports of basic consumer goods (textiles, wearing apparel, and footwear). A detailed study of the facts and figures presented by the industry representatives themselves, reveals that no case has been made that imports are in any way affecting the basic vitality of the domestic industries involved.

Title III provides for amendments to the antidumping and countervailing duty laws. Present law provides ample protection to American industry if enforced.

Title IV opens a tax loophole which, in effect, provides tax exemptions to producers who, for the most part, are already engaged in profitable export businesses. This tax concession, which would cost the American taxpayers about $600 million to a billion dollars a year, comes at a time when budgetary considerations are so important as to cause the President to veto appropriation bills that would help educate our children and provide decent medical care for many of our veterans. A separate statement with regard to the DISC proposals is included infra.

TITLE I: TRADE AGREEMENT AUTHORITY

Title I of the bill extends the President's trade agreement authority, and authorizes the President to reduce duties by 20 percent of their present level. It is generally understood that use of this authority is to be limited to pay tariff compensation to our trading partners for actions the United States will take to restrict imports. Such action would negate tariff concessions the United States has already negotiated, thus subjecting the United States to compensatory claims.

No one during the entire committee proceedings has been willing to even guess what the total compensation cost would be as a result of the quotas that will be imposed by the bill. Footwear imports now amount to $436 million. Imports of textiles and wearing apparel of wool and manmade fibers total over $1 billion. The 20-percent tariff reduction authority, even widely applied to post-Kennedy Round tariffs, appears to be of questionable magnitude in compensating our trading partners for such quota restrictions.

More importantly, the tariff reduction authority will be of little value in reducing the other forms of retaliation which will inevitably result from quotas imposed by the United States. Additionally, the U.S. industries whose own tariffs may be reduced to compensate other countries for the imposition of the quotas provided in the bill might well question why they must assume the costs of the increased import competition in exchange for quota protection granted to other industries.

The President's trade proposal of last November began as a status quo measure in trade policy. It is unfortunate that after a 3-year lapse in trade agreement authority, the officials responsible for trade policy have been so remiss in their efforts in bringing to Congress such unimaginative proposals for dealing with the problems that vitally affect our existence as a trading nation. In the absence of such needed foresight, it was inevitable that the pleadings of special interest groups should attempt to gain the favorable attention of the Congress.

Foreign import restrictions

While there is certainly a need to protect United States commerce from unjustifiable or unreasonable import restrictions or other policies which discriminate against United States trade, the task will be made far more difficult with the imposition of the import controls imposed by other provisions of this bill.

"Trade not aid" has been the announced position of the United States since World War II. It would be ironic if this generation would be the one to go down in history as being willing to spend a hundred thousand lives to protect freedom yet unwilling to sacrifice one dollar of *potential* profit or one *potential* job.

National security provision

Both unneeded and unwise is the amendment which ties the President's hands in adjusting imports which he determines are impairing the national security. The oil industry amendment is simply aimed at freezing the existing rigid quota system into law. Very few disagree with the need to assure adequate supplies of petroleum sufficient to meet national security requirements. We disagree that the mandatory oil import quota system adopted 11 years ago needs to be retained in its present form. That system can and does result in the uneconomic bestowal of unrequited benefits to a few multi-billion dollar international energy companies. The heavy costs of such benefits must, of course, be borne by the consumer. The system has all of the disadvantages inherent in any quota system. These disadvantages have been detailed in a number of public documents.

We are told that the prices of the industry have been relatively stable for the past 10 years when inflation has taken hold of other parts of the economy. This sounds plausible until one realizes that for the past 10 years, the price of crude oil has dropped for all other nations except the United States. What the American taxpayer does is subsidize this industry by depletion allowances and tax credits to find oil all over the world and when it is found, it is sold at a lower price to all nations except the very nation which was responsible for its discovery.

As is well known, the Cabinet Task Force on Oil Imports rendered a verdict far different than that adopted by the committee. In the hearings before the committee, witnesses for the oil industry offered evidence designed to refute the basic assumptions of the Task Force Report. They also complained that the logic of the report was an unsettling factor in the petroleum market, in that the conclusion of the Task Force might be adopted.

However, the action of the committee would prevent the President from accepting the conclusions of his own advisers. The committee invited former Secretary of Labor Shultz, Chairman of the Cabinet Task Force on Oil Imports, to comment on the criticism of the Task Force report made by oil industry spokesmen. In his written testimony he stated:

"Having found that there was a case for protection of the national security but that the present import control program was too restrictive, a majority of the Task Force then asked what sort of program should be adopted. * * *

"First, a majority of the Task Force found that the present oil import system does not reflect national security needs, present or future, and 'is no longer acceptable.' Its 12.2 percent limitation on imports into the bulk of the country is based on the mid-1950's level and has no current justification. The present system treats imports from secure sources in a variety of inconsistent ways. Besides costing consumers an estimated $5 billion each year ($8.4 billion per year by 1980), the quotas have caused inefficiencies in the marketplace, have led to undue Government intervention, and are riddled with exceptions unrelated to the national security. Consumer prices for the whole country are, under the quota system, established largely as a result of limitations on oil production by one or two State regulatory bodies.

"To replace the present method and level of import restrictions, the report recommends phased-in adoption of a preferential tariff system that would draw the bulk of future imports from secure Western Hemisphere sources. A ceiling would be placed on imports from the Eastern Hemisphere. These would never be permitted to exceed 10 percent of United States demand, a level which would pose no threat to the national security. The program would be subjected to constant surveillance by a new management system, which has already been created by the President, and to another high level, intensive review no later than 1975.

"The tariff system would restore a measure of market competition to the domestic industry and get the government, after a three-to-five year transition period, out of the unsatisfactory business of allocating highly valuable import rights among industry claimants. Tariffs also would eliminate the rigid price structure maintained by the present import quotas. They would establish Federal rather than State control over this national security program with its important international implications.

"An initial tariff level of $1.45 per barrel of crude oil (higher on products) would be established for imports from the Eastern Hemisphere. Further liberalization towards an equilibrium tariff level would be implemented—after further study—by the new management system. Consumers and the public treasury would divide the savings thus created.

"For myself, I would say again, as I did in the Report, that I personally am persuaded on the basis of presently available evidence that an equilibrium tariff objective of approximately $1.00 per barrel should be established now. It would not be reached for three or five years, depending on the transition period chosen, and the planning schedule could be altered by the management system if called for by countervailing evidence coming to light during that period. There is some uncertainty in our forward estimates now, but there always will be, and judgments still have to be made. My own judgment is that the national security —the only authorized basis for oil import restrictions—will be adequately protected by such a move. Believing that, I also believe it is fairer to the industry and to all affected interests if the objective is charted now." (Hearings before the Committee on Ways and Means, June 3, 1970, pt. 8, pp. 2345, 2348).

The action of the committee with respect to oil imports and to all future cases involving the national security provision is unnecessary. It merely adds additional favors to a bill already dominated by special interests.

Tariff adjustment and adjustment assistance

Title I amends existing provisions of law with respect to industries and to firms or groups of workers who may be adversely affected by increased imports. Admittedly, the existing criteria for determining whether industries should be afforded tariff adjustment or whether firms or groups of workers should be afforded the opportunity to apply for adjustment assistance are too strict. However, the bill goes too far in changing the "burden of proof" relating to injury from increased imports. We must take care not to provide the means of withdrawal into a protective shell anytime a U.S. product is faced with foreign competition. Our Government cannot be expected to insulate a domestic product from competitive imports anymore than it can assure domestic producers protection from domestic competition.

Likewise, it may be stated that the additional injury determination to be made under section 301(b)(5) of the tariff adjustment provision is completely unnecessary. Determinations concerning access to the U.S. market must necessarily involve many factors, not merely percentages based on ratios of imports to consumption. It would be disastrous indeed if other countries adopted the same stringent criteria for permitting access to their markets by U.S. exports.

TITLE II: QUOTAS ON TEXTILES AND FOOTWEAR

Our opposition to title II of H.R. 18970 represents no lack of concern for the 2.4 million workers in the textile and apparel industry or the 230,000 workers in the footwear industry.

We recognize the fact that import penetration has been sharp and extensive in some product lines. However, no evidence was submitted to the committee that fully and effectively demonstrated the need for industry-wide quotas. This lack of evidence is the basic reason why attempts to reach "voluntary" agreements in textiles have been so patently unsuccessful despite the full weight and support of the U.S. Government.

Textiles

Included are three basic tables which demonstrate why it has not been possible for our Government spokesmen to convince foreign governments that restraints on textile exports to the United States are necessary to avoid serious injury to the American textile industry.

These tables are also convincing evidence as to why legislated import quotas are unnecessary. Table 1 shows United States imports, exports, domestic consumption, and ratio of imports to consumption, by fiber, 1960–69. A number of facts are immediately discernible from table 1.

(1) In the decade 1960–69 imports gained 2.2 percentage points in their share of the domestic market, increasing overall from 6.3 percent to 8.5 percent of total domestic consumption. A number of domestic industries would be satisfied with such a minimal degree of import penetration.

(2) In terms of total growth, domestic consumption of textiles, cotton, wool and manmade fiber, has increased from 6.6 billion pounds to 10.3 billion pounds in 1969. Imports accounted for 12 percent of that growth. In the same period, increased domestic production accounted for 88 percent of the growth in domestic consumption.

(3) Domestic consumption of wool textiles has actually declined, and domestic consumption of cotton textiles has remained fairly stable in the decade 1960–69. Despite the cotton textile agreement, however, imports of cotton textiles have increased relative to domestic production.

(4) In contrast with wool and cotton textiles, domestic consumption of textiles of manmade fiber have increased tremendously, rising from 1.8 billion pounds in 1960 to 5.6 billion pounds in 1969, a total increase of 3.8 billion pounds. Imports of manmade fiber textiles accounted for 6 percent of such growth while increased domestic production of manmade fiber textiles accounted for 94 percent.

(5) Imports of textiles of cotton, wool and manmade fiber increased 459.2 million pounds between 1960 and 1969. Imports of wool textiles remained fairly stable.

Imports of cotton textiles increased 236 million pounds compared with an increase of 226 million pounds in imports of textiles of manmade fibers.

(6) In terms of total fiber consumption it should be noted that both cotton and wool have experienced displacement by increased use of manmade fibers even in an expanding market.

Table 2 shows the balance of trade and employment in textiles and apparel for the years 1960–69. There is no doubt that the relative shift in the import-export position has been dramatic. However, because of the vast increase in consumption of textile products by the American market, it is to be noted that employment in both textile mill products and apparel have increased in the past decade with textile mill products increasing by 57,600 employees and apparel by 180,000 employees.

Table 3 illustrates the real fallacy of the case for textile quotas that is made by the textile and apparel manufacturers since figures clearly show that the net profit after federal income taxes has risen during the decade in both textile mill products and apparel and other finished products.

TABLE 1.—TEXTILES: U.S. IMPORTS, EXPORTS, DOMESTIC CONSUMPTION, AND RATIO OF IMPORTS TO CONSUMPTION, BY FIBER, 1960–69

[In millions of pounds]

Year	Imports				Exports				Domestic consumption [1]				Ratio of imports to domestic consumption (percent)			
	Total	Man-made fibers	Cotton	Wool	Total	Man-made fibers	Cotton	Wool	Total	Man-made fibers	Cotton	Wool	Total	Man-made fibers	Cotton	Wool
1960	415.7	31.3	252.3	132.1	328.8	90.8	233.3	4.7	6,635.6	1,818.3	4,209.9	607.4	6.3	1.7	6.0	21.7
1961	339.8	23.5	188.9	127.4	330.1	86.4	239.2	4.5	6,632.9	1,997.8	4,031.2	603.9	5.1	1.2	4.7	21.1
1962	486.0	30.6	309.8	145.6	315.2	90.5	220.3	4.4	7,280.8	2,358.6	4,277.5	644.7	6.7	1.3	7.2	22.6
1963	493.0	36.2	304.3	152.5	310.5	97.1	207.8	5.6	7,497.0	2,726.9	4,136.7	633.4	6.6	1.3	7.4	24.1
1964	491.3	50.0	300.2	141.1	328.7	108.5	213.2	7.0	8,011.1	3,114.3	4,331.4	565.4	6.1	1.6	6.9	25.0
1965	595.8	79.0	360.7	156.1	315.5	129.1	173.7	12.7	8,835.4	3,570.5	4,664.5	600.4	6.8	2.2	7.7	26.0
1966	776.3	123.1	510.3	142.9	339.6	140.0	189.5	10.1	9,487.1	3,975.1	4,951.3	560.7	8.2	3.1	10.3	25.5
1967	703.9	138.8	443.4	121.7	330.0	133.0	188.4	8.6	9,400.1	4,242.4	4,678.0	479.7	7.5	3.3	9.5	25.4
1968	813.1	193.3	473.8	146.0	326.5	129.0	188.2	9.3	10,307.2	5,360.1	4,432.1	515.0	7.9	3.6	10.7	28.3
1969	874.9	257.5	488.0	129.4	387.4	146.1	232.4	8.9	10,305.6	5,647.9	4,181.2	476.5	8.5	4.6	11.7	27.2

[1] Domestic consumption equals mill consumption plus imports less exports of semimanufactured and manufactured products.

Source: Textile Organon, March 1970, p. 50.

TABLE 2.—TEXTILES AND APPAREL[1] BALANCE OF TRADE AND EMPLOYMENT, 1957-69

Year	Balance of trade			Number of employees engaged in making—	
	Exports[1] (millions)	General imports[1] (millions)	Balance (millions)	Textile mill products (thousands)	Apparel (thousands)
1969	$753	$2,125	−$1,372	[2]982.0	[2]1,414.0
1968	694	1,818	−1,124	990.5	1,408.0
1967	660	1,461	−801	958.3	1,397.7
1966	679	1,516	−837	961.5	1,398.8
1965	640	1,343	−703	925.6	1,354.7
1964	681	1,132	−451	892.0	1,302.5
1963	583	1,074	−491	885.4	1,282.8
1962	580	1,031	−451	902.3	1,263.7
1961	578	773	−191	893.4	1,214.5
1960	618	866	−248	924.4	1,233.2
1959	542	744	−202	945.7	1,225.9
1958	526	562	−36	918.8	1,171.8
1957	563	549	14	981.1	1,210.1

[1] Includes textile manufactures and clothing of all fibers compiled on the basis of the Standard International Trade Classification (divisions 65 and 84 except exports of subgroup 841.8, all clothing donated for relief or charity, etc.).
[2] December 1969.

Source: Textile Hi-Lights, March 1970, American Textile Manufacturers Institute, Inc.

TABLE 3.—NET SALES AND NET PROFITS AFTER FEDERAL INCOME TAXES, TOGETHER WITH NET PROFITS AS A PERCENT OF NET SALES AND RATE OF PROFIT ON STOCKHOLDERS EQUITY, FOR ALL MANUFACTURING CORPORATIONS, CORPORATIONS MANUFACTURING TEXTILE MILL PRODUCTS, AND CORPORATIONS MANUFACTURING APPAREL AND OTHER FINISHED PRODUCTS, 1960-69

[In millions of dollars]

Year	Net sales			Net profit after Federal income taxes		
		Corporations manufacturing—			Corporations manufacturing—	
	All manufacturing corporations[1]	Textile mill products	Apparel and other finished products	All manufacturing corporations[1]	Textile mill products	Apparel and other finished products
1960	$345,690	$13,254	$11,012	$15,197	$329	$152
1961	356,424	13,398	12,365	15,308	280	157
1962	389,404	14,449	13,055	17,727	354	212
1963	412,678	15,052	13,696	19,481	354	189
1964	443,072	16,249	14,880	23,208	507	318
1965	492,201	18,028	16,263	27,521	694	377
1966	554,159	19,513	18,110	30,937	702	432
1967	575,427	18,672	18,170	29,008	540	420
1968	631,911	20,841	20,718	32,069	654	507
1969	694,584	21,780	22,687	33,248	621	523

Year	Net profit as a percent of net sales			Rate of profit in percent on stockholders' equity[2]		
		Corporations manufacturing—			Corporations manufacturing—	
	All manufacturing corporations[1]	Textile mill products	Apparel and other finished products	All manufacturing corporations[1]	Textile mill products	Apparel and other finished product
1960	4.4	2.5	1.4	9.2	5.9	7.7
1961	4.3	2.1	1.3	8.8	5.0	7.1
1962	4.6	2.4	1.6	9.8	6.2	9.2
1963	4.7	2.3	2.4	10.3	6.1	7.7
1964	5.2	3.1	2.1	11.6	8.5	11.7
1965	5.6	3.8	2.3	13.0	10.8	12.7
1966	5.6	3.6	2.4	13.5	10.1	13.3
1967	5.0	2.9	2.3	11.7	7.6	11.9
1968	5.1	3.1	2.4	12.1	8.8	12.9
1969	4.8	2.9	2.3	11.5	7.9	11.9

[1] Except newspapers.
[2] Annual data are quarterly average.

Source: Federal Trade Commission and Securities and Exchange Commission, Quarterly Financial Report for Manufacturing Corporations.

Indeed, the rate of profits percentagewise on stockholder equity has been equal to that of all other manufacturing corporations in recent years.

Footwear.—In contrast to textiles and apparel, the administration is opposing import quotas on footwear. We agree with that conclusion which is also reflected in the report of the Task Force on Nonrubber Footwear. This report was prepared by an interagency group in the executive branch which concluded that:

> The problem of the shoe industry today is a major problem in certain communities heavily dependent upon it and where failures have occurred, where plants have been shifted elsewhere, or where imports have offered strong competition to the types of shoes formerly made there. On the other hand, it nationally is a relatively small problem in terms of adverse impact on an entire industry, upon employment, or upon the national well-being.
>
> Given the information available to the task force, no case appears sustainable that the entire industry has been so adversely affected or is so threatened as to require extraordinary measures. The specific areas and individuals who have been affected do require attention and assistance. Other areas and other individuals in firms still in business may well be threatened unless efforts are begun now to improve their competitive abilities. But the problems that loom ahead of them are not solely due to imports and the solutions must be found in a variety of directions.

Quota Provisions.—Under section 201 of title II, the quantitative limitations on imports of textiles and footwear are to be imposed by category of goods, by country of origin on the basis of average annual imports of each category of textiles or apparel from each foreign country in the years 1967–69.

Quite aside from what action the President might take under provisions of the bill, section 201 of title II of the bill means that beginning in January 1971, by law, the geographic and commodity composition of imports of certain textiles and footwear are to be the same as in the years 1967–69. The volume of imports, however, would be reduced sharply. In the case of imports of manmade fiber goods, the amount permitted to be imported would be 40 percent less than the current levels for 1970. In the case of textile manufactures of wool, there would be no cutback, since imports have declined below the levels of 1967–69. Regarding nonrubber footwear, imports would be 39 percent lower than current levels for 1970.

Because of the economic hardships currently experienced by all consumers, especially our less affluent citizens, due to unchecked inflation and increasing unemployment, such drastic restraints on the available supply of consumer goods will result in even sharper price increases.

Proponents of the bill state that the President will be given the flexibility to deal with such developments. He will be authorized to exempt nondisruptive imports, to reach agreement with foreign supplying countries, to exempt articles because of lack of supply at reasonable prices, or finally to invoke his "national interest" authority. However, we wonder at the need for so much Executive flexibility if the requirement for industrywide import restrictions is so essential.

In considering the effect of the statutory quotas in terms of total imports of manmade fiber textiles and apparel by country of origin, table 4 shows the 1967–69 average annual imports for such textiles, estimated annual imports for 1970, and the percent of rollback that would occur by the supplying country.

Of the principal suppliers of textiles in the Far East, the smallest rollback would accrue to Japan (33 percent). The smaller countries such as Korea (40 percent), Taiwan (48 percent), and Hong Kong (39 percent) would be the most severely affected of these countries. Considering the amount of foreign aid to Korea and Taiwan, both economic and military, that has been and continues to be expended necessarily, for our mutual interest, the unfairness and lack of logic in the base period is doubly evident.

Important and strategic countries in other areas would be no better off in terms of percentage rollback as a result of the base period for the statutory quotas, e.g., the Philippines (42 percent), Israel (63 percent), Ireland (55 percent), United Kingdom(68 percent), and Costa Rica (80 percent).

The rationale for the rigid base of 1967–69 is that the whole intent of the legislation is to obtain agreements under which countries will restrain their exports to the United States. Under section 202 of the bill, the President is authorized to negotiate these agreements, to exempt from the base quota limitation imports from countries willing to enter into trade agreements. If a significant amount of trade is covered by the agreements, the President may control imports from any country not reaching a mutual agreement with the United States.

The levels at which imports will be restrained under the negotiated agreements are unspecified.

The time, effort, and the political costs to be expended in negotiating the bilateral agreements with regard to categories and specified articles of textiles and footwear are costs which are difficult to calculate. It cannot be assumed that these costs will be small either in economic or political terms.

Section 201(d) of the bill authorizes the President to exempt nondisruptive imports, either by country or by article. No standards are provided for, other than administrative discretion to exempt such imports from the statutory base quotas.

In fact, title II of the bill grants to the President or his delegates unprecedented authority, in peacetime, to exercise economic controls over the volume and types of goods to be bought and sold. The livelihood of many wholesalers, retailers and manufacturers, throughout the country, and the budgets of all consumers would thereby be daily affected by the, as yet, unknown and uncharted administrative decisions called for in this bill.

The quotas are to be allocated by category and by country on a "first come-first serve" basis. The small shoe retailer, textile processor, or garment manufacturer dependent upon imports will undoubtedly have a difficult time being the "first come" importer in competition with huge chains and purchasing organizations representing large department stores and other mass buyers.

The agreements provided for in section 202, regarding the purchase of goods to be made available under the foreign export quota leaves much to be desired. Voluntary agreements represent no improvement over statutory quotas when compared to arm's length transactions and competitive market conditions.

Also, under what law could the President or any other agency of the United States government require a United States producer to limit his sales abroad because the government of the importing country believes that imports are disrupting the market? Traditionally, the United States has acted against market sharing, controlled sales and cartelized operations. Yet the basic approach of the bill is to force other governments either to enact laws, or to require their producers to cooperate, in limiting sales abroad.

And how are the quotas going to be policed? Additional thousands of customs officials will be needed to cover all U.S. ports. And does any one really think that foreign governments will help us police their ports to maintain a law harmful to their exporting businesses?

Title II of the bill is a blatant admission that the Congress of the United States is unable to deal with the tariff and trade problems now faced by this country.

Legislated quotas for special interests contradict the real economic strength of the U.S. economy since exports of U.S. goods have continued to increase. Although imports have risen at a faster pace in recent years, and such trade trends may be a cause for concern, it should be noted that the trade surplus for January June 1970 stood at $1.6 billion, or at projected annual rate of $3.2 billion.

As the world's largest producer and consumer, it is not surprising that the United States, traditionally the largest importer of raw materials is becoming the world's largest importer of semimanufactured and manufactured goods. As the greatest mass market, with income levels to support that market, it is not unusual that this country is importing more and more consumer goods for the benefit of the American public.

Unfortunately, the trade policies set forth in title II harms the most successful U.S. exporter. Table V illustrates very succinctly the trade relationships, in terms of agricultural exports, that may be jeopardized with the enactment of this bill. A comparison of U.S. textile and shoe imports from selected countries, and commercial agricultural exports to the same countries, reveals that only with Hong Kong, South Korea, and Taiwan do textile and shoe imports exceed our agricultural exports to those countries.

The future of our agricultural exports are already threatened by growing agricultural protectionism abroad. Many agricultural associations have expressed the fear that other countries will react to import quotas by reducing their purchases of agricultural commodities in this country. At stake, too, are thousands of jobs in our most efficient and high-wage industries whose export sales may be seriously reduced or even eliminated if this bill is enacted.

CONCLUSION

We do not forget that the Tariff Act of 1930 began as a minor "restructuring" of agricultural tariffs.

We only ask that we pause to think about the consequences of invoking hasty protective legislation, since it is our belief that in this deadly game of protectionism, there can be no winners—only embittered losers. For if our generation should have learned anything from two costly world wars, it should be that nations that can't trade with each other in peace achieve their social contacts under more violent and unproductive circumstances.

DISC proposal

With regard to the tax incentives that are to be granted to those favored corporations that can qualify as a Domestic International Sales Corporation (DISC), we feel that the only true thing that we can honestly say about the DISC proposal is that it is appropriately named as far as the Amercian taxpayer is concerned. For it will run him around in circles to the tune of $600 million or $1 billion a year, which Treasury and our committee staff estimate this proposal will cost us in lost revenue. In truth, the DISC proposal is nothing more than a substantial tax reduction for those who are presently engaged in the export business. It discriminates against other American taxpayers and consumers and will, in our opinion, do little if anything to improve our export position.

Moreover, the DISC proposal has been generally explained (probably in deference to GATT) as being merely a deferral of tax, and that a tax will be collected when the income is paid out by the DISC as a dividend. But if the parent corporation has excess foreign income tax credits, and uses the overall limitation on the credit, the parent can utilize a DISC so as to eliminate—not just defer—tax on domestic income. For example, if a taxpayer is shipping coal f.o.b. Norfolk to German steel mills, and has excess foreign tax credits because of income taxes imposed on oil produced in foreign countries, one-half of the profits on the coal shipped to Germany can be run through a DISC and no tax will be paid on the dividend the taxpayer receives from DISC out of those profits. That is because such dividends are treated under the DISC proposal as income from foreign countries for purposes of the credit for foreign taxes, even though the profits are clearly from domestic sources (coal from a U.S. mine sold in the U.S. for export to Germany). This use of excess foreign tax credits to avoid tax on income from domestic sources is not limited to exports of minerals—it can apply to the sale of any article for export where part of the domestic profit is channeled over to a DISC.

DISC can be utilized, if parent has excess foreign tax credits, to eliminate (not just defer) tax on domestic income

Example:

$200 net income from foreign countries on which foreign income taxes are paid at the rate of 60 percent .... [1] $120

$400 net income from coal mine in West Virginia—$80 of the net income being from sales f.o.b. Norfolk to German steel mills:

$600 total net income at 50 percent .... [2] $300

Present law: Foreign tax credit is limited to $100, leaving $200 taxes payable to United States: Limitation under present law:

$$\frac{\$300 \text{ U.S. tax} \times \$200 \text{ net foreign income}}{\$600 \text{ total net income}} = \$100 \text{ credit}$$

[1] Foreign taxes.
[2] U.S. tax before credit for foreign taxes.

By setting up a DISC to make the sales on a commission basis to the German customers, half of the profits will escape tax—not just be deferred. The DISC will receive a commission of $40 on the sales which are still made f.o.b., Norfolk. The DISC will then pay in the same year a dividend of $40 to the parent, and this dividend—under the DISC proposal—is treated as income from foreign sources even though from the sale in the United States of coal from a U.S. mine.

As a result, the foreign tax credit is increased from $100 to $120 even though no foreign taxes are paid on the coal profits. The limitation on the foreign tax—treating the DISC income as foreign income—is:

$$\$300 \text{ U.S. tax} \times \frac{\$240 \text{ foreign income}}{\$600 \text{ total income}} = \$120$$

So, the United States collects no tax on $40 of the profits from a domestic mine routed through a DISC. Here the foreign tax credit is used to eliminate tax on domestic income—contrary to the manner in which the credit is supposed to work.

(In the above example, the profits of the coal mine are after percentage depletion, and it is assumed that depletion is based on 10 percent of gross so that putting $40 of profit in the DISC does not reduce the depletion allowance.)

James C. Corman.
Sam Gibbons.

ADDITIONAL DISSENTING VIEWS OF HON. JAMES C. CORMAN AND HON. SAM GIBBONS ON THE DISC EXPORT PROPOSAL

It is ironic that the first significant tax measure considered since the Tax Reform Act of 1969 is a revision which proposes a $630 million tax benefit much of which will benefit a limited number of large companies.

The committee consideration of the DISC proposal is an unfortunate example of how tax loopholes are born—a special provision is created and labeled a "tax incentive" in the hope that it may do some good, despite little if any evidence that it will be effective, and also despite the prospect that it will be difficult to remove. We spent last year trying to cut back or eliminate "tax incentives" that for the most part were created in a similar manner. It is distressing that after all of the effort and concern for taxpayer morale and admonitions about "back door spending" last year, our first tax action this year should be to introduce a new "tax incentive" that is more costly than most of those we reduced or eliminated last year. We are giving back through the DISC proposal a substantial portion of what we gained last year. It is striking that the $630 million revenue loss estimated by the Treasury (estimated to amount to $720 to $955 million by the staff of the Joint Committee on Internal Revenue Taxation) is only slightly less than the revenue we gained from the minimum tax on preference income contained in the Tax Reform Act of 1969.

This attempt to provide a special tax incentive to stimulate exports comes at the very time we seem to have the least need for it—at a time when the Government is reporting the largest monthly foreign trade surplus in over 4 years. In the first half of this year, exports increased at an annual rate of 14 percent while imports have increased at a rate of only 9 percent. Moreover, the trade surplus in the first half of this year was $2.7 billion on an annual basis, as contrasted to the surplus of $638 million in 1969. Admittedly, the present level is still low relative to former levels, but the recent improvements suggest that further improvements are likely without any tax stimulant, especially if we can stabilize our prices.

1. *The DISC proposal creates new form of tax discrimination*

Tax incentives almost always create new forms of discrimination. The DISC proposal is no exception. It discriminates against domestic business and in doing so grants export business far more benefits than are available to those doing business through subsidiaries overseas.

It favors export business over domestic business.—This new provision creates two classes of business for tax purposes: those that produce for the domestic market are taxed at one rate and those that produce for export to foreign markets are taxed at a lower rate even if they manufacture the same article. The tax rate on total manufacturing and sales profits in the export class would be reduced by nearly half, from 48 to 28 percent, or by 20 percentage points.

For some industries, those with low rates of return on sales, the provision that profits equal to 4 percent of sales can be transferred to the DISC means the tax rate would be reduced by even more than the 20-point average. Agriculture exports, for example, with a rate of profit of about 1 percent on sales would be completely exempted from tax under the DISC proposal. And, of course, any exporting company with a profit rate on sales of 4 percent or lower would also be completely tax exempt through DISC. The same is true of an individual whose income is from exporting. For example, a sole proprietor who sets up a DISC could become another example of a nontaxable high-income tax return.

The DISC proposal goes beyond removing advantages of a foreign subsidiary.—The DISC proposal was presented by the Treasury as an equity measure designed to provide the same tax deferral privilege to the U.S. manufacturers that U.S. overseas subsidiaries now receive. But DISC is much more favorable to the U.S. manufacturer than is the present treatment of overseas subsidiaries and therefore can hardly be defended as merely an equalizing tax equity measure.

First, while it is true that U.S. overseas subsidiaries do not pay U.S. tax until their profits are returned to the United States, they nevertheless are subject to foreign tax which the Treasury Department says averages about 39 percent, as compared to the 48 percent U.S. rate. As a result, on the average, they are able to defer 9 percentage points of tax. But under the DISC proposal the U.S. manufacturer would be able to defer, perhaps indefinitely, the entire U.S. tax on the DISC profits and probably in most cases pay virtually no foreign tax. This is no equalizing change.

Second, the DISC treatment of U.S. exporters provides them a more generous determination of profits from sales and treats these profits as earned abroad. No such treatment is available for U.S. overseas subsidiaries. In the case of the overseas subsidiary there are pricing rules designed to prevent profit from the U.S. manufacturing company from being channeled to the subsidiary to avoid the U.S. tax. Essentially, these rules require that sales from the manufacturer to the subsidiary be priced as if they were arm's-length transactions. Under the DISC proposal, however, this pricing rule would not apply, and instead the DISC could purchase from its parent manufacturer at less than arm's-length price, thereby channeling manufacturing profits into the DISC. The DISC would be permitted (unlike the overseas subsidiary) to earn the higher of 50 percent of the combined manufacturing and sales profit, or 4 percent of sales plus, in either case, 10 percent of export promotion expenses. In some cases this 4 percent of sales rule would permit all profits on the transaction to be attributed to the DISC and be exempt from tax. This is no equalizing change.

Third, the DISC proposal is far more favorable to exporters (than foreign subsidiaries) in the treatment of loans back to the manufacturing parent or other export-manufacturers. An overseas subsidiary cannot loan profits to a corporation in the United States without the profits being taxed; if a loan of this type is made it is treated as a dividend and taxed. Under the DISC proposal, this rule would not apply. A DISC could loan profits to its parent, or any other corporation engaged in the export business, without the profits becoming subject to tax. This is no equalizing change.

2. DISC treatment in many cases provides tax exemption, not merely tax deferral

Treasury claims that the DISC treatment provides tax deferral and not tax exemption. But in many cases it will in fact be a permanent exemption. The tax is imposed only when profits are paid out of the DISC. But since the DISC can transfer profits to its parent in the form of loans there is no need to pay them out as dividends. There are limitations on the amount of loans which the DISC can make but these limits are seldom restrictive. Essentially, the DISC's profits can continue to be loaned to a corporation engaged in exporting so long as the total amount of loans to the borrower does not exceed its export-related assets. The DISC proposal—and its actual method of operation—merely provides that as long as the profits of the DISC are loaned to the parent or other exporting corporation, and the ratio of the borrower's export sales to total sales is in excess of the ratio of its loans to total assets, the loans will never be subject to tax. In this way the tax on the DISC's profits can be postponed indefinitely. What is indefinite tax deferral if not tax exemption?

In fact, the tax treatment of DISC profits is most accurately described as tax exemption as long as the profits remain in the export business and tax deferral only in the unlikely event that they are taken out of the export business.

While an overseas subsidiary may also exempt some of its profits from U.S. tax (but not foreign taxes) by employing them permanently in an overseas business, it will want to bring a large part of its profits home after an initial buildup period. This it cannot do without payment of U.S. tax. As a result, its tax treatment is more properly considered tax deferral than that which would be provided for the DISC's.

Actually the assets of a DISC loaned back to the U.S. parent manufacturer can be invested in any type of business carried on by the borrower so long as the ratio referred to above is not exceeded. As a result, it is quite possible for an exporter under this proposal to set up a DISC, borrow the funds back and then use the funds to set up a manufacturing business overseas. In this way, the exemption of much of a DISC's profits might well be used to expand business overseas at the expense of exports—the antithesis of expanding exports. In other words, a company is likely to still have as many plants overseas with this proposal as it would without and still use the DISC proposal to avoid tax on its export business associated with its foreign plant. In fact, it may expand its foreign operations with tax-free funds borrowed from its DISC.

3. DISC provides a windfall to large exporters

The DISC provision would provide a tax reduction windfall of up to $630 million a year for exporters, according to the Treasury estimates. Also, according to Treasury statements, DISC is supposed to assist small companies—a claim that is made by proponents for nearly all "tax incentive" proposals. We believe, however, the windfall from DISC would go primarily to those large companies that currently account for most of our exports. As evidence of this we point to the fact that Treasury witnesses before this committee acknowledged that about half of the manufacturing exports are made by 93 companies. These, of course, are some of our very largest companies.

Still more evidence that this windfall will benefit large companies—which also are the companies most likely to be integrated from raw materials to finished products—can be seen by examining the Treasury's special pricing rule for DISC's. Under the Treasury proposal, large integrated manufacturing companies would be able to avoid tax on substantially greater amounts of profits than will nonintegrated companies. This arises because the Treasury pricing rules would permit the allocation of 50 percent of the combined profits of a manufacturing parent and export DISC subsidiary to the DISC subsidiary on which no tax is paid currently. This means that a large, integrated company would be able to channel to the DISC one-half of the profits which arise *at each stage* of the manufacturing process, while a small, nonintegrated company (for example, one which manufactures components for export sale or assembles parts made by others) would be able to channel only one-half of the profits arising *from its single stage* of production to the DISC. Clearly, as a result of this pricing rule, the large integrated companies will be able to avoid tax on a larger amount of profit per dollar of export sales than will the small companies.

Some may think that the phase-in of the DISC tax exemption over several years will change the windfall nature of the DISC proposal. Nothing could be further from the truth. The phase-in simply postpones part of these ultimate effects for a short time and it postpones them for small companies as well as large and for new exporters as well as existing exporters.

4. Are we getting our money's worth from DISC?

The Treasury says that the DISC proposal will after the phase-in period cost $630 million a year. Of course, to the extent that exports grow, this $630 million revenue loss will also grow. At the same time, the Treasury claims the DISC proposal will under one set of estimates, over time, increase exports by from $1.25 billion to $1.50 billion. We understand they also have another still more optimistic estimate.

Even if the Treasury's assertion—which we believe is overly optimistic—that DISC will increase exports by $1¼ to $1½ billion over time is accepted, we are being asked to spend $630 million a year to increase exports by $1¼ to $1½ billion, or for every dollar of increased exports we are asked to lose revenue of 42 to 50 cents. The nature of this bad bargain we are asked to strike becomes even more apparent when we consider the total cost of the DISC proposal over several years. With a $630 million revenue loss per year, we will have spent over $3 billion in 5 years. What will we obtain for this? For the past 2 years exports have been increasing by $3 billion a year without DISC. If this rate of increase continues at the end of 5 years, exports will be $15 billion higher than they are today even without this proposal. What are we buying for our $3 billion spent on DISC over this period? We are buying a further increase of exports over the $15 billion increase which would occur without DISC of $1¼ to $1½ billion, or further increasing the $15 billion to $16.25 billion to $16.5 billion—but at a revenue cost or more than $3 billion over this period. The revenue loss is, of course, postponed by the phase-in of DISC, but so is whatever stimulative effect on exports DISC would have.

This $3 billion revenue cost of the DISC proposal over 5 years to obtain slightly over a billion dollar increase in exports is not the entire story. In the first place, there is no guarantee exports will increase by the $1 billion or more (this is the next topic we discuss). In the second place, the Treasury derives an estimate of a revenue loss of $630 million from DISC by assuming that 75 percent of exports would be channeled through a DISC. The staff of the Joint Committee on Internal Revenue Taxation assumed that 90 percent of the exports might eventually be channeled through DISC's and estimated on that basis that from $720 million to $955 million would be the revenue loss under the DISC proposal. In view of the ease with which a DISC may be set up (it is deliberately designed as a shell corporation), it is difficult for us to see why virtually all exports are not run through such a corporation. If all eligible exports were channeled through a DISC, the revenue loss would be $800 million to $1,063 million a year, not $630 million a year. If, over a 10-year period, exports double, as they nearly did during the 1960's, by the end of a 10-year period, the revenue loss would be $1.26 billion per year on the Treasury basis or from $1.6 billion to $2.1 billion per year on the more realistic 100-percent participation basis.

It seems clear to us that in creating this special tax incentive we are striking a bad bargain. It must be classed as an inefficient use of the Government's revenue. When compared to the many worthwhile purposes for which expenditures are needed, it is hard to see why we are assigning such a high expenditure priority to this type of program, even if the Treasury estimates were accepted at full value.

5. It appears doubtful that DISC will be effective in making significant increases in exports

It is doubtful that DISC will increase exports by the $1¼ to $1½ billion claimed by the Treasury. No reliable evidence or supporting analysis to back up the Treasury assertion that DISC would increase exports by this amount was presented to the committee. Apparently, the Treasury claims that exports would increase not so much because exporters would use the tax saving to reduce prices but on the assumptions that they expand their efforts to find export markets and that the proposal will encourage the location of plants in the United States rather than overseas. These results claimed by the Treasury deserve more careful and critical consideration, since they are the basic justification for the proposal.

Reduction in export prices because of DISC reductions in the taxes of exporters cannot be expected to yield any significant increase in the dollar volume of exports. Sales of most export commodities are simply not very responsive to price changes. A recent study coauthored by Hendrick S. Houthakker, a current member of the President's Council of Economic Advisers, showed that a 1-percent reduction in the price of merchandise exports would result in a 1.5-percent increase in the physical volume of exports. While other studies in price flexibility of exports may differ somewhat from this result, it nevertheless is in line with most of the other studies on this subject.

A reduction in the prices of commodities currently exported in conjunction with the relatively small increase in the physical volume of exports in response to the price reduction means that the dollar value of exports would not increase very substantially if the tax saving from DISC were passed through in lower prices. Based on the estimate of export responsiveness made by Dr. Houthakker, if the

Treasury figure of $630 million revenue loss from DISC were reflected in lower prices, the dollar value of exports on the average would be expected to increase by only $315 million. Apparently because of the recognition of these results, the Treasury does not argue that the claimed $1¼ to $1½ billion increase in exports would take place because of price reduction but rather that it would occur because of other reactions to DISC.

What are the other reactions that DISC's proponents rely on to increase exports? First, they argue that the greater profitability of export sales arising from the tax reduction will induce exporters to increase their promotional efforts product development, services and similar selling efforts. Second, they argue that the more favorable tax treatment for U.S. plants (than for overseas facilities) will induce manufacturers to locate plants in the United States that they would have established overseas in the absence of DISC.

While it is obvious that such efforts can be expected to increase export sales somewhat and might have some impact on the choice of plant locations, the crucial questions are how significant would be any increase in exports and how significant will be the investment which would be shifted to the United States. The Treasury did not submit any real evidence or analysis that would assist the committee in evaluating this effect. The Treasury did submit a number of assertions from companies in the export business that DISC would encourage them to increase their efforts to export and, in some instances, to locate plants in the United States. But these statements are largely self-serving declarations by companies that would benefit from DISC, not evidence. They are the type of statement one would expect from anyone who sees a possible tax reduction, and should, therefore, be heavily discounted.

We believe there are several significant questions concerning the possible effectiveness of DISC which deserve a much closer look than the rather casual Treasury assertions provide. For instance, the increase in exports which would result from greater promotional effort depends on how successful this greater effort could be expected to be. Additional costs of export promotion without price reduction are not likely to create demand, but at best only divert it from other markets, and even then on probably a temporary basis. Unless these efforts bring about an appreciable increase in demand, however, the most profitable thing for a company to do would be to merely pocket its tax reduction and not attempt to incur the costs necessary to increase exports. In many cases necessary additional export promotion costs to achieve any appreciable results could well be greater than the tax saving. Moreover, in view of the dependence of U.S. exports on the level of economic activity in other countries, it appears highly unlikely to us that additional export promotion, which neither reduces prices nor increases income in other countries, would increase exports by as much as $1¼ to $1½ billion. Finally, given the present restrictions on imports from the United States imposed by other countries, there is no assurance that U.S. exports could be increased substantially. Moreover, experience has shown that they tend to impose additional impediments if U.S. exports begin to increase.

Another Treasury assertion that deserves close scrutiny is that DISC would affect plant location decisions so that a significant amount of manufacturing facilities that would be located overseas in the absence of DISC would be built in the United States. This concern for tax-induced investment in the United States appears to be at odds with the repeal of the investment credit. With inflationary pressures here at home still a problem, the current situation appears to be a particularly inappropriate time to provide an inducement to expand domestic plants In this economic situation, the additional inflationary pressures which this could fuel could hardly help but worsen our balance of trade.

In any event, there are serious questions about how effective DISC will be in affecting investment decisions to locate plants in the United States. The basic issue—and one which appears to have received virtually no real consideration—is how the tax advantage provided by DISC compares to other cost differences between United States and overseas facilities and how it compares to the noncost considerations. In other words, how much weight would be given to the tax saving from DISC in the entire range of considerations which determine plant location. Lower overseas production costs are, of course, one of the reasons why U.S. companies have located there. In addition, there are reasons other than cost differences such as tariffs and import restrictions or servicing or the nature of the market which dictate overseas plant location. We believe that factors such as these are far more significant than tax costs in determining plant locations, but no analysis of the relative importance of these influences on plant location and how much investment might be expected to shift was presented to the committee. There is also the possibility that many companies might use their tax savings from a DISC to expand the parent company's investments in plants overseas.

6. *Alternatives to DISC were not considered*

We also object to the committee's adoption of DISC without considering the alternatives. DISC is a new and complex piece of legislation with uncertain effects in an area where a number of tax and nontax proposals have been suggested. Some of these alternatives might well be more effective than DISC in increasing exports (if this is truly needed). Adoption of DISC implies, however, that DISC is the most efficient way to increase exports, but this is a judgment which cannot rationally be made without comparing it to other approaches.

Alternative methods of encouraging exports might also provide U.S. exporters with a greater relative improvement in their competitive position because other countries may respond to DISC—which in many cases is more favorable than the tax provisions generally applicable to exporters in other countries—by adopting tax provisions which are similar to DISC.

Some of the other methods of increasing exports which might yield a greater increase in exports per dollar spent are worth highlighting. One of the more effective actions the Government could take to encourage exports is to upgrade its export-expansion program and provide subsidized insurance and greater access to cheap credit with a minimum of redtape. Providing fairly automatic access to adequate amounts of cheap credit for export purposes would encourage export production and, perhaps more important, increase export sales by permitting exporters to extend low-interest rate long-term credit to their customers. The guaranteed availability of such credit, not just its price, would be of particular significance when, as appears will be the case for some time to come, there is insufficient credit to meet all the demands for it.

Another area that the administration and the committee should have considered before the adoption of DISC is the nontariff trade barriers imposed by other countries. Other countries maintain personnel in their consulates overseas to be sure that the United States or other countries do not impose barriers which run contrary to GATT. We believe the location of more personnel in our consulates overseas to see that our exporters are not discriminated against also could well yield worthwhile dividends.

Consideration could also be given to an equalization of border tax adjustments, either through refunding of State and local excise taxes (a principle embodied in H.R. 13713 introduced by Chairman Mills), or by an expanded border tax adjustment program which provides rebates on exports as well as levies on imports. Of course, still another alternative the committee could have considered if the purpose of DISC is to equate tax treatment of U.S. manufacturers and overseas subsidiaries, is to eliminate the present tax deferral for the overseas subsidiaries rather than extending tax exemption to part of the U.S. manufacturer's profits.

In considering DISC, the committee seemed to find the claimed employment creating aspects of DISC one of its most appealing features. The committee did not, however, consider whether alternative methods of increasing employment would be cheaper and more efficient. Other methods of increasing employment might not only be cheaper but might also be more effective in focusing the increased employment in areas where it is most needed for regional and area development. An additional program funded to the extent of $630 million or more a year would make a significant difference in such programs.

7. Conclusion

We have listed some six major reasons why we believe the adoption of the DISC proposal is undesirable. We believe that one of the most significant shortcomings of the committee's consideration is its failure to consider relative national priorities. With the trade surplus in June the largest in 4 years and with exports in the first half of 1970 running 14 percent ahead of last year, it is hard to understand why a new special tax incentive is so high on our list of priorities that it warrants the expenditure of $630 million or more a year. It is especially difficult to understand such a priority at a time when funds for many other programs are being cut back and when we find ourselves faced with the prospect of a sizable budgetary deficit, variously estimated at levels as high as $10 billion.

James C. Corman.
Sam Gibbons.

SEPARATE DISSENTING VIEWS OF HON. BARBER B. CONABLE, JR. AND HON. JERRY L. PETTIS

On balance, this is a bad bill, and the fact that it is sponsored, supported, or acquiesced in by legislators of brilliance, unquestioned patriotism, and otherwise sparkling record does not diminish the calamity it represents. There is ample justification for concern about the symmetry and reciprocity of our trade arrangements. For the most part, our U.S. traders have not been treated as well abroad as those from abroad who wish to sell their products here in the greatest market of the free world. Both in Europe and the Orient there are many restrictions on American investment and American exports.

But this bill fails to make the leap from the justification for action against those who have not treated us fairly to the appropriate remedy for dealing with them. Many remedies are available to us and yet in going the quota route we have chosen the remedy most likely of all to harm our national and commercial interests. We cannot open other doors by closing our own. Our goal abroad should not be to punish others but to advance American trading interests. One who believes in the effectiveness of our system of free enterprise must believe also in our ability to compete, not necessarily with respect to every article produced, but with respect to the aggregate value of production. If America has lost the ingenuity that made our competitive system a boon to Americans, no amount of protection can save us. In commerce, protection leads to rigidity, and rigidity to moribundity.

Even if it is assumed that protection is an appropriate short-term device to ease adjustment problems (and none of the proponents of this bill so limit their view of it), quota legislation is still the least appropriate type of protection for an economic system like ours. Increasing tariffs would permit a degree of competition to save us from commercial hardening of the arteries and would permit some control of the resulting increases in price level. Quantitative restriction of imports excludes the efficient foreign producer as well as the inefficient, while reducing the supply of goods available to the American consumer. The resulting domestic price rise is indeterminate, even though inevitable.

We oppose this bill primarily for these philosophical and economic reasons. Statistical, technical and tactical reasons further influencing our opposition are summarized below:

1. We believe that our present law, given an aggressive executive branch, can be effective to protect our people against dumping and other unfair trade practices. The fact that present law has not been effectively used in the past does not mean that it cannot be effectively used. President Nixon has signaled by his actions in this area that he intends to use these existing powers more effectively to advance American trading interests abroad.

2. The protection of American employment is the usual rationale given for this legislation. Although employment has been soft lately,

there are many reasons in addition to the intrusion of imports. Nobody enjoys even the statistics of unemployment, much less its human impact. But more jobs are involved in our export trade and production for export than are now threatened by imports. Export jobs are usually high pay, high technology jobs; import jobs are usually comparatively less significant in national economic terms. Export jobs will almost certainly be affected by import restrictions, through the inevitable retaliatory reaction abroad. We should not put ourselves in the position of relying on the restraint of our trading partners to avoid a trade war, and all the damage that will do to sales of American products abroad.

3. With inflation still our major economic woe, this is a bad time to be limiting the supply of those necessities which are cheapest and most likely to be bought in the Nation's bargain basements. Regardless of claims to the contrary, neither the supply of goods nor the most effective part of business competition can be reduced without causing prices to rise. Domestic inflation is one of the causes of the deterioration of our trade balance. We sould strike at the causes of inflation rather than try to compensate for it with protective devices which will themselves become part of the inflationary spiral.

4. Quotas, whether voluntary or involuntary, are going to be difficult to administer fairly. A domestic chain retailer with large purchasing power will have an advantage with respect to foreign supply once that supply is limited. There is no plan to license imports, and in all probability the small retailer, lacking bargaining power, will have to deal exclusively in the higher priced domestic goods.

5. By this bill we are giving long-term legislative quota protection to several large industries. In effect, we are making a legislative finding that they have been injured by imports. The so-called basket and escape clauses leave with the President substantial discretion as to whether or what types of protective relief will be given to injured industries and employees. As a result, this bill, with its splendid opportunities for legislative back-scratching will be difficult to keep under control as it moves through Congress. Of total textile consumption in this country in 1969, about 8½ percent was represented by imports. Of total footwear consumption, about 13 percent was imports. Many a smaller industry, lacking the political clout that comes with a large labor force, can make a statistical case equivalent to these giants; and this invites expansion of the bill rather than its containment.

6. This type of quota legislation provides protection for other industries than the American industries affected. In fact, the Japanese are guaranteed their historical share of our textile market, a portion otherwise bound to decline as new lower cost industries in South Korea and Taiwan increase their textile production. Japan has a favorable balance of trade with us, despite her rising costs, while Korea and Taiwan need our trade badly. Japan is also benefited relative to these same countries by the bill's failure to remove American selling price protection from rubber-soled footwear. As we have said previously, we do not advocate punishing any country or favoring any country. We should not be closing doors to trade, but opening doors which previously have been closed.

7. Agricultural produce, a major factor in our favor in balance of trade, is peculiarly subject to the foreign retaliation this bill will

trigger. Japan is our best purchaser of our agricultural produce, and can easily shift large amounts of its purchases to Australia and Canada. The European Economic Community would like an excuse, in light of its butter surpluses, to shut off the better than $500 million annual trade in American soybeans which are used for margarine. One in five cultivated American farm acres produces for overseas consumption. It is of particular irony to American farmers that they were not aggressively represented in the trade liberalization negotiations of the Kennedy round, and that they will, on the other hand, be peculiarly vulnerable to the repercussions of our move away from trade liberalization.

8. We are the leading trading nation in the world. This bill, if enacted into law, will signal that the United States is abandoning a leadership role, and a contraction of world trade is likely to result. Markets of the developing world will expand at a faster rate than our own already highly developed domestic markets, and this is the wrong time to be looking inward.

9. Although DISC is a scheme of tax deferment with a potential revenue impact of close to $1 billion when fully implemented, we do not oppose it. At least DISC puts the emphasis where it should be—on expanding exports rather than restricting imports. We think the DISC proposal will be of benefit primarily to small- and middle-sized producers not already in the export market, since larger producers tend already to be represented in foreign markets through foreign subsidiaries; the domestic tax benefits of these are greater than DISC will be able to provide. In some marginal cases, DISC may actually provide an alternative to the relocation of American plants abroad. In short, though DISC is a tax loophole, we believe it to be a modest one which will have the desirable effect of stimulating exports at this time.

BARBER B. CONABLE, JR.
JERRY L. PETTIS.

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