93d Congress
1st Session

COMMITTEE PRINT

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

---

*PREPARED STATEMENTS OF ADMINISTRATION WITNESSES SUBMITTED TO THE COMMITTEE ON WAYS AND MEANS AT PUBLIC HEARINGS BEGINNING ON MAY 9, 1973

AND OTHER MATERIAL RELATING TO

THE ADMINISTRATION PROPOSAL ENTITLED THE "TRADE REFORM ACT OF 1973" (H.R. 6767)

*This does not include interrogation by Members of the Committee on Ways and Means.

MAY 14, 1973

NOTE: This material is printed for information only so as to make it generally available, and is not to be construed as the statement or position of the Committee on Ways and Means or any Member thereof.

U.S. GOVERNMENT PRINTING OFFICE
95-146 O WASHINGTON : 1973

COMMITTEE ON WAYS AND MEANS

WILBUR D. MILLS, Arkansas, *Chairman*

AL ULLMAN, Oregon
JAMES A. BURKE, Massachusetts
MARTHA W. GRIFFITHS, Michigan
DAN ROSTENKOWSKI, Illinois
PHIL M. LANDRUM, Georgia
CHARLES A. VANIK, Ohio
RICHARD H. FULTON, Tennessee
OMAR BURLESON, Texas
JAMES C. CORMAN, California
WILLIAM J. GREEN, Pennsylvania
SAM M. GIBBONS, Florida
HUGH L. CAREY, New York
JOE D. WAGGONNER, Jr., Louisiana
JOSEPH E. KARTH, Minnesota

HERMAN T. SCHNEEBELI, Pennsylvania
HAROLD R. COLLIER, Illinois
JOEL T. BROYHILL, Virginia
BARBER B. CONABLE, Jr., New York
CHARLES E. CHAMBERLAIN, Michigan
JERRY L. PETTIS, California
JOHN J. DUNCAN, Tennessee
DONALD G. BROTZMAN, Colorado
DONALD D. CLANCY, Ohio
BILL ARCHER, Texas

JOHN M. MARTIN, Jr., *Chief Counsel*
J. P. BAKER, *Assistant Chief Counsel*
RICHARD C. WILBUR, *Minority Counsel*

CONTENTS

* No prepared statement.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

The Trade Reform Act of 1973, which I am today proposing to the Congress, calls for the most important changes in more than a decade in America's approach to wrold trade.

This legislation can mean more and better jobs for American workers.

It can help American consumers get more for their money.

It can mean expanding trade and expanding prosperity, for the United States and for our trading partners alike.

Most importantly, these proposals can help us reduce international tensions and strengthen the structure of peace.

The need for trade reform is urgent. The task of trade reform requires an effective, working partnership between the executive and legislative branches. The legislation I submit today has been developed in close consultation with the Congress and it envisions continuing cooperation after it is enacted. I urge the Congress to examine these proposals in a spirit of constructive partnership and to give them prompt and favorable consideration.

This legislation would help us to:

—Negotiate for a more open and equitable world trading system;
—Deal effectively with rapid increases in imports that disrupt domestic markets and displace American workers;
—Strengthen our ability to meet unfair competitive practices;
—Manage our trade policy more efficiently and use it more effectively to deal with special needs such as our balance of payments and inflation problems; and
—Take advantage of new trade opportunities while enhancing the contribution trade can make to the development of poorer countries.

Strengthening the Structure of Peace

The world is embarked today on a profound and historic movement away from confrontation and toward negotiation in resolving international differences. Increasingly in recent years, countries have come to see that the best way of advancing their own interests is by expanding peaceful contacts with other peoples. We have thus begun to erect a durable structure of peace in the world from which all nations can benefit and in which all nations have a stake.

This structure of peace cannot be strong, however, unless it encompasses international economic affairs. Our progress toward world peace and stability can be significantly undermined by economic conflicts which breed political tensions and weaken security ties. It is imperative, therefore, that we promptly turn our negotiating efforts to the task of resolving problems in the economic arena.

My trade reform proposals would equip us to meet this challenge. They would help us in creating a new economic order which both reflects and reinforces the progress we have made in political affairs. As I said to the Governors of the International Monetary Fund last September, our common goal should be to "set in place an economic structure that will help and not hinder the world's historic movement toward peace."

Toward a New International Economic Order

The principal institutions which now govern the world economy date from the close of World War II. At that time, the United States enjoyed a dominant position. Our industrial and agricultural systems had emerged from the war virtually intact. Our substantial reserves enabled us to finance a major share of international reconstruction. We gave generously of our resources and our leadership in helping the world economy get back on track.

The result has been a quarter century of remarkable economic achievement—and profound economic change. In place of a splintered and shattered Europe stands a new and vibrant European Community. In place of a prostrate Japan stands one of the free world's strongest economies. In all parts of the world new economic patterns have developed and new economic energies have been released.

These successes have now brought the world into a very different period. America is no longer the sole, dominating economic power. The new era is one of growing economic interdependence, shared economic leadership, and dramatic economic change.

These sweeping transformations, however, have not been matched by sufficient change in our trading and monetary systems. The approaches which served us so well in the years following World War II have now become outmoded; they are simply no longer equal to the challenges of our time.

The result has been a growing sense of strain and stress in the international economy and even a resurgence of economic isolationism as some have sought to insulate themselves from change. If we are to make our new economic era a time of progress and prosperity for all the world's peoples, we must resist the impulse to turn inward and instead do all we can to see that our international economic arrangements are substantially improved.

Momentum for Change

The United States has already taken a number of actions to help build a new international economic order and to advance our interests within it.

—Our New Economic Policy, announced on August 15, 1971, has helped to improve the performance of our domestic economy, reducing unemployment and inflation and thereby enhancing our competitive position.

—The realignment of currencies achieved under the Smithsonian Agreement of December 18, 1971, and by the adjustments of recent weeks have also made American goods more competitive with foreign products in markets at home and abroad.
—Building on the Smithsonian Agreement, we have advanced far-reaching proposals for lasting reform in the world's monetary system.
—We have concluded a trade agreement with the Soviet Union that promises to strengthen the fabric of prosperity and peace.
—Opportunities for mutually beneficial trade are developing with with the People's Republic of China.
—We have opened negotiations with the enlarged European Community and several of the countries with which it has concluded special trading agreements concerning compensation due us as a result of their new arrangements.

But despite all these efforts, underlying problems remain. We need basic trade reform, and we need it now. Our efforts to improve the world's monetary system, for example, will never meet with lasting success unless basic improvements are also achieved in the field of international trade.

Building a Fair and Open Trading World

A wide variety of barriers to trade still distort the world's economic relations, harming our own interests and those of other countries.
—Quantitative barriers hamper trade in many commodities, including some of our potentially most profitable exports.
—Agricultural barriers limit and distort trade in farm products, with special damage to the American economy because of our comparative advantage in the agricultural field.
—Preferential trading arrangements have spread to include most of Western Europe, Africa and other countries bordering on the Mediterranean Sea.
—Non-tariff barriers have greatly proliferated as tariffs have declined.

These barriers to trade, in other countries and in ours, presently cost the United States several billion dollars a year in the form of higher consumer prices and the inefficient use of our resources. Even an economy as strong as ours can ill afford such losses.

Fortunately, our major trading partners have joined us in a commitment to broad, multilateral trade negotiations beginning this fall. These negotiations will provide a unique opportunity for reducing trading barriers and expanding world trade.

It is in the best interest of every nation to sell to others the goods it produces more efficiently and to purchase the goods which other nations produce for efficiently. If we can operate on this basis, then both the earnings of our workers and the buying power of our dollars can be significantly increased.

But while trade should be more open, it should also be more fair. This means, first, that the rules and practices of trade should be fair to all nations. Second, it means that the benfits of trade should be fairly distributed among American workers, farmers, businessmen and consumers alike and that trade should create no undue burdens for any of these groups.

I am confident that our free and vigorous American economy can more than hold its own in open world competition. But we must always insist that such competition take place under equitable rules.

The Urgent Need for Action

The key to success in our coming trade negotiations will be the negotiating authority the United States brings to the bargaining table. Unless our negotiators can speak for this country with sufficient authority, other nations will undoubtedly be cautious and noncommittal—and the opportunity for change will be lost.

We must move promptly to provide our negotiators with the authority their task requires. Delay can only aggravate the strains we have already experienced. Disruptions in world financial markets, deficits in our trading balance, inflation in the international marketplace, and tensions in the diplomatic arena all argue for prompt and decisive action. So does the plight of those American workers and businesses who are damaged by rapidly rising imports or whose products face barriers in foreign markets.

For all of these reasons, I urge the Congress to act on my recommendations as expeditiously as possible. We face pressing problems here and now. We cannot wait until tomorrow to solve them.

Providing New Negotiating Authorities

Negotiators from other countries will bring to the coming round of trade discussions broad authority to alter their barriers to trade. Such authority makes them more effective bargainers; without such authority the hands of any negotiator would be severely tied.

Unfortunately, the President of the United States and those who negotiate at his direction do not now possess authorities comparable to those which other countries will bring to these bargaining sessions. Unless these authorities are provided, we will be badly hampered in our efforts to advance American interests and improve our trading system.

My proposed legislation therefore calls upon the Congress to delegate significant new negotiating authorities to the executive branch. For several decades now, both the Congress and the President have recognized that trade policy is one field in which such delegations are indispensable. This concept is clearly established; the questions which remain concern the degree of delegation which is appropriate and the conditions under which it should be carried out.

The legislation I submit today spells out only that degree of delegation which I believe is necessary and proper to advance the national interest. And just as we have consulted closely with the Congress in shaping this legislation, so the executive branch will consult closely with the Congress in exercising any negotiating authorities it receives I invite the Congress to set up whatever mechanism it deems best for closer consultation and cooperation to ensure that its views are properly represented as trade negotiations go forward.

It is important that America speak authoritatively and with a single voice at the international bargaining table. But it is also important that many voices contribute as the American position is being shaped.

The proposed Trade Reform Act of 1973 would provide for the following new authorities:

First, I request authority to eliminate, reduce, or increase customs duties in the context of negotiated agreements. Although this authority is requested for a period of five years, it is my intention and my expectation that agreements can be concluded in a much shorter time. Last October, the member governments of the European Community expressed their hope that the coming round of trade negotiations will be concluded by 1975. I endorse this timetable and our negotiators will cooperate fully in striving to meet it.

Secondly, I request a Congressional declaration favoring negotiations and agreements on non-tariff barriers. I am also asking that a new, optional procedure be created for obtaining the approval of the Congress for such agreements when that is appropriate. Currently both Houses of the Congress must take positive action before any such agreement requiring changes in domestic law becomes effective—a process which makes it difficult to achieve agreements since our trading partners know it is subject to much uncertainty and delay. Under the new arrangement, the Persident would give notice to the Congress of his intention to use the procedure at least 90 days in advance of concluding an agreement in order to provide time for appropriate House and Senate Committees to consider the issues involved and to make their views known. After an agreement was negotiated, the President would submit that agreement and proposed implementing orders to the Congress. If either House rejected them by a majority vote of all members within a period of 90 days, the agreement and implementing orders would then enter into effect.

Thirdly, I request advance authority to carry out mutually beneficial agreements concerning specific customs matters primarily involving valuation and the marking of goods by country of origin.

The authorities I outline in my proposed legislation would give our negotiators the leverage and the flexibility they need to reduce or eliminate foreign barriers to American products. These proposals would significantly strengthen America's bargaining position in the coming trade negotiations.

Objectives in Agricultural Trade

I am not requesting specific negotiating authority relating to agricultural trade. Barriers to such trade are either tariff or non-tariff in nature and can be dealt with under the general authorities I am requesting.

One of our major objectives in the coming negotiations is to provide for expansion in agricultural trade. The strength of American agriculture depends on the continued expansion of our world markets—especially for the major bulk commodities our farmers produce so efficiently. Even as we have been moving toward a great reliance on free market forces here at home under the Agricultural Act of 1970, so we seek to broaden the role of market forces on the international level by reducing and removing barriers to trade in farm products.

I am convinced that the concerns which all nations have for their farmers and consumers can be met most effectively if the market plays a far greater role in determining patterns of agricultural production and consumption. Movement in this direction can do much to help ensure adequate supplies of food and relieve pressure on consumer prices.

Providing for Import Relief

As other countries agree to reduce their trading barriers, we expect to reduce ours. The result will be expanding trade, creating more and better jobs for the American people and providing them with greater access to a wider variety of products from other countries.

It is true, of course, that reducing import barriers has on some occasions led to sudden surges in imports which have had disruptive effects on the domestic economy. It is important to note, however, that most severe problems caused by surging imports have not been related to the reduction of import barriers. Steps toward a more open trading order generally have a favorable rather than an unfavorable impact on domestic jobs.

Nevertheless, damaging import surges, whatever their cause, should be a matter of great concern to our people and our Government. I believe we should have effective instruments readily available to help avoid serious injury from imports and give American industries and workers time to adjust to increased imports in an orderly way. My proposed legislation outlines new measures for achieving these goals.

To begin with, I recommend a less restrictive test for invoking import restraints. Today, restraints are authorized only when the Tariff Commission finds that imports are the "major cause" of serious injury or threat thereof to a domestic industry, meaning that their impact must be larger than that of all other causes combined. Under my proposal, restraints would be authorized when import competition was the "primary cause" of such injury, meaning that it must only be the largest single cause. In addition, the present requirement that injury must result from a previous tariff concession would be dropped.

I also recommend a new method for determining whether imports actually are the primary cause of serious injury to domestic producers. Under my proposal, a finding of "market disruption" would constitute *prima facie* evidence of that fact. Market disruption would be defined as occurring when imports are substantial, are rising rapidly both absolutely and as a percentage of total domestic consumption, and are offered at prices substantially below those of competing domestic products.

My proposed legislation would give the President greater flexibility in providing appropriate relief from import problems—including orderly marketing agreements or higher tariffs or quotas. Restraints could be imposed for an initial period of five years and, at the discretion and consumption. Movement in this direction can do much to help years. In exceptional cases, restrictions could be extended even further after a two-year period and following a new investigation by the Tariff Commission.

Improving Adjustment Assistance

Our responsibilities for easing the problems of displaced workers are not limited to those whose unemployment can be traced to imports. All displaced workers are entitled to adequate assistance while they seek new employment. Only if all workers believe they are getting a fair break can our economy adjust effectively to change.

I will therefore propose in a separate message to the Congress new legislation to improve our systems of unemployment insurance and compensation. My proposals would set minimum Federal standards for benefit levels in State programs, ensuring that all workers covered by such programs are treated equitably, whatever the cause of their involuntary unemployment. In the meantime, until these standards become effective, I am recommending as a part of my trade reform proposals that we immediately establish benefit levels which meet these proposed general standards for workers displaced because of imports.

I further propose that until the new standards for unemployment insurance are in place, we make assistance for workers more readily available by dropping the present requirement that their unemployment must have been caused by prior tariff concessions and that imports must have been the "major cause" of injury. Instead, such assistance would be authorized if the Secretary of Labor determined that unemployment was substantially due to import-related causes. Workers unemployed because of imports would also have job training, job search allowances, employment services and relocation assistance available to them as permanent features of trade adjustment assistance.

In addition, I will submit to the Congress comprehensive pension reform legislation which would help protect workers who lose their jobs against loss of pension benefits. This legislation will contain a mandatory vesting requirement which has been developed with older workers particularly in mind.

The proposed Trade Reform Act of 1973 would terminate the present program of adjustment assistance to individual firms. I recommend this action because I believe this program has been largely ineffective, discriminates among firms within a given industry and has needlessly subsidized some firms at the taxpayer's expense. Changing competitive conditions, after all, typically act not upon particular firms but upon an industry as a whole and I have provided for entire industries under my import relief proposals.

Dealing With Unfair Trade Practices

The President of the United States possesses a variety of authorities to deal with unfair trade practices. Many of these authorities must now be modernized if we are to respond effectively and even-handedly to unfair import competition at home and to practices which unfairly prejudice our export opportunities abroad.

To cope with unfair competitive practices in our own markets, my proposed legisl[illegible] [illegible]uld amend our antidumping and countervailing duty laws [illegible] [illegible]ide for more expeditious investigations and decisions. It wou[illegible] [illegible]ke a number of procedural and other changes in these laws to guarantee their effective operation. The bill would also amend the current statute concerning patent infringement by subjecting cases involving imports to judicial proceedings similar to those which involve domestic infringement, and by providing for fair processes and effective action in the event of court delays. I also propose that the Federal Trade Commission Act be amended to strengthen our ability to deal with foreign producers whose cartel or monopoly practices raise prices in our market or otherwise harm our interest by restraining trade.

In addition, I ask for a revision and extension of my authority to raise barriers against countries which unreasonably or unjustifiably restrict our exports. Existing law provides such authority only under a complex array of conditions which vary according to the practices or exports involved. My proposed bill would simplify the authority and its use. I would prefer, of course, that other countries agree to remove such restrictions on their own, so that we should not have to use this authority. But I will consider using it whenever it becomes clear that our trading partners are unwilling to remove unreasonable or unjustifiable restrictions against our exports.

Other Major Provisions

Most-Favored-Nation Authority. My proposed legislation would grant the President authority to extend most-favored-nation treatment to any country when he deemed it in the national interest to do so. Under my proposal, however, any such extension to countries not now receiving most-favored-nation treatment could be vetoed by a majority vote of either the House or the Senate within a three-month period.

This new authority would enable us to carry out the trade agreement we have negotiated with the Soviet Union and thereby ensure that country's repayment of its lend-lease debt. It would also enable us to fulfill our commitment to Romania and to take advantage of opportunities to conclude beneficial agreements with other countries which do not now receive most-favored-nation treatment.

In the case of the Soviet Union, I recognize the deep concern which many in the Congress have expressed over the tax levied on Soviet citizens wishing to emigrate to new countries. However, I do not believe that a policy of denying most-favored-nation treatment to Soviet exports is a proper or even an effective way of dealing with this problem.

One of the most important elements of our trade agreement with the Soviet Union is the clause which calls upon each party to reduce exports of products which cause market disruptions in the other country. While I have no reason to doubt that the Soviet Union will meet its obligations under this clause if the need arises, we should still have authority to take unilateral action to prevent disruption if such action is warranted.

Because of the special way in which state-trading countries market their products abroad, I would recommend two modifications in the way we take such action. First, the Tariff Commission should only have to find "material injury" rather than "serious injury" from imports in order to impose appropriate restraints. Secondly, such restraints should apply only to exports from the offending country. These by state-trading countries, eliminating the difficult and time-consuming problems associated with trying to reach a constructed value for their exports.

Balance of Payments Authority. Though it should only be used in exceptional circumstances, trade policy can sometimes be an effective supplementary tool for dealing with our international payments imbalances. I therefore request more flexible authority to raise or lower import restrictions on a temporary basis to help correct deficits or surpluses in our payments position. Such restraints could be applied to imports from all countries across the board or only to those countries which fail to correct a persistent and excessive surplus in their global payments position.

Anti-Inflation Authority. My trade recommendations also include a proposal I made on March 30th as a part of this Administration's effort to curb the rising cost of living. I asked the Congress at that time to give the President new, permanent authority to reduce certain import barriers temporarily and to a limited extent when he determined that such action was necessary to relieve inflationary pressures within the United States. I again urge prompt approval for this important weapon in our war against inflation.

Generalized Tariff Preferences. Another significant provision of my proposed bill would permit the United States to join with other developed countries, including Japan and the members of the European Community, in helping to improve the access of poorer nations to the markets of developed countries. Under this arrangement, certain products of developing nations would benefit from preferential treatment for a ten-year period, creating new export opportunities for such countries, raising their foreign exchange earnings, and permitting them to finance those higher levels of imports that are essential for more rapid economic growth.

This legislation would allow duty-free treatment for a broad range of manufactured and semi-manufactured products and for a selected list of agricultural and primary products which are now regulated only by tariffs. It is our intention to exclude certain import-sensitive products such as textile products, footwear, watches and certain steel products from such preferential treatment, along with products which are now subject to outstanding orders restricting imports. As is the case for the multilateral negotiations authority, public hearing procedures would be held before such preferences were granted and preferential imports would be subject to the import relief provisions which I have recommended above. Once a particular product from a given country became fully competitive, however, it would no longer qualify for special treatment.

The United States would grant such tariff preferences on the basis of international fair play. We would take into account the actions of other preference-granting countries and we would not grant preferences to countries which discriminate against our products in favor of goods from other industrialized nations unless those countries agreed to end such discrimination.

Permanent Management Authorities. To permit more efficient and more flexible management of American trade policy, I request permanent authority to make limited reductions in our tariffs as a form of compensation to other countries. Such compensation could be necessary in cases where we have raised certain barriers under the new import restraints discussed above and would provide an alternative in such cases to increased barriers against our exports.

I also request permanent authority to offer reductions in particular United States barriers as a means of obtaining significant advantages for American exports. These reductions would be strictly limited; they would involve tariff cuts of no more than 20 percent covering no more than two percent of total United States imports in any one year.

Reforming International Trading Rules

The coming multilateral trade negotiations will give us an excellent opportunity to reform and update the rules of international trade. There are several areas where we will seek such changes.

One important need concerns the use of trade policy in promoting equilibrium in the international payments system. We will seek rule changes to permit nations, in those exceptional cases where such measures are necessary, to increase or decrease trade barriers across the board as one means of helping to correct their payments imbalances. We will also seek a new rule allowing nations to impose import restrictions against individual countries which fail to take effective action to correct an excessive surplus in their balance of payments. This rule would parallel the authority I have requested to use American import restrictions to meet our own balance of payments problem.

A second area of concern is the need for a multilateral system for limiting imports to protect against disruptions caused by rapidly changing patterns of international trade. As I emphasized earlier, we need a more effective domestic procedure to meet such problems. But it is also important that new arrangements be developed at the international level to cope with disruptions caused by the accelerating pace of change in world trade.

We will therefore seek new international rules which would allow countries to gain time for adjustment by imposing import restrictions, without having to compensate their trading partners by simultaneously reducing barriers to other products. At the same time, the interests of exporting countries should be protected by providing that such safeguards will be phased out over a reasonable period of time.

Promoting Export Expansion

As trade barriers are reduced around the world, American exports will increase substantially, enhancing the health of our entire economy.

Already our efforts to expand American exports have moved forward on many fronts. We have made our exports more competitive by realigning exchange rates. Since 1971, our new law permitting the establishment of Domestic International Sales Corporations has been helping American companies organize their export activities more effectively. The lending, guaranty and insurance authorities of the Export-Import Bank have been increased and operations have been extended to include a short-term discount loan facility. The Department of Commerce has reorganized its facilities for promoting exports and has expanded its services for exporters. The Department of State, in co-operation with the Department of Commerce, is giving increased emphasis to commercial service programs in our missions abroad.

In addition, I am today submitting separate legislation which would amend the Export Trade Act in order to clarify the legal framework in which associations of exporters can function. One amendment would make it clear that the act applies not only to the export of goods but also to certain kinds of services—architecture, construction, engineering, training and management consulting, for example. Another amendment would clarify the exemption of export associations from our domestic antitrust laws, while setting up clear information, disclosure and regulatory requirements to ensure that the public interest is fully protected.

In an era when more countries are seeking foreign contracts for entire industrial projects—including steps ranging from engineering studies through the supply of equipment and the construction of plants—it is essential that our laws concerning joint export activities allow us to meet our foreign competition on a fair and equal basis.

The Growth of International Investment

The rapid growth of international investment in recent years has raised new questions and new challenges for businesses and governments. In our own country, for example, some people have feared that American investment abroad will result in a loss of American jobs. Our studies show, however, that such investment on balance has meant more and better jobs for American workers, has improved our balance of trade and our overall balance of payments, and has generally strengthened our economy. Moreover, I strongly believe that an open system for international investment, one which eliminates artificial incentives or impediments here and abroad, offers great promise for improved prosperity throughout the world.

It may well be that new rules and new mechanisms will be needed for international investment activities. It will take time, however, to develop them. And it is important that they be developed as much as possible on an international scale. If we restrict the ability of American firms to take advantage of investment opportunities abroad, we can only expect that foreign firms wil seize these opportunities and prosper at our expense.

I therefore urge the Congress to refrain from enacting broad new changes in our laws governing direct foreign investment until we see what possibilities for multilateral agreements emerge.

It is in this context that we must also shape our system for taxing the foreign profits of American business. Our existing system permits American-controlled businesses in foreign countries to operate under the same tax burdens which apply to its foreign competitors in that country. I believe that system is fundamentally sound. We should not penalize American business by placing it at a disadvantage with respect to its foreign competitors.

American enterprises abroad now pay substantial foreign income taxes. In most cases, in fact, Americans do not invest abroad because of an attractive tax situation but because of attractive business opportunities. Our income taxes are not the cause of our trade problems and tax changes will not solve them.

The Congress exhaustively reviewed this entire matter in 1962 and the conclusion it reached then is still fundamentally sound: there is no reason that our tax credit and deferral provisions relating to overseas investment should be subject to drastic surgery.

On the other hand, ten years of experience have demonstrated that in certain specialized cases American investment abroad can be subject to abuse. Some artificial incentives for such investment still exist, distorting the flow of capital and producing unnecessary hardship. In those cases where unusual tax advantages are offered to induce investment that might not otherwise occur, we should move to eliminate that inducement.

A number of foreign countries presently grant major tax inducements such as extended "holidays" from local taxes in order to attract investment from outside their borders. To curb such practices, I will ask the Congress to amend our tax laws so that earnings from new American investments which take advantage of such incentives will be taxed by the United States at the time they are earned—even though the earnings are not returned to this country. The only exception to this provision would come in cases where a bilateral tax treaty provided for such an exception under mutually advantageous conditions.

American companies sometimes make foreign investments specifically for the purpose of re-exporting products to the United States. This is the classic "runaway plant" situation. In cases where foreign subsidiaries of American companies have receipts from exports to the United States which exceed 25 percent of the subsidiaries' total receipts, I recommend that the earnings of those subsidiaries also be taxed at current American rates. This new rule would only apply, however, to new investments and to situations where lower taxes in the foreign country are a factor in the decision to invest. The rule would also provide for exceptions in those unusual cases where our national interest required a different result.

There are other situations in which American companies so design their foreign operations that the United States treasury bears the burden when they lose money and deduct it from their taxes. Yet when that same company makes money, a foreign treasury receives the benefit of taxes on its profits. I will ask the Congress to make appropriate changes in the rules which now allow this inequity to occur.

We have also found that taxing of mineral imports by United States companies from their foreign affiliates is subject to lengthy delays. I am therefore instructing the Department of the Treasury, in consultation with the Department of Justice and the companies concerned, to institute a procedure for determining inter-company prices and tax payments in advance. If a compliance program cannot be developed voluntarily, I shall ask for legislative authority to create one.

The Challenge of Change

Over the past year, the Administration has repeatedly emphasized the importance of bringing about a more equitable and open world trading system. We have encouraged other nations to join in negotiations to achieve this goal. The declaration of European leaders at their summit meeting last October demonstrates their dedication to the success of this effort. Japan, Canada and other nations share this dedication.

The momentum is there. Now we—in this country—must seize the moment if that momentum is to be sustained.

When the history of our time is written, this era will surely be described as one of profound change. That change has been particularly dramatic in the international economic arena.

The magnitude and pace of economic change confronts us today with policy questions of immense and immediate significance. Change can mean increased disruption and suffering, or it can mean increased well-being. It can bring new forms of deprivation and discrimination, or it can bring wider sharing of the benefits of progress. It can mean conflict between men and nations, or it can mean growing opportunities for fair and peaceful competition in which all parties can ultimately gain.

My proposed Trade Reform Act of 1973 is designed to ensure that the inevitable changes of our time are beneficial changes—for our people and for people everywhere.

I urge the Congress to enact these proposals, so that we can help move our country and our world away from trade confrontation and toward trade negotiation, away from a period in which trade has been a source of international and domestic friction and into a new era in which trade among nations helps us to build a peaceful, more prosperous world.

Richard Nixon.

The White House, *April 10, 1973.*

95-146 O - 73 - 2

SUMMARY OF TRADE REFORM ACT OF 1973

Title I—AUTHORITY FOR NEW NEGOTIATIONS

Title I contains the basic authorities required for trade negotiations.

The President is provided authority for a period of five years to increase or decrease tariffs without limit in order to carry out trade agreements. Any proposed changes in duties are subject to prenegotiation procedures, including public hearings. Duty reductions will be phased over a minimum of five equal annual stages or by maximum annual reductions of three percent ad valorem, whichever is greater.

The President is provided advance authority to implement agreements relating to methods of customs valuation, certain matters relating to assessments and marking of origin requirements. A new procedure is also established under which the President can implement agreements on other types of trade barriers if he notifies the Congress 90 days before concluding such an agreement and if neither House of Congress disapproves of the agreement within ninety days of its submission.

Title II—RELIEF FROM DISRUPTION CAUSED BY FAIR COMPETITION

Title II contains major changes in existing provisions relating to import relief for industries seriously injured by increased imports, and provides new adjustment assistance provisions for workers displaced by import competition.

Chapter I liberalizes existing criteria for determining that injury to domestic industries is due to imports. Upon petition, request, or on its own motion, the Tariff Commission will conduct an investigation to determine whether increased imports are the "primary" cause of serious injury, or threat thereof, to the domestic industry producing like or directly competitive articles. A finding of market disruption constitutes *prima facie* evidence that imports are the primary cause of injury.

The President can provide import relief in the form of increases in duties, quantitative limitations, orderly marketing agreements, and suspension of items 806.30 and 807.00 of the Tariff Schedules. Consistent with adjustment purposes, import relief is limited to five years and must be phased out during this period. The relief may be extended for one two-year period.

Chapter II on adjustment assistance provides for supplemental payments to workers in cases where the Secretary of Labor determines that increased imports have been a "substantial" cause of unemployment or underemployment. The supplemental payment benefits are based on those which will apply under State law for all workers following enactment of compansion legislation establishing minimum State standards for unemployment insurance benefits. The chapter also provides continuing programs of worker benefits in the form of training and relocation and job search allowances.

Title III—RELIEF FROM UNFAIR TRADE PRACTICES

Title III revises the four principal statutes which provide authority to respond to foreign unfair trade practices.

Chapter I revises and expands the President's authority under section 252 of the Trade Expansion Act to take action against foreign countries which maintain unjustifiable or unreasonable import restrictions and other policies which burden, restrict, or discriminate against United States trade.

Chapter II amends the Antidumping Act of 1921. The amendments include placing time limits on investigations and withholding of appraisement and providing for hearings.

Chapter III contains major amendments to the countervailing duty law. Countervailing duties will apply for the first time to duty-free goods, subject to a determination of material injury by the Tariff Commission. The application of countervailing duties is not required, however, if such action would be significantly detrimental to United States economic interests or an existing quantitative limitation is an adequate substitute. The Secretary of the Treasury must determine within one year whether a bounty or grant is being paid or bestowed.

Chapter IV amends section 337 of the Tariff Act relating to foreign unfair practices in import trade by expanding the procedures in the statute relating to patent infringement. Companion legislation will provide the Federal Trade Commission authority to investigate and regulate other unfair methods of import competition.

Title IV—INTERNATIONAL TRADE POLICY MANAGEMENT

Title IV contains various permanent authorities to provide the President with more flexible means to manage trade policy.

It provides explicit and flexible authority for the President to deal with serious balance-of-payments situations, including authority to impose a temporary import surcharge or other import limitations to deal with a serious balance-of-payments deficit, or to cooperate in correcting an international balance-of-payment disequilibrium. The President is also authorized to reduce or suspend tariffs or other import restrictions temporarily in the case of a persistent balance-of-payments surplus.

Other permanent authorities enable the President to exercise fully United States rights and obligations under trade agreements, to implement supplemental tariff agreements of a limited scope, to compensate countries for increases in United States import restrictions, and to reduce import restrictions temporarily to restrain inflation.

Title V—TRADE RELATIONS WITH COUNTRIES NOT ENJOYING MOST-FAVORED-NATION TREATMENT

Title V provides authority to the President to extent most-favored-nation treatment to imports from countries which currently receive Column 2 rates of duty, subject to a 90-day Congressional veto procedure. This treatment may be extended through bilateral commercial agreements or through multilateral trade agreements to which the United States is also a party.

The agreements must be limited to an initial period of not more than three years but may be renewed for additional three-year periods. The President may suspend or withdraw the application of most-favored-nation treatment at any time, and the agreements must provide for suspension or termination at any time for national security reasons.

The Tariff Commission, upon petition or other initiation will conduct an investigation to determine whether imports from the country receiving most-favored-nation treatment under this title are causing or likely to cause material injury to a domestic industry and whether market disruption exists with respect to these imports. The President may apply relief measures to imports from that country without taking action on imports from other countries.

Title VI—GENERALIZED SYSTEM OF PREFERENCES

Title VI provides authority to the President for ten years to participate with other developed countries in granting generalized tariff preferences on imports of semi-manufactures, manufactures, and selected other products from developing countries.

The President may provide duty-free treatment on any eligible article from beneficiary developing countries, subject to pre-negotiation procedures. Preferential treatment is generally not to apply to imports of an article from a particular developing country which supplies more than 50 percent of the total value of United States imports or $25 million of the article to the United States during a representative annual period.

Preferential treatment will not apply to articles on which import relief measures or national security actions are in effect. Developing countries which do not undertake to eliminate preferences to other developed countries before January 1, 1976 or are not receiving most-favored-nation treatment are not eligible as beneficiaries.

Title VII—GENERAL PROVISIONS

Title VII contains general technical provisions applicable to the entire Act, including maintenance of the Tariff Schedules of the United States, and the repeal of various sections of the Trade Expansion Act. It also repeals the Johnson Debt Default Act, and an embargo on certain furs.

TRADE REFORM ACT OF 1973

A BILL To promote the development of an open, nondiscriminatory and fair world economic system, to stimulate the economic growth of the United States, and to provide the President with additional negotiating authority therefor, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Trade Reform Act of 1973."

TABLE OF CONTENTS

SEC. 1. SHORT TITLE.

This Act may be cited as the "Trade Reform Act of 1973."

SEC. 2. STATEMENT OF PURPOSES.

The purposes of this Act are—

(a) To provide authority in the trade field supporting United States participation in an interrelated effort to develop an open, nondiscriminatory and fair world economic system through reform of international trade rules, formulation of international standards for investment and tax laws and policies, and improvement of the international monetary system;

(b) To facilitate international cooperation in economic affairs for the purpose of providing a means of solving international economic problems, furthering peace and raising standards of living throughout the world;

(c) To stimulate the economic growth of the United States and enlarge foreign markets for the products of United States commerce (including agriculture, manufacturing, mining, and fishing) by furthering the expansion of world trade through the progressive reduction and elimination of barriers to trade on a basis of mutual benefit and equity;

(d) To establish a program of temporary import relief to facilitate adjustment of sections of the domestic economy adversely affected by increased imports, consistent with anticipated multilateral safeguard rules being negotiated with other trading nations;

(e) To provide trade adjustment assistance to workers adversely affected by increased imports;

(f) To improve the means of dealing with problems of unfair import competition;

(g) To provide additional authority for the President to facilitate his negotiations with foreign nations to obtain for exports of American producers fair treatment and equitable access to foreign markets;

(h) To provide the President with more flexible authority to deal with matters affecting trade, including the full exercise of United States rights in the context of international agreements and the use of temporary measures to deal with balance of payments disequilibria and to restrain inflation;

(i) To enable the United States to take advantage of new trade opportunities with countries with which it has not had trade agreement relations in the recent past; and

(j) To provide for United States participation in the common effort of developed countries to open their markets on a generalized preferential basis to the products of developing countries.

TITLE I—AUTHORITY FOR NEW NEGOTIATIONS

CHAPTER 1.—GENERAL AUTHORITIES

SEC. 101. BASIC AUTHORITY FOR TRADE AGREEMENTS.

Whenever the President determines that any of the purposes of this Act will be promoted thereby, the President may—

(1) After the date of enactment of this Act, and before five years from that date, enter into trade agreements with foreign countries or instrumentalities thereof; and

(2) Provide for such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any such trade agreement.

SEC. 102. STAGING REQUIREMENTS AND ROUNDING AUTHORITY.

(a) Except as otherwise provided in this section, the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement 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 or a reduction of three percent ad valorem (or ad valorem equivalent) whichever is greater, had taken effect on the date of the first action pursuant to section 101(b) to carry out such trade agreement, and

(2) the remainder of such total reduction had taken effect at one-year intervals after the date referred to in paragraph (1) in installments equal to the greater of three percent ad valorem (or ad valorem equivalent) or one fourth of such remainder.

(b) After any part of a reduction takes effect, then any time thereafter during which such part of the reduction is not in effect by reason of action taken pursuant to Chapter 1 of Title II of this Act shall be excluded in determining the one-year intervals referred to in subsection (a)(2).

(c) If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitation provided by subsection (a) of this section by not more than whichever of the following is lesser:

(1) the difference between the limitation and the next lower whole number, or

(2) one-half of one percent ad valorem, or ad valorem equivalent.

(d) The provisions of subsection (a) need not be applied if the total reduction in the rate of duty does not exceed ten percent of the rate prior to the reduction.

(e) Nothing contained herein shall prevent the President, where he determines that it is appropriate, from providing in the case of certain products, that reductions pursuant to a trade agreement under this title shall become fully effective over a longer period of time than that provided in subsection (a).

SEC. 103. NONTARIFF BARRIERS TO TRADE.

(a) The Congress finds that trade barriers and other distortions of international trade are reducing the growth of foreign markets for the products of United States commerce (including agriculture, manufacturing, mining, and fishing), diminishing the intended mutual benefits of reciprocal trade concessions, and preventing the development of open and nondiscriminatory trade among nations. It is the will of the Congress that the President take all appropriate and feasible steps within his power to reduce, eliminate, or harmonize barriers and other distortions of international trade in order to further the objective of providing better access for products of the United States to foreign markets.

(b) In order to further the objectives of subsection (a), the President is urged to negotiate trade agreements with other countries and instrumentalities providing on a basis of mutuality for the reduction, elimination, or harmonization of barriers and other distortions of international trade. Nothing in this subsection or in subsection (a) shall be construed as prior approval of any legislation that may be necessary to implement an agreement concerning trade barriers and other distortions of international trade.

(c) The President, whenever he finds that it will be of substantial benefit to the United States, is hereby authorized to take any action required or appropriate to carry out any trade agreement negotiated pursuant to subsection (b), to the extent that such implementation is limited to a reduction of the burden on trade resulting from methods of customs valuation, from establishing the quantities on which assessments are made, and from requirements for marking of country of origin.

(d) Whenever the President enters into a trade agreement providing for the reduction, harmonization or elimination of barriers or other distortions of international trade, and the President determines that it is necessary or appropriate to seek additional action by Congress in order to implement such agreement, he may authorize the entry into force of such agreement and issue such orders as may be necessary for the United States to fulfill its obligations under such agreement, subject to the procedures contained in subsection (e).

(e) Orders issued pursuant to subsection (d) shall be valid pursuant to this section:

(1) Only if the President has given notice to the Senate and to the House of Representatives of his intention to utilize this procedure, such notice to be given at least 90 days in advance of his entering into an agreement;

(2) Only after the expiration of 90 days from the date on which the President delivers a copy of such agreement to the Senate and to the House of Representatives, as well as a copy of his proposed orders in relation to existing law and a statement of his reasons as to how the agreement serves the interests of United States

commerce and as to why the proposed orders are necessary to carry out the agreement; and

(3) Only if between the date of delivery of the agreement to the Senate and to the House of Representatives and the expiration of the 90-day period referred to in subsection (e)(2) above, neither the Senate nor the House of Representatives has adopted a resolution, by an affirmative vote by the yeas and nays of a majority of the authorized membership of that House, stating that it disapproves of the agreement.

For purposes of subsection (e)(2), in the computation of the 90 day period there shall be excluded the days on which either House is not in session because of adjournment of more than three days to a day certain or an adjournment of the Congress sine die. The notices referred to in subsection (e)(1) and the documents referred to in subsection (e)(2) 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.

CHAPTER 2.—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS PURSUANT TO TITLE I

Subchapter A—Title I Prenegotiation Requirements

SEC. 111. TARIFF COMMISSION ADVICE.

(a) In connection with any proposed trade agreement under section 101, 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, continuance of United States duty-free or excise treatment, or additional duties.

(b) Within six 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 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, commerce, agriculture, mining, fishing, and labor, utilizing to the fullest extent practicable United States Government facilities abroad and appropriate personnel of the United States.

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

SEC. 112. ADVICE FROM DEPARTMENTS.

(a) Before any trade agreement is entered into under sections 101 and 103 of this title, the President shall seek information and advice with respect to each agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State, Treasury, and the Special Representative for Trade Negotiations, and from other sources as he may deem appropriate.

(b) Whenever the President or any agency seeks advice of selected industry, labor and agriculture groups concerning United States negotiating objectives and bargaining positions in specific product sectors prior to entering into a trade agreement under this title, the meetings of such advisory groups shall be exempt from the requirements relating to open meetings and public participation contained in section 10(a)(1) and (3) of the Federal Advisory Committee Act.

SEC. 113. PUBLIC HEARINGS.

(a) In connection with any proposed trade agreement under sections 101 and 103 of this title, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published pursuant to section 111, any article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings, and prescribe regulations governing the conduct of such hearings.

(b) The organization holding such hearings shall furnish the President with a summary thereof.

SEC. 114. PREREQUISITE FOR OFFERS.

In any negotiations seeking an agreement under section 101, the President may make an offer for the modification or continuance of any duty, or continuance of duty-free or excise treatment, with respect to any article only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 113. In addition, the President may make such an offer only after he has received advice concerning such article from the Tariff Commission under section 111(b), or after the expiration of the relevant six-month period provided for in that section, whichever first occurs.

Subchapter B—Congressional Liaison

SEC. 121. TRANSMISSION OF AGREEMENTS TO CONGRESS.

As soon as practicable after a trade agreement entered into under section 101 or 103 has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in the light of the advice of the Tariff Commission under section 111(b), if any, and of other relevant considerations, of his reasons for entering into the agreement.

TITLE II—RELIEF FROM DISRUPTION CAUSED BY FAIR COMPETITION

CHAPTER 1—IMPORT RELIEF

SEC. 201. INVESTIGATION BY TARIFF COMMISSION.

(a)(1) A petition for eligibility for import relief for the purpose of facilitating orderly adjustment to import competition may be filed with the Tariff Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The petition shall include a statement describing the specific purpose for which import relief is being sought, which may include such objectives as facilitating the orderly transfer of resources to alternative employment and other means of adjustment to new conditions of competition.

(2) Whenever a petition is filed under this subsection, the Tariff Commission shall transmit a copy thereof to the Special Representative for Trade Negotiations and the agencies directly concerned.

(b)(1) Upon the request of the President or the Special Representative for Trade Negotiations, 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 an article is being imported into the United States in such increased quantities as to be the primary cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported article.

(2) In making its determination regarding serious injury or threat thereof, the Tariff Commission shall take into account all economic factors which it considers relevant, including significant idling of productive facilities in the industry, inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry.

(3) In making its determination regarding primary cause, the Tariff Commission shall take into account all factors it considers relevant, including the extent to which current business conditions within the industry may have contributed to the competitive difficulties which the firms in the industry have been experiencing.

(4) In addition, the Tariff Commission shall, for the purpose of assisting the President in making his determinations under sections 202

and 203, investigate and report on efforts made by the firms in the industry to compete more effectively with imports.

(5) In each investigation under this subsection in which it is requested to do so pursuant to the petition, request or resolution referred to in subsection (b)(1) or on its own motion, the Tariff Commission shall determine whether there exists a condition of market disruption as defined in subsection (f) below. If the Tariff Commission finds serious injury, or the threat thereof, a finding of market disruption shall constitute prima facie evidence that increased quantities of imports of the like or directly competitive articles are the primary cause of such injury or threat thereof.

(c) In the course of any proceeding under subsection (b), the Tariff Commission shall, after reasonable notice, hold public hearings and shall afford interested parties an opportunity to be present, to present evidence, and to be heard at such hearings.

(d)(1) The Tariff Commission shall report to the President its findings under subsection (b) and the basis therefor 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 three 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), unless prior to the end of the three-month period, the Tariff Commission makes a finding that a fair and thorough investigation cannot be made within that time and publishes its finding in the Federal Register. In such cases, the period within which the Tariff Commission must make its report shall be extended by two months.

(3) Upon making its report to the President, the Tariff Commission shall also promptly make it public (with the exception of information which the Commission determines to be confidential) and have a summary of it published in the Federal Register.

(e) No investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this section, unless one year has elapsed since the Tariff Commission made its report to the President of the results of such previous investigation.

(f)(1) For the purposes of this section the term "the primary cause" means the largest single cause.

(2) For the purposes of this section, a condition of market disruption shall be found to exist whenever a showing has been made that imports of a like or directly competitive article are substantial, that they are increasing rapidly both absolutely and as a proportion of total domestic consumption, and that they are offered at prices substantially below those of comparable domestic articles.

(g) Any investigation by the Tariff Commission under subsection (b) of section 301 of the Trade Expansion Act of 1962 (as in effect before the date of the enactment of this Act) which is in progress immediately before such date of enactment shall be continued under this section in the same manner as if the investigation had been instituted originally under the provisions of this section. For purposes of subsection (d)(2), the petition for any investigation to which the preceding sentence applies shall be treated as having been filed, or the request or resolution as having been received or the motion having been adopted, as the case may be, on the date of the enactment of this Act.

(h) If, on the date of the enactment of this Act, the President had not taken any action with respect to any report of the Tariff Commission containing an affirmative determination resulting from an investigation undertaken by it pursuant to section 301(b) of the Trade Expansion Act of 1962 (as in effect before the date of the enactment of this Act) such report shall be treated by the President as a report received by him under this section on the date of the enactment of this Act.

SEC. 202. PRESIDENTIAL ACTION AFTER INVESTIGATIONS.

(a) After receiving a report from the Tariff Commission containing an affirmative finding that increased imports have been the primary cause of serious injury or threat thereof under section 201(d) with respect to an industry, the President may—

(1) provide import relief for such industry in accordance with section 203; or

(2) direct the Secretary of Labor to give expeditious consideration to petitions for adjustment assistance for workers in the industry concerned; or

(3) take any combination of these actions.

(b) Within 60 days after receiving a report from the Tariff Commission containing an affirmative finding under section 201(b), the President shall make his determination whether to provide import relief pursuant to section 203; provided, that in the event the Tariff Commission was equally divided, the President shall act within 120 days. If the President determines not to provide import relief, he shall immediately submit a report to the House of Representatives and to the Senate stating the considerations on which his decision was based.

(c) In determining whether to provide import relief pursuant to section 203, the President shall take into account, in addition to such other considerations as he may deem relevant—

(1) information and advice from the Secretary of Labor on the extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance or benefits from other manpower programs;

(2) the probable effectiveness of import relief as a means to promote achievement of the adjustment purpose, the efforts being made or to be implemented by the industry concerned to adjust to import competition and other considerations relative to the position of the industry in the nation's economy;

(3) the effect of import relief upon consumers, including the price and availability of the imported article and the like or directly competitive article produced in the United States, and upon competition in the domestic markets for such articles;

(4) the effect of import relief on United States international economic interests;

(5) the impact upon United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may be required for purposes of compensation;

(6) the geographic concentration of imported products marketed in the United States; and

(7) alternative economic and social costs that would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

(d) The President may, within 45 days after the date on which he receives an affirmative finding of the Tariff Commission under section 201(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 60 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 subsection (b), the date on which the President receives such supplemental report shall be treated as the date on which the President received the affirmative finding of the Tariff Commission.

SEC. 203. IMPORT RELIEF.

(a) If the President determines pursuant to section 202 to provide import relief, he shall, to the extent and for such time (not to exceed five years) that he determines necessary to prevent or remedy serious injury or the threat thereof to the industry in question and to facilitate the orderly adjustment to new competitive conditions by the industry in question—

(1) provide an increase in, or imposition of, any duty or other import restriction on the article causing or threatening to cause serious injury to such industry; or

(2) suspend, in whole or in part, the application of items 806.30 or 807.00 of the Tariff Schedules of the United States with respect to such article; or

(3) negotiate orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of the article causing or threatening to cause serious injury to such industry; or

(4) take any combination of such actions.

(b) Import relief provided pursuant to subsection (a) shall become initially effective no later than 60 days after the President's determination under section 202 to provide import relief, except that the applicable period within which import relief shall be initially provided shall be 180 days if the President anounces at the time of his determination to provide import relief his intention to negotiate one or more orderly marketing agreements pursuant to subsection (a)(3) of this section.

(c) In order to carry out an agreement concluded under subsection (a)(3), the President is authorized to issue regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out one or more agreements concluded under subsection (a)(3) among countries accounting for a significant part of United States imports of the article covered by such agreements, the President is also authorized to issue regulations governing the entry or withdrawal from warehouse of the like articles which are the product of countries not parties to such agreements.

(d)(1) Wherever the President has acted pursuant to subsection (a)(1) or (2), he may at any time thereafter while such import relief is in effect, negotiate orderly marketing agreements with foreign countries, and may, upon the entry into force of such agreements, suspend or terminate, in whole or in part, such other actions previously taken.

(2) Any import relief provided pursuant to this section (including relief provided under any orderly marketing agreement) may be suspended, terminated or reduced by the President at any time and, unless renewed under subsection (d) (3), shall terminate not later than the close of the date which is five years after the effective date of the initial grant of any relief under this section.

(3) Any import relief provided pursuant to this section (including any orderly marketing agreements) shall be phased out during the period of import relief and, in the case of a five-year term of import relief, the first reduction of relief shall commence no later than the close of the date which is three years after the effective date of the initial grant of relief. The phasing out of an orderly marketing agreement may be accomplished through increases in the amounts of imports which may be entered during a year.

(4) Any import relief provided pursuant to this section (including any orderly marketing agreements) may be renewed in whole or in part by the President for one two-year period if he determines, after taking into account the advice received from the Tariff Commission under subsection (e) (2) and after taking into account the factors described in section 202(b), that such renewal is in the national interest.

(e)(1) So long as any import relief pursuant to this section (including any orderly marketing agreements) remains in effect, the Tariff Commission shall keep under review developments with respect to the industry concerned and upon request of the President shall make reports to the President concerning such developments.

(2) Upon petition on behalf of the industry concerned, filed with the Tariff Commission not earlier than the date which is nine months, and not later than the date which is six months, before the date any import relief is to terminate fully by reason of the expiration of the applicable period prescribed pursuant to subsection (d) (2), the Tariff Commission shall report to the President its findings as to the probable economic effect on such industry of such termination as well as the progress and specific efforts made by the firms in the industry concerned to adjust to import competition during the initial period of import relief.

(3) Advice by the Tariff Commission under subsection (e) (2) 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.

(f) No investigation for the purposes of section 201 shall be made with respect to an industry which has received import relief under this section unless two years have elapsed since the expiration of import relief under subsection (d).

CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

Subchapter A—Petitions and Determinations

SEC. 221. PETITIONS.

(a) A petition for a certification of eligibility to apply for adjustment assistance may be filed with the Secretary of Labor (hereinafter in this chapter referred to as "the Secretary") by a group of workers or by their certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than ten days after the Secretary's publication of notice under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard. The Secretary may request the Tariff Commission to hold any hearing required by this section and submit the transcript thereof and relevant information and documents to him within a specified time.

SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

A group of workers shall be certified as eligible to apply for adjustment assistance under this chapter if the Secretary determines that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, that sales or production, or both, of such firm or subdivision have decreased absolutely, and that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed substantially to such total or partial separation, or threat thereof.

SEC. 223. DETERMINATIONS BY SECRETARY OF LABOR.

(a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and issue a certification of eligibility to apply for assistance under this chapter covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

(b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm prior to his application under section 231 occurred (1) more than one year before the date of the petition upon which such certification was granted, or (2) more than six months prior to the effective date of this Act.

(c) Whenever the Secretary concludes that the Tariff Commission can aid him in reaching a determination under this section, he may request the Tariff Commission to conduct an investigation of facts relevant to such determination and to report the results within a specified time. In his request, the Secretary may state the particular kinds of data which he deems appropriate to be included.

(d) Upon reaching his determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register.

(e) Whenever the Secretary determines, with respect to any certification of eligibility of the workers of a firm or subdivision of the firm, that total or partial separations from such firm or subdivision are no longer attributable to the conditions specified in section 222, he shall terminate such certification and promptly have notice of such termination published in the Federal Register. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

Subchapter B.—Program Benefits

PART I—SUPPLEMENTAL PAYMENTS

SEC. 231. QUALIFYING REQUIREMENTS FOR WORKERS.

An adversely affected worker covered by a certification under subchapter A who files an application with a cooperating State agency shall, in accordance with the provisions of this subchapter, be paid a supplement to the State unemployment insurance payments to which he is otherwise entitled, if the following conditions are met:

(A) Such worker's last total or partial separation prior to his application under this section, occurred

(1) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment, and

(2) before the expiration of the two-year period beginning on the date on which the determination under section 223 was made, and

(3) before the termination date (if any) determined pursuant to section 223(e); and

(B) Such worker had, in the 52 weeks immediately preceding such total or partial separation, at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary.

SEC. 232. SUPPLEMENT TO UNEMPLOYMENT INSURANCE.

(a) Any adversely affected worker who meets the requirements of section 231 and receives State unemployment insurance payments for any week within the two-year period beginning with the date on which his last total or partial separation prior to his application under section 231 occurred shall receive a payment equal to the amount (if any) by which the unemployment insurance payment he receives under the applicable State law for such week is less than the payment he would have received for such week had the applicable State law provided that—

(1) the weekly benefit amount of any eligible individual for a week of total unemployment shall be:

(i) an amount equal to at least one-half of such individual's average weekly wage as determined by the State agency; or

(ii) the maximum weekly benefit amount payable under such State law, whichever is the lesser, and

(2) the maximum weekly benefit amount shall be no less than 66⅔ percent of the Statewide average weekly wage most recently computed before the beginning of the individual's benefit year.

(b) The amount of any weekly payment to be made under this section which is not a whole dollar amount shall be rounded upward to the next higher whole dollar amount.

(c) For the purposes of this section—

(1) "benefit year" means a period as defined in State law except that it shall not exceed one year beginning subsequent to the end of an individual's base period.

(2) "base period" means a period as defined in State law except that it shall be fifty-two consecutive weeks, one year, or four calendar quarters ending not earlier than six months prior to the beginning of an individual's benefit year.

(3) "individual's average weekly wage" means:

(i) in a State which computes individual weekly benefit amounts on the basis of high quarter wages, an amount equal to one-thirteenth of an individual's high quarter wages; or

(ii) in any other State, an amount computed by dividing the total amount of wages (irrespective of the limitation on the amount of wages subject to contribution under the State law) paid to such individual during his base period by the number of weeks in which he performs services in employment covered under such law during such period.

(4) "high quarter wages" means the amount of wages for services performed in employment covered under the State law paid to an individual in that quarter of his base period in which such wages were highest, irrespective of the limitation on the amount of wages subject to contributions under such State law.

(5) "Statewide average weekly wage" means the amount computed by the State agency at least once each year on the basis of the aggregate amount of wages, irrespective of the limitation on the amount of wages subject to contributions under such State law, reported by employers as paid for services covered under such State law during the first four of the last six completed calendar quarters prior to the effective date of the computation, divided by a figure representing fifty-two times the twelve-month average of the number of employees in the pay period containing the twelfth day of each month during the same four calendar quarters, as reported by such employers.

PART II—TRAINING AND RELATED SERVICES

SEC. 233. EMPLOYMENT SERVICES.

The Secretary shall make every reasonable effort to secure for adversely affected workers covered by a certification under subchapter A of this chapter counseling, testing, and placement services, and supportive and other services, provided for under any Federal law. The Secretary shall, whenever appropriate, procure such services through agreements with cooperating State agencies.

SEC. 234. TRAINING.

(a) If the Secretary determines that there is no suitable employment available for an adversely affected worker covered by a certification under subchapter A of this chapter, but that suitable employment (which may include technical and professional employment) would be available if the worker received appropriate training, he may authorize such training. Insofar as possible, the Secretary shall provide or assure the provision of such training on a priority basis through manpower and related service programs established by law.

(b) The Secretary may, where appropriate, authorize supplemental assistance necessary to defray transportation and subsistence expenses for separate maintenance when training is provided in facilities which are not within commuting distance of a worker's regular place of residence. The Secretary shall not authorize payments for subsistence exceeding $5 per day; nor shall he authorize payments for transportation expenses exceeding 10 cents per mile.

(c) The Secretary shall not authorize any training program under this section which begins more than one year from certification under subchapter A or the applicant's last total or partial separation prior to his application under section 231, whichever is later.

(d) Any adversely affected worker who, without good cause, refuses to accept or continue, or fails to make satisfactory progress in, suitable training to which he has been referred by the Secretary shall not thereafter be entitled to payments under this chapter until he enters or resumes the training to which he has been so referred.

PART III—JOB SEARCH AND RELOCATION ALLOWANCES

SEC. 235 JOB SEARCH ALLOWANCES.

(a) Any adversely affected worker covered by a certification under subchapter A of this chapter who has been totally separated may file an application with the Secretary for a job search allowance. Such allowance, if granted, shall provide reimbursement to the worker of 80 percent of the cost of his necessary job search expenses as prescribed by regulations of the Secretary, *Provided*, That such reimbursement may not exceed $500 for any worker.

(b) A job search allowance may be granted only:

(1) to assist an adversely affected worker in securing a job within the United States;

(2) where the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides; and

(3) where the worker has filed an application for such allowance with the Secretary no later than one year from the date of his last total separation prior to his application under section 231.

SEC. 236. RELOCATION ALLOWANCES.

(a) Any adversely affected worker covered by a certification under subchapter A of this chapter who is the head of a family as defined in regulations prescribed by the Secretary and who has been totally separated may file an application with the Secretary for a relocation allowance, subject to the terms and conditions of this section.

(b) A relocation allowance may be granted only to assist an adversely affected worker in relocating within the United States and only if the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides and that such worker—

(1) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which he wishes to relocate, or

(2) has obtained a bona fide offer of such employment.

(c) A relocation allowance shall not be granted to such worker unless—

(1) for the week in which the application for such allowance is filed, he is entitled to a payment under section 232 or would be so entitled (determined without regard to whether he filed application therefor) but for the fact that

(A) he has obtained the employment referred to in subsection (b)(1), or

(B) the unemployment insurance payment he receives is equal to or greater than the payment he would have received for such week had the applicable State law provided as set forth in subsections (1) and (2) of section 232(a),

and

(2) such relocation occurs within a reasonable period after the filing of such application or (in the case of a worker undergoing vocational training under the provisions of any Federal statute) within a reasonable period after the conclusion of such training.

(d) For the purposes of this section, the term "relocation allowance" means—

(1) 80 percent of the reasonable and necessary expenses, as specified in regulations prescribed by the Secretary, incurred in transporting a worker and his family and their household effects, and

(2) a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of $500.

Subchapter C—General Provisions

SEC. 237. AGREEMENTS WITH STATES.

(a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this chapter as "cooperating States" and "cooperating State agencies" respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, will receive applications for, and will provide, payments on the basis provided in this chapter, (2) where appropriate, will afford adversely affected workers who apply for payments under this chapter testing, counseling, referral to training, and placement services, and (3) will otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this chapter.

(b) Each agreement under this subchapter shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(c) Each agreement under this subchapter shall provide that unemployment insurance otherwise payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to payments under this chapter.

(d) A determination by a cooperating State agency with respect to entitlement to payments under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable law and only in that manner and to that extent.

SEC. 238. ADMINISTRATION ABSENT STATE AGREEMENT.

(a) In any State where there is no agreement in force between a State or its agency under section 237, the Secretary shall arrange under regulations prescribed by him for performance of all necessary functions under subchapter B of this chapter, including provision for a fair hearing for any worker whose application for payments is denied.

(b) A final determination under subsection (a) with respect to entitlement to payments under subchapter B of this chapter is subject to review by the courts in the same manner and to the same extent as is provided by section 405(g) of title 42 of the United States Code.

SEC. 239. PAYMENTS TO STATES.

(a) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each cooperating State, the sums necessary to enable such State as agent of the United States to make payments provided for by this chapter. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, from the funds for carrying out the purposes of this chapter.

(b) All money paid a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subchapter, to the Treasury and credited to current applicable appropriations, funds, or accounts from which payments to States under this section may be made.

(c) Any agreement under this subchapter may require any officer or employee of the State certifying payments or disbursing funds under the agreement, or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this chapter.

SEC. 240. LIABILITIES OF CERTIFYING AND DISBURSING OFFICERS.

(a) No person designated by the Secretary, or designated pursuant to an agreement under this subchapter, as a certifying officer, shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this chapter.

(b) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this chapter if it was based upon a voucher signed by a certifying officer designated as provided in subsection (a).

SEC. 241. RECOVERY OF OVERPAYMENTS.

(a) If a cooperating State agency or the Secretary, or a court of competent jurisdiction finds that any person—

(1) has made, or has caused to be made by another, a false statement or representation of a material fact knowing it to be false, or has knowingly failed or caused another to fail to disclose a material fact; and

(2) as a result of such action has received any payment under this chapter to which he was not entitled,

such person shall be liable to repay such amount to the State agency or the Secretary as the case may be, or either may recover such amount by deductions from any sums payable to such person under this chapter. Any such finding by a State agency or the Secretary may be made only after an opportunity for a fair hearing.

(b) Any amount repaid to a State agency under this section shall be deposited into the fund from which payment was made. Any amount repaid to the Secretary under this section shall be returned to the Treasury and credited to the current applicable appropriation, fund, or account from which payment was made.

SEC. 242. PENALTIES.

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this chapter or pursuant to an agreement under section 237 shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

SEC. 243. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary from time to time to carry out his functions under this chapter in connection with furnishing payments to workers, which sums are authorized to be appropriated to remain available until expended.

SEC. 244. TRANSITIONAL PROVISIONS.

(a) Where a group of workers has been certified as eligible to apply for adjustment assistance under section 302(b) (2) or (c) of the Trade Expansion Act of 1962, any worker covered by such certification shall be entitled to the rights and privileges provided in Chapter 3 of title III of said Act as existing prior to the date of enactment of this Act.

(b) In any case where a group of workers or their certified or recognized union or other duly authorized representative has filed a petition under section 301(a)(2) of the Trade Expansion Act of 1962, more than four months prior to the effective date of this Act, and

(1) the Tariff Commission has not rejected such petition prior to the effective date of this Act, and

(2) the President or his delegate has not issued a certification under section 302(c) of that Act to the petitioning group prior to the effective date of this Act,

such group or representative thereof may file a new petition under section 221 of this Act, not later than 90 days after the effective date of this Act, and shall be entitled to the rights and privileges provided in this chapter. For purposes of section 223(b)(1), the date on which such group or representative filed the petition under the Trade Expansion Act of 1962 shall apply. Section 223(b)(2) shall not apply to workers covered by a certification issued pursuant to a petition meeting the requirements of this subsection.

(c) The Tariff Commission shall make available to the Secretary on request data it has acquired in investigations under section 301 of the Trade Expansion Act of 1962 concluded within the two year period ending on the date of enactment of this Act, which did not result in Presidential action under section 302(a)(3) or 302(c) of that Act.

SEC. 245. DEFINITIONS.

For purposes of this chapter—

(1) The term "adversely affected employment" means employment in a firm or appropriate subdivision of a firm, if workers of such firm or subdivision are eligible to apply for payments under this chapter.

(2) The term "adversely affected worker" means an individual who, because of lack of work in an adversely affected employment—

(A) has been totally or partially separated from such employment, or

(B) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

(3) The term "average weekly wage" means one-thirteenth of the total wages paid to an individual in the high quarter. For purposes of this computation, the high quarter shall be that quarter in which the individual's total wages were highest among the first four of the last five completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made. Such week shall be the week in which total separation occurred, or, in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary.

(4) The term "average weekly hours" means the average hours worked by the individual (excluding overtime) in the employment from which he has been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (3).

(5) The term "total separation" means the layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(6) The term "partial separation" means, with respect to an individual who was not been totally separated, that he has had his hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment and his wages reduced to 75 percent or less of his average weekly wage in such adversely affected employment.

(7) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico; and the term "United States" when used in the geographical sense includes such Commonwealth.

(8) The term "State agency" means the agency of the State which administers the State law.

(9) The term "State law" means the employment insurance law of the State approved by the Secretary under section 3304 of the Internal Revenue Code of 1954.

(10) The term "unemployment insurance" means the unemployment insurance payable to an individual under any State law or Fed-

eral unemployment insurance law, including title 5 of the United States Code, Ch. 85, and the Railroad Unemployment Insurance Act.

SEC. 246. ADMINISTRATIVE PROVISION.

The Secretary of Labor shall, in coordination with the Special Representative for Trade Negotiations, prescribe such regulations as may be necessary to implement the provisions of this chapter.

TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

CHAPTER 1.—FOREIGN IMPORT RESTRICTIONS

SEC. 301. RESPONSES TO UNFAIR FOREIGN IMPORT RESTRICTIONS AND EXPORT SUBSIDIES.

(a) Whenever the President determ' es that a foreign country or instrumentali .y—

(1) maintains unjustifiable or unreasonable tariff or other import restrictions which impair the value of trade commitments made to the United States or which burden, restrict or discriminate against United States commerce,

(2) engages in discriminatory or other acts or policies which are unjustifiable or unreasonable and which burden or restrict 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 have the effect of substantially reducing sales of the competitive United States product or products to those other foreign markets;

the President—

(A) shall take all appropriate and feasible steps within his power to obtain the elimination of such restrictions or subsidies;

(B) may refrain from providing benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality; and

(C) may impose duties or other import restrictions on the products of such foreign country or instrumentality, on a most-favored-nation basis or otherwise, and for such time as he deems appropriate.

(b) In determining what action to take under subsection (a), the President shall consider the relationship of such action to the international obligations of the United States and to the purposes of this Act as specified in section 2.

(c) The President shall provide an opportunity for any interested person to bring to his attention any foreign restrictions, acts, or policies of the kind referred to in paragraphs (1), (2), or (3) of subsection (a). Such opportunity shall be provided prior to the taking of any action only if the President determines it feasible and appropriate.

CHAPTER 2.—ANTIDUMPING DUTIES

SEC. 310. AMENDMENTS TO THE ANTIDUMPING ACT OF 1921.

(a) Section 201(b) of the Antidumping Act, 1921 (19 U.S.C. 160 (b)) is amended to read as follows:

"(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 6 months, or in more complicated investigations within 9 months, 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, than the constructed value) and such order of withholding of appraisement shall be subject to the provisions of paragraph (2).

"If, before the expiration of 6 months, or in more complicated investigations 9 months, after the question of dumping was raised or presented to him or any person to whom authority under this section has been delegated, the Secretary concludes that the determination required under paragraph (1) cannot reasonably be made within such time limits, he shall publish notice to that effect in the Federal Register and shall make such determination (and publish the notice required by paragraph (2) or (3)) within 12 months after the question was so raised or presented. 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 relative to dumping has been received in accordance with regulations prescribed by the Secretary."

(b) Section 201(c) of the Antidumping Act, 1921 (19 U.S.C. 160 (c)) is amended to read as follows:

"(c)(1) Prior to making any determination pursuant to subsection (a) of this section, the Secretary or the Tariff Commission, as the case may be, shall conduct a hearing on the record at which:

"(A) any foreign manufacturer or exporter or domestic importer of the foreign merchandise in question shall have the right to appear by counsel or in person; and

"(B) any other person, firm or corporation may make application and, upon good cause shown, may be allowed by the Secretary or the Tariff Commission, as the case may be, to intervene and appear at such hearing by counsel or in person.

"(2) The transcript of the hearing, together with all papers filed in connection with the investigation (including any exhibits and papers to which the Secretary or the Tariff Commission, as the case may be, shall have granted confidential or *in camera* treatment) constitutes the exclusive record for determination. Notwithstanding any other provisions of law, upon payment of duly prescribed costs, such transcript and papers (other than items to which confidential or *in camera* treatment has been granted) shall be made available to all persons.

"(3) The Secretary, upon determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and the Tariff Commission, upon making its determination under subsection (a), shall each include in the record and shall publish in the Federal Register, such determination, whether affirmative or negative, together with a statement of findings and conclusions, and the reasons or bases therefor, on all the material issues of fact or law presented on the record.

"(4) The hearings provided for hereunder shall be exempt from the provisions of sections 554, 555, 556, and 557 of the Act of September 6, 1966 (5 U.S.C. 554–557).

(c) Section 203 of the Antidumping Act, 1921 (19 U.S.C. 162) is amended to read:

"SEC. 203. PURCHASE PRICE.

"For the purposes of this section and sections 160–171 of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, 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, less the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and less the amount, if included in such price, of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any other taxes rebated or not collected, by reason of the exportation of the merchandise to the United States, which rebate or noncollection has been determined by the Secretary to be a bounty or grant within the meaning of section 303 of the Tariff Act of 1930.

(d) Section 204 of the Antidumping Act, 1921 (19 U.S.C. 163), is amended to read:

"SEC. 204. EXPORTER'S SALES PRICE.

"For the purpose of sections 160–171 of this title, the exporter's sales price of imported merchandise shall be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, 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, less (1) the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, (2) the amount of the commissions, if any, for selling in the United States the particular merchandise under consideration, (3) an amount equal to the expenses, if any, generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, (4) the amount of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States, and (5) the amount of any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on or with the use of the imported merchandise subsequent to the importation of the merchandise and prior to its sale to a person who is not the exporter of the merchandise within the meaning of section 207; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any other taxes rebated, or not collected, by reason of the exportation of the merchandise to the United States, which rebate or noncollection has been determined by the Secretary to be a bounty or grant within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)."

CHAPTER 3.—COUNTERVAILING DUTIES

SEC. 330. AMENDMENTS TO SECTION 303 OF THE TARIFF ACT OF 1930.

(a) Section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) is amended to read:

"**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, then upon the importation of 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 any duties otherwise 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 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), provided, however, that such a Tariff Commission determination shall be required only for such time as a determination of injury is required by the international obligations of the United States.

"(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) Whenever, in the case of any imported article or merchandise as to which the Secretary has not determined whether a bounty or grant is being paid or bestowed, the Secretary concludes, from information presented to him or to any person to whom authority under this section has been delegated, that a formal investigation into the question of whether a bounty or grant is being paid or bestowed is warranted, he shall forthwith publish notice of the initiation of such an investigation in the Federal Register. The date of publication of such notice shall be considered the date on which the question is presented to the Secretary within the meaning of subsection (a)(1).

"(5) 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 determinations 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 materially 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 and with respect to which the Tariff Commission has made an affirmative determination under subsection (b)(1) (for such time as a finding of injury is required by the international obligations of the United States), 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.

"(d) DISCRETIONARY IMPOSITION OF COUNTERVAILING DUTIES.—Whenever the Secretary determines, after seeking information and advice from such agencies as he may deem appropriate, that—

"(1) the imposition of an additional duty under this section upon any article would result, or be likely to result in significant detriment to the economic interests of the United States; or

"(2) that any article is subject to a quantitative limitation imposed by the United States on its importation into, or subject to an effective quantitative limitation on its exportation to, the United States and that such quantitative limitation is an adequate substitute for the imposition of a duty under this section;

the imposition of an additional duty under this section shall not be required."

(b)(1) Except as provided in paragraph (2), the amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) The last sentence of section 303(a)(1) of the Tariff Act of 1930 (as added by subsection (a) of this section) shall apply only with

respect to questions presented on or after the date of the enactment of this Act.

(c) Any article which is entered or withdrawn from warehouse free of duty as a result of action taken under Title VI of this Act shall be considered a nondutiable article for purposes of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303)."

CHAPTER 4.—UNFAIR PRACTICES IN IMPORT TRADE

SEC. 350. AMENDMENTS TO SECTION 337 OF THE TARIFF ACT.

Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) is hereby amended to read as follows:

"(a) The importation of articles into the United States which would infringe a United States patent if made, used, or sold in the United States, shall constitute an unfair method of competition, and is hereby declared unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provisions of law, as hereinafter provided.

"(b) The Commission shall investigate alleged violations hereof on complaint under oath or upon its own motion. The burden of proof of any such alleged violation shall be on the complainant, or on the Commission if it investigates on its own motion, to make a *prima facie* showing of the facts required in subsection (a). The Commission shall complete its investigation and announce its findings hereunder at the earliest practicable time, but not later than one year after the date on which a complaint is received or an investigation is initiated by the Commission on its own motion.

"(c) Whenever the Commission shall find the existence of any such violation it shall order that the articles concerned in such unfair methods, imported by any person violating the provisions of this section, shall be excluded from entry into the United States, and upon information of such action by the Commission, the Secretary of the Treasury shall, through the proper officers, refuse such entry; *Provided however*, That whenever

(1) the validity of the patent is challenged by the respondent and a *bona fide* challenge to patent validity is either pending in a suit or the respondent indicates his intention to and in fact institutes such a suit within 60 days of such a challenge to validity before the Commission; or

(2) misuse is claimed by a respondent and a *bona fide* claim of misuse is pending in a court action and the court's decision on that issue would be decisive of the claim before the Commission,

the Commission shall continue the proceedings on all other issues, and if it finds favorably to the patentee thereon, issue an exclusion order conditional on the results of the court proceedings, and in the meantime shall order that the articles concerned be allowed entry into the United States under such bond, in favor of the patentee based on an estimated reasonable royalty or damages, or both, as it shall consider necessary to protect the patentee's asserted rights.

"(d) Any refusal of entry under this section shall continue until the patent expires or until the Commission, either on its own motion or at the request of any interested person, shall find that the continued exclusion is no longer necessary to prevent the violation that occasioned the exclusion order.

"(e) Whenever the Commission has reason to believe that any article is offered or sought to be offered for entry into the United States in violation of this section, but has no information sufficient to satisfy it thereof, the Commission may in its discretion issue a temporary exclusion order if a *prima facie* showing of a violation of this section has been made and immediate and substantial harm to the patentee involved would result if the temporary exclusion order were not issued. Where a temporary exclusion order is issued, the Secretary of the Treasury shall refuse entry of the articles so excluded by the temporary exclusion order, except that such articles shall be entitled to entry under bond in favor of the patentee based on an estimated reasonable royalty or damages, or both, as the Commission shall consider necessary to protect the patentee's asserted rights. No temporary exclusion order or the posting of a bond under this subsection shall remain in effect for more than one year after the date on which a complaint is received or an investigation is initiated by the Commission on its own motion.

"(f) During the course of each investigation under this section, public hearings shall be held, after reasonable notice, pertaining to, and in advance of, the Commission's determination. A transcript shall be made of all testimony and exhibits presented at such hearing.

"(g) Any person adversely affected by an action or refusal of the Commission to act under this section may secure judicial review in the United States Court of Customs and Patent Appeals in the manner prescribed in Chapter 7 of title 5 and section 2112 of title 28, of the United States Code. Any refusal of entry under this section may be stayed by the court in which case adequate bond shall be provided to protect the patentee's rights. For this purpose, the Court of Customs and Patent Appeals may order the Secretary of the Treasury to impose such bond, in favor of the patentee, based on an estimated reasonable royalty or damages, or both, as it considers necessary to protect the rights of the patentee pending determination of the appeal.

"(h) When used in this section and in sections 338 and 340, the term "United States" includes the several States and Territories, the District of Columbia, and all possessions of the United States except the Virgin Islands, American Samoa, and the Island of Guam."

TITLE IV—INTERNATIONAL TRADE POLICY MANAGEMENT

SEC. 401. BALANCE OF PAYMENTS AUTHORITY.

(a) Whenever the President determines that special import measures are required to deal with the United States balance-of-payments position in the presence of a serious balance-of payments deficit or a persistent surplus, or to cooperate in correcting an international balance-of-payments disequilibrium as reflected in other countries' balance-of-payments deficits or surpluses, the President is authorized to take one or more of the following actions, for such period as he deems necessary:

(1) For dealing with a serious United States balance-of-payments deficit, or for cooperating in correcting an international balance-of-payments disequilibrium:

(A) to impose a temporary import surcharge in the form of duties (in addition to those already imposed, if any) on articles imported into the United States; and

(B) to impose temporary limitations, through the use of quotas on the importation of articles into the United States, provided that international trade or monetary agreements to which the United States is a party permit the imposition of quotas as a balance-of-payments measure.

(2) For dealing with a persistent United States balance-of-payments surplus:

(A) to reduce temporarily or suspend the duty applicable to any article; and

(B) to increase temporarily the value or quantity of articles which may be imported under any import restriction, or to suspend temporarily any import restriction;

except with respect to those articles where in his judgment such action would cause or contribute to material injury to firms or workers in any domestic industry, including agriculture, mining, fishing, or commerce, to impairment of the national security, or otherwise be contrary to the national interest.

(b) For the purposes of subsection (a),

(1) a serious balance-of-payments deficit shall be considered to exist whenever the President determines that:

(A) the balance of payments (as measured either on the official reserve transactions basis or by the balance on current account and long-term capital) has been in substantial deficit over a period of four consecutive calendar quarters, or

(B) the United States has suffered a serious decline in its net international monetary reserve position, or

(C) there has been or threatens to be a significant alteration in the exchange value of the dollar in foreign exchange markets, and

(D) the condition indicated in (A), (B) or (C) is expected to continue in the absence of corrective measures.

(2) United States cooperation in correcting a fundamental international balance of payments disequilibrium as reflected in other countries' payments positions is authorized when allowed or recommended by the International Monetary Fund.

(3) A persistent balance-of-payments surplus shall be considered to exist whenever the President determines that:

(A) the balance of payments (as measured either on the official reserve transactions basis or by the balance on current account and long-term capital) has been in substantial surplus for four consecutive calendar quarters; or

(B) the United States has experienced large increases in its international monetary reserves in excess of needed levels of reserves; or

(C) the exchange value of the dollar has appreciated significantly in foreign exchange markets; and

(D) the condition indicated in (A), (B) or (C) is expected to continue in the absence of corrective measures.

(c) Import restricting actions authorized by this section shall be applied consistently with the most-favored-nation principle or on a basis which shall aim at a distribution of trade with the United States approaching as closely as possible that which various foreign countries might have expected to obtain in the absence of such restrictions, unless the President determines that import restricting actions not consistent with these principles are necessary to achieve the objectives of this section. In determining what action to take under this subsection the President shall consider the relationship of such action to the international obligations of the United States.

(d) Import restricting actions authorized by this section shall be of broad and uniform application with respect to product coverage except where the President determines, consistently with the purposes of this section, that certain articles or groups of articles should not be subject to import restricting actions because of the needs of the United States economy. Such exceptions shall be related to the unavailability of domestic supply at reasonable prices, the necessary importation of raw materials, and other similar factors. Neither the authorization of import restricting actions nor the determination of exceptions with respect to product coverage shall be made for the purpose of protecting individual domestic industries from import competition.

(e) Any limitation imposed under subsection (a)(1)(B) on the quantity or value, or both, of an article or group of articles—

(1) shall permit the importation of a quantity or value not less than the quantity or value of such article or articles imported into the United States from the foreign countries to which such limitation applies during the most recent period that the President determines is representative of imports of such article or articles, and

(2) shall take into account any increase since the end of such representative period in domestic consumption of such article or articles and like or similar articles of domestic manufacture or production.

(f) Measures under subsection (a)(2) of this section shall be applied consistently with section 407 of this Act.

(g) The President may at any time, consistent with the provisions of this section, suspend, modify, or terminate, in whole or in part, any action taken under this section.

SEC. 402. WITHDRAWAL OF CONCESSIONS AND SIMILAR ADJUSTMENTS.

(a) Whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to this Act, the Trade Expansion Act of 1962, or the Tariff Act of 1930, as amended, withdraws or suspends any obligation with respect to the trade of any foreign country or instrumentality thereof, or, whenever any such trade agreement is terminated, in whole or in part, with respect to the United States, the President is authorized, in order to exercise the rights or fulfill the obligations of the United States, to the extent, at such times, and for such periods as he deems necessary or appropriate, and consistently with the purposes of this Act and the international obligations of the United States—

(1) to increase any existing duty or other import restriction or provide additional import restrictions; and

(2) to take other actions to withdraw, suspend or terminate the application in whole or in part of the agreement.

(b) Duties or other import restrictions required or appropriate to carry out any trade agreement shall not be affected by any wthdrawal or suspension of an obligation under, or termination in whole or in part of, such agreement unless the President acting pursuant to the authority granted in subsection (a) increases such existing duties or other import restrictions, or provides additional import restrictions.

(c) No rate of duty shall be increased under the authority of this section to a rate more than 50% above the column 2 rate (or 50% ad valorem equivalent), whichever is higher.

(d) The President may, to the extent that such action is consistent with the international obligations of the United States, act pursuant to this section on a most-favored-nation basis or otherwise.

SEC. 403. RENEGOTIATION OF DUTIES.

(a) In order to permit some adjustments to be made over time to deal with changed circumstances, while maintaining an overall balance of mutually advantageous concessions under existing trade agreements, the President is authorized at any time to enter into supplemental tariff agreements with foreign countries or instrumentalities thereof to modify or continue any existing duty, continue any existing duty-free or excise treatment, or impose additional duties, as he determines to be required or appropriate to carry out any such supplemental tariff agreement, within the limitations set forth in this section.

(b) In any one year, agreements involving the reduction of duties, or continuance of duty-free treatment, shall not affect articles accounting for more than two percent of the value of United States imports for the most recent 12-month period for which import statistics are available, nor shall any agreement be made under the authority of this section with respect to any article which has been the subject of a prior agreement entered into pursuant to this section during the preceding five years.

(c)(1) No rate of duty shall be decreased under the authority of this section to a rate more than 20% below the existing duty.

(2) No rate of duty shall be increased under the authority of this section to a rate more than 50% above the column 2 rate or 50% ad valorem (or ad valorem equivalent), whichever is higher.

SEC. 404. COMPENSATION AUTHORITY.

(a) Whenever any action has been taken under sections 203, 301, 402, 403, or 408 of this Act to increase or impose any duty or other import restriction, the President—

(1) shall, to the extent required by United States international obligations, afford foreign countries having an interest as exporters of the products concerned an opportunity to consult with the United States with respect to concessions, if any, to be granted as compensation for any duty or other import restriction imposed by the United States; and

(2) may enter into agreements with such countries for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions.

(b) In furtherance of the purposes of this section, the President may modify or continue any existing duty or other import restriction, or continue any existing duty-free or excise treatment, to the extent that he determines such action to be required or appropriate to maintain a general level of mutually advantageous concessions.

(c) No rate of duty shall be reduced under the authority of this section to a rate below 50% of the existing duty, provided that this limitation shall not apply if the rate existing on such date is not more than five percent ad valorem (or ad valorem equivalent).

SEC. 405. AUTHORITY TO SUSPEND IMPORT BARRIERS TO RESTRAIN INFLATION.

(a) If, during a period of sustained or rapid price increases, the President determines that supplies of articles, imports of which are dutiable or subject to any other import restriction, are inadequate to meet domestic demand at reasonable prices, he may, either generally or by article or category of articles, in addition to any authority he may otherwise have,

(1) temporarily reduce or suspend the duty applicable to any article; and

(2) temporarily increase the value or quantity of articles which may be imported under any import restriction.

(b) The President shall not exercise the authority granted in subsection (a) with respect to an article if in his judgment such action would cause or contribute to material injury to firms or workers in any domestic industry, including agriculture, mining, fishing, or commerce, to impairment of the national security, or otherwise be contrary to the national interest. Actions taken under subsection (a) in effect at any time shall not apply to more than 30% of the estimated total value of United States imports of all articles during the time such actions are in effect.

(c) The President may, to the extent that such action is consistent with the purposes of this section and the limitations contained herein, modify or terminate, in whole or in part, any action taken under subsection (a).

(d) The President shall within 30 days of taking any action under this section notify each House of Congress of the nature of his action and the reasons therefor.

(e) No action taken under this section shall remain in effect for more than one year unless specifically authorized by law.

SEC. 406. RESERVATION OF ARTICLES FOR NATIONAL SECURITY OR OTHER REASONS.

(a) No action shall be taken pursuant to the provisions of this Act to reduce 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) While there is in effect with respect to any article any action taken under section 203 of this Act, or sections 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, 1981), the President shall reserve such article from negotiations or actions contemplating reduction or elimination of any duty or other import restriction with respect to such article, under Title I or sections 403, 404 or 405 of this Act. In addition, the President shall also so reserve any other article which he determines to be appropriate, taking into consideration information and advice available pursuant to and with respect to the matters covered by sections 111(b), 112, and 113(b), where applicable.

SEC. 407. MOST-FAVORED-NATION PRINCIPLE.

Except as otherwise provided pursuant to this Act or any other Act any duty or other import restriction or duty-free treatment applied in carrying out any action or any trade agreement under this Act, under Title II of the Trade Expansion Act of 1962 or under section 350 of the Tariff Act of 1930 as amended, shall apply to products of all foreign countries, whether imported directly or indirectly.

SEC. 408. AUTHORITY TO TERMINATE ACTIONS.

The President may at any time terminate, in whole or in part, any actions taken to implement trade agreements under this Act, title II of the Trade Expansion Act of 1962, or section 350 of the Tariff Act of 1930, as amended.

SEC. 409. PERIOD OF TRADE AGREEMENTS.

Every trade agreement entered into under Titles I and IV of this Act shall be subject to termination or withdrawal, upon due notice, at the end of a period specified in the agreement. Such period shall be not more than three years from the date on which the agreement becomes effective for the United States. If the agreement is not terminated or withdrawn from at the end of the period so specified, it shall be subject to termination or withdrawal thereafter upon not more than six months' notice.

SEC. 410. PUBLIC HEARINGS IN CONNECTION WITH AGREEMENTS UNDER TITLE IV.

The President shall provide for a public hearing during the course of which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard—

(1) Prior to the conclusion of any agreement or modification of any duty or other import restrictions pursuant to section 403 or section 404 of this title;

(2) Pursuant to a request made by any interested person within 90 days after the President's taking any action under sections 402 or 408, on the subject of any such action.

SEC. 411. AUTHORIZATION FOR GATT APPROPRIATIONS.

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.

TITLE V—TRADE RELATIONS WITH COUNTRIES NOT ENJOYING MOST-FAVORED-NATION TARIFF TREATMENT

SEC. 501. EXCEPTION OF THE PRODUCTS OF CERTAIN COUNTRIES OR AREAS.

(a) Except as otherwise provided in this title, the President shall continue to deny most-favored-nation treatment to the products of any country or area, the products of which were not eligible for column 1 tariff treatment on the date of enactment of this Act.

(b) The President is authorized to deny such most-favored-nation treatment to all of the products of any country or area if in his judgment such action is necessary for reasons of national security.

SEC. 502. AUTHORITY TO ENTER INTO COMMERCIAL AGREEMENTS.

(a) Subject to the provisions of subsections (b) and (c) of this section, the President may authorize the entry into force of bilateral commercial agreements providing most-favored-nation treatment to the products of countries heretofore denied such treatment whenever he determines that such agreements with such countries will promote the purposes of this Act and are in the national interest.

(b) Any such bilateral commercial agreement shall—

(1) be limited to an initial period specified in the agreement which shall be no more than three years from the time the agreement enters into force, except that it may be renewable for additional periods, each not to exceed three years, provided a satisfactory balance of trade concessions has been maintained during the life of each agreement and provided further that the President determines that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by the other party to a bilateral commercial agreement with the United States;

(2) provide that it is subject to suspension or termination at any time for national security reasons, or that the other provisions of such agreement shall not limit the rights of any party to take any action for the protection of its security interests; and

(3) provide for consultations for the purpose of reviewing the operation of the agreement and relevant aspects of relations between the United States and the other party.

(c)(1) An agreement referred to in subsection (a) or an order referred to in section 504(a) shall take effect only after the expiration of 90 days from the date on which the President delivers a copy of such agreement or order to the Senate and to the House of Representatives, if between the date of delivery of the agreement or order to the Senate and to the House of Representatives and the expiration of the 90-day period neither the Senate nor the House of Representatives has adopted a resolution, by an affirmative vote by the yeas and nays of a majority of the authorized membership of that House, stating that it disapproves of the agreement or order.

(2) For purposes of this subsection, there shall be excluded from the computation of the 90-day period the days on which either House

is not in session because of an adjournment of more than three days to a day certain or an adjournment of Congress sine die. The agreement referred to in subsection (a) or order referred to in section 504(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.

SEC. 503. ADDITIONAL PROVISIONS.

(a) Bilateral commercial agreements under this title may in addition include provisions concerning:

(1) safeguard arrangements necessary to prevent disruption of domestic markets;

(2) arrangements for the protection of industrial rights and processes, trademarks and copyrights;

(3) arrangements for the settlement of commercial differences and disputes;

(4) arrangements for the promotion of trade including those for the establishment or expansion of trade and tourist promotion offices, for facilitation of activities of governmental commercial officers, participation in trade fairs and exhibits and the sending of trade missions, and for facilitation of entry, establishment and travel of commercial representatives; and

(5) such other arrangements of a commercial nature as will promote the purposes of this Act.

(b) Nothing in this section shall be deemed to affect domestic law.

SEC. 504. EXTENSION OF MOST-FAVORED-NATION TREATMENT.

(a) The President may extend most-favored-nation treatment to the products of a foreign country which (1) has entered into a bilateral commercial agreement and such agreement has entered into force pursuant to section 502, or (2) has become a party to an appropriate multilateral trade agreement to which the United States is also a party, and the President has issued an order extending such treatment, which order has taken effect pursuant to section 502(c).

(b) The application of most-favored-nation treatment shall be limited to the period of effectiveness of the obligations of the United States to such country under such bilateral commercial agreement or multilateral agreement.

(c) The President may at any time suspend or withdraw any extension of most-favored-nation treatment to any country pursuant to subsection (a), and thereby cause all products of such country to be dutiable at the column 2 rate.

SEC. 505. MARKET DISRUPTION.

(a) A petition may be filed or a Tariff Commission investigation otherwise initiated under section 201 of this Act in respect of imports of an article manufactured or produced in a country, the products of which are receiving most-favored-nation treatment pursuant to this title, in which case the Tariff Commission shall determine (in lieu of the determination described in section 201(b) of this Act) whether imports of such article produced in such country are causing or are likely to cause material injury to a domestic industry producing like or directly competitive articles, and whether a condition of market disruption (within the meaning of section 201(f)(2) of this Act) exists with respect to such imports.

(b) For the purposes of sections 202 and 203 of this Act, an affirmative determination of the Tariff Commission pursuant to subsection (a) of this section shall be treated as an affirmative determination of the Tariff Commission pursuant to section 201(b) of this Act, provided, however, that the President, in taking action pursuant to section 203(a)(1) of this Act, may adjust imports of the article from the country in question without taking action in respect of imports from other countries.

SEC. 506. EFFECTS ON OTHER LAWS.

The President shall from time to time reflect in general headnote 3(e) of the Tariff Schedules of the United States the provisions of this title and actions taken hereunder, as appropriate.

TITLE VI—GENERALIZED SYSTEM OF PREFERENCES

SEC. 601. PURPOSES.

The purpose of this title is to promote the general welfare, foreign policy and security of the United States by enabling the United States to participate with other developed countries in granting generalized tariff preferences to exports of manufactured and semimanufactured products and of selected other products from developing countries. The Congress finds that the welfare and security of the United States are enhanced by efforts to further the economic development of the developing countries, and that such development may be assisted by providing increased access to markets in the developed countries, including the United States, for exports from developing countries.

SEC. 602. AUTHORITY TO EXTEND PREFERENCES.

Notwithstanding the provisions of section 407 of this Act, the President may designate any article as an eligible article, may provide duty-free treatment for any eligible article from any beneficiary developing country designated under section 604, and may modify or supplement any such action consistent with the provisions of this title. In taking any such action, the President shall have due regard for—

(1) the purpose of this title;

(2) the anticipated impact of such action on United States producers of like or directly competitive products; and

(3) the extent to which other major developed countries are undertaking a comparable effort to assist beneficiary developing countries by granting preferences with respect to imports of products of such countries.

SEC. 603. ELIGIBLE ARTICLES.

(a) In connection with any proposed action under section 602, the President shall from time to time publish and furnish the Tariff Commission with lists of articles which may be considered for designation as eligible articles. Prior to the taking of actions under section 602 providing duty-free treatment for any article, the provisions of sections 111 through 114 of this Act shall be complied with as though such actions were actions under section 101 of this Act to carry out a trade agreement entered into thereunder.

(b) Preferential treatment provided under section 602 shall apply only to eligible articles which are imported directly from a beneficiary developing country into the customs territory of the United States; provided that the sum of the cost or value of materials produced in the beneficiary developing country plus the direct costs of processing operations performed in the beneficiary developing country shall equal or exceed that percentage of the appraised value of the article at the time of its entry into the customs territory of the United States that the Secretary of the Treasury shall by regulation prescribe. Such percentage, which may be modified from time to time, should apply uniformly to all articles from all beneficiary developing countries. For the purposes of this subsection, the Secretary shall also determine what constitutes direct costs and shall prescribe rules governing direct importation.

(c) No action shall be taken under section 602 designating as an eligible article any article the importation of which is the subject of any action pursuant to section 203 of this Act, section 351 of the Trade Expansion Act of 1962, section 22 of the Agricultural Adjustment Act, section 202 of the Sugar Act of 1947, or the Act of August 22, 1964 (78 Stat. 594), or any agreement concluded pursuant to section 204 of the Agricultural Act of 1956, or any action by the President pursuant to section 232 of the Trade Expansion Act. Upon the effective date of any action pursuant to section 203 of this Act, section 22 of the Agricultural Adjustment Act, section 202 of the Sugar Act of 1947, or the Act of August 22, 1964 (78 Stat. 594), or any agreement concluded pursuant to section 204 of the Agricultural Act of 1956, or any action by the President pursuant to section 232 of the Trade Expansion Act, with respect to any article then designated an eligible article, such article shall cease to be an eligible article. When the actions or agreements described in the foregoing sentence cease to apply to an article, the President may again designate such article as an eligible article pursuant to the provisions of this section.

(d) After receiving an affirmative finding of the Tariff Commission under section 201 of this Act in respect to an eligible article, the President may, in lieu of the actions permitted under section 203 of this Act terminate the status of such article as an eligible article.

SEC. 604. BENEFICIARY DEVELOPING COUNTRY.

(a) Subject to the provisions of subsection (b), the President may designate any country a beneficiary developing country, taking into account—

(1) the purpose of this title;

(2) any expression by such country of its desire to be so designated;

(3) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(4) whether or not the other major developed countries are extending generalized preferential tariff treatment to such country; and

(5) whether or not such country has nationalized, expropriated or seized ownership or control of property owned by a United States citizen, or any corporation, partnership or association not less than 50 percent beneficially owned by citizens of the United States without provision for the payment of prompt, adequate and effective compensation.

(b) The President shall not designate any country a beneficiary developing country—

(1) the products of which are not receiving most-favored-nation treatment by reason of general headnote 3(e) to the Tariff Schedules of the United States; or

(2) which accords preferential treatment to the products of a developed country other than the United States, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated before January 1, 1976.

SEC. 605. LIMITATIONS ON PREFERENTIAL TREATMENT.

(a) The President may modify, withdraw, suspend or limit the application of the preferential treatment accorded under section 602 with respect to any article or with respect to any country; provided that no rate of duty shall be established in respect of any article pursuant to this section other than the rate which would apply in the absence of this title. In taking any such action, the President shall consider the factors set forth in sections 602 and 604(a) of this title.

(b) The President shall withdraw or suspend the designation of a country as a beneficiary developing country if, subsequent to such designation—

(1) the products of such country are excluded from the benefit of most-favored-nation treatment by reason of general headnote 3(e) to the Tariff Schedules of the United States; or

(2) he determines that such country has not eliminated or will not eliminate preferential treatment accorded by it to the products of a developed country other than the United States before January 1, 1976.

(c) Whenever the President determines that a country has supplied 50 percent by value of the total imports of an eligible article into the United States, or has supplied a quantity of such article to the United States having a value of more than $25,000,000, on an annual basis over a representative period, that country shall not be considered a beneficiary developing country in respect of such article, unless the President determines that it is in the national interest to designate, or to continue the designation of such country as a beneficiary developing country in respect of such article.

(d) No action pursuant to this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930, as amended (46 Stat. 696) upon coffee imported into Puerto Rico.

SEC. 606. DEFINITIONS.

For the purposes of this title—

(1) the term "country" shall mean any country, dependent territory (including an insular possession or trust territory of the United States), area, or association of countries;

(2) the term "developed country" shall mean any country determined by the President to enjoy a high level of economic development relative to the countries of the world taken as a whole, taking into account its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the term "major developed country" shall mean any developed country which is a member of the Organization for Economic Cooperation and Development and which is determined by the President to account for a significant percentage of world trade.

SEC. 607. EFFECTIVE PERIOD OF PREFERENCES.

No preferential treatment under this title shall remain in effect for a period in excess of ten years after the effective date of the grant of such preferential treatment or after December 31, 1984, whichever is the earlier.

TITLE VII—GENERAL PROVISIONS

SEC. 701. AUTHORITIES.

(a) The President may delegate the power, authority, and discretion conferred upon him by this Act to the heads of such agencies as he may deem appropriate.

(b) The head of any agency performing functions under this Act may—

(1) authorize the head of any other agency to perform any of such functions;

(2) prescribe such rules and regulations as may be necessary to perform such functions; and

(3) to the extent necessary to perform such functions, procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such cases such services shall be without regard to the civil service and classification laws, and, except in the case of stenographic reporting services by organizations, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

SEC. 702. REPORTS.

(a) The President shall submit to the Congress an annual report on the trade agreements program and on import relief and adjustment assistance for workers under this Act. Such report shall include information regarding new negotiations; changes made in duties and nontariff barriers and other distortions of trade of the United States; reciprocal concessions obtained; changes in trade agreements (including the incorporation therein of actions taken for import relief and compensation provided therefor); extension or withdrawal of most-favored-nation treatment by the United States with respect to the products of a foreign country; extension, modification, withdrawal, suspension or limitation of preferential treatment to exports of developing countries; the results of action taken to obtain removal of foreign trade restrictions (including discriminatory restrictions) against United States exports; and the measures being taken to seek the removal of other significant foreign import restrictions; other information relating to the trade agreements program and to the agreements entered into thereunder, and information relating to the provision of adjustment assistance for workers dislocated due to imports.

(b) The Tariff Commission shall submit to the Congress, at least once a year, a factual report on the operation of the trade agreements program.

SEC. 703. TARIFF COMMISSION.

(a) In order to expedite the performance of its functions under this Act, the Tariff Commission may conduct preliminary investigations, determine the scope and manner of its proceedings, and consolidate proceedings before it.

(b) In performing its functions under this Act, the Tariff Commission may exercise any authority granted to it under any other Act.

(c) The Tariff Commission shall at all times keep informed concerning the operation and effect of provisions relating to duties or other import restrictions of the United States contained in trade agreements entered into under the trade agreements program.

SEC. 704. SEPARABILITY.

If any provision of this Act or the application of any provision to any circumstances or persons shall be held invalid, the validity of the remainder of this Act, and of the application of such provision to other circumstances or persons, shall not be affected thereby.

SEC. 705. DEFINITIONS.

For the purposes of this Act—

(1) The term "agency" includes any United States agency, department, board, instrumentality, commission, or establishment, or any corporation wholly or partly owned by the United States.

(2) The term "duty" includes the rate and form of any import duty, including but not limited to tariff-rate quotas.

(3) The term "other import restriction" includes a limitation, prohibition, charge, and exaction other than duty, imposed on importation or imposed for the regulation of imports.

(4) The term "firm" includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustees in bankruptcy, and receivers under decree of any court.

(5) An imported article is "directly competitive with" a domestic article at an earlier or later stage of processing, and a domestic article is "directly competitive with" an imported article at an earlier or later stage of processing, if the importation of the imported article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article. For purposes of this paragraph, the unprocessed article is at an earlier stage of processing.

(6) A product of a country or area is an article which is the growth, produce, or manufacture of such country or area.

(7) The term "modification", as applied to any duty or other import restriction, includes the elimination of any duty or other import restriction.

(8) The term "existing" without the specification of any date, when used with respect to any matter relating to entering into or carrying out a trade agreement or other action authorized by this Act, means existing on the day on which such trade agreement is entered into or such other action is taken, and, when referring to a rate of duty, refers to the nonpreferential rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing in column 1 of the Tariff Schedules of the United States on such day.

(9) 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.

SEC. 706. RELATION TO OTHER LAWS.

(a) The second and third sentences of section 2(a) of the Act entitled "An Act to amend the Tariff Act of 1930," approved June 12, 1934, as amended (19 U.S.C. 1352(a)), are each amended by striking out "this Act or the Trade Expansion Act of 1962" and inserting in lieu thereof "this Act or the Trade Expansion Act of 1962 or the Trade Reform Act of 1973."

(b) Action taken or considered to have been taken by the President under section 231 of the Trade Expansion Act of 1962 and in effect on the date of the enactment of this Act shall be considered as having been taken by the President under section 501(a).

(c) Section 242 of the Trade Expansion Act of 1962 is amended as follows:

(1) by striking out "351 and 352" in subsection (a) and inserting in lieu thereof "201, 202 and 203 of the Trade Reform Act of 1973";

(2) by striking out "with respect to tariff adjustment" in subsection (b)(2);

(3) by striking out "301(e)" in subsection (b)(2) and inserting in lieu thereof "201(d) of the Trade Reform Act of 1973"; and

(4) by striking out "section 252(d)" each place it appears and inserting in lieu thereof "subsection 301(c) of the Trade Reform Act of 1973."

(d) Sections 202, 211, 212, 213, 221, 222, 223, 224, 225, 226, 231, 243, 252, 253, 254, 255, 256(1), (2) and (3), 301, 311 through

338, 361, 401, 402, 403, 404, and 405(1), (3), (4) and (5) of the Trade Expansion Act of 1962 are repealed.

(e) All provisions of law (other than this Act, the Trade Expansion Act of 1962, and the Trade Agreements Extension Act of 1951) in effect after the date of enactment of this Act, referring to section 350 of the Tariff Act of 1930, to that section as amended, to the Act entitled "An Act to amend the Tariff Act of 1930," approved June 12, 1934, to that Act as amended or to the Trade Expansion Act of 1962, or to agreements entered into, or proclamations issued, or actions taken under any of such provisions, shall be construed, unless clearly precluded by the context, to refer also to this Act, or to agreements entered into or proclamations or orders issued, pursuant to this Act.

(f) Headnote 4 to schedule 1, part 5, subpart B of the Tariff Schedules of the United States (77A Stat. 32, 19 U.S.C. 1202) is hereby repealed.

(g) The Johnson Debt Default Act (62 Stat. 744; 18 U.S.C. 955) is hereby repealed.

(h) Section 350(a) (6) of the Tariff Act of 1930 is repealed.

SEC. 707. CONSEQUENTIAL CHANGES IN THE TARIFF SCHEDULES.

The President shall from time to time as appropriate embody in the Tariff Schedules of the United States the substance of the relevant provisions of this Act, and of other Acts affecting import treatment, and actions thereunder, including modification, continuance or imposition of any rate of duty or other import restriction.

SEC. 708. SIMPLIFICATION AND MODIFICATION OF THE TARIFF SCHEDULES.

(a) If the President determines that such action will simplify or clarify the Tariff Schedules of the United States, or that it will reduce barriers to international trade, he may from time to time, upon recommendation of the Tariff Commission, modify or amend the Tariff Schedules of the United States, which modification or amendment may include, without limitation:

(1) establishment of new classification;

(2) transfer of particular articles from one classification to another classification; and

(3) abolition of classifications;

Provided, that except as authorized in subsection (b), such action shall not result in any modification of any rate of duty or other import restriction. This subsection shall not be deemed, however, to authorize the adoption of a revised tariff nomenclature in place of the Tariff Schedules of the United States.

(b) If the President determines that such action would contribute to the simplification or clarification of the Tariff Schedules, he may—

(1) modify the rate of duty applicable to any article, or impose or eliminate a rate of duty in respect of any article, provided that no rate of duty or duty-free treatment may be changed by more than 1 percent ad valorem (or the ad valorem equivalent) from the rate existing on the effective date of this Act, or as modified in accordance with the provisions of any trade agreement concluded in accordance herewith.

(2) subject to subsection (d), modify the rate of duty applicable to any article or impose or eliminate a rate of duty in respect of any article, without regard to the limitation contained in paragraph (1) of this subsection, or modify another import restriction, applicable to an article, or group of articles, the annual imports of which have in none of the immediately preceding ten years exceeded $10,000.

(c) Before recommending to the President any action under this section the Tariff Commission shall publish in the Federal Register a public notice of the type of modification of the Tariff Schedules which it has under consideration, and shall give interested parties adequate opportunity for the presentation of their views to the Commission.

(d) Following any modification of the type authorized by subsection (b)(2) which has, or could have, the effect of reducing or eliminating a duty or other import restriction, the Tariff Commission shall, for a period of five years following the effective date of such modification, observe the effect, if any, of the modification on the importation of the article, or group of articles, involved. The Commission shall promptly report to the President any substantial increase in the imports of such article, or group of articles, during such five-year period. If the President determines that an effect of the modification has been a substantial increase in the imports of such article or group, and that such increase has resulted, or is likely to result in injury to the domestic industry producing the like or directly competitive article, he shall promptly terminate the modification of the duty or other import restriction of such article or group of articles.

(e) The President may at any time terminate, in whole or in part, any action taken under this section.

SECTION-BY-SECTION ANALYSIS OF TRADE REFORM ACT OF 1973

SEC. 1. SHORT TITLE.

Section 1 provides that this Act is to be cited as the "Trade Reform Act of 1973."

SEC. 2. STATEMENT OF PURPOSES.

The purposes of this Act are to provide authority in the trade field supporting United States participation in an interrelated effort to develop an open, nondiscriminatory, and fair world economic system; to facilitate international cooperation in economic affairs; to stimulate United States economic growth and enlarge foreign markets for United States exports; to establish a program of temporary import relief and to provide trade adjustment assistance to workers; to improve the means for dealing with unfair import competition; to provide additional authority for the President to obtain fair and equitable access to foreign markets for United States exports; to provide the President more flexible authority to deal with trade matters; to enable the United States to take advantage of new trade opportunities with countries with which it has not recently had trade agreement relations; and to enable United States participation in the effort by developed countries to provide generalized preferential treatment to products of developing countries.

TITLE I.—AUTHORITY FOR NEW NEGOTIATIONS

CHAPTER 1.—GENERAL AUTHORITIES

SEC. 101. BASIC AUTHORITY FOR TRADE AGREEMENTS.

This section contains the basic grant of authorities to the President applicable to trade agreements, to be exercised in accordance with certain conditions set out in the remainder of the title. The section calls for a determination that the use of these authorities will promote the purposes of the Act, although it is assumed that this requirement is implicit and does not contemplate a formal, published finding by the President.

1. Authority to Enter into Trade Agreements

Paragraph (1) authorizes the President to enter into trade agreements with foreign countries during the five years following the date of enactment of this Act. This provision restores trade agreements authority similar to that provided by section 201(a)(1) of the Trade Expansion Act of 1962 which lapsed on June 30, 1967.

95-146 O - 73 - 5

2. Modification of Duties

Paragraph (2) provides that in connection with trade agreements with foreign countries the President may, at any time during the five-year period, continue or modify any existing duty, continue existing duty-free or excise treatment, or impose additional duties as he determines to be required or appropriate to carry out trade agreements. Unlike previous legislation, this section does not contain a limit on the amount of increase or decrease in tariffs which the President may negotiate and implement under a trade agreement.

This authority may be used to raise any duty to any level or to eliminate duties on any or all products, provided such action is pursuant to an international trade agreement. It also permits a combination of actions under an agreement, which could include the elimination of some duties, reduction of others by the same or varying amounts, no reductions on some products, and increases in tariffs to achieve rate harmonization in certain product sectors. In conjunction with the authority provided under section 103, it would be possible to convert nontariff barriers to fixed duties at equivalent or higher levels and then schedule their reduction over a period of time. The authority to modify duties includes the conversion of specific to ad valorem rates, and vice versa.

SEC. 102. STAGING REQUIREMENTS AND ROUNDING AUTHORITY.

Section 102 incorporates the staging principles of section 253 of the Trade Expansion Act of 1962, with the principal exception that reductions of up to three percent ad valorem may be put into effect each year. The purpose of staging is to provide time for the adjustment of United States industries and workers to the effects of the reduction or elimination of duties under a trade agreement.

1. Staging Authority

Subsection (a) requires that any reductions or eliminations of duties pursuant to trade agreements may not take place in less than five equal annual stages, or by annual reductions of a maximum of three percent ad valorem, whichever is the greater. For example, a duty scheduled to be lowered from 20 percent to 10 percent could be reduced three percent at valorem (which is greater than one-fifth of the total reduction) in each of the first three years and eliminated in the fourth. Alternatively the 20 percent duty might be reduced to 10 percent over a longer period.

This section sets forth a minimum preferred period of staging as under section 253 of the Trade Expansion Act. However, under subsection (e) it is specifically recognized that staging could be extended for as long a period as the President deems appropriate for certain products. For example, while the reduction of a duty from 30 percent to 10 percent could be staged in two percentage point annual reductions over a period of ten years, it could not be made effective more rapidly than in four percentage point reductions over five years. Under subsection (c) a total reduction which does not exceed ten percent of the duty prior to its reduction may be exempted from the staging requirements.

2. Interruption of Staging

Subsection (b) provides, as in the Trade Expansion Act, for the exceptional situation in which it might become necessary to interrupt implementation of a trade agreement concession and not complete the staging within five years. This would occur if staging began but was then suspended as an import relief measure under section 203. When implementation of staging is resumed, the duty rate last in effect must go back into effect for the period of time that stage was suspended before the next stage can be implemented. For example, if the staging is interrupted three months after the second stage begins, nine months of the second stage would go into effect when the staging resumes before implementation of the third stage could become effective.

3. Rounding Authority

The rounding authority under subsection (c) is identical to section 254 of the Trade Expansion Act of 1962. This authority permits the President, by rounding fractions or decimals, to proclaim marginally lower rates in the course of staging than the interim reductions prescribed under subsection (a) if rounding will simplify the computation of the amount of duty to be collected.

SEC. 103. NONTARIFF BARRIERS TO TRADE.

This section contains a statement of Congress urging the President to negotiate with foreign countries for the reduction, elimination, or harmonization of nontariff barriers and other distortions of international trade. For the purposes of this section, the terms nontariff or trade barriers include all barriers to trade including those which stem from methods of application of a duty other than the rate of duty itself. Negotiations could take the form of agreements on particular nontariff barriers and of general principles applicable to all nontariff barriers, which could also act as guidelines for specific agreements.

Since 1934 the Congress has periodically delegated to the President prior authority to enter into trade agreements with foreign countries and to proclaim reductions in tariffs and other import restrictions negotiated in such agreements. With respect to nontariff barriers, which are heterogeneous and usually imbedded in a variety of domestic laws, there is no commonly applicable standard that would lend itself to a general delegation of authority. Furthermore, it is not possible to foresee the types of agreements which may be negotiated or the form of legal techniques which may be necessary to implement them.

Three types of procedures are contemplated under this Act which could be used by the President to negotiate and implement various types of agreements on nontariff barriers:

(1) Continuation of existing procedures, which include the constitutional authority of the President to negotiate or complete agreements when additional implementing legislation is not necessary; completion of an international agreement and submission to the Senate as a Treaty; or completion of an international agreement on an *ad referendum* basis and submission to the Congress for approval through implementing legislation.

(2) Advance authority from the Congress to implement agreements on certain matters under section 103(c).

(3) A Congressional veto procedure applicable to agreements for which the exercise of additional Congressional authority is necessary or appropriate. This procedure described under section

103(d) and (e) is optional since the President could, for example use his existing authorities to submit such agreements to the Congress on an *ad referendum* basis or for approval as a Treaty, as appropriate.

1. Congressional Mandate to Negotiate

Subsections (a) and (b) contain a statement by the Congress urging the President to negotiate agreements with foreign countries to achieve the mutual reduction, elimination, or harmonization of nontariff barriers and other distortions of international trade. This mandate is not to be construed as prior approval by the Congress of any legislation which may be necessary to implement any such agreement.

Unless specifically provided for in an agreement, the President shall determine the extent to which benefits of agreements will apply to nonsignatory of agreements of countries.

2. Advance Authority for Certain Agreements

Subsection (c) grants the President advance authority to implement agreements which substantially benefit the United States with respect to methods of customs valuation, establishing the quantities on which assessments are made, and requirements for marking of country of origin. Agreements relating to American Selling Price, the "Final List," simplification of methods of valuation and the wine-gallon/proof gallon basis for assessment, for example could be implemented under this authority. This authority would not apply, however, to countervailing duty or antidumping regulations.

3. Congressional Veto Procedure

Subsection (d) authorizes the President to implement agreements related to matters which he determines it is necessary or appropriate to seek additional action by Congress. International agreements covering these matters can be implemented in compliance with the procedures under subsection (e) : (1) only if the President has given at least 90 days' notice to both Houses of Congress and appropriate Congressional committees prior to entering into an agreement of his intention to utilize this procedure; (2) only after the expiration of 90 days from the date of President delivers a copy of the agreement and his proposed orders for implementing the agreement with respect to existing domestic law to both Houses of Congress, with a statement as to why the agreement serves the United States trade interests and why the proposed orders are necessary; and (3) only if during the 90 day period the majority of the authorized membership of neither House of Congress adopts a resolution stating its disapproval of the agreement.

The purpose of the 90 days' advance notice requirement is to give the appropriate Congressional committees the opportunity to hold hearings, receive comments from the public, and make recommendations for provisions or modifications in such agreements.

This authority could apply, for example, to new agreements relating to quantitative limitations on imports of agricultural products. However, it is an optional procedure since the President can, if he believes it appropriate, use his existing authorities or other constitutional procedures with respect to import limitations or other nontariff barriers imposed pursuant to domestic laws.

CHAPTER 2.—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS PURSUANT TO TITLE I

Subchapter A.—Title I Prenegotiation Requirements

This subchapter is identical in substance to sections 221 through 224 of the Trade Expansion Act, with the exception of a new provision under section 112(b). Section 225 of the Trade Expansion Act (reservation of articles from negotiation) has been included in section 406 of this Act, which relates to the reservation of articles for national security or other reasons. The prenegotiation procedures of this chapter, unless an explicit exception to the contrary is contained elsewhere in this Act, apply only to actions under section 101.

SEC. 111. TARIFF COMMISSION ADVICE.

Section 111 is identical to section 221 of the Trade Expansion Act except that the language of section 221 relating to the 50 percent limitation on the reduction of duties under section 201(b) of the Trade Expansion Act is omitted.

Subsection (a) provides for the publication and transmission to the Tariff Commission by the President of lists of articles which may be considered for concessions in connection with any proposed trade agreement under section 101 of this title.

Subsection (b) requires the Tariff Commission to advise the President on each article within six months of its judgment as to the probable economic effect of modifying or continuing duties on domestic industries producing like or directly competitive articles. Section 111 (c) outlines the economic factors which the Tariff Commission shall investigate and analyze, and subsection (d) requires the Tariff Commission to hold public hearings during the course of preparing this advice.

The purpose of this advice is to assist the President in making an informed judgment as to the impact of such duty modifications on domestic economic interests. It is intended, as under present procedures, that the Tariff Commission reports to the President under section 111(b) would not be made public.

SEC. 112. ADVICE FROM DEPARTMENTS.

Section 112(a) is identical in substance to section 222 of the Trade Expansion Act. Subsection (b) is a new provision required in view of the enactment of the Federal Advisory Committee Act.

Subsection (a) requires the President, before entering into a trade agreement under sections 101 and 103 of this title, to seek information and advice with respect to each agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State, Treasury, and from the Special Representative for Trade Negotiations. He shall also seek information and advice as appropriate from other sources such as the Department of Transportation.

Subsection (b) provides that meetings of selected industry, labor, and agriculture groups advising the President or any agency on United States negotiating objectives and bargaining positions in specific product sectors prior to entry into trade agreements under this title shall be exempt from the requirements relating to open meetings and public participation under the Federal Advisory Committee Act. Open meetings and public participation would compromise the United States negotiating posture with foreign countries and inhibit the flow of information from the advisory groups to the President.

SEC. 113. PUBLIC HEARINGS.

Section 113 is identical to the provisions under section 223 of the Trade Expansion Act except that it is divided into two subsections. It applies to proposed agreements on nontariff barriers under section 103, in addition to those on tariffs as under the Trade Expansion Act.

This section requires the President to hold public hearings in connection with any proposed trade agreement under this title to enable interested persons to present their views with respect to the list of articles provided under section 111, any concessions which should be sought from foreign countries, and any other relevant matters. The President is required to designate an agency or interagency committee to hold these hearings and to provide a summary to the President.

SEC. 114. PREREQUISITE FOR OFFERS.

Section 114 is identical in substance to section 224 of the Trade Expansion Act.

The President must receive the summary of public hearings under section 113 before making an offer to modify or continue any duty or to continue duty-free or excise treatment on any article in any negotiations under section 101. The President also cannot make an offer on an article in negotiations under section 101 until he receives the advice of the Traiff Commission under section 111(b) or the relevant six-month period has expired.

This section is intended to permit the President to begin the early stages of a negotiation before receiving the advice and summary, but to prevent him, until either six months have passed or the Tariff Commission provides its advice, from making an offer to modify a duty which, if accepted, would be binding subject to the conclusion of a trade agreement.

Subchapter B.—Congressional Liaison

SEC. 121. TRANSMISSION OF AGREEMENTS TO CONGRESS.

This section is identical in substance to section 226 of the Trade Expansion Act. It requires the President to transmit to each House of the Congress a copy of all trade agreements entered into force under sections 101 or 103, with a statement of his reasons for entering into the agreement in the light of the Tariff Commission's advice under section 111(b) and other relevant considerations.

This Act does not contain a specific provision for better coordination between the Executive Branch and the Congress on matters relating to the trade agreements program. A number of proposals for improving coordination and consultation have been suggested, and it is hoped that the Congress will make provision for this purpose.

TITLE II.—RELIEF FROM DISRUPTION CAUSED BY FAIR COMPETITION

CHAPTER 1.—IMPORT RELIEF

This chapter constitutes a major revision of the "escape clause" provisions of the Trade Expansion Act. There are four fundamental changes:

(1) Liberalization of existing criteria for determining injury to domestic industry due to imports, including the deletion of the causal link to trade agreement concessions, the substitution of "primary" for "major" cause with respect to the relationship between increased imports and injury, and inclusion of a market disruption determination.

(2) Inclusion of additional factors to be taken into account by the Tariff Commission in determining injury due to imports and by the President in his determining whether and in what form to provide import relief. These factors include efforts by the industry to adjust to import competition and the impact of relief on consumers, exporters, and other domestic industries.

(3) Expanded forms and amounts of import relief which the President may provide, including orderly marketing agreements, other import restrictions, removal of statutory limitations on tariff increases and authority to withdraw application of 806.30 and 807.00 provisions.

(4) Stricter time limits on the duration of import relief and the mandatory phasing out of such relief.

These changes are consistent with the fundamental purpose of import relief under this title, namely to permit a seriously injured domestic industry to become competitive again under relief measures and, at the same time, to create incentives for the industry to adjust to competitive conditions in the absence of long-term import restrictions.

SEC. 201. INVESTIGATION BY TARIFF COMMISSION.

Section 201 outlines procedures to be followed by the Tariff Commission in conducting an investigation to determine the existence of injury to a domestic industry due to imports. It also contains major changes in existing criteria and factors to be taken into account in making such a determination.

1. Filing of Petitions

Subsection (a) provides that a petition for eligibility for import relief may be filed with the Tariff Commission by an entity, such as a trade association, firm, or union, which is broadly representative of an industry. The petition must include a statement describing the specific purpose for which import relief is sought, such as to facilitate the transfer of resources to alternative employment and other means to adjust to new competitive conditions.

The Tariff Commission must transmit a copy of any petitions to the Special Representative for Trade Negotiations and to the Government agencies which are directly concerned in particular cases, such as the Departments of Agriculture, Commerce, Interior, Labor, State, and Treasury.

2. Injury Determination

Subsection (b) requires the Tariff Commission to conduct an investigation to determine whether there is injury to a domestic industry due to imports at the request of the petitioner under subsection (a), the President, the Special Representative for Trade Negotiations, or the relevant committees of the Congress. The investigation is to determine whether an article is being imported in such increased quantities as to be the primary cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported article. The term "industry" includes entities engaged in agricultural activities.

One major change in existing law (section 301(b) of the Trade Expansion Act) is the deletion of the requirement that the increased imports result "in major part" from concessions granted under trade agreements. The second major change is the substitution of "primary cause" for "major cause." "Major" has been understood to mean greater than all other factors combined; the "pirmary cause" as defined in section 201(f)(1) means the largest single cause.

Subsection (b) provides that, in making its determination with respect to injury, the Tariff Commission shall take into account all economic factors it considers relevant, including significant unemployment or underemployment in the industry, inability of a significant number of firms to operate at a reasonable level of profit, and significant idling of productive facilities in the industry. In determining whether imports are the primary cause of injury, the Commission shall consider relevant factors such as the extent to which current business conditions, changes in taste or technology, or competitive conditions within the industry may have contributed to the competitive difficulties experienced by firms in the industry. To assist the President in making his determination under sections 202 and 203, the Tariff Commission will also investigate and report on efforts by firms in the industry to compete more effectively with imports.

3. Market Disruption

Subsection (b) provides that the Tariff Commission shall determine in its investigation whether there exists a condition of market disruption as defined in subsection (f) when requested to do so by the petitioner, or by a request or resolution referred to under subsection (b)(1), or upon its own motion. If the Commission finds both market disruption and serious injury, or the threat thereof, the finding of market disruption shall constitute *prima facie* evidence that the causation test has been met, i.e., that increased imports are the primary cause of such injury or threat thereof. However, the Tariff Commission is obligated to conduct a market disruption investigation whether or not rebuttal evidence has been introduced by outside parties. The Commission could, notwithstanding a finding of market disruption, find that factors other than import competition were the cause of serious injury or the threat thereof.

Market disruption shall be found to exist whenever a showing has been made that imports of a like or directly competitive article are substantial, that they are increasing rapidly both absolutely and as a proportion of total domestic consumption, and that they are offered at prices substantially below those of comparable domestic articles. "Comparable" is intended to be a more narrow category of products than "like or directly competitive" articles.

4. Public Hearings

Subsection (c) provides for the Tariff Commission to hold public hearings in connection with any proceedings under section 201(b).

5. Reports to the President

Subsection (d) repeats the requirements of the Trade Expansion Act that the Tariff Commission report to the President the findings and their basis under each investigation under this section, and include in each report any dissenting or separate views. The Tariff Commission will furnish the President a transcript of the hearings and any briefs submitted in the course of its investigation. The Commission will also make its report public, including a summary in the Federal Register, with the exception of confidential information.

The reports of the Tariff Commission are normally to be filed not later than three months after the date on which the petition was filed. This period may be extended by two months if necessary to produce a fair and thorough investigation. Under existing law the Tariff Commission has six months in which to submit its report. Contrary to existing law the Tariff Commission will not make a recommendation to the President in cases in which it has found injury, as to the duty or other import restriction which is necessary to prevent or remedy such injury. Instead the Tariff Commission will report its findings with respect to the criteria mentioned above.

6. Subsequent Investigations

Subsection (e) continues the restriction contained in section 301 (b)(4) of the Trade Expansion Act that the Tariff Commission will not investigate the same subject matter under a previous investigation unless one year has elapsed since the Tariff Commission made its report to the President of the results of such previous investigation.

SEC. 202. PRESIDENTIAL ACTION AFTER INVESTIGATIONS.

This section provides for a determination by the President within a specific time period whether to provide import relief following an affirmative finding by the Tariff Commission of injury to an industry due to imports. It also enumerates factors which the President must take into account in this determination.

1. President's Authority

Subsection (a) provides that after receiving a report from the Tariff Commission containing an affirmative finding of injury to an industry due to imports, as determined under section 201(b), the President may decide to (1) provide import relief for the industry under section 203; (2) direct the Secretary of Labor to expedite consideration of petitions by workers for adjustment assistance; or (3) take any combination of these actions.

2. Time Limit and Report to Congress

Subsection (b) The President to make his determination whether to provide import relief under section 203 within 60 days after receiving an affirmative finding of injury from the Tariff Commission. In the case of a tie vote, the President has 120 days to make his determination. If the President decides to provide import relief, he is required to do so within the additional periods provided in section 203. If he determines not to provide import relief, he is required to submit immediately a report to both Houses of Congress stating the considerations on which his decision was based.

3. Factors to be Considered

Subsection (c) describes various considerations which the President must take into account in determining whether to provide import relief under section 203. These factors include, for example, the effectiveness of import relief as a means to promote adjustment, the impact of relief measures on domestic consumers, other industries and workers, and upon United States foreign economic interests.

4. Additional Information from Tariff Commission

Subsection (d) provides that the President may request additional information from the Tariff Commission within 45 days after the date on which he receives an affirmative finding of injury. The Commission must furnish this additional information in a supplemental report within 60 days of the request. A similar provision is presently contained in section 351 of the Trade Expansion Act, but with longer time periods for making the request and furnishing the information. For purposes of section 202(b), the date on which the President receives the supplemental report is treated as the date on which the President received the affirmative finding.

SEC. 203. IMPORT RELIEF.

This section constitutes a major revision of sections 351 and 352 of the Trade Expansion Act. The section as a whole stresses the objective of adjustment in both form and duration of import relief which the President may provide.

1. President's Authority

Subsections (a) and (b) require the President to grant import relief with respect to the article causing or threatening serious injury within 60 days of his decision under section 202(a) to provide import relief. The relief will be granted to the extent and for such time (not to exceed five years) the President determines necessary to prevent or remedy serious injury to the industry, and to facilitate its orderly adjustment to new competitive conditions.

The relief may take the form of (1) an increase in, or imposition of, any duty or other import restriction on the article; (2) suspension of the application of 806.30 or 807.00 of the Tariff Schedules to the article in whole or in part; (3) negotiation of orderly marketing agreements with one or more foreign countries; or (4) any combination of these actions.

The time period during which the President must provide import relief is extended from 60 to 180 days if, at the time of his determination under section 202 to provide import relief, he announces an intention to negotiate one or more orderly marketing agreements. Interational agreements may be substituted for import relief at any time.

This section expands upon the import relief measures available under existing law. First, it provides new authority to suspend, in whole or in part, the application of items 806.30 or 807.00 of the Tariff Schedules to the article causing or threatening serious injury. Secondly, it removes the requirement under section 352 of the Trade Expansion Act that orderly marketing agreements can only be negotiated *in lieu* of and prior to the imposition of duties or other import restrictions. Thirdly, it removes the restriction presently contained in section 351(b) of the Trade Expansion Act that duty increases may not exceed stipulated limits.

2. Implementation of Orderly Marketing Agreements

Subsection (c), which is virtualy identical to section 352(b) of the Trade Expansion Act, provides that the President may issue regulations governing the entry of an article covered by an orderly marketing agreement. In order to carry out one or more agreements among countries accounting for a significant portion of total United States imports of the article covered, the President may also issue regulations governing the entry of like articles from countries which are not parties to such agreements. Thus, the President may impose controls on imports of articles covered by agreements from non-participating as well as participating countries.

Under subsection (d)(1), the President may negotiate orderly marketing agreements with foreign countries at any time after import relief in the form of duty increases, quotas, or suspension of $806.30 or $807.00 provisions is in effect. These measures may be suspended or terminated, in whole or in part, upon implementation of the international agreements.

3. Termination and Phasing Out

The section provides limitations on the duration of import relief measures and requires the phasing out of such measures during the time of their application.

Subsection (d)(2) provides that any import relief provided under subsection (a), including any orderly marketing agreements, shall terminate not later than five years after the date of the initial grant of relief unless renewed under subsection (d)(4) by the President, in whole or in part, for one additional two-year period. The relief may be extended at any level which was in effect during the initial five-year period. The President must determine that a renewal is in the national interest, taking into account advice from the Tariff Commission and the factors described in section 202(b). Section 351(c) of the Trade Expansion Act provided for an initial term of relief of four years with possible four-year extensions.

Subsection (e)(2) enables that an industry to file a petition with the Tariff Commission for an extension of import relief during the six-month period prior to the three months before the date any import relief is to terminate fully under subsection (d), i.e., five years or, if terminated earlier, the actual period of the initial term of import relief. A modification or a reduction of import relief by the President during this five-year period is not a termination for purposes of subsection (d); that is, an industry may not petition the Tariff Commission with respect to the phasing out of import relief. The Tariff Commission shall conduct an investigation, including a hearing, and report to the President its findings as to the probable economic effect on the industry of terminating relief, and the progress and specific efforts made by firms in the industry to adjust to import competition during the period of initial import relief.

Subsection (d)(3) provides that any import relief measure must also be phased out and, in the case of a five-year term of import relief, the first modification or reduction of the relief must commence within three years. The President may phase out the relief in equal or unequal stages, as he deems appropriate. In the case of orderly marketing agreements, phasing out may be accomplished by increases in the annual amount of imports which may be entered.

Subsection (e)(1) requires the Tariff Commission to keep under review developments with respect to the industry concerned as long as any import relief remains in effect, and report such developments to the President upon his request.

Subsection (f) provides that no investigation for the purposes of section 201 shall be made with respect to an industry which has received import relief under this section unless two years have elapsed since the expiration of import relief in five or seven years as provided under subsection (d).

4. Compensation Authority

It should be noted that section 404 of this Act provides that whenever any action has been taken under section 203 to increase or impose any duty or other import restriction, the President shall afford interested foreign countries an opportunity to consult with the United States with respect to concessions, if any, to be granted as "compensation" for the import restriction imposed. The President may enter into agreements with such countries to modify duties or other import restrictions as compensation required or appropriate to maintain a general level of reciprocal concessions.

CHAPTER 2.—ADJUSTMENT ASSISTANCE FOR WORKERS

The primary purpose of this chapter is to provide adjustment assistance for workers displaced by import competition pending the enactment of minimum Federal standards of unemployment insurance. Provisions relating to job search and relocation allowances, as well as training, are also included. The worker adjustment assistance program of the Trade Expansion Act is replaced by the provisions of this chapter.

This chapter provides Federal supplements to State unemployment insurance payments and makes provisions for employment services, training, and for job search and relocation grants. Companion legislation imposes minimum standards on State unemployment compensation payments, effective July 1, 1975. These new standards will be available for trade-impacted workers immediately. When all States meet the new levels, no further supplements will be paid under this Act. The other assistance provided for under this chapter continue after the payments of supplements cease.

This chapter eases the eligibility requirements in three major respects, as compared with the Trade Expansion Act: (1) increased imports need not be linked to trade agreement concessions, as is now required; (2) increased imports need only have "contributed substantially" to, rather than having been the "major" cause of, loss of work; and (3) both group petitions and applications for individual assistance go directly to the Secretary of Labor for prompt disposition, eliminating the present determinations by the Tariff Commission and the President.

Subchapter A.—Petitions and Determinations

SEC. 221. PETITIONS.

Section 221(a) provides for filing of petitions with the Secretary of Labor by groups of workers or their duly authorized representatives for a certification of eligibility to apply for adjustment assistance. The Secretary must promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

This subsection incorporates the same filing provision with respect to workers' petitions as contained in section 301(a)(2) of the Trade Expansion Act except that petitions are to be filed with the Secretary instead of the Tariff Commission. The provisions of section 302(a)(3) and (b)(2) of the Trade Expansion Act would be eliminated.

Subsection (b) provides that the Secretary shall provide for a public hearing if the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits a request not later than ten days after the publication of notice under subsection (a).

The Secretary may request the Tariff Commission to hold any hearing in connection with the investigation initiated under subsection (a) and to submit the transcript and relevant information and documents to him within a specified time. Subsection (b) is similar to section 301(d)(2) of the Trade Expansion Act except for the substitution of the Secretary for the Tariff Commission to provide a public hearing, and the time limit for a request for the hearing.

SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

Section 222 replaces section 301(c)(2) and (3) of the Trade Expansion Act of 1962. It provides new criteria for certification of eligibility of groups of workers to apply for adjustment assistance and substitutes the Secretary of Labor for the Tariff Commission for the purpose of determining whether the criteria are met.

This section also eliminates the requirement in the Trade Expansion Act of a causal link of increased imports to trade agreement concessions, and requires that increased imports only "contribute substantially" to the separations rather than being the major cause. It adds the requirement that sales or production, or both, of the affected firm or subdivision must have declined on an absolute basis.

SEC. 223. DETERMINATION BY SECRETARY OF LABOR.

Subsection (a) provides that as soon as possible but not later than 60 days after a petition is filed under section 221, the Secretary shall determine whether the petitioning group of workers meets the eligibility requirements of section 222, and shall issue a certification of eligibility to apply for adjustment assistance under subchapter B covering workers in any group which meets such requirements. The certification is of a continuing nature and covers not only workers totally or partially separated from the impact date through the period ending with the date of the certification but separation of other workers thereafter.

Each certification shall specify the date on which the total or partial separation began or threatened to begin. The date to be determined is the earliest date on which any part of the total or partial separations involving a significant number or proportion of workers began or threatens to begin. The date when total or partial separations threatens to begin is the date on which they are expected to begin.

Subsection (b) provides that a certification of eligibility to apply for assistance shall not apply to any worker who was last totally or partially separated from the firm or subdivision prior to his application under section 231 (1) more than one year before the date of the petition upon which the certification covering him was granted or (2) more than six months before the effective date of this Act. Section 244(b) adjusts the applicable petition date for subsection (b)(1) and makes subsection (b)(2) inapplicable in the case of groups and workers meeting certain requirements set forth therein.

Subsection (c) authorizes the Secretary to request the Tariff Commission to conduct an investigation of the facts relevant to a determination under section 223 and to report the results within a specified time. The Secretary may state the particular kinds of data which he deems appropriate to be included. This is not intended, however, to preclude the Tariff Commission from gathering and including in its report such additional data as it considers relevant.

Subsection (d) requires the Secretary to publish promptly in the Federal Register a summary of his determination on a petition under subsection (a). If the determination is affirmative, the Secretary would issue a certification and the summary would therefore be of the certification.

Subsection (e) provides for the termination of certifications of eligibility to apply for adjustment assistance if the Secretary determines that total or partial separations are no longer attributable to the conditions specified under section 222. This subsection is the same in substance as section 302(e) of the Trade Expansion Act, except that the Secretary is given the statutory authority to terminate, instead of by delegation from the President, and the publication of terminations in the Federal Register is expressly required by statute instead of by regulation. As in the existing provisions, it is expressly provided that such termination shall apply only to total or partial separations occurring after the termination date specified by the Secretary. Therefore, the termination would not affect the eligibility of workers separated before the termination date to apply for and receive assistance.

Subchapter B.—Program Benefits

Part I.—Supplemental Payments

SEC. 231. QUALIFYING REQUIREMENTS FOR WORKERS.

This section states the qualifications an individual worker must have in order to obtain supplemental payments for weeks in which he is entitled to State unemployment insurance payments. The qualifications are similar to those in section 322 of the Trade Expansion Act. The major differences in subsection (B) are omission of the requirement of employment during 78 of 156 weeks immediately preceding total or partial separation, an increase of the wages for a qualifying week of employment from $15 to $30, and the new requirement that the qualifying weeks be with a single firm or subdivision of a firm.

In order to qualify for unemployment insurance supplemental payments, an adversely affected worker covered by a certification under subchapter A must file an application with a cooperating State agency. The worker's last total or partial separation before he applies must have occurred after the "impact date" (the date specified in the certification when total or partial separation began or threatened to begin), within two years after the Secretary issued the certification covering the worker, and before the termination date determined under section 233(e). The date of issuance of the certification is the date on which the Secretary or his delegate signs the certification. The worker must also have had 26 weeks of employment with a single firm or subdivision at $30 or more wages a week in adversely affected employment within the 52 weeks immediately preceding his total or partial separation.

SEC. 232. SUPPLEMENT TO UNEMPLOYMENT INSURANCE.

This section establishes the amount of supplemental payment that an adversely affected worker who receives State unemployment insurance for a week of unemployment and meets the qualifying requirements of section 231 shall receive. A supplemental payment is equal to the amount (if any) by which the State unemployment insurance he receives for such week is less than the payment he would have received if under the State law his weekly benefit amount was one-half of his average weekly wage, or the maximum weekly benefit amount, whichever is less. The maximum weekly benefit amount used in computing the weekly benefit amount which he would have received, for trade readjustment purposes, would be 66⅔ percent of the statewide average weekly wage computed before the beginning of the applicant's benefit year as that term is defined in the State law. Each State would be required to compute the statewide average weekly wage at least once a year. This establishes a Federal standard by which to measure the amount to be paid as a supplement to State unemployment insurance.

Legislation is being introduced amending section 3304(a) of the Internal Revenue Code to require State unemployment insurance laws with respect to benefit years beginning on and after July 1, 1975 to provide weekly benefit amounts which will meet, as a minimum, precisely the same standard here proposed. If such legislation is enacted in the form proposed, on and after July 1, 1975, it is most likely that all adversely affected workers would receive an amount of State unemployment insurance which would make supplementation unnecessary.

If the State weekly benefit amount of unemployment insurance equaled or exceeded the Federal standard, no trade readjustment allowance would be paid. No adversely affected worker would receive total benefits (State unemployment insurance and Federal supplement, if necessary) less than the Federal standard.

Subsection (c) defines the terms used in establishing the weekly benefit amount on the basis of which the supplemental payment would be made. "Benefit year" would be the benefit year as defined in State law but could not be more than a one-year period beginning after the end of the individual's base period. "Base period" would be the base period as defined in State law with the limitation that it be either 52 consecutive weeks, one year, or four calendar quarters and could not end earlier than six months prior to the beginning of an individual's benefit year. This is to assure that the weekly benefit amount is based on recent earnings.

The definition of "individual's average weekly wage" takes account of variations in State laws. Where a State computes weekly benefit amounts on the basis of high quarter wages, the average weekly wage would be 1/13th of the amount of wages received in such quarter. In other States, the average weekly wage will be computed on the basis of a simple formula. Total wages in the base period will be divided by the number of weeks in the base period during which the individual performed services in employment covered under the State law during the base period. "High quarter wages" are the amount of wages paid to an individual in that quarter of his base period in which the wages were the highest.

The "statewide average weekly wage" will be total wages paid by covered employers in the State for the first four of the last six completed calendar quarters divided by the average number of workers in covered employment during the same four quarter period. Since the figures used in the computation will be based on reports furnished by employers, there is a lag between the period used in making the computation and the computation date to enable the State agency to collect the data needed to make the computation.

Part II—Training and Related Services

SEC. 233. EMPLOYMENT SERVICES.

Section 233 provides that the Secretary shall make every reasonable effort to secure counseling, testing, and placement services, and supportive and other services provided for under any Federal law for adversely affected workers covered by a certification under subchapter A of chapter 2. The Secretary shall procure such services through agreements with cooperating State agencies whenever appropriate.

It is the intention under this provision that the Secretary shall make arrangements for effective referral of the workers for the services to the extent such services are provided for under any other Federal law, and that appropriations made available under this Act are not to be expended to defray the cost or expense of the actual services. In procuring such services through agreements with cooperating State agencies, it is expected that the services will be funded through funds made available under other programs, including under revenue-sharing arrangements.

As used in section 233, it is intended that the phrase "supportive and other services" 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 for full employment. It is intended that the minor health services referred to above shall 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.

SEC. 234. TRAINING.

This section authorizes the Secretary to provide or assure provision of appropriate training to trade-impacted workers under manpower and related service programs established by law, on a priority basis.

Subsection (a) provides that the Secretary may authorize training, under manpower and related service programs established by law for adversely affected workers covered under certifications under subchapter A for whom suitable employment (including technical and professional employment) would be available only after such training. These provisions are similar to section 326(a) of the Trade Expansion Act.

Subsection (a) also provides that the Secretary shall assure the provision of training, insofar as possible, on a priority basis. In relation to Federally financed manpower training programs, this language authorizes the Secretary to exercise such guidance and control as is possible in order to assure that manpower funds allocated to and primarily administered by State and local officials shall be used to serve workers certificated under this chapter. The reference to priority is intended to place such workers in a favored position if training resources are not adequate to meet the needs of all applicants. The only other such priority with statutory support is that provided for veterans in Title V of Public Law 92-540. As under section 233, it is intended that appropriations under this Act will not be expended to defray the cost or expense of training but that funds available under other programs, including revenue sharing arrangements, shall be utilized.

Subsection (b) authorizes supplemental assistance to defray transportation and subsistence costs when training is provided in facilities which are not within commuting distance. This provision is identical in substance to section 326(a) of the Trade Expansion Act, including the maximum amounts of $5 per day for subsistence and 10¢ per mile for transportation expenses.

Subsection (c) provides that the Secretary shall not authorize training which begins more than one year after the certification under subchapter A or of the worker's last total or partial separation before applying under subchapter B, whichever is later. There is no directly comparable section in the Trade Expansion Act.

Subsection (d) provides that any worker refusing without good cause to accept or continue, or failing to make satisfactory progress in suitable training to which he was referred by the Secretary shall be disqualified from receiving payments under this chapter until he enters or resumes the training. This subsection is identical in substance to section 327 of the Trade Expansion Act.

Part III.—Job Search and Relocation Allowances

SEC. 235. JOB SEARCH ALLOWANCES.

This section provides that a worker covered by a certification under subchapter A may file an application with the Secretary for a job search allowance. This allowance provides reimbursement to the worker of 80 percent of the cost of his necessary job search expenses, not to exceed $500.

The allowance can only be granted to assist the worker in obtaining employment within the United States, only when the worker cannot reasonably be expected to obtain suitable employment in his commuting area, and only if the application for the allowance is filed within one year from his last total separation prior to applying under section 231.

SEC. 236. RELOCATION ALLOWANCES.

Section 236 retains most of the provisions for relocation allowances under sections 328, 329, and 330 of the Trade Expansion Act.

Subsection (a) is identical in substance to section 328 of the Trade Expansion Act. Relocation allowances are afforded (upon application and meeting qualifying requirements) to any adversely affected worker covered by a certification under subchapter A of this chapter who is the head of a family, as defined in regulations prescribed by the Secretary, and who has been totally separated from adversely affected employment. The qualifying requirements of subsection (b) are identical to those of section 329(a) of the Trade Expansion Act.

Subsection (c), which is comparable to section 329(b) of the Trade Expansion Act, authorizes payment of a relocation allowance only if for the week in which the worker files an application for such allowance, he is entitled to a supplemental payment under section 232, or would be so entitled (without regard to whether he filed application for the supplemental payment) if it were not for the fact that he has either obtained the employment to which he wishes to relocate, or received an unemployment insurance payment equal to or greater than the payment he would have received for such week had the applicable State law provided as set forth in section 232(a)(1) and (2) of this Act.

Subsection (c) also provides that to be entitled to a relocation allowance, the worker must relocate within a reasonable time after he applies for such allowance. If the applicant is a worker undergoing vocational training under the provisions of any Federal statute he must relocate within a reasonable time after the conclusion of such training.

Subsection (d) changes the definition and therefore the amounts of the relocation allowances under section 330 of the Trade Expansion Act. "Relocation allowance" is defined as (1) 80 percent of the reasonable and necessary expenses (as specified in regulations prescribed by the Secretary of Labor) incurred in transporting the worker, his family, and their household effects from their present location, and (2) a lump sum payment equivalent to three times the worker's average weekly wage, up to a maximum payment of $500.

Subchapter C.—General Provisions

SEC. 237. AGREEMENTS WITH STATES.

Subsections (a), (b), and (c) of this section provide for agreements between the Secretary and States or State agencies to carry out the functions required under subchapter B. These subsections are substantially the same as section 331 of the Trade Expansion Act. Subsection (d), which provides for review of State determinations made under terms of such agreements differs somewhat from the review provision under section 336 of the Trade Expansion Act.

Subsection (a) authorizes the Secretary to enter into agreements under which States or State agencies will, as agents of the United States: (1) receive applications and provide payments as provided in this chapter; (2) offer testing, counseling, referral to training, and placement services to adversely affected workers applying for payments, where appropriate, and (3) otherwise cooperate in providing payments and services under this chapter.

Subsection (b) states that agreements shall include terms and conditions for amendment, suspension or termination. Subsection (c) requires that agreements shall not deny or reduce unemployment insurance payments to adversely affected workers by reason of any right to payments under this chapter.

Subsection (d) provides that determinations with respect to entitlement to payments made by cooperating State agencies under agreements with the Secretary shall be subject to review in exactly the same manner and to the same extent as determinations under the applicable State law. Section 336 of the Trade Expansion Act provided for such review to the maximum extent practicable and consistent with the worker assistance provisions of that Act. Subsection (d) has the effect of channeling all questions arising from determinations by State agencies under subchapter B through the normal State review procedure.

SEC. 238. ADMINISTRATION ABSENT STATE AGREEMENT.

Subsection (a) authorizes the Secretary to arrange by regulations for performance of necessary functions under subchapter B where there is no agreement in force with a State or State agency. Among the functions to be carried out is provision of a fair hearing for any worker whose application for payments is denied. This provision follows the terms of 5 U.S.C. § 8503(c), a section that states the procedures for provision of unemployment compensation to Federal employees absent a State agreement to administer that compensation program.

Subsection (b) provides for review by the courts of final determinations under subsection (a) of entitlement to payments under subchapter B in the same manner and to the same extent as is provided by 42 U.S.C. § 405(g), the judicial review provision for the social security program. Section 336 of the Trade Expansion Act provides that determinations as to entitlement of indivdiuals for adjustment assistance shall be final and not subject to court review except as provided in the Secretary's regulations.

SEC. 239. PAYMENTS TO STATES.

This section provides that the State agencies pay supplemental payments out of funds advanced to them from the Federal Treasury.

The section eliminates the requirement of section 332(a)(2) of the Trade Expansion Act that the Federal Government reimburse a cooperating State for the unemployment compensation paid to a worker who qualified under State law to receive such compensation. Previously, if the Federal Government determined that such a worker was unemployed due to trade concessions, it would reimburse the State the amounts paid out to such a worker for unemployment compensation.

Subsection (b) provides for appropriate fiscal safeguards for funds not spent.

Subsection (c) stipulates that agreements made under this subchapter may include requirements that any State employee certifying or disbursing funds under this agreement be bonded.

SEC. 240. LIABILITIES OF CERTIFYING AND DISBURSING OFFICERS.

Subsection (a), which is identical to section 333 of the Trade Expansion Act, relieves a designated certifying officer, in the absence of gross negligence or intent to defraud the United States, from liability with respect to the payment of any payment certified by him under this chapter.

Subsection (b) provides similar relief from liability for a disbursing officer with respect to any payment by him under this chapter if it was based upon a voucher signed by a designated certifying officer.

SEC. 241. RECOVERY OF OVERPAYMENTS.

This section is identical in substance to section 334 of the Trade Expansion Act.

It provides that if a person has been found to have received any payment to which he was not entitled, as a result of false statements, such person shall be liable to repay such amount to the State agency or to the Secretary. Such recovery may also be made by deducting the amount to which the person was not entitled from any sum payable to him under this chapter.

Any amount repaid to a State agency shall be deposited into the fund from which payment was made, and any amount repaid to the administering agency shall be credited to the current applicable fund from which payment was made.

SEC. 242. PENALTIES.

This section imposes the same penalties as section 335 of the Trade Expansion Act provided for any person who knowingly makes false statements of, or fails to disclose material facts for the purpose of obtaining or increasing for himself or for any other individual any payment authorized to be paid under this chapter or under an agreement under section 237. The offenses are punishable by fines of not more than $1,000 or imprisonment for not more than one year, or both.

SEC. 243. AUTHORIZATION OF APPROPRIATIONS.

Section 243 authorizes the appropriation to the Secretary of such sums as may be necessary from time to time to carry out his functions under this chapter in connection with furnishing payments to workers. Section 243 further provides that sums which are authorized to be appropriated shall remain available until expended.

This provision covers not only payments but also the Secretary's functions throughout chapter 2 in connection with furnishing payments to workers. It includes, for example, funds for the Secretary's functions with respect to subchapter A, and the functions of the Tariff Commission thereunder. The authorization would not, however, include appropriations to defray the expense or cost of actual services furnished workers, under this or any other Federal law.

SEC. 244. TRANSITIONAL PROVISIONS.

Subsection (a) provides that any worker covered by a certification issued under section 302(b)(2) or (c) of the Trade Expansion Act shall be entitled to the rights and privileges provided in the worker assistance chapter of that Act as existing prior to the date of enactment of this Act. Workers so covered may therefore apply for trade readjustment allowances under the terms and conditions of the Trade Expansion Act and will continue to receive assistance under that Act to the extent of their eligibility.

Subsection (b) provides for cases where a group of workers or their authorized representative has filed a petition under section 301(a)(2) of the Trade Expansion Act, such filing was more than four months prior to the effective date of this Act, the Tariff Commission has not rejected the petition, and the President or his delegate has not issued a certification under 302(c) of the Trade Expansion Act to the petitioning group. In such circumstances, the group or its representative may file a new petition under section 221 of this Act, not later than 90 days after the effective date of the Act, and shall be entitled to the rights and privileges provided in this chapter. For purposes of section 223(b)(1), the petition date shall be the original filing date under the Trade Expansion Act, and section 223(b)(2) shall not apply to workers covered by a certification issued pursuant to a petition meeting the requirements of this subsection.

Subsection (b) attempts to prevent inequitable cutoffs of assistance that would occur because pending Trade Expansion Act petitions may not be decided upon before the effective date of the new Act. While a group may file another petition under the new Act, workers covered by the petition may be ineligible for assistance because the new filing date is later than the original Trade Expansion Act filing. The provision in subsection (b) for using the earlier date in pending cases, and not applying the six-month cutoff of section 223(b)(2), is intended to meet this problem.

Subsection (c) provides that the Tariff Commission shall make certain materials available to the Secretary on request. The data involved is derived from section 301 Trade Expansion Act investigations concluded within the two years before the date of enactment of this Act which did not lead to either affirmative or negative Presidential action under section 302(a)(3) or 302(c) of the Trade Expansion Act.

SEC. 245. DEFINITIONS.

This section, except for some deletions, substantially adopts the definitions of section 338 of the Trade Expansion Act. Those terms which have been deleted are "average weekly manufacturing wage," "remuneration," "week," and "week of unemployment."

Subsection (1) defines "adversely affected employment" as work in those firms or subdivisions of firms the employees of which have been declared eligible to apply for assistance.

Subsection (2) defines "adversely affected worker" as an individual who has been partially or totally separated because of lack of work in the affected firm, or subdivision thereof, or totally separated from the firm in a subdivision of which such adversely affected employment exists.

Subsection (3) defines "average weekly wage." A person's average weekly wage is one-thirteenth of the total salary paid that person in that quarter, out of the first four of five completed quarters preceding his separation, in which the person's salary was the highest.

Subsection (4) defines "average weekly hours" as the average number of hours worked by the individual in the affected employment, and not including overtime, in the 52 weeks (excluding weeks of sickness or vacation) preceding the week in which partial or total separation occurred.

Subsection (5) defines "total separation" as the complete separation of the worker from the firm in which some adversely affected employment exists.

Subsection (6) defines "partial separation" as occurring when the worker has had his hours of work reduced to 80 percent or less of his average weekly hours and his wages reduced to 75 percent or less of his average weekly wage in the affected employment.

Subsection (7) defines "State" to include the District of Columbia and the Commonwealth of Puerto Rico and the "United States" to include both.

Subsection (8) defines "State agency" as the agency of the particular State which administers the relevant State law.

Subsection (9) defines "State law" as the unemployment insurance law of the particular State that was approved by the Secretary of Labor as provided by section 3304 of the Internal Revenue Code of 1954.

Subsection (10) defines "unemployment insurance" as those unemployment benefits payable to an individual through any State or Federal unemployment insurance law.

SEC. 246. ADMINISTRATIVE PROVISION.

This section provides that the Secretary shall prescribe necessary regulations to implement this chapter, in coordination with the Special Representative for Trade Negotiations.

TITLE III.—RELIEF FROM UNFAIR TRADE PRACTICES

The purpose of this title is to consolidate and revise the four principal statutes dealing with unfair trade practices of foreign countries.

The first chapter deals with responses to unfair foreign import restrictions and export subsidies from foreign countries to third country markets which displace competitive United States exports. This chapter revises and updates section 252 of the Trade Expansion Act ("Foreign Import Restrictions").

The second chapter makes a number of amendments to the Antidumping Act of 1921. The third chapter contains amendments to section 303 of the Tariff Act of 1930 on countervailing duties, including their application to duty-free goods subject to an affirmative finding of injury to domestic industry.

The fourth chapter revises section 337 of the Tariff Act of 1930 with respect to patent infringements. Companion legislation will authorize the Federal Trade Commission to investigate and regulate unfair methods of competition in import trade other than patent infringement.

CHAPTER 1.—FOREIGN IMPORT RESTRICTIONS

SEC. 301. RESPONSES TO UNFAIR FOREIGN IMPORT RESTRICTIONS AND EXPORT SUBSIDIES.

This section revises and expands the authority of the President under section 252 of the Trade Expansion Act to respond to unreasonable or unjustifiable foreign trade restrictions or discriminatory or other acts which burden or restrict United States commerce.

1. Authority to Respond to Unfair Trade Practices

Subsection (a) authorizes the President to take action (retaliate) against any foreign country which (1) maintains unjustifiable or unreasonable tariff or other import restrictions (including variable levies) which impair trade commitments made to the United States or which burden, restrict, or discriminate against United States trade; (2) engages in unjustifiable or unreasonable discriminatory or other acts or policies, such as nontariff barriers, which directly or indirectly burden or restrict United States trade; or (3) subsidizes its exports to third countries which substantially reduce sales of competitive United States exports to such countries.

"Unjustifiable" refers to restrictions or policies which are illegal or inconsistent with international obligations such as the GATT. "Unreasonable" refers to restrictions or policies which are not necessarily illegal but which, for example, nullify or impair benefits within the meaning of GATT Article XXIII. The President shall make the judgment as to what constitutes an unjustifiable or unreasonable measure and no GATT determination is required.

The President is required to take all appropriate and feasible steps to obtain the elimination of such restrictions or subsidies. The President has discretionary authority to refrain from providing benefits of trade agreement concessions to the country. He also may impose duties or other import restrictions at any level and for such time as he deems appropriate, on a most-favored-nation basis or only on the products imported from one or more offending foreign countries.

This subsection makes a number of changes in existing law. First, it removes the distinction formerly contained in section 252(a)(3) of the Trade Expansion Act between agricultural and non-agricultural products, whereby the President had greater authority to retaliate against unjustifiable foreign import restrictions on agricultural products. The effect of this distinction in section 252 was to limit the President's authority to act against unfair practices on non-agricultural products to suspending, withdrawing, or preventing the application of trade agreements concessions. The new provision would enable the President to impose any type of import restriction against unfair foreign import restrictions or subsidies on any product.

Second, the subsection extends the President's retaliation authority to cases in which a foreign country provides subsidies or equivalent incentives in connection with its exports to third country markets which substantially reduce sales of competitive United States exports in those markets. This authority is not contained in section 252 of the Trade Expansion Act.

Third, the subsection (a) authorizes action against "unreasonable" restrictions or other policies to the same extent authorized against "unjustifiable" restrictions. Section 252 provided less authority to deal with unreasonable than with unjustifiable measures. In particular, section 252(c) required that the President, in taking action against "unreasonable" restrictions, have due regard for the international obligations of the United States.

While subsection (b) requires the President to consider the relationship to international obligations before he takes action under subsection (a), this requirement shall not constitute a limitation on the legal scope of the President's authority to take action in the national interest. However, it is intended that the President shall depart from international obligations only in rare cases where adequate international procedures for dealing with unjustifiable or unreasonable actions are not available.

Fourth, subsection (a) provides that the President may act on a most-favored-nation basis or otherwise. Although in most cases retaliation might be taken only against one or more offending countries such as contemplated by GATT Article XXIII, cases could arise in which it is appropriate to act on a most-favored-nation basis, such as under GATT Article XXVIII.

2. Hearings

Subsection (c) parallels in a simplified manner the substance of section 252(d) of the Trade Expansion Act. It requires the President to provide an opportunity for interested persons to bring to his attention any of the foreign restrictions, acts or policies referred to under subsection (a). However, the President may take action against foreign restrictions without awaiting these views.

CHAPTER 2.—ANTIDUMPING DUTIES

SEC. 310. AMENDMENTS TO THE ANTIDUMPING ACT OF 1921.

This section amends the Antidumping Act of 1921 with respect to time limits on dumping investigations and the withholding of appraisement, purchase price, and exporter's sales price. It also provides for public hearings on the record and judicial review of affirmative determinations by the Secretary of the Treasury and the Tariff Commission.

1. Time Limits

Subsection (a) amends section 201(b) of the Antidumping Act to provide that the Secretary of the Treasury or his delegate must within six months or, in more complicated investigations, within nine 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 value or constructed value of the merchandise.

If the Secretary's determination is affirmative, then under paragraph (2) of section 201(b), as amended, 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. 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 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 three 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). 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.

Paragraph (3) of section 201(b) also provides that if the Secretary determines that the circumstances are such that a determination cannot reasonably be made within nine months, he shall publish notice to that effect, and in such cases may take up to twelve months after the question of dumping was raised to reach a determination. These time limits are modeled after the limits presently set forth in the Antidumping Regulations issued by the Treasury Department.

2. Hearings

Subsection (b) incorporates a new provision in the Antidumping Act which requires the Secretary of the Treasury or the Tariff Commission to hold a hearing on the record prior to any determination under subsection (a). The transcript of the hearing plus all papers filed in connection with the investigation will constitute the exclusive record for determination and, with the exception of material treated as confidential or *in camera*, shall be available to all persons.

Paragraph (3) requires the Secretary and the Tariff Commission to include in the record and publish in the Federal Register their determinations, whether affirmative or negative, together with a statement of the bases for their findings and conclusions on all material issues presented on the record

3. Purchase Price

Subsection (c) makes three amendments to section 203 of the Antidumping Act, dealing with purchase price.

The first amendment deals with the treatment to be given export taxes in the computation of purchase price. Section 203 of the Antidumping Act, which defines purchase price and sets forth the adjustments to be made thereto, provides that any export tax imposed on the exported product must be *added to* the purchase price if it is not already included therein. Section 204, on the other hand, which defines exporter's sales price, provides that any export tax must be *subtracted from* exporter's sales price if it is included therein.

The "purchase price" treatment of an export tax is anomalous. An export tax increases the price of an exported product and, if not subtracted, would distort any dumping price comparison made between the export price and the home market price of a particular product. The distortion would artificially reduce or eliminate any dumping margins that might otherwise exist. The present treatment of export taxes under the exporter's sales price provision is proper and the proposed amendment would make the section on purchase price symmetrical with the section on exporter's sales price in this regard.

The second amendment deals with the treatment of certain types of tax rebates in computing purchase price. The amendment would conform the standard in the Antidumping Act to the standard under the countervailing duty law, thereby harmonizing tax treatment under the two statutes. With the amendment, no adjustment to the advantage of the foreign exporter would be permitted for indirect tax rebates unless the direct relationship of the tax to the product being exported, or components thereof, could be demonstrated.

The Treasury Department considers rebates or remissions of taxes not directly related to an exported product or its components as being bounties or grants within the meaning of the countervailing duty law. Under the Antidumping Act, Treasury is required in its calculation of purchase price to add back to the price at which merchandise is sold to the United States "the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller, *in respect to the manufacture, production, or sale of the merchandise*, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States." (Emphasis added.) The "adding back" of such taxes under the Antidumping Act would have the effect of reducing or eliminating any dumping margins that may exist. The language of the Antidumping Act "in respect to the manufacture, production or sale of the merchandise" is somewhat broader than the standard applied to tax rebates under the countervailing duty law (directly related to the exported products or its components) and could result in inconsistency of treatment of tax rebates under the two laws.

The third amendment would assure that imported merchandise benefitting from tax rebates which the Secretary has already determined to be a bounty or grant, and thus subject to countervailing duties would not be unfairly penalized by subjecting them to antidumping duties as well by reason of the same tax rebates.

4. Exporter's Sales Price

Subsection (c) also makes three amendments to section 204 of the Antidumping Act dealing with exporter's sales price.

The first amendment adds a fifth item to the list of those costs, expenses, or taxes which must be subtracted from the resale price in the United States to an unrelated purchaser in the computation of exporter's sales price. This amendment provides that whenever merchandise subject to an antidumping investigation or finding is imported by a person or corporation related to the exporter, i.e., an exporter's sales price situation, and the merchandise is changed by further process or manufacture so as to remove it from the class or kind of merchandise involved in the proceeding before it is sold to an unrelated purchaser, such merchandise will not escape the purview of the law, but appropriate adjustments for the value added will be made to arrive at an exporter's sales price. The amendment will codify existing Treasury Department regulations on the subject and eliminate any question concerning the scope or intent of the Act to reach such merchandise which has been further processed or manufactured.

The second and third amendments are identical to the amendments of section 203 of the Act concerning the treatment of certain tax rebates or remissions in the computation of purchase price, and would apply these same standards in the computation of exporter's sales price.

CHAPTER 3.—COUNTERVAILING DUTIES

SEC. 330. AMENDMENTS TO SECTION 303 OF THE TARIFF ACT OF 1930.

This section effects four major changes in the present countervailing duty statute:

(1) it provides for the application of countervailing duties to duty-free imports;

(2) it requires a determination of material injury by the Tariff Commission for the application of countervailing duties to duty-free imports, for so long as such a determination is required by international obligations;

(3) it provides that the Secretary of the Treasury must determine within one year if a bounty or grant is being paid or bestowed; and

(4) it provides discretionary authority for the Secretary to bar the application of countervailing duties in any particular case if he determines that such action would be detrimental to United States economic interests, or that existing quantitative limitations are an adequate substitute for the imposition of countervailing duties.

1. Application to Duty-Free Goods

Subsection 303(a)(1) as amended removes the restriction on the application of countervailing duties to dutiable merchandise only, thereby making the law applicable also to duty-free merchandise. Any articles entered or withdrawn from warehouse free of duty as a result of preferential treatment granted under Title IV shall be considered nondutiable for the purpose of imposing countervailing duties. Subsection (a)(2) provides that countervailing duties may be assessed on duty-free merchandise only if the Tariff Commission makes an affirmative determination of material injury concerning the merchandise pursuant to subsection (b)(1).

This injury requirement will apply only so long as such a determination is required by the international obligations of the United States, i.e., under the GATT. A principal reason why this requirement is being introduced is that the GATT requires an injury determination generally in countervailing duty cases but the United States prior countervailing duty law was in existence at the time GATT was created and the absence of an injury requirement falls under the "grandfather clause" of the Protocol of Provisional Application. The question of injury requirements in United States and other countervailing duty statutes is currently under consideration in the GATT. The purpose of this statutory provision is to comply with the technical requirements of the GATT without prejudicing the positions that the United States may finally take on this question.

2. Injury Determination

Subsection (b) provides that whenever the Secretary of the Treasury has determined that a bounty or grant is being paid or bestowed on duty-free merchandise, the Tariff Commission must conduct an investigation to determine whether a United States industry is being or is likely to be materially injured, or is prevented from being established, due to imports of such merchandise. Subsection (b) also requires the suspension of liquidation of all such articles on or after the 30th day after the date of publication in the Federal Register of the Secretary's determination that a bounty or grant is being paid or bestowed. If the decision of the Commission is in the affirmative, countervailing duties will be assessed; a negative determination would terminate the proceedings. This procedure closely parallels the procedures followed under the Antidumping Act with respect to the determination of injury.

3. Public Notices

Subsection (a)(4) codifies present practice under Treasury Department regulations by providing for the publication in the Federal Register of a notice of the initiation of a countervailing duty investigation whenever the Secretary concludes that a formal investigation is warranted. Subsection (a)(5) requires that all determinations by the Secretary and by the Tariff Commission under the law be published in the Federal Register, as under present practice.

4. Time Limitations

Subsection (a)(1) adds the requirement to existing law 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. Subsection (a)(4) provides that the 12-month time limit on the investigation by the Secretary will begin from the date the notice of the initiation of a countervailing duty investigation is published in the Federal Register.

Subsection (c) requires the application of countervailing duties on dutiable or duty-free merchandise on or after the 30th day after the date of publication in the Federal Register of the Secretary's determination that a bounty or grant is being paid or bestowed. In the case of duty-free merchandise, such duties will only be assessed following an affirmative injury determination by the Tariff Commission, but will be effective as of the date of suspension of liquidation, provided for in subsection (b).

Subsection (a)(3) makes no change in existing law which provides for a determination or estimate by the Secretary of the net amount of each bounty or grant. Subsection (a)(5) repeats the requirement under existing law that the Secretary make regulations necessary to identify articles and to assess and collect duties under section 303.

Subsection (c) provides that the amendments made by section 330(a) take effect on the date of the enactment of this Act, except that the last sentence of section 303(a)(1) (requiring that determination of the existence of a bounty or grant be made within 12 months after the question is presented) shall apply only to questions regarding bounties presented on or after such date of enactment.

5. Discretionary Authority

Subsection (d) provides that the imposition of countervailing duties shall not be required in any case where the Secretary determines, after seeking information and advice from other agencies, that the imposition of such duties would result or be likely to result in significant detriment to the economic interests of the United States, or that an existing quantitative limitation is an adequate substitute for the imposition of countervailing duties.

CHAPTER 4.—UNFAIR PRACTICES IN IMPORT TRADE

SEC. 350. AMENDMENTS TO SECTION 337 OF THE TARIFF ACT.

Under section 337 of the Tariff Act, the President has discretion to direct the issuance of an exclusion order against articles concerned in unfair methods of competition, on the basis of a Tariff Commission investigation and report that the statutory criteria have been met.

The major change made by this chapter is to limit section 337 to patent infringement. A companion statute will authorize the Federal Trade Commission to investigate and regulate other unfair methods of competition.

Under section 337, as amended by section 350 of this Act, the Tariff Commission will direct the issuance of exclusion orders in cases of patent infringement and the President will not make any determinations. However, in those cases in which the validity or enforceability of the complainant's patent is being litigated in the Federal Courts, the Commission will permit imports under bond, payable to the patentee, pending a final determination by the courts.

1. Patent Infringement Declared Unlawful

Subsection (a) provides that the importation of articles into the United States which infringe a United States patent is unlawful, and when such infringement is found by the Tariff Commission to exist, it shall be dealt with as provided under this section and any other provisions of law. This section no longer requires a showing of injury to, or prevention of the establishment of, an industry, nor does it require that the industry in question be economically and efficiently operated. Section 337(a) of the Tariff Act (19 U.S.C. 1337a), which is not amended, provides that the importation of a product made, produced, or processed under or by means of a process covered by the claims of a letters patent, shall have the same status for purposes of section 317 as the importation of a product which infringes a patent.

2. Investigations by the Commission and Exclusion Orders

Subsection (b) provides that the Commission is authorized to investigate any alleged violation on complaint under oath or upon its own initiative. The burden of establishing a *prima facie* showing of an alleged violation shall be on the complainant, or on the Commission if it investigates on its own initiative. Subsection (c) provides that whenever the Commission finds the existence of the violation described in subsection (a), it shall order that the articles concerned be excluded from entry into the United States and the Secretary of the Treasury shall enforce any such order.

3. Deferral to Courts on Patent Validity

Subsection (c) further provides that whenever patent validity is challenged by the respondent and a *bona fide* challenge to patent validity is either pending in a suit or the respondent files such a suit, or patent misuse is claimed by the respondent and a *bona fide* claim of misuse is pending in a court action and the court's decision would be dispositive of the issue, the Tariff Commission shall continue its proceedings on all other issues. If the Commission finds favorably to the patentee, it will issue an exclusion order conditional on the results of the court proceedings. In any such case, imports will be permitted under a bond, in favor of the patentee, in an amount appropriate to protect his asserted rights.

4. Termination of Exclusion Orders

Subsection (d) provides that any refusal of entry under this section shall continue until the patent expires or until the Commission (on its own motion or at the request of any interested party) finds that the continued exclusion is no longer necessary to prevent the unlawful method of competition. Thus, for example, if the infringer becomes a licensee of the domestic patentee, the parties could request the Commission to rescind the exclusion order.

5. Issuance of Temporary Exclusion Orders

Subsection (e) authorizes the Tariff Commission to issue temporary exclusion orders pending the completion of its full investigation if a *prima facie* showing of a violation has been established, and if immediate and substantial harm to the patentee would result if a temporary order were not issued. In such cases, however, imports will be permitted under a bond in favor of the patentee.

6. Public Hearings

Subsection (f) provides that public hearings shall be held in connection with investigations under this section and that a transcript shall be made.

7. Judicial Review

Subsection (g) authorizes any person adversely affected by an action of the Commission to secure judicial review in the United States Court of Customs and Patent Appeals. If the court decides to stay the issuance of an exclusion order, it shall provide for the imposition of a bond in favor of the patentee to protect his rights pending determination of the appeal.

8. Definitions

Subsection (h) provides, as under existing law, that the term "United States" includes all possessions of the United States except the Virgin Islands, American Samoa, and the Island of Guam.

TITLE IV.—INTERNATIONAL TRADE POLICY MANAGEMENT

The purpose of this title is to provide certain permanent authorities to the President which enable more flexible tools for the management of trade policy.

Section 401 grants explicit and more flexible authority than under existing legislation for the President to impose or liberalize restrictions on imports to deal with serious balance-of-payments problems.

Section 402 permits the United States to exercise fully its GATT rights and obligations. It provides the President authority at least as extensive as his authority under trade agreements, and authority to maintain trade agreement rates in the absence of a trade agreement.

Section 403 provides permanent authority for the President to negotiate and implement trade agreements of limited scope.

Section 404 provides permanent authority for the President to compensate foreign countries for increases in United States import restrictions.

Section 405 provides authority for the President to reduce import restrictions temporarily for the purpose of restraining inflation.

Section 406 requires the reservation of certain articles from reductions in duties or other import restrictions during the course of trade negotiations.

Section 407 requires the application of trade agreement concessions on a most-favored-nation basis unless a deviation is specifically authorized.

Section 408 provides authority for the President to terminate at any time actions to implement trade agreements.

Section 409 provides that all trade agreements are subject to termination or withdrawal at the end of a specific time period.

Section 410 provides for public hearings in connection with certain actions under this title.

Section 411 authorizes annual appropriations to the GATT.

SEC. 401. BALANCE OF PAYMENTS AUTHORITY.

Section 401 provides the President with explicit and more flexible authority than under existing legislation to impose one or more special import measures for a period he deems necessary to deal with the United States balance-of-payments position in specific situations:

(1) To impose a temporary import surcharge and/or temporary quantitative limitations on imports in the case of a serious United States balance-of-payments deficit, or to cooperate in correcting an international balance-of-payments disequilibrium.

(2) To reduce temporarily or suspend duties and/or import limitations or other restrictions in the case of a persistent balance-of-payments surplus.

The President may suspend, modify, or terminate, in whole or in part, any action under this section at any time, consistent with the provisions of the section.

1. Balance-of-Payments Deficit or International Disequilibrium

In the case of a serious United States balance-of-payments deficit, or with respect to cooperative efforts to correct an international balance-of-payments disequilibrium, subsection (a) authorizes the President to impose a temporary surcharge in the form of duties on any dutiable or duty-free articles, and/or to limit temporarily imports of such articles through the use of quotas. Quotas may be imposed if this type of measure is contemplated as a legitimate instrument to deal with balance-of-payments problems by international agreements to which the United States is a party. This section does not require approval of any kind of the use in a particular instance of these measures by the United States for balance-of-payments purposes.

United States cooperation in correcting a fundamental international balance-of-payments disequilibrium as reflected in payments positions of other countries is authorized when allowed or recommended by the IMF. Multilateral cooperation could include, for example, the implementation of joint actions to restrict imports from a country running large and consistent surpluses if that country refuses to take measures to ameliorate the payments disequilibrium.

The criteria under subsection (b) for the President determining that a serious balance-of-payments deficit exists for purposes of this section are a substantial deficit in the United States balance-of-payments over a period of four consecutive calendar quarters, or a serious decline in the United States net international monetary reserve position, or a significant alteration in the foreign exchange value of the dollar, and the expectation that one or more of these conditions would continue in the absence of corrective measures. A substantial balance-of-payments deficit will be based on an average of four consecutive calendar quarters. A serious decline in net international monetary reserves will be based on a worsening of the United States position in absolute terms. The use of this authority with respect to a significant change in the exchange rate of the dollar applies to situations in which a temporary surcharge might be a more appropriate measure than permitting an immediate depreciation in the exchange rate of the dollar. This provision is not intended, however, to provide authority to alter trends in foreign exchange rates.

Subsection (c) sets forth the principle that an import surcharge be applied on a most-favored-nation basis, and quotas be applied on a basis which shall aim at a distribution of trade approaching that which foreign countries might expect in the absence of quotas. However, the President may act inconsistently with these principles if necessary to achieve the objectives under this section. In determining what action to take, the President must consider the relationship of such actions to United States international obligations.

Subsection (d) provides that actions taken under this balance-of-payments provision must be applied uniformly to a broad range of imported products. However, the President may exempt certain articles or groups of articles because of the needs of the United States economy relating to such factors as the unavailability of domestic supply at reasonable prices and the necessary importation of raw materials. This authority would permit the nonapplication of an import surcharge to duty-free imports, for example. The authority to implement import restricting measures or to exempt particular products from such measures cannot be used for the purpose of protecting individual domestic industries from import competition.

Subsection (e) provides that if the President exercises his authority to impose quotas, imports of the articles cannot be limited to a level less than the quantity or value imported during the most recent period which the President determines to be representative. Since the quotas are for balance-of-payments purposes and not designed to alter trends in the growth of imports of particular products, any increase since the end of the representative period in the domestic consumption of the articles and of like or similar articles must also be taken into account.

2. Balance-of-Payments Surplus

The criteria for the President determining that a persistent balance-of-payments surplus exists for purposes of this section are a substantial surplus in the balance-of-payments over four consecutive calendar quarters, large increases in United States international monetary reserves in excess of needed levels, or significant appreciation in the exchange value of the dollar, and the expectation that one or more of these conditions will continue in the absence of corrective measures.

As in the case of a balance-of-payments deficit, a substantial surplus will be determined on the basis of an average of four consecutive calendar quarters. Large increases in monetary reserves will be measured in absolute terms. Significant appreciation in the exchange rate of the dollar applies to those situations where the exercise of the authority to reduce or suspend tariffs or other import restrictions would be preferable to an increase in the value of the dollar which might otherwise be required. It would not be used to oppose long term trends in foreign exchange markets.

In the case of a persistent balance-of-payments surplus, subsection (a) authorizes the President to reduce or suspend temporarily tariffs or other import restrictions. Subsection (f) stipulates that such actions must be applied on a most-favored-nation basis. However, the President shall not apply this authority to any product where he determines such action would cause or contribute to material injury to domestic firms or workers, impair the national security, or be otherwise contrary to the national interest.

SEC. 402. WITHDRAWAL OF CONCESSIONS AND SIMILAR ADJUSTMENTS.

The primary purpose of section 402 is to permit the United States to exercise fully its rights and obligations under the GATT and other trade agreements, and to make the President's domestic authority at least as extensive as his authority under trade agreements. This section provides the President authority to withdraw, suspend, or terminate concessions pursuant to United States rights under trade agreements and, equally important, the authority to maintain trade agreement concession rates in the absence of a trade agreement. This authority enables the President to exercise the same rights as other countries have with respect to trade agreements, thereby providing additional flexibility and leverage in international negotiations.

1. Withdrawal, Suspension, or Termination of Concessions

Subsection (a) authorizes the President to give domestic legal effect to the withdrawal or suspension of concessions to any foreign country or to the termination of a trade agreement, in order to exercise United States rights or obligations under trade agreements. For this purpose the President may increase duties or other import restrictions, impose additional restrictions, or take other actions to withdraw, suspend, or terminate, in whole or in part, the application of the trade agreement to the extent and for such time as necessary or appropriate. These actions may be applied on other than a most-favored-nation basis only to the extent such action is not inconsistent with United States international obligations.

As provided under subsection (c), however, the President may not increase a duty to a rate more than 50 percent ad valorem (or ad valorem equivalent) or more than 50 percent above the Column 2 rate, whichever is greater. For example, the trade agreement rate of duty currently applied to automobiles is 3 percent and the Column 2 rate is 10 percent. If the United States withdrew its obligations to apply the 3 percent rate, the President could increase the rate to any level up to 50 percent ad valorem.

If, for example, the United States withdraws a tariff concession made to a particular country under GATT Article XXVIII, the President could effect a corresponding increase in a limited States rate of duty. This authority might also be used in cases where the United States is owed compensatory tariff reductions as a result of a foreign country imposing import restrictions on United States goods for valid

95-146 O - 73 - 7

reasons, e.g., balance-of-payments needs (Article XII), to remedy domestic injury (Article XIX), or under its renegotiation rights (Article XXVIII). If this compensation is not forthcoming or is judged inadequate, the President is authorized to increase duties or other import restrictions to restrike the balance of concessions.

2. Maintaining Rates After Termination of a Trade Agreement

Subsection (b) provides the President authority to maintain existing levels of duties or other import restrictions even after a trade agreement is terminated. The issue of maintaining existing rates when a trade agreement is terminated became a potential problem, for example, in the case of tariffs on petroleum when Venezuela announced its intention to terminate its bilateral trade agreement with the United States. Had this happened, the tariff to be applied arguably could have been the much higher, pre-agreement rate. Existing domestic law (section 251 of the Trade Expansion Act) would have required this rate to be applied on a most-favored-nation basis. In that type of situation, administrative control over United States tariff rates could be lost, with foreign actions potentially determining United States rates of duty.

SEC. 403. RENEGOTIATION OF DUTIES.

The section provides permanent authority to negotiate and implement supplemental trade agreements with foreign countries of a limited scope for the purpose of making adjustments to deal with changed circumstances while maintaining an overall balance of concessions under existing agreements. The authority permits the President to negotiate agreements of a limited nature even after expiration of his basic negotiating authority provided under section 101.

Subsection (a) provides the President authority to enter into agreements with foreign countries at any time to modify or continue any existing duty, to continue existing duty-free or excise treatment, or to impose additional duties. This authority could be used to eliminate tariff discrepancies and anomalies that exist on certain products with Canada, for example.

Under subsection (b) duty reductions or the continuation of duty-free treatment under such agreements cannot affect more than two percent of the total value of United States imports during the most recent twelve-month period. Moreover, the same articles cannot be subjected to a second agreement under this section within a five-year period. The subsection envisions the staged implementation of duty reductions, for example, over a five-year period, if appropriate.

Subsection (c) limits duty reductions under this authority to a cut of 20 percent from existing duty levels. (Authority for duty reductions granted as compensation for increases in United States import restrictions is contained in section 404.) Subsection (c) also sets a ceiling on duty increases under this authority to not more than 50 percent above the Column 2 rate or 50 percent ad valorem, whichever is greater.

SEC. 404. COMPENSATION AUTHORITY.

The purpose of this section is to provide the President with permanent authority to compensate foreign countries for increases in United States tariffs or other import restrictions, in order to maintain the level of reciprocal and mutually advantageous concessions. Domestic authority to reduce duties for purposes of compensation under section 201 of the Trade Expansion Act expired on June 30, 1967.

Section 404 requires the President to afford an opportunity, to the extent required by international obligations, for foreign countries affected by import restrictions imposed by the United States to consult with the United States with respect to concessions as compensation. This provision confirms the President's existing authority. This section also grants the President discretionary authority to enter agreements with such countries to grant new concessions in the form of modification or continuation of any duty or continuation of existing duty-free or excise treatment to the extent he determines necessary or appropriate to maintain a general level of reciprocal and mutually advantageous concessions.

Subsection (c) limits duty reductions to not more than 50 percent below the existing rate. This limitation does not apply to duties of 5 percent ad valorem (or ad valorem equivalent) or below. The President could stage such duty reductions if appropriate.

The principal use of this authority is likely to be in cases where the President has provided import relief pursuant to section 203. In such cases, the United States is required by GATT Article XIX to consult with foreign countries having an interest as exporters of the products concerned. If a satisfactory arrangement is not made, i.e., if compensation is not forthcoming, countries adversely affected have the right under GATT to restrike the balance of concessions by increasing or imposing equivalent new barriers on United States exports. If, on the other hand, the President can offer corresponding or offsetting tariff reductions on other articles, the balance of concessions can be restored without damaging United States exports.

This authority is also required for actions taken pursuant to section 402, for example, if the United States unilaterally withdraws tariff concessions under GATT Article XXVIII. The authority could also be used in cases where the President has retaliated on a most-favored-nation basis against unfair trade practices under section 301 and compensation is owed to those countries which have suffered the incidental effects of retaliation aimed at a single country.

This compensation authority may also be used in connection with actions taken under section 403 to increase United States tariffs or other import restrictions. One example would be where the United States and another country agreed that some United States tariffs would be lowered and others raised (as part of a package in which that country makes reciprocal concessions or rate increases), third countries adversely affected by the duty increases would have a right to demand compensation and, in lieu thereof, to retaliate against United States exports.

SEC. 405. AUTHORITY TO SUSPEND IMPORT BARRIERS TO RESTRAIN INFLATION.

Section 405 provides the President authority to temporarily reduce import barriers as a means to restrain inflation.

1. President's Authority

Subsection (a) authorizes the President, during a period of sustained or rapid price increases, to reduce or suspend duties and increase the level of imports which may enter under other import restrictions on any article or group of articles on a temporary basis, if he determines that supplies of such articles are inadequate to meet domestic demand at reasonable prices. There is no limitation on the amount of the decrease in duty or increase in quota levels which the President may auhorize. Subsection (c) provides that the President may modify or terminate, in whole or in part, any action taken under subsection (a), to the extent consistent with the purposes and limitations of this section.

Subsection (d) requires the President within 30 days of the taking of any action under this section to notify both Houses of Congress of the nature and reason for such action.

2. Limitations on Authority

Subsection (b) stipulates that the President shall not exercise the judgment, such action would cause or contribute to material injury to firms or workers in any domestic industry, impair the national security, or otherwise be contrary to the national interest.

Subsection (b) further provides that actions taken under subsection (a) shall not affect more than 30 percent of the estimated total value of United States imports of all articles during the time the actions are in effect. Subsection (e) limits the duration of any action taken under this section to one year, unless a longer period is specifically authorized by law.

SEC. 406. RESERVATION OF ARTICLES FOR NATIONAL SECURITY OR OTHER REASONS.

Subsection 406(a) directs the President to exclude any article from any action under this Act which would involve the reduction or elimination of any duty or other import restriction if he determines such action would threaten to impair the national security. This subsection parallels section 232(a) of the Trade Expansion Act which authorizes the President to exclude for reasons of national security any articles from actions taken pursuant to section 201(a) of the Trade Expansion Act or section 350 of the Tariff Act of 1930. Section 232 of the Trade Expansion Act is not repealed by this Act.

Subsection (b) requires the President to reserve any article from negotiations or actions contemplating the reduction or elimination of a duty or other import restriction under Title I or under sections 403, 404, and 405 on which there is in effect any import relief measures under section 203 of this Act or section 351 of the Trade Expansion Act, or any national security action under section 232 of the Trade Expansion Act. This portion of subsection (b) is identical to section 225(a) of the Trade Expansion Act, except that the principles apply to actions under Title IV as well as to five-year trade agreements authority.

Subsection (b) also permits the President, as under section 225(c) of the Trade Expansion Act, to reserve any other article from such negotiations under Title I and IV as he determines appropriate. In making such determinations the President shall take into consideration the information and advice provided by the Tariff Commission under section 111(b) where available, advice from Departments under section 112, and the summary of public hearings provided under section 113.

SEC. 407. MOST-FAVORED-NATION PRINCIPLE.

This section is identical in substance to section 251 of the Trade Expansion Act. Except as otherwise provided in this or any other Act, any duty or other import restriction or duty-free treatment applied in carrying out any action or trade agreement under this or previous Acts shall be applied to direct or indirect imports from all foreign countries. However, certain sections in this Act and prior Acts permit deviations from the most-favored-nation principle. For example, certain nontariff barrier agreements authorized under section 103 could apply only to signatories, and generalized tariff preferences granted under Title VI apply only to beneficiary developing countries.

SEC. 408. AUTHORITY TO TERMINATE ACTIONS.

This section authorizes the President to terminate at any time, in whole or in part, any actions taken to implement trade agreements under this or prior Acts. This is identical in substance to prior authorities contained in section 255(b) of the Trade Expansion Act and section 350(a)(6) of the Tariff Act, which are repealed by this Act. These provisions authorize the President to terminate, in whole or in part, any proclamation made to carry out a trade agreement under those Acts. These termination authorities include the lesser authorities to terminate for a limited period of time, i.e., to suspend and to terminate in part in order to restore, in whole or in part, import treatment existing prior to the implementation of trade agreements.

For example, if trade agreements reduced a tariff rate from the statutory rate of 20 percent to 10 percent, the termination or suspension of the lower rate would put into effect any rate provided by the President above 10 percent, but not exceeding 20 percent ad valorem. Similarly, if trade agreements had increased a rate, the suspension would result in a new rate being established by the President which would not be lower than a rate previously in effect.

SEC. 409. PERIOD OF TRADE AGREEMENTS.

This section is identical in substance to section 255(a) of the Trade Expansion Act. It provides that every trade agreement entered into under Title I and IV shall be subject to termination or withdrawal, upon due notice, at the end of a period specified in the agreement. This period cannot be more than three years from the date on which the agreement becomes effective for the United States. If the agreement is not terminated or withdrawn from at the end of the specified period, it shall be subject to termination or withdrawal thereafter upon not more than six months' notice.

SEC. 410. PUBLIC HEARINGS IN CONNECTION WITH AGREEMENTS UNDER TITLE IV.

Section 410 requires the President to provide for a public hearing prior to the conclusion of any agreement or modification of any duty or other import restriction under section 403 ("Renegotiation of Import Restrictions") or section 404 ("Compensation Authority"). Public hearings shall also be held after the President takes any action under section 402 ("Withdrawal of Concessions and Similar Adjustments") or section 408 ("Authority to Terminate Actions") if requested within 90 days after the action.

Section 113 provides for public hearings in connection with trade agreements under Title I of this Act.

SEC. 411. AUTHORIZATION FOR GATT APPROPRIATIONS.

Section 411 authorizes annual appropriations to finance the United States contribution to the budget of the GATT. This contribution is presently financed from the appropriation made to the Department of State entitled "International Conferences and Contingencies."

TITLE V.—TRADE RELATIONS WITH COUNTRIES NOT ENJOYING MOST-FAVORED-NATION TARIFF TREATMENT

The purpose of this title is to authorize the President to enter into bilateral commercial arrangements to extend most-favored-nation treatment to imports from countries which are currently subject to Column 2 rates of duty. The President may also extend most-favored-nation treatment to countries which become a party to a multilateral agreement to which the United States is also a party, for example, the GATT. The implementation of such agreements or orders is subject to a Congressional veto procedure.

The bilateral agreements must be limited to an initial period of not more than three years, and may be renewable for additional periods, each not to exceed three years. The President may at any time suspend or withdraw, in whole or in part, the application of most-favored-nation treatment. This title also contains a provision designed to protect domestic industries from market disruption caused by increased imports from a country which receives most-favored-nation treatment under this title. The President may apply import relief measures outlined in section 203 to the imports from the country causing injury without taking action on imports from other countries.

In addition, section 706 of this Act repeals the embargo contained in the Trade Agreements Extension Act of 1951 on seven furs and skins the product of the Soviet Union or the People's Republic of China. The Johnson Debt Default Act, which is described under section 507, is also repealed.

SEC. 501. EXCEPTION OF THE PRODUCTS OF CERTAIN COUNTRIES OR AREAS.

This section replaces section 231 of the Trade Expansion Act. Subsection (a) stipulates that except as otherwise provided in this title, the President shall continue to deny most-favored-nation treatment to products imported from any country or area which are subject to Column 2 rates of duty on the date of enactment of this Act. Headnote 3(e), in conformity with section 231 of the Trade Expansion Act, lists the countries to which Column 2 rather than most-favored-nation rates of duty apply.[1] Subsection (b) authorizes the President to withdraw most-favored-nation treatment from any country when he deems it necessary for national security reasons.

SEC. 502. AUTHORITY TO ENTER INTO COMMERCIAL AGREEMENTS.

Subsection (a) authorizies the President to enter into bilateral commercial agreements which would provide most-favored-nation treat-

---

[1] Albania, Bulgaria, the People's Republic of China, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, Indochina (any part of Cambodia, Laos, or Vietnam under Communist control or domination), North Korea, Kurile Islands, Latvia, Lithuania, Outer Mongolia, Rumania, Southern Sakhalin, Tanna Tuva, Tibet, and the USSR.

ment to imports from countries which currently receive Column 2 rates of duty, provided such agreements will promote the purposes of this Act and are in the national interest. This provision also applies to agreements which have already been entered into, such as the agreement with the Soviet Union signed in October 1972.

As provided under subsection (c), the President is authorized to implement a bilateral commercial agreement, or an order referred to in section 504(a) only if the majority of the authorized membership of neither House of Congress adopts a resolution stating their disapproval of the agreement within 90 days after the President delivers a copy of the agreement or order to the Congress.

Subsection (b) enumerates three provisions which the President is required to include in a bilateral commercial agreement under this title. A bilateral agreement must be limited to an initial period of not more than three years. It must also be subject to suspension or termination at any time for national security reasons, or not limit the right to take actions to protect security interests. An agreement must also provide for consultations to review the operation of the agreement and other relevant matters.

The agreement may be renewed for additional periods, each not to exceed three years, if there has been a satisfactory balance of trade concessions maintained, and if the President determines that any actual or foreseeable trade agreement concessions by the United States resulting from multilateral negotiations are satisfactorily reciprocated by the other party to the agreement.

SEC. 503. ADDITIONAL PROVISIONS.

This section lists five provisions which might be included in a bilateral commercial agreement under this title. The list is illustrative, however, and does not inhibit the President's discretion to include these or any other commercial arrangements. However, the provisions shall not be deemed to affect existing domestic legislation. Inclusion of a provision listed in this section does not constitute separate domestic authority for any action. Although most of these provisions are contained in the trade agreement with the Soviet Union, they would not necessarily be included in agreements negotiated with other countries.

The bilateral agreements may include arrangements to safeguard against domestic market disruption, to protect United States industrial rights and processes, trademarks, and copyrights, and to settle commercial disputes, such as the provision in the agreement with the Soviet Union for third country arbitration. The agreements may also provide arrangements to promote trade, for example, by establishing trade and tourist promotion offices, the sending of trade missions, and facilitating activities of commercial representatives.

SEC. 504. EXTENSION OF MOST-FAVORED-NATION TREATMENT.

Subsection (a) authorizes the President to extend most-favored-nation treatment to imports from any country which has entered into a bilateral commercial agreement which has entered into force under section 502. The President may also issue an order extending most-favored-nation treatment to a country which has become a party to an appropriate multilateral trade agreement to which the United States is also a party, such as the GATT, subject to the Congressional veto procedure under section 502(c). The application of most-favored-nation treatment shall be limited, however, to the duration of the bilateral agreement or to the period both countries are a party to a multilateral agreement.

Subsection (b) authorizes the President at any time to suspend or withdraw the application of most-favored-nation treatment extended under subsection (a), thereby restoring the applicable Column 2 rate of duty on all products imported from the country.

SEC. 505. MARKET DISRUPTION.

The purpose of this section is to provide more easily satisfied criteria for determining whether injury to a domestic industry has occurred due to imports from countries which are granted most-favored-nation treatment under this title.

The section provides for a Tariff Commission investigation when a petition is filed or otherwise initiated under section 201 with respect to imports from countries which receive most-favored-nation treatment under this title. The Tariff Commission shall determine whether imports of the article from the country receiving most-favored-nation treatment are causing or are likely to cause material injury to a domestic industry producing like or directly competitive articles, and whether market disruption as defined in section 201(f)(3) exists with respect to these imports.

An affirmative finding by the Tariff Commission shall be treated as an affirmative determination under section 201(b) for purposes of providing import relief under section 203. However, the President may adjust by means of tariff increases or quotas the imports from the country in question without taking action on imports from other sources.

SEC. 506. EFFECTS ON OTHER LAWS.

This section requires that the provisions and actions taken under this title be reflected periodically in general headnote 3(e) to the Tariff Schedules of the United States.

It should be noted that section 706 repeals the prohibition against imports of seven furs and skins which are products of the Soviet Union or the People's Republic of China. Section 706 also repeals the Johnson Act which prohibits individuals, private corporations, associations, or partnerships from extending loans or purchasing or selling securities to foreign countries which are in default in the payment of their obligations to the United States. Congress amended the Act in 1945 to exempt from its provisions any nation which is a member of the "World Bank" and the International Monetary Fund. In practice the Johnson Act applies to the Soviet Union and all East European countries except Yugoslavia, which is a member of the IMF and the "World Bank," and Bulgaria, which is not considered in default of its obligations under the Act.

TITLE VI.—GENERALIZED SYSTEM OF PREFERENCES

Title VI provides authority to the President for ten years to extend generalized tariff preferences to imports from developing countries.

The basic authority provides for duty-free treatment on articles determined eligible from beneficiary developing countries. Preferential treatment will not apply to imports of an article from a particular developing country if that country supplies 50 percent of the total value of United States imports or $25 million of the article to the United States during a representative period, unless the President determines that non-application of preferential treatment would not be in the national interest.

The authority applies specifically to semi-manufactures or manufacturers but selected other products may also receive preferential treatment. Articles will be determined eligible under the procedures applicable to the negotiation of a tariff concession, including public hearings and a Tariff Commission investigation to determine the anticipated impact on domestic producers. Preferences cannot be granted on articles which are or subsequently become subject to import relief measures or national security actions.

The President may modify, withdraw, suspend or limit preferential treatment at any time on any article or to any country, but he cannot establish an intermediate preferential duty between zero and the most-favored-nation rate. With respect to affirmative Tariff Commission findings of import injury on eligible articles, the President may terminate the preferential treatment without raising the most-favored-nation rate.

Preferences cannot be granted to countries which do not receive most-favored-nation treatment, or to any country which grants preferences to other developed countries ("reverse" preferences) unless the country provides satisfactory assurances that it will eliminate such preferences before January 1, 1976. The President is required to suspend or withdraw preferences from countries which fail to terminate reverse preferences by this date and from countries which cease to receive most-favored-nation treatment.

SEC. 601. PURPOSES.

Section 601 sets forth the purpose of this title, namely to promote the United States national interest by enabling the United States to participate with other developed countries in granting generalized tariff perferences on imports from developing countries. Tariff preferences would apply mainly to imports of semi-manufactured and manufactured products from developing countries. The purpose of the generalized system of tariff preferences is to encourage the economic development of developing countries through increased access to the markets of developed countries.

SEC. 602. AUTHORITY TO EXTEND PREFERENCES.

This section authorizes the President to provide duty-free treatment for any eligible article designated under section 603 imported from any developing country which qualifies as a beneficiary under section 604. This authority constitutes a specific exception to the most-favored-nation principle under section 407 of this Act.

In addition to the restrictions imposed by sections 603 and 604, the President is required before taking such action to have due regard for the purpose of this title outlined in section 601, the anticipated impact of tariff preferences on domestic producers of competitive products, and the extent to which other major developed countries are making a comparable effort to assist developing countries through generalized tariff preferences.

The granting of generalized non-discriminatory preferential treatment by developed countries to exports of developing countries is authorized under the GATT in the form of a waiver of the most-favored-nation provision in Article I, under the terms of Article XXV. The waiver recognizes that generalized preferences do not constitute an impediment to most-favored-nation tariff reductions, and notes the view of developed countries that generalized preferences are temporary in nature and do not constitute a binding commitment. The waiver includes arrangements for the notification and review of any generalized tariff preference schemes and consultation procedures if such preferences appear to unduly impair trade benefits under the GATT to any member.

SEC. 603. ELIGIBLE ARTICLES.

Section 603 outlines the procedures and criteria for determining products which may be eligible for duty-free preferential treatment under this title.

Subsection (a) requires that, prior to granting duty-free treatment under section 602 on any article, the President must publish and furnish to the Tariff Commission a list of articles which may be designated eligible articles for this purpose. The procedures specified in sections 111 through 114 must be followed prior to granting preferential treatment, including a Tariff Commission investigation to determine the anticipated effect on domestic industry, and public hearings. The list of articles under consideration for eligibility may be revised from time to time. It should be noted that the title itself does not contain a list of excepted articles or other restrictions on the application of preferences to specific articles, except as provided under subsection (c).

Subsection (b) requires that eligible articles be imported directly from a beneficiary developing country in order to qualify for duty-free entry. In addition, the sum of the cost or value of materials produced in a beneficiary developing country plus the direct costs of processing operations performed in a beneficiary developing country shall equal or exceed the percentage of the appraised value of the article at the time of its entry into the United States which the Secretary of the Treasury prescribes by regulation. The percentage shall be uniform for all products and all countries. The Secretary will also determine what constitutes "direct costs" of processing operations performed in a beneficiary developing country, including the treatment of executive compensation, and will establish regulations governing direct importation.

Subsection (c) prohibits the President from designating as eligible any article which is subject to any import relief measures under other Acts or section 203 of this Act, or which is subject to national security action under section 232 of the Trade Expansion Act. It further provides for the automatic withdrawal of preferential treatment on any article which subsequently becomes subject to import relief or national security actions under this or other Acts. The President may redesignate articles as eligible when such actions cease to apply.

Subsection (d) authorizes the President, in acting on an affirmative finding from the Tariff Commission of injury on an eligible article under section 201, to terminate the preference (restore the most-favored-nation rate of duty) to beneficiary developing countries, in lieu of any change in the most-favored-nation rate applied to non-beneficiary countries or any other import relief action permitted under section 203 in response to such a finding.

SEC. 604. BENEFICIARY DEVELOPING COUNTRY.

This section outlines criteria for determining which developing countries may be beneficiaries of duty-free preferential treatment on eligible articles.

Subsection (a) permits the President to designate any country a beneficiary developing country, except countries which are specifically ineligible under subsection (b). The President must take into account five considerations in making the designation: (1) the purpose of the title outlined in section 601; (2) whether the country has indicated its desire to be designated a beneficiary; (3) the level of economic development of the country; (4) whether other major developed countries are extending generalized tariff preferences to the country; and (5) whether the country has expropriated the property of United States nationals in violation of international law. No one of these considerations is individually controlling on the President.

Subsection (b) stipulates that no country which is not receiving most-favored-nation treatment can be designated a beneficiary of preferential treatment. It further provides that no country which grants tariff preferences on products of other developed countries may receive preferences unless the country provides satisfactory assurances to the President that it will eliminate these "reverse" preferences before January 1, 1976.

SEC. 605. LIMITATIONS ON PREFERENTIAL TREATMENT.

Subsection (a) provides the President authority to modify, withdraw, suspend, or limit at any time the application of preferential treatment on any product or with respect to any country. In taking such action, the President shall consider the factors outlined in section 602 and the criteria for designating beneficiary countries in section 604(a). The President cannot, however, establish an intermediate preferential rate of duty (between zero and the most-favored-nation rate) on any article.

Subsection (b) requires the President to withdraw or suspend preferential treatment from any country which ceases to receive most-favored-nation treatment, and from any country which has not or will not eliminate preferences granted to other developed countries before January 1, 1976.

Subsection (c) provides that duty-free preferential treatment shall not apply to a particular article from a particular beneficiary developing country if that country has supplied 50 percent of the total value or over $25 million of United States imports of the article on an annual basis over a representative period. The President is not required to withdraw or suspend preferential treatment under this subsection, however, if he determines such action would not be in the national interest. The specific criteria in this "competitive need" formula represent a maximum cutoff point which does not preclude the President from withdrawing or suspending preferential treatment in cases where a developing country supplies a smaller amount or percentage of

United States imports of the article The President may restore preferential treatment at a subsequent date under his basic authority to extend preferences provided in section 602.

This "competitive need" formula is designed to provide an express basis for the withdrawal or suspension of preferential treatment in those cases where it can no longer be justified on grounds of promoting the development of an industry in a particular developing country. This authority also enables the President to withhold the initial granting of preferential treatment to a particular developing country which has already demonstrated its competitiveness in a particular article. It is not intended that this authority be used as an additional import relief measure for individual domestic industries.

Subsection (d) provides that tariff preferences granted under this title will not affect duties on coffee imported into Puerto Rico imposed by the legislature of Puerto Rico under the authority of the Tariff Act of 1930, as amended.

SEC. 606. DEFINITIONS.

For the purposes of this title, "country" is defined to include dependent territories, areas (regions of countries not designated as such for purposes of the title), and associations of countries. It also includes an insular possession or trust territory of the United States. The President will determine which countries will be treated as "developed countries," taking into account their per capita gross national product, living standards, and other appropriate economic factors. "Major developed countries" are defined as OECD member countries which account for a significant percentage of world trade.

SEC. 607. EFFECTIVE PERIOD OF PREFERENCES.

Preferential treatment granted under this title must be terminated after ten years or after December 31, 1984, whichever is earlier, unless an extension is authorized by Congress.

TITLE VII.—GENERAL PROVISIONS

SEC. 701. AUTHORITIES.

Although the President has general authority to delegate functions under section 301 of Title 3, United States Code, subsection (a) makes clear the full power of the President to delegate his authority under this Act to the heads of appropriate agencies.

Subsection (b) is identical to section 401 of the Trade Expansion Act, except that it omits the reference to rates of compensation for expenses incurred by individuals. It provides authority to the head of any government agency to delegate any of his functions under this Act to the head of any other agency; to prescribe rules and regulations, and to procure temporary or intermittent services of experts, consultants, or organizations to the extent necessary to perform functions under this Act, subject to certain standard conditions.

SEC. 702. REPORTS.

This section revises section 402 of the Trade Expansion Act to correspond to the changes made in this Act.

Subsection (a) provides for an annual report to the Congress by the President on the trade agreements program and on import relief and adjustment assistance to workers. The report shall include, for example, information relating to new trade negotiations and changes made in duties, nontariff barriers and other distortions of trade; extension or withdrawal of most-favored-nation treatment; actions with respect to generalized tariff preferences on imports from developing countries; and measures taken to obtain the removal of foreign trade restrictions on United States exports, and their results.

Subsection (b) provides for a factual report by the Tariff Commission to the Congress on the operation of the trade agreements program at least once a year.

SEC. 703. TARIFF COMMISSION.

This section is identical to section 403 of the Trade Expansion Act.

Subsection (a) provides that the Tariff Commission may conduct preliminary investigations, determine the scope and manner of its proceedings, and consolidate its proceedings.

Subsection (b) provides that, in performing functions under this Act, the Tariff Commission may exercise any authority granted to it under any other Act.

Subsection (c) provides that the Tariff Commission shall keep informed at all times concerning the operation and effect of provisions relating to duties or other import restrictions of the United States contained in trade agreements.

SEC. 704. SEPARABILITY.

Section 704 is identical to section 404 of the Trade Expansion Act. It is a standard separability provision designed to insure that the invalidity of any one provision of this Act will not affect the validity of the remainder the Act.

SEC. 705. DEFINITIONS.

This section defines a number of terms used in this Act and is identical in substance with section 405 and paragraphs (6) and (7) of section 256 of the Trade Expansion Act.

Paragraph (1) provides that the term "agency" includes any United States agency, department, board, instrumentality, commission, or establishment, or any corporation wholly or partly owned by the United States.

Paragraph (a) defines the term "duty" to include the rate and form of any import duty, including tariff rate quotas. Where the modification of a rate of duty requires the subdivision of an existing classification, such subdivision is to be regarded as part of the act of modification.

Paragraph (3) defines the term "other import restriction" to include a limitation, prohibition, charge, or exaction other than a duty, imposed on importation or imposed for the regulation of imports.

Paragraph (4) provides that the term "firm" includes virtually any kind of legal entity, such as individual proprietorships, partnerships, and joint ventures. This definition is concerned with the legal form of "firm" and does not relate to the kind of activity in which the firm may be engaged.

Paragraph (5), which is based on section 405(4) of the Trade Expansion Act, defines the phrase "directly competitive with," for purposes of articles which are subject to a petition for import relief or adjustment assistance. The definition encompasses articles competitive at an earlier or later stage of processing as well as like articles in the same stage of processing. An unprocessed article will be regarded as an article at an earlier stage of processing. The term "earlier or later stage of processing" contemplates that the article will remain substantially the same during various stages of processing and not be wholly transformed into a different article.

Paragraph (6) provides that a product of a country or area is an article which is the growth, produce, or manufacture of such country.

Paragraph (7) makes clear that the term "modification," as applied to any duty or other import restriction, includes its elimination.

Paragraph (8) defines the term "existing" without the specification of any date, when used with respect to matters relating to entering into or carrying out trade agreements or other actions authorized by this Act, as existing on the day on which such trade agreement is entered into or such action is taken. When referring to a rate of duty, the term refers to the nonpreferential rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing in Column 1 of the Tariff Schedules of the United States on such day.

Paragraph (9) defines the term "ad valorem equivalent" as meaning the ad valorem equivalent of a specific rate, or the ad valorem equivalent of the specific rate plus the ad valorem rate in the case of combined rates. The ad valorem equivalent will be determined by the President on the basis of the value of imports of the article during a representative period. In determining the value of imports, the President shall utilize the standards of valuation under sections 402 and 402a of the Tariff Act of 1930 applicable to the article during the representative period.

SEC. 706. RELATION TO OTHER LAWS.

Subsection (a) amends the second and third sentences of section 2(a) of the Act to amend the Tariff Act of 1930 (the 1934 trade agreements legislation) to continue in effect the relation of trade agreements to section 336 of the Tariff Act of 1930 (equalization of costs of production) and to the third paragraph of section 311 of that Act (relating to flour manufactured from imported wheat in a bonded manufacturing warehouse).

Subsection (b) is designed to insure the uninterrupted operation under section 501(a) of this Act of any action taken by the President under section 231 of the Trade Expansion Act.

Subsection (c) amends section 242 of the Trade Expansion Act (Interagency Trade Organization) by changing the references to various sections of that Act to the corresponding sections of this Act.

The following sections of the Trade Expansion Act are repealed by subsection (d):

Section 202 (Low-Rate Articles), which is no longer necessary;

Sections 211, 212, and 213 (Special Provisions Concerning the European Economic Community) which are no longer necessary;

Sections 221, 222, 223, and 224 (Requirements Concerning Negotiations) which are replaced by chapter 2 of title I of this Act;

Section 225 (Reservation of Articles from Negotiations), which has been replaced by section 406 of this Act;

Section 226 (Transmission of Agreements to Congress), which has been replaced by section 122 of this Act;
Section 231 (Products of Communist Countries or Areas), which has been replaced by section 501 of this Act;
Section 252 (Foreign Import Restrictions), which has been replaced by section 301 of this Act;
Section 253 (Staging Requirements), which has been replaced by section 102 of this Act;
Section 254 (Rounding Authority), which has been replaced by section 102(c) of this Act;
Section 255 (Termination), which has been replaced by sections 408 and 409 of this Act.
Section 256(1), (2), and (3) (Definitions), which have been eliminated as being unnecessary;
Sections 301 and 302 (Tariff Commission Investigations and Reports and Presidential Action Thereafter), which have been replaced by sections 201 and 202 of this Act;
Sections 311 through 338 (Adjustment Assistance for Firms and Workers), which have been replaced by sections 221 through 245 of this Act with respect to workers;
Section 361 (Adjustment Assistance Advisory Board) which has been eliminated as being unnecessary;
Section 401 (Authorities) which has been replaced by section 701 of this Act;
Section 402 (Reports) which has been replaced by section 702 of this Act;
Section 403 (Tariff Commission) which has been replaced by section 703 of this Act;
Section 404 (Separability) which has been replaced by section 704 of this Act;
Section 405(1), (3), (4), and (5) (Definitions) which have been eliminated as being unnecessary.

Subsection (e) insures that references in other laws (except the Trade Expansion Act of 1962 and the Trade Agreements Extension Act of 1951) to section 350 of the Tariff Act of 1930 and to agreements and proclamations thereunder, will also refer to this Act, unless clearly precluded by the context.

Subsection (f) repeals the prohibition against imports of seven furs and skins, the products of the Soviet Union or the Peoples Republic of China.

Subsection (g) repeals the Johnson Debt Default Act which prohibits private persons from making loans to countries which are in default in the payment of their obligations to the United States.

Subsection (h) repeals section 350(a)(6) of the Tariff Act of 1930, the termination provision replaced by section 408 of the Act.

SEC. 707. CONSEQUENTIAL CHANGES IN THE TARIFF SCHEDULES.

This section expressly recognizes the desirability of embodying in the Tariff Schedules of the United States the substance of relevant provisions of this Act and of other Acts affecting import treatment and actions taken thereunder so that the Tariff Schedules will reflect and be consistent with current law and actions thereunder. For example, the provision could be made for the inclusion of new parts to the Appendix to the Tariff Schedules to embody temporary duty modifications or increases resulting from actions taken under section 405 (suspension of import barriers to restrain inflation) or section 401 (balance of payments authority), as well as for reflection of the tariff preferences for developing countries.

SEC. 708. SIMPLIFICATION AND MODIFICATION OF THE TARIFF SCHEDULES.

This section provides the President limited authority to modify or amend the Tariff Schedules of the United States, upon recommendations of the Tariff Commission, for the purpose of simplifying or clarifying the Tariff Schedules.

Modifications or amendments may include the establishment of new classifications, the abolition of existing classifications, or the transfer of particular articles from one classification to another. No such action, however, may result in any modification of any rate of duty or other import restriction by more than one percent ad valorem (or ad valorem equivalent) unless annual imports of the article involved did not exceed $10,000 in each of the immediately preceding ten years.

The President may put in effect such limited tariff modifications even in the absence of a recommendation if he determines that such action will contribute to the simplification or clarification of the Tariff Schedules. However, this authority cannot be used to adopt a revised tariff nomenclature in place of the Tariff Schedules.

Before making recommendations to the President the Tariff Commission shall publish in the Federal Register a notice of any proposed modification of the Tariff Schedules and shall provide an opportunity for interested parties to present their views to the Commission.

The Tariff Commission shall keep the effect of modifications under observation for a period of five years. The Commission shall report to the President any substantial increase in the imports of such articles. If the President determines that his action resulted in a substantial increase in imports which has resulted or is likely to result in injury to the domestic industry producing a like or directly competitive article, he shall terminate the modification of the duty or other import restriction. The President may also at any time terminate, in whole or in part, any action taken under this section.

SUMMARY OF TREASURY RECOMMENDATIONS ON CHANGES IN THE TAXATION OF FOREIGN SOURCE INCOME

THE DEPARTMENT OF THE TREASURY,
Washington, D.C., April 10, 1973.

The Treasury recommends the following modifications in the rules relating to the taxation of foreign income:

(1) United States shareholders would be taxed on future undistributed earnings of a controlled foreign corporation engaged in manufacturing or processing activities where the corporation makes new or additional investment and is allowed a foreign "tax holiday" or similar tax incentive with respect to such investment.

(2) United States shareholders would be taxed on the future undistributed earnings of a controlled foreign corporation where the corporation makes new or additional foreign investment in the manufacturing or processing of products exported to the United States market, if the income from such investment is subject to foreign corporate tax significantly lower than in the United States.

(3) Where a United States taxpayer has deducted foreign losses against United States income, such losses would be taken into account to reduce the amount of foreign tax credit claimed by such taxpayer on foreign earnings in later years.

EXPLANATION OF TREASURY RECOMMENDATIONS ON CHANGES IN THE TAXATION OF FOREIGN SOURCE INCOME

Table of Contents:

I. EXPLANATION OF TAX HOLIDAY PROPOSAL

1. BACKGROUND

Under existing law, the income of foreign corporations operating abroad is generally not subject to current United States taxation, regardless of whether the stockholders of the corporation are U.S. or foreign. The Subpart F provisions of the Internal Revenue Code, adopted by the Congress in 1962, represent an exception to this general rule in the case of certain tax haven activities conducted by corporations controlled by U.S. stockholders. The great bulk of United States investment abroad in manufacturing and processing facilities is located in countries which impose substantial corporate income taxes.

95-146 O - 73 - 8

Investment decisions in such cases are made on the basis of general business considerations in which tax burdens are a largely neutral factor. However, there has been an increasing tendency by both developed and developing countries to deviate from their normal corporate tax structures by offering tax related incentives, such as holidays from taxation, to attract foreign investment. This has led in some significant cases to United States companies making investments in manufacturing facilities abroad in order to obtain special tax benefits. These tax incentives are an unwarranted and undesirable use of income tax structures and create a distortion in the application of our existing tax rules with respect to foreign source income.

2. BASIC PROPOSAL

United States shareholders would be taxed on future undistributed earnings of a controlled foreign corporation engaged in manufacturing or processing activities where the corporation makes new or additional investment and is allowed a foreign "tax holiday" or similar tax incentive with respect to such investment.

3. DETAILED DESCRIPTION

A. *Taxation of United States Shareholders.*—It is proposed that a new section 951(a)(1)(C) be added to the Internal Revenue Code to provide that the United States shareholders, as defined in section 951(b), of a controlled foreign corporation engaged in manufacturing or processing abroad be taxed currently on their pro rata share of the earnings of such corporation if it is allowed a foreign tax investment incentive (i.e., the earnings of such a corporation would be deemed to be distributed currently to its shareholders). These provisions would operate independently of the exceptions to Subpart F. Once the income of a foreign corporation is subject to current taxation, its income would continue to be taxed currently thereafter, whether to the same shareholders or to new shareholders and whether or not the foreign tax incentive continues to apply.

B. *Manufacturing and Processing.*—A new section would be added to the Code to define a corporation engaged in manufacturing and processing abroad. The new rules would apply to a controlled foreign corporation engaged in manufacturing or processing (including refining) outside of the United States, provided that more than 10 percent of the unadjusted basis of the corporation's assets are used in manufacturing and processing operations.

C. *Existing Foreign Investment.*—In the case of an existing facility, current taxation would not occur unless or until the investment made after the effective date and during a period when the applicable foreign tax incentives are still in effect exceeds 20 percent of the unadjusted basis of existing manufacturing assets. It would make no difference whether the investment was funded from new capital or reinvested earnings. This rule provides a margin for normal modernization and replacement of existing facilities.

D. *Foreign Branches of Controlled Foreign Corporations.*—For purposes of applying these rules, a branch of a foreign corporation located outside of the country of incorporation will be treated as a separate corporation.

4. FOREIGN TAX INCENTIVE

The Treasury Department would be granted authority to determine which foreign practices constitute tax investment incentives. This authority could be exercised by determinations with respect to general categories of incentives, such as an exemption or reduction of tax for a period of time or for cash grants that are not required to be taken into account as taxable income. The authority could also be exercised by determinations with respect to specific incentives in specific countries, including local and regional incentives. Incentives would include those provided by law or regulations or individually negotiated arrangements. The fact that there is a generally low rate of tax in a country would not be considered by itself a tax incentive. The Treasury would have authority to exempt tax benefits determined not to be significant in amount or effect and to make determinations prospective in appropriate cases, and would be prepared to rule on the status of tax arrangements under which foreign investments are made.

5. TREATY EXCEPTIONS

The legislation would preserve discretion in the Executive, subject to Senate approval, to enter into bilateral income tax treaties which would make these rules inapplicable to specific incentives, in order to promote investment in appropriate situations and with appropriate safeguards.

6. LIMITATION ON TAX CREDIT

Income treated as distributed under this provision would not be entitled to be taken into account for the over-all foreign tax credit computation, but would be separately computated.

II. Explanation of Proposal With Respect to Controlled Foreign Corporations Exporting to the United States

1. BACKGROUND

In addition to the problem of foreign "tax holidays" and similar tax incentives designed to induce United States investment abroad, there are certain cases where United States companies make foreign investments with the specific purpose of producing for the United States market. Such "runaway plants" are often established to take advantage of significantly lower foreign corporate tax rates.

2. BASIC PROPOSAL

In addition to taxing shareholders on the future undistributed earnings of controlled foreign corporations taking advantage of a tax holiday or other foreign tax incentive, United States shareholders would be taxed on the future undistributed earnings of a controlled foreign corporation where the corporation makes new or additional foreign investment in the manufacturing or processing of products exported to the United States market, if the income from such investment is subject to foreign corporate tax significantly lower than in the United States.

3. DETAILED DESCRIPTION

A. *Taxation of United States Shareholders.*—New section 951(a)(1)(C) of the Code would provide that the United States shareholders, as defined in section 951(b), of a controlled foreign corporation engaged in manufacturing or processing abroad be taxed currently on their pro rata share of the earnings of such corporation, even though the corporation is not taking or has not taken advantage of a foreign tax investment incentive, if:

(1) 25 percent or more of the corporation's gross receipts are from the manufacture and sale of products destined for the United States market, and

(2) The effective rate of tax on the income of the controlled foreign corporation is less than 80 percent of the United States tax rate.

B. *Existing Investment.*—This provision would not apply unless or until investment made after the effective date of this proposal exceeds 20 percent of the unadjusted basis of existing manufacturing and processing assets.

C. *Foreign Branches of Controlled Foreign Corporations.*—For purposes of applying these rules, a branch of a foreign corporation located outside of the country of incorporation will be treated as a separate corporation.

D. *Limitation on Tax Credit.*—Income treated as distributed under this provision would not be entitled to be taken into account for the overall foreign tax credit computation, but would be separately computated.

E. *Exceptions.*—The President would be given authority to exempt companies in particular industries if he determines that it is in the public interest to do so. The legislation would preserve discretion in the Executive to enter into income tax treaties, subject to Senate approval, which would make these rules inapplicable in specific situations, in order to promote investment in appropriate situations and with appropriate safeguards.

III. Explanation of Recovery of Foreign Losses Proposal

1. BACKGROUND

Under existing law United States taxpayers may deduct losses from foreign transactions for purposes of computing their taxable income. Thus, the foreign losses reduce the U.S. tax on U.S. source income. In addition, a United States taxpayer is allowed to credit against his United States tax on foreign income an amount equal to the U.S. tax imposed on the foreign income with respect to which the foreign taxes were paid. In the alternative, the foreign taxes may be deducted. If the taxpayer chooses to credit his foreign taxes the amount creditable is limited to the U.S. tax imposed on the foreign income with respect to which the foreign taxes were paid. The limitation may be computed either separately for each country (the "per-country" limitation), or on an over-all basis (the "over-all" limitation) under which all foreign income taxes and foreign source income are aggregated.

A taxpayer who is on the per-country limitation at the time a loss from a foreign transaction is incurred does not have to reduce the limitation for foreign taxes paid on foreign income from other countries as he would if he were on the over-all limitation. Thus, he gets the full credit for other foreign taxes paid, plus the full deduction for the foreign losses. When the foreign operations in the country of loss become profitable, taxes are often paid to such country without taking into account the prior losses. The tax credit allowed by the United States for such taxes may effectively eliminate any United States tax on the earned income during the profitable period. The same result occurs in the case of a taxpayer on the over-all limitation who has an over-all loss on his foreign operations. In such cases the United States bears the burden of the taxpayer's deducting large losses which greatly reduce U.S. taxes, while the foreign country collects the taxes on the operation once it becomes profitable with the U.S. tax eliminated by the foreign tax credit.

It is also presently possible for taxpayers to incur large start-up losses in the early years of an operation in a foreign country, and then to incorporate the operation once it becomes profitable. In this case no U.S. tax would be paid, even if the foreign country takes the prior losses into account, unless the earnings were repatriated.

2. BASIC PROPOSAL

Modify the limitations on the foreign tax credit provided by section 904 to provide a special limitation for taxes of a foreign country which are excessive because the foreign country has not permitted losses of the enterprise to be offset against subsequent profits, and to provide recapture of losses where the legal form or ownership of the enterprise changes.

3. DETAILED DESCRIPTION

A. It is proposed that a new subparagraph (3) be added to section 904(a) of the Code to provide that if a taxpayer sustained a loss (whether ordinary or capital) in a foreign country or possession of the United States in a taxable year, then to the extent that the loss was not taken into account in such year for purposes of computing the foreign tax credit limitations provided by section 904(a)(1) or (2), then for purposes of computing the limitation on the foreign tax credit such loss would be taken into account in succeeding taxable years as a reduction of the taxpayer's taxable income from sources within such country or possession. The amount of the reduction in any one year is not to exceed 25 percent of the taxpayer's income from such country or possession computed without regard to such reduction. The amount of the losses not taken into account shall be carried forward in the ten succeeding years until exhausted. Such a reduction will not be made, however, to the extent that the loss has been allowed by the foreign country where the loss was incurred and has thereby reduced the amount of foreign tax paid. Thus, if a taxpayer has elected the per-country limitation, and sustains a loss for 1973 in country X, the taxable income from sources within such country for 1974, for purposes of computing the limitation on the amount of the foreign tax credit that may be taken, is to be reduced by the amount of the 1973 loss but only to the extent that the adjustment does not exceed 25 percent of the corporation's taxable income from X for 1974. Any excess would be carried over to subsequent years. Likewise, a taxpayer who has elected the over-all limitation and sustains an over-all loss on his foreign operations in 1973 would reduce his taxable income from sources without the U.S. in 1974 by the amount of that loss subject to the 25 percent of taxable income limitation. Detailed rules relating to the allocations of losses among years, countries and classes of income would be provided in Treasury regulations.

B. In cases in which material income producing capital assets used in the trade or business which gave rise to the losses are disposed of before the prior losses have been fully taken into account, including cases in which the enterprise is transferred to a corporation before the losses have been fully taken into account, the losses not previously taken into account would be included in the taxpayer's gross income in the year of disposition of the property.

C. Section 904(d) will be amended to provide that taxes not allowed as a credit by reason of the application of new section 904(a)(3) may not be carried back or carried forward.

PREPARED STATEMENTS OF ADMINISTRATION WITNESSES

Statement of the Honorable George P. Shultz, Secretary of the Treasury—Wednesday, May 9, 1973

Mr. Chairman and Members of this distinguished Committee:

The world economy has changed greatly since this Committee last considered comprehensive foreign trade legislation. This rapid change will continue whether or not we in the United States seek to influence its future course. But we must play an active and constructive role in influencing the shape of a sensible world economy. Your approval of the Trade Reform Act of 1973 can be an initial step toward that end.

The Trade Reform Act provides the President with the authority he needs to negotiate effectively on behalf of American workers, businessmen, and consumers. It would provide: (*a*) authority to change customs duties up or down in the context of negotiated agreement; (*b*) a Congressional declaration favoring negotiations and agreements on non-tariff barriers with an optional procedure for obtaining Congressional approval of these agreements where appropriate: (*c*) authority to raise or lower import restrictions on a temporary basis to help correct deficits or surpluses in our payments position.

These authorities are necessary for meaningful trade negotiations and will provide for a more efficient and flexible management of American trade policy.

The Trade Reform Act and supplementary legislation will provide a second set of tools to deal with domestic problems that may arise in connection with international trade and to permit our export firms to compete equally in international markets:

(*a*) The Trade Reform Act would introduce a fairer and less stringent test for domestic industry to qualify for temporary import relief in order to give it time to adjust to import competition or to avoid serious injury.

(*b*) The Act would improve procedures for protecting American workers and industry from unfair competition by amending the antidumping and countervailing duty statutes.

(*c*) It would help protect the interest of U.S. exporters by revising and simplifying the President's authority to raise import barriers against countries that unreasonably or unjustifiably restrict our exports.

(*d*) It would permit the temporary reduction of import barriers as necessary to combat inflation.

(*e*) Separate legislation to amend the Export Trade Act will make explicit the Act's application to our export of services as well as exports of goods and will clarify the exemption of export associations from our domestic antitrust laws, while ensuring the protection of the public interest through clear information, disclosure, and regulatory requirements.

(*f*) Separate legislation will reform the pension and unemployment insurance systems to help all workers who lose their jobs, from whatever cause.

(*g*) Finally, the Act will permit increased trade with nonmarket economies by granting the President authority to extend most-favored-nation treatment to these countries and will permit the United States to extend preferential duty-free treatment to certain imports from developing countries. Secretary Rogers will have more to say on these final two points.

THE CHANGED ENVIRONMENT OF INTERNATIONAL TRADE

We consider this legislation at a critical time. We have seen repeated and widespread monetary disturbances in recent years. Points of strain and tension have arisen in trading relationships among nations. These problems are part of that process of vast change in the world economy which has taken place since the basic monetary and trading institutions were established at the end of World War II, almost thirty years ago. In part, they are the consequences of the success of our postwar policies.

Since the end of World War II, the United States has worked to create a strong, free economy in a multilateral world with as few restrictions as possible on the free flow of trade and capital. We worked to create an economic framework in which all countries could grow and prosper. We gave of ourselves and of our substance to achieve those goals.

This was done for our own sake, as well as in the interest of others. We worked from a far-reaching vision of what would serve our own economic and security interests. But it was a broad vision conceived in the interest of all. Our own security and economic well-being depended on the ability of others to grow and prosper in freedom.

The world today is different from what it was when American planners decided to devote our wealth, influence, and energy to the achievement of a more secure and more prosperous world. Today, economic power is not concentrated in the United States alone as it was thirty years ago. Great centers of wealth have grown up in Europe and Japan. The European Community is now the world's largest trading bloc, with large and persistent trade surpluses. Japan has sustained a truly remarkable rate of growth, and the size of its trade and balance of payments surplus constitute a major problem in the world economy. Other countries, including many developing countries, have made notable strides forward.

However, along with this diffusion of economic power has gone a reluctance to remove restrictions that are contrary to the principles of an open world economy. At one time those restrictions could have been considered necessary to support weak economies in the face of overwhelming U.S. economic power or as temporary aids to promote political objectives such as regional integration. No longer is this true.

In this changed world of economic equals we need to deal with those restrictions, and we need new rules to assure equality of responsibility.

There must be a reformed international monetary system—one that puts equal obligations for adjustment on surplus and deficit countries. There must be reform of international trade rules to eliminate growing discrimination, to assure that market access is not barred non-tariff barriers, and to develop procedures for resolving differences without political tension.

This new system will allow our industries, workers and farmers to compete fairly in international trade and our consumers to benefit from the variety of goods the world has to offer. We have much to gain from this kind of a new world economic system, and much to lose from no system at all. Either we go forward to a new and higher level of international cooperation, or I fear we may go backward.

Negotiations are well underway to reform the international monetary system. We need the Trade Reform Act to begin to reform the trading system.

THE NEED FOR TRADE REFORM

The existing system has been unable to deal with a variety of measures that have made fair competition in world markets much more difficult. Undervalued exchange rates, quotas, restrictions on agricultural trade, preferential trading arrangements, and the proliferation of non-tariff barriers have served to hamper our exports, including some that we produce far more efficiently than anyone else. These barriers to trade exact a high cost for all nations of the world in higher consumer prices, inefficient use of resources, and heavy strains on the balance of payments.

Our trade position must be improved, and to do this we must secure the reduction of foreign barriers to trade in order to gain access to foreign markets and permit our goods to compete equally with those of other countries. It is in the interest of the United States, even more than other countries, to bring about a freer and fairer trading system.

To deal with these problems we seek to:

Free up agricultural trade;

Come to grips with the unreasonable aspects of regionalism;

Bring order to the maze of non-tariff barriers preventing the expansion of world trade; and

Work out new answers to the problems of buffering our industries against injury from sudden surges of imports, and to better enable our workers to adjust to changing competitive situations affecting employment.

Other countries have complaints against some of our trade practices. To move forward we must be prepared to strike a fair bargain, with a fair balancing of the interests involved. The Trade Reform Act will make these negotiations both possible and fruitful.

The need is urgent. But there are some things that can be done under existing authorities, and we have made a beginning.

The United States has taken several steps to improve its trade position and to stimulate reform. In February 1972 the United States and the European Community reached an agreement on future trade discussions. In this understanding the United States and the Community agreed to move rapidly to: (1) examine the impact of the enlargement of the Community on U.S. exports; (2) renegotiate the existing GATT concessions of the new members in order to compensate the United States for the loss of these rights or for any higher duties that might arise due to the enlargement; and (3) enter into multilateral trade negotiations this year.

We anticipate that the extension of the Community to the three new member countries—the United Kingdom, Ireland, and Denmark—will harm our trade in some products, particularly in agriculture. We expect the Community to recognize this damage and to compensate us. Negotiations began in Geneva in mid-March. We hope they will be concluded before the multilateral trade negotiations begin.

THE LINK BETWEEN TRADE AND MONETARY REFORM

The upcoming trade negotiations are important not only in their own right but also in their implications for the monetary negotiations. We must have coordinated consideration of the two areas if we are to construct a workable economic system.

The two-stage realignment that was achieved at the Smithsonian Institution in February of this year provides exchange rates that lay the foundation for restoration of the external strength of the dollar. Overall, the major currencies of Europe and Japan have appreciated against the dollar by an average of about 25%. Japan, the world's third largest economy, and Germany, Europe's ranking industrial power, both appreciated by about 30% to 35% against the United States. Nevertheless, fundamental reform of the monetary system is urgently needed. Considerable progress has already been achieved, making it all the more imperative that we achieve rapid progress on the trade front as well.

The monetary and trade negotiations must lead to a consistency in rules that has been lacking in the past. We need, for example, to reach a new consensus on the relationships between nondiscrimination in monetary arrangements and most-favored-nation treatment in trade. The divergence between rules and practices in these two fields has grown unacceptably large. Trade rules cannot be allowed to shield large portions of national economies from the impact of balance-of-payments adjustment measures. And we need to build trade liberalization incentives into balance-of-payments adjustment rules.

To achieve a consistency in the rules in the monetary and trade fields does not require that detailed trade and monetary negotiations proceed in the same forum. Nor does it require that detailed trade negotiations wait on monetary reform, or vice-versa. But it does require a coordinated consideration of the rules in the two areas.

The Trade Reform Act will further this coordination in several ways. The Act will provide the President with special balance-of-payments authority to increase or reduce trade barriers. The Act would specifically authorize the President to employ an import surcharge for the purpose of protecting our balance of payments and authorize him to reduce tariffs as one possible adjustment measure if we were to have a persistent surplus. This authority could also be used to protect U.S. interests vis-a-vis a chronic surplus country which had not taken effective adjustment measures.

FOREIGN INVESTMENT AND TAXATION

I would like to say a word about investment abroad by U.S. firms and the Administration's proposals for modification in the tax treatment of foreign source income. The rapid growth of international investment in recent years—particularly the growth in investment undertaken by multinational corporations—has been a subject of great controversy at home and abroad.

On balance, we believe that this investment has been beneficial to the American economy. Government studies show that it has improved the U.S. balance of trade and the overall balance of payments, and has meant more jobs for the U.S. economy. We cannot assume that discouraging foreign investment will promote investment and prosperity in the United States. On the contrary, if investment opportunities exist abroad, foreign firms will take them if American firms do not, which will lessen the flow of American-made goods into foreign markets.

Our proposals for taxing foreign source income are shaped against that background. We believe our tax system should not be used as a club to inhibit foreign investment, because we believe that investment to be good on the whole. At the same time, we do not believe that our tax system or any other tax system should be permitted to induce American business to make foreign investments which they would not otherwise make.

Our existing system is designed to permit an American-controlled business operating in a foreign country to operate under the same tax rules applicable to its foreign competitors in that same country. We believe that is a fundamentally sound system and that we should not devise new rules designed to disadvantage American business with respect to its foreign competitors.

Our data show that our American enterprises abroad pay substantial foreign income taxes. In the vast majority of cases, it is business factors and not income tax factors which lead to foreign investment. Income taxes are not the cause of our trade problem, and income tax changes will not solve that trade problem. For these reasons, we conclude that drastic surgery on our tax credit and deferral provisions relating to overseas investment is not justified.

The issues in this field are not new. In 1962, the Congress exhaustively reviewed this field and we believe the conclusions which it reached are fundamentally sound.

There are, however, three situations in which the existing tax system produces artificial distortions and incentives and which we ask that you change. The first two proposals relate to tax holidays and runaway plants, where we ask that you modify our tax system to neutralize tax inducements offered by other countries. The third proposal would eliminate the present ability of American firms to offset foreign losses against their U.S. income without ever paying U.S. tax on subsequent profits.

Tax Holidays.—A number of foreign countries presently attract U.S. investment by granting major tax incentives, such as extended tax holidays or cash grants that are not included in taxable income. To neutralize such practices, the Administration is recommending amendment of our tax laws so that earnings from new or additional American investments which take advantage of those inducements will be taxed to their U.S. shareholders as earned, rather than at the time they are remitted to these shareholders. Exceptions could be made by treaty.

Runaway Plants.—Some American companies occasionally undertake foreign investments for the purpose of re-exporting a substantial share of their production to the United States. To prevent income taxes from inducing such decisions, the Administration recommends that in cases where new or additional foreign investment is made by a U.S.-controlled foreign corporation in a low tax country, earnings will also be taxed on a current basis if exports to the U.S. market account for more than 25 percent of the corporation's total receipts. This rule would only apply when the effective rate of tax on the income of the controlled foreign corporation is less than 80 percent of the U.S. tax rate and exceptions would be permitted for particular situations if the President determines that it is in the public interest to do so.

Recovery of Foreign Losses.—The Administration also recommends amendment of our tax laws (a) to reduce the credit for foreign taxes where foreign taxes are excessive because the foreign country has not allowed prior losses to be offset against subsequent profits; and (b) to recapture benefits of loss deductions where the legal form or ownership of an enterprise changes in such a way that future profits are insulated from losses previously taken against U.S. tax. This provision would also reduce the advantage of drilling for oil abroad and increase the relative attractiveness of domestic drilling.

CONCLUSION

We have joined with our major trading partners in a commitment for a new round of comprehensive negotiations scheduled to begin this autumn. Our negotiators will face a challenge and an opportunity.

The world economy must be fair for all nations. It must permit each nation to compete equally without artificial restraints in the international market. It must be flexible enough to prevent recurring monetary crises that distort trade and capital flows, injure our national economies, and create political tensions that harm the cause of peace. Such a world economy will especially benefit the United States. We wish to achieve this objective not through confrontation, but through negotiation in a spirit of cooperation and progress with the other trading nations.

We ask Congress to join with us in this effort. We stand ready to work out a new cooperative relationship, and to utilize new institutional procedures to assure that the Congress and the Executive work together to achieve our mutual objectives.

We must and we will approach the trade negotiations with a tough mind and a clear resolve that American interests will be properly looked after.

We believe that the legislative program now before you will give us the tools to do the job. I urge its speedy enactment.

Statement of the Honorable William P. Rogers, Secretary of State—Wednesday, May 9, 1973

The Trade Reform Act which you are now considering has two essential purposes: First, to ensure the continued prosperity of the

American people, and second, to help build a more stable and secure world by developing closer economic ties among all nations.

Some seem to believe that these two purposes are mutually inconsistent, that we must choose one or the other. We hear it said that America's prosperity is threatened by our growing economic ties with other nations and by the cost of our involvement in building a more secure world.

The bill before you is based upon just the opposite view. We believe that our prosperity is increasingly dependent upon closer economic ties with other nations. And we believe that the United States can only remain prosperous in a more secure, interdependent and peaceful world.

By pursuing these objectives we will create more rather than less jobs for American workers. And by working to improve relations with our adversaries and to share more equally the common burden with our allies, we hope to lighten the burden on the American taxpayer of our engagement abroad. This will be possible because the nature of our economy and of our international role are changing.

Following World War II the United States accepted a major share of the responsibility for the economic recovery of our friends and the common defense against our adversaries. At that time we had an enormous competitive edge in trade with one of the world's few sound economies, an economy which was very largely self-sufficient.

The situation today is substantially different. First, the possibilities of peaceful and mutually beneficial coexistence with the Communist countries have improved. The old image of a bi-polar world, with the free and Communist worlds confronting each other as antagonists across every frontier, is no longer real. Second, other countries have grown into economic powers somewhat more comparable to the United States. The combined gross national product of the nine-member European Community was 70% that of the U.S. in 1972. Similarly Japan's output as recently as 1967 was one-seventh that of the U.S., but in 1972 it was one-fourth.

The United States has also grown immensely more prosperous. In fact over the past decade the absolute growth in our per capita income exceeded that of Japan and the other developed countries. But we can no longer take for granted our competitive edge in trade. Our businesses and government policies must now become more export-minded to keep pace with the greater import needs of our industries and consumers.

To many these may seem unfortunate developments, but not if they are put in the proper perspective. For many decades our best trading partners and main competitors—Canada, Japan and western Europe—have been neither economically self-sufficient nor complacent about their ability to compete. They have prospered by exporting those goods which they produce most efficiently and importing from others goods produced more efficiently elsewhere.

Almost without noticing it, we have also begun to benefit from a greater involvement in international trade. The proportion of our total production sold abroad is steadily increasing. Today about 14% of our industrial production and 31% of our agricultural crops are exported, creating millions of jobs and supporting major sectors of our economy. The increasing significance of imports is evident to everyone. Without growing imports of petroleum and raw material resources our economy cannot expand. As consumers all Americans benefit from the savings and variety provided by imports. Increased imports dampen rather than increase domestic inflation.

This process of mutual growth and greater interdependence with our major allies has brought with it problems as well as benefits.

A monetary and trading system founded on American economic predominance obviously requires adjustment in a more balanced and integrated world economy. A quarter century of American balance of payments deficits fueled the world's economic growth. But these deficits combined with an overly rigid monetary system to finally cause heavy demands upon the dollar, erosion of our competitive position and for the first time in this century a deficit in our trade balance.

We are determined to correct this situation. We have already taken dramatic action to revalue the dollar, making our exports substantially more competitive. We are making significant progress toward a more equitable, flexible and stable monetary system.

We have also begun to make progress in trade. Japan, the European Community and other industrialized countries have agreed to join us in far-reaching multilateral trade negotiations this September. Prime Minister Tanaka and President Nixon pledged in their communique last September to actively support trade negotiations covering both industry and agriculture. Prime Minister Tanaka agreed to work vigorously for a better equilibrium in the trade balance with the United States. And the heads of government of the European Community stated last October that they attach major importance to the upcoming trade negotiations. Sir Christopher Soames, the European Community's "Foreign Minister" has made clear that trade negotiations will be at the center of the Community's future relations with the United States.

We want to make the next round of trade negotiations as significant as the last. Since the Kennedy Round concluded in 1967, after reducing trade barriers an average 35 percent, world trade has nearly doubled. To defend and further America's economic interests in these trade talks our negotiators must have the same authority as their European and Japanese counterparts. This is one of the major reasons why trade legislation is required at the earliest possible date.

Nothing is more important to the overall success of our foreign policy than for us to receive a mandate now to further our international economic interests. For these economic interests are intimately related to our political and security concerns throughout the world.

With our allies in Europe and Japan economic tensions could develop in a way which could affect the entire fabric of our political and defense relationship. Properly managed, economic negotiations should lead to the greater willingness and ability of our allies to shoulder a more equal share of the common burden. Left to smoulder or fed by a spirit of confrontation, these tensions could weaken the alliance, which is such an important factor in our national security.

We will not allow this to happen. With American encouragement, our allies have begun to shoulder a larger portion of the defense burden. Since 1970 our NATO allies have increased their defense expenditures by 30%. They now provide 90 percent of NATO's ground forces, 80 percent of its seapower and 75 percent of its air forces. Our joint success in moving from confrontation to an era of negotiations with our adversaries has allowed the United States to devote a substantially greater share of its resources to domestic concerns. Since 1968 we have reduced the portion of our GNP devoted to defense from nine to six percent.

As we negotiate differences with our allies, we must not forget that our economic interests coincide far more than they diverge. All of our countries have problems adjusting to the growing impact on domestic economies of rapid shifts in trade, shifts largely created by greater global economic integration. While some have lost faith in our ability to compete, the Japanese and Europeans are constantly concerned that the United States will flood their markets with our more efficiently produced goods.

Thus we have a common interest in agreeing on the safeguards proposed by this bill, safeguards which would assist workers and industries to adjust to sudden, massive, or unfair disruption by foreign goods. And in other areas of trade as well we must all devise and accept new rules and obligations. For none of us can afford a trade war any more than a military conflict.

We should approach the challenges presented by our new economic situation with confidence and traditional American enthusiasm for competition. Our businessmen, workers and farmers should seize the great opportunities which are being opened by revaluation of the dollar and the prospect of more equitable trade relations with Japan, Canada and the European Community.

This bill is equally important for our relations with the communist nations. While extensive East-West economic ties are not by themselves sufficient to create a more peaceful relationship, they are an indispensable ingredient. Without normalizing our economic relations, normal political relations are clearly impossible. During 1972 we took dramatic initiatives toward China and the Soviet Union. To build these initiatives into a permanent structure of peace we must now begin to weave a network of mutual interests in trade, technology and resource development.

Hardly anyone questions the political advantages of building closer economic ties with the communist nations. However, we must keep in mind that our economic relations with the non-communist developed and developing nations are much more substantial than our economic ties with the communists. This will remain true for the foreseeable future.

We have a balance of trade surplus with the communist nations and expect that this will continue indefinitely, easing our overall trade deficit. We want to place our businessmen in the same competitive position in these growing markets as the Europeans and Japanese. Today western Europe has ten times as much trade with eastern Europe as we do. Japan is in substantially the same position with both the Soviet Union and China.

Extension of MFN status to the communist nations, as proposed by this bill, would be a major step towards political and economic normalization. It would not grant them exceptionally favorable treatment, for we extend MFN status to all of the countries with whom we have substantial trade.

I am aware of the continued active interest by the Congress in Soviet emigration practices. I share your deep concern about this matter both officially and personally. But I believe the best hope for a satisfactory resolution of this issue will come not from the confrontation form il legislation would now bring about, but from a steady improvement in our overall relations with the Soviet Union.

As these relations have improved in recent years, we have witnessed a significant and favorable evolution in Soviet emigration policy. An unprecedented 60,000 Soviet Jews have been able to emigrate. For over a year the average monthly level has exceeded 2,500. I know some of you are genuinely apprehensive over the firmness of present Soviet emigration policy, particularly in regard to the decision to waive totally collection of the education tax. However, as you already know, the President has been assured by the Soviet Government that the policy on total waivers is to be continued indefinitely. He has also been assured that present Soviet emigration policy, which has permitted the current level of emigration, will also be continued indefinitely. I am not in a position to place into the public record the texts of confidential communications on this subject, but those assurances are firm.

Failure to grant MFN status would seriously jeopardize our relations with the Soviet Union. It would impede the gradual evolution of the Soviet Union into a more open member of the world community, an evolution which is the best long-term hope for all of us including those Soviet Jews who wish to emigrate.

I am departing in the next few days on an extensive trip through Latin America. I will be taking with me Bill Casey, our Under Secretary for Economic Affairs, because I know that economic issues are high on the agenda of our neighbors in this hemisphere. In fact for almost all of the countries in Asia, Africa and Latin America economic development is the number one priority. And generalized tariff preferences, as proposed by this Act, have become both symbolically and substantively their number one request of the United States. This is so because these countries no longer want to be dependent upon aid—they want to earn the foreign exchange required for development through expanded trade.

But why are generalized preferences in the American interest? They are in our interest because most of our increasingly important energy and raw material imports, thirty percent of our total trade, and ovei half of our investment income come from the developing nations. If we want these nations to take into account *our* interests, not only in economic but in political fields as well, we must take into account *their* interests. Other industrial nations have already extended such prefeiences. And preferences are an important stimulus to steady economic development, which will ultimately create markets for us, decrease the military and economic assistance burden on the United States and lead to a more stable world.

Passage of the Trade Reform Act of 1973 will allow us to pursue these major objectives:

We will strengthen the productive and competitive qualities of the American economy, increase jobs, raise incomes, and devise safeguards to assist workers and industries to adjust to rapid shifts in trade.

We will press the European Community, Canada and Japan to assure fairer treatment for our exports.

We will continue our strong offensive to create a more equitable and smoothly functioning monetary system.

We will vigorously pursue both trade expansion and trade reform.

We will join with the less developed nations to accelerate mutually beneficial trade.

With the communist nations, we will construct a network of mutually advantageous economic ties to strengthen the fabric of peace. We want to reduce our mutual expenditures on arms as we increase our commitment to trade.

What we are seeking in this bill is an economic policy which will accelerate rather than impede recent progress toward a more peaceful and prosperous world. I am confident that by working together the Congress and this Administration can shape such a policy.

Statement of the Honorable Peter M. Flanigan, Executive Director, Council on International Economic Policy—Wednesday, May 9, 1973

You have heard Secretary Rogers and Secretary Shultz describe the political, monetary and economic policy context within which the proposed Trade Reform Act has been conceived. They have also outlined those policy objectives it is designed to foster. As Executive Director of the Council on International Economic Policy, I would ask you to consider this bill as part of an integrated Administration approach to the range of problems which we have grouped together under the general heading of international economic reform.

During the quarter century since the post-war conferences on international monetary, trade and investment arrangements, the international economic world has changed. Economic power relationships, once heavily one-sided, are now more evenly distributed among Western Europe, Japan and North America. The needs and aspirations of the developing countries are clearer and more pressing than they were in a post-war world of disintegrating colonialism. The post-war confrontation between East and West is giving way to a growing recognition that, though systems may differ, nations can learn to live in peace through negotiated agreements.

However, while the world has changed, the systems under which nations and regional groupings conduct their economic affairs—trade, investment, finance, aid—have changed but little. There has been some tinkering, much as a family that has outgrown the size of its house first tries to cope with new needs by adding a new room here, enlarging an old one there. But the real problem is that the structure itself is no longer adequate to their needs: the whole house needs rebuilding, and for that, they must work from the foundation up.

In building a new international economic structure, we cannot limit ourselves to just one or two distinct parts. All aspects of the system are closely interrelated, and all must be dealt with if we are to succeed in constructing a system strong enough to last and flexible enough to meet the changing patterns and stresses of a dynamic world economy of the future. For this reason, we have insisted, in the talks we have engaged in since the process of reform was initiated by the President two years ago, on the interrelationships among money, trade and investment arrangements and the need to deal with each as part of an integrated whole rather than separate, unrelated transactions.

It is in the light of this need for an integrated approach to reform of the international system as a whole that I ask you to evaluate the President's proposals for new trade legislation.

First, let me briefly review the balance sheet of our present system, then the needs we must meet in our international commercial transactions, and finally how this bill will help us achieve the objectives which have been identified from this review.

None can deny that, on balance, the post-war trade system has served the United States and the world well. From an era between the two major wars of the 20th Century that was characterized by general economic instability, by desperate efforts to carve out protected positions, by competitive currency devaluations, by shrinking world trade and by catastrophic economic depression, there emerged a consensus that all nations stood to gain from a multilateral, non-discriminatory, open world system of trade and payments. As a consequence of the agreements reached on monetary arrangements at Bretton Woods in 1944 and on the trade rules of GATT in 1947, world trade and international economic prosperity has grown at a pace unprecedented in world history. Our experience with these two contrasting systems leaves no doubt about the general path we should follow for the rest of this century and beyond: a return to the protectionist isolationism of the 1930's is a prescription for disaster. The benefits to this nation from an open and equitable economic world are too obvious by comparison to contest, and must be preserved.

This fundamental point having been made, what is wrong with the present system? Secretary Shultz has discussed the need for reform in the monetary system, and how it is related to the need for trade reform. I will thus concentrate on one major aspect: the need for equilibrium in the system and why favorable action on this bill is essential for that purpose.

During the international debate over the past 18 months on the kind of system the world needs, one requirement stands out as commanding a virtually unanimous consensus. All nations agree that a major result that the international economic system should achieve, over a reasonable period of time and at as high a level possible of trade and related transactions, is equilibrium in the international accounts of each country. Equilibrium is simply balance: nations which are temporarily in either surplus or deficit in their overall international accounts must take action to move back toward balance, and the system itself must be structured in such a way as to both allow and encourage that movement.

The other point on which all agree is that the United States, in particular, must be in equilibrium in its balance of payments. I can assure you that the international economic policy of this Administration is geared precisely to this purpose.

To achieve this equilibrium, however, requires discipline and effort by us, both at home and abroad, and action by other countries to assure that the various policies they pursue keep them in balance and do not frustrate our achievement of balance. I have said that the system must both allow and encourage movement toward balance. Our main problem with the way the system and countries within it have performed in the past is that the rules and practices have frequently been inadequate on both counts.

In the first annual International Economic Report of the President, published in March of this year, we presented a detailed discussion of our balance of payments structure and the reasons why we believe we must look to our trade account to bear most of the burden for bringing our own international account back into balance. In summary, the main reason is that, given United States responsibilities in the modern world, both as the wealthiest and strongest single nation, there are offsetting patterns in each of the other transactions categories—investment, services, aid and military expenditures abroad—which tend to cancel each other out now, and are likely to do so over the next several years. We must, therefore, look to the trade account to bear most of the burden of the adjustment we need to bring our overall international position back into balance.

To promote this adjustment, we have, during the last 18 months, together with our trade partners, twice revised the exchange rates for the world's currencies to make our products more competitive, both at home and abroad. The results of those changes have not yet been fully felt, but they will be felt increasingly as time passes.

A more flexible monetary system will help to assure balance in the system and that equilibrium is reached in our own accounts as well as in the accounts of others. We cannot reasonably expect that the trade negotiations, which begin later this year and will doubtless carry through until 1975, and the results of which will not be fully in place until the 1980's, will have any immediate effect on our balance of payments problems. But these negotiations can lay the groundwork for a more open and fair trading world in the future, and that is their purpose. In the years ahead, we look to such a world, reasonably free of the inequities and distortions which currently obtain, to provide maximum benefits for our citizens and those of our trading partners.

In his speech to the Governors of the International Monetary Fund last September, the President charted the course which he believes this nation must follow:

> "We shall press for a more equitable and open world of trade."
> "We shall meet competition rather than run away from it."
> "We shall not turn inward and isolationist."
> "Finally," he said, "we must set in place an economic structure that will help and not hinder the world's historic movement toward peace."

If these are our major objectives, how does this bill help us to meet them, and what specific purposes is it designed to serve? In its simplest terms, this bill would give us the tools to negotiate needed reform abroad and to take effective action at home, both to encourage reform and to adjust our economy for its role in an open, equitable system.

In a world in which trade is open and fair; in which capital can move openly in response to changing market needs and opportunities; in which artificial incentives or barriers to trade and capital movements are either removed or brought under equitable rules; and in which the monetary system is sufficiently flexible and responsive to encourage and allow adjustment when needed, the United States can compete on the basis of comparative advantage, create more and better jobs for its citizens and a better standard of living for its consumers.

To achieve these goals, the bill provides authorities to meet five central purposes.

The first is to negotiate a more open trading world. Attention here is focused on the tariff and non-tariff barrier negotiating authorities and procedures. We have asked for authority to negotiate a trade package in which tariffs can be raised, reduced or eliminated. In the past, this authority has been limited to a fixed percentage amount—most recently in the Trade Expansion Act of 1962, when the limitation was 50 percent. However, in addition to that general authority, that Act also contained a provision for eliminating tariffs on those products in which the U.S. and a European Community enlarged to include the United Kingdom accounted for more than 80 percent of world trade and for complete elimination if the tariff was 5 percent or less. Thus, the concept of reductions beyond a certain percentage has a precedent in past law and Congressional approval.

When tariffs were still relatively high and accorded a greater degree of protection, reduction limits may well have been appropriate. But, after the Kennedy Round of reductions agreed to in 1967, tariffs were reduced substantially. Thus, the authority we seek today is, in absolute terms, roughly equivalent to that which Congress granted in 1962 and, as such, is by no means unprecedented.

On the non-tariff side, our proposals are designed to fill a vacuum in U.S. negotiating authority which has never been dealt with adequately in past legislation. The Trade Expansion Act did not deal directly with non-tariff practices at all, and we have seen over the years that, as tariffs are reduced, non-tariff trade-distorting practices have become a more important hindrance to an open trading system.

Our proposals contain three interrelated and important elements:

(1) A Congressional declaration favoring negotiations looking toward the elimination or international harmonization of non-tariff practices which impede trade opportunities or access to markets. This is needed in order to convince our partners that the Congress is concerned about these practices and wants our negotiators to bring these issues forward in the coming negotiations as a priority objective.

(2) Authority to conclude and implement agreements relating to methods of customs valuation assessment and marking of products by country of origin. These authorities are consistent with those requested for tariffs and will permit us to reach comprehensive agreements on tariffs and administrative practices as part of a total package.

(3) An optional new procedure for Congressional participation and action concerning agreements negotiated on other non-tariff matters.

Under this procedure, the President would inform Congress of his intention to conclude a particular agreement on a non-tariff practice not less than ninety days before signature was expected. During this period, the appropriate committees would have an opportunity to consider the issues involved, hold hearings to obtain the views of the public, and to influence the form of the agreement through recommendations or expression of concerns to the Executive Branch. After conclusion of the agreement, the text and necessary implementing orders would be submitted to Congress. If neither House voted against it, the agreement and orders would become effective ninety days later.

This procedure is also not without precedent. Similar arrangements were developed in past laws such as Section 202 of the Automotive Products Act of 1965. We are proposing it here out of recognition that both Congress and the Executive need a better system for handling negotiations in this complex non-tariff field.

One of the main past problems has been the lack of coordination between Congress and the Executive in the process by which such agreements are concluded. We recognize that Congress must retain the final say over whether a particular agreement on non-tariff barriers is appropriate for the United States, if such an agreement requires changes in domestic law. Our proposal procedure assures that result, but it also brings Congressional views into play before the conclusion and to assure prompt action following it. We believe this will strengthen the hand of U.S. negotiators while preserving essential Congressional authority.

Our second major purpose is equity—both in markets abroad and markets at home. While our purpose in these negotiations is to reduce barriers and secure a more open world for American traders, we firmly believe that, for trade to be free, it must be fair. Expanded trade will not meet the objectives of contributing to an orderly, cooperative international economy unless the system itself is equitable and the rules apply equally to all. For this reason, the bill provides, in both its negotiating authorities and in its modernized provisions concerning unfair competitive practices, the tools which this country needs to bring balance and fairness forward as a key feature of the international trade world of the future.

To assure fair rules and practices abroad for our exports, we need two elements in this bill. First, the kind of flexible negotiating authority I have just discussed which will allow us to reach balanced, comprehensive agreements in which we and our trade partners undertake mutual commitments to fair rules and equivalent trade conditions, covering both tariff and non-tariff barriers to trade. Such comprehensive agreements will be designed to assure all that trade will be fair and that action to implement these commitments will constitute overall reciprocity.

Second, we need the revised authority we have requested in Section 301 of the bill to take action to redress an imbalance in equity where it may occur. This revision builds upon our experience with a similar authority—Section 252 of the Trade Expansion Act—which we have found to have been less credible than I am sure the Congress hoped it would be when that Act was passed in 1962. By making this authority more flexible, and more simple, and by extending it to industrial goods as well as agricultural goods, we hope to reestablish the credibility of American determination to act if action is needed, and thus to bring about those reforms from which, we are convinced, all nations will benefit.

To achieve our objective of equitable arrangements governing competition from imports in our own market—competition which, as Secretary Shultz has stated, we need and welcome, as long as it is fair competition—we have proposed a variety of amendments to existing laws. These concern our reaction to such practices as dumping, foreign subsidies and patent infringement. A separate proposal would also amend the Federal Trade Commission Act, mainly to give the Commission jurisdiction over other forms of anti-competitive practices.

Our existing laws, for the most part, date back over forty years or more. Though amended over time, they still do not measure up to modern requirements for prompt and orderly process. Our proposals are designed to meet these needs and to assure that our laws concerning unfair practices are administered in a way that will be open, fair and effective.

We propose, for example, that reasonable time limits be fixed on Treasury investigations concerning dumping and countervailing duty action in order to assure both domestic industries and importers that the issue will be aired and decided within a known period of time. In the case of anti-dumping investigations, the limits would be six months in most cases, nine in more complex circumstances, with a possibility for a three-month extension in cases of particular difficulty. The limit for reaching decisions in countervailing duty investigations is set at 12 months. However, because of the broad potential coverage of the term "bounty or grant", we believe the Secretary of the Treasury must, in judging the actions of foreign governments, have some flexibility in administering the law to ensure that the action we take is not detrimental to the economic interests of the United States.

A third major purpose is to enable us to act effectively to ease the adjustment of American industries and workers to fair import competition, when those imports increase at a rate which causes or threatens serious injury in our market. A major overhaul of the procedures and Presidential authorities granted in past law has been long overdue. The House of Representatives endorsed the need for change here in its vote on the proposed Trade Act of 1970. Our proposals are designed to meet the needs of a modern trading system and to promote adjustments in ways which protect and balance the interests of workers, industries, consumers, taxpayers and our trade partners. The new relief system would recognize the reality that more open trade can, in fact, cause disruption. When it does, the objectives of openness can be promoted by measures which help ease adjustment to change. Our proposal clearly identifies adjustment to new competitive conditions as the purpose of temporary relief from fair import competition, and recognizes that relief for this purpose is better than permanent resistance to needed change.

To make our law on relief from injurious competition more realistic and more available to industries that really need it, we are proposing three important changes: first, the current requirement that increased imports must be shown to have resulted from a past tariff concession would be eliminated. Second, the requirement that imports be the "major" cause of serious injury—that is, greater than all others combined—would be changed to require only that imports be the "primary" cause of such injury—that is, that imports be only the single greatest cause, but not necessarily greater than all others.

Third, to assist in making this finding of primary cause, we are proposing a new market disruption criterion which the Tariff Commission is required to examine if requested to do so. Disruption is defined as occurring when imports are substantial, are increasing rapidly, both absolutely and as a portion of domestic consumption and are being offered at prices substantially below those of competing domestic articles. A finding of disruption would constitute *prima facie* evidence that, if serious injury or threat of it has been established, imports are the primary cause.

As he announced in his message of April 10 transmitting this bill to Congress, the President is also proposing, in separate legislation, changes in our present system of unemployment insurance. That legislation will call for State action to meet minimum federal standards for unemployment benefits no later than 1975. Under the permanent system envisaged by those proposals, a worker would be protected against loss of income whatever the cause might be. In the interim, we believe we can and should move now to put these benefit standards into effect immediately for workers displaced substantially because of imports, essentially by means of a supplementary federal adjustment assistance payment where it is necessary to bring state benefit levels into conformity with the new standards.

Access to this supplementary assistance would be made much easier and faster than under current legislation. Rather than the current Tariff Commission proceedings, eligibility and certification procedures would be assigned to the Secretary of Labor, who would be required to act within 60 days of receipt of the petition. Easier access criteria and speedier availability is consistent with the concept that, within a few years, all workers should be receiving assistance according to uniform standards regardless of the reasons why they are temporarily out of work. In addition, the program of special assistance for retraining, job search and relocation allowances would be retained permanently as aids to the adjustment process which is a key feature of this bill.

Our fourth objective is to modernize the tools and use of trade policy in the United States. Our bill proposes several changes and new additions to the array of trade policy measures which we believe a modern economy like ours needs in a changing world. We have, for example, requested authority to make more effective use of trade policy as a supplementary action to deal with a persistent surplus or deficit in our balance of payments, and, where proper, as a means to prompt necessary adjustment action by others.

Use of trade restrictive measures, which is contemplated in the reformed monetary system we have proposed to the Committee of Twenty of the IMF, would be considered a last resort. But on those exceptional occasions when it may be called for, it is important that our laws clearly provide authority for it.

Another authority in our bill is a reaffirmation of the proposed legislation which the President sent to Congress on March 30, requesting authority to reduce trade barriers temporarily when needed to help fight inflation. While this authority would be limited to items covering not more than 30 percent by value of total U.S. imports, we believe such action can be a valuable weapon in our continuing battle with inflation and of significant benefit to American consumers.

Other authorities we propose under this heading include a provision by which the United States could, where called for under an international agreement, offer compensation for a unilateral increase in an import duty or other restriction, rather than face retaliation abroad which could harm an important American export interest. Another would permit us to suspend or withdraw past trade concessions when that action, in accordance with our GATT negotiations, was needed to promote an important national interest. This Committee has endorsed similar proposals in the past, and I hope that it will do so now.

Our final objective is to open up and take advantage of new trade opportunities with all countries. A main element under this purpose, as emphasized by Secretary Rogers, is an authority to institute a system of generalized tariff preferences for less developed countries. Under this system, we would, for a period of 10 years, grant duty free tariff treatment to imports of most manufactured and semi-manufactured goods, plus a few other selected products, coming from developing countries.

A second element, in separate legislation, would be amendments to the Web-Pomerene Act to clarify the position of associations of exporters in relation to our antitrust laws and to expand coverage to certain services in order to put American exporters on an equal basis with their foreign competitors. Finally, the Bill would enable the President to conclude beneficial trade agreements with Communist countries, including the grant of most-favored nation tariff treatment. As in the case of the non-tariff barrier authority, our proposal leaves final authority over these agreements in the hands of Congress through provision for a veto within 90 days by either House over any particular agreement.

These authorities are not unprecedented in concept. They build on our experience in using current authority and are designed for the realities of a new economic world. They are designed to give our negotiators the same kind of negotiating flexibility now possessed by most of our main trade partners. And they provide the President with approximately the same degree of authority in managing our trade program as is possessed by these partners. Without those authorities, we could be at a significant disadvantage in the critical international bargaining ahead. Given the stake all Americans have in a successful outcome of these negotiations and in the smooth functioning of our nation's economy in an increasingly interdependent world, positive Congressional action on the Trade Reform Act is a high national priority, and I urge prompt and favorable consideration of it.

Statement of Ambassador William D. Eberle, Special Representative for Trade Negotiations—Thursday, May 10, 1973

Yesterday Secretary Shultz and Secretary Rogers described the interrelationship of the Trade Reform Act with overall United States international political, monetary, and economic policy objectives. The Executive Director of the Council of International Economic Policy, Mr. Flanigan, then outlined how the Trade Reform Act itself is part of an integrated approach to one of the set of objectives—reform of the international economic system.

Today I, and my colleagues, would like to examine the provisions of the Act in detail with you. I have provided each of you a copy of very lengthy testimony which I am tabling for the record as part of the legislative history. This testimony describes the various provisions in the Act, their purposes, and the arguments for them, and in some cases when and how the Administration would intend to apply them.

I do not want to take your time by reading this lengthy document. Rather, I would like to make some brief comments and then be available to answer any of your questions about the Trade Reform Act of 1973.

One way to examine the Act is to understand its three major purposes, and to note that in general each purpose can be best associated with two titles of the Act.

A major and perhaps *the* major goal of the Act is to establish the authority to proceed to negotiations which lead to a more open world trading system through the reduction of barriers to trade. Title I establishes new authorities to negotiate. Title II makes some major changes in existing import relief and adjustment assistance programs to facilitate the adjustment of domestic industries and workers to new competitive conditions under a more liberal trading system.

The second goal of the Act is to stimulate the building of a more equitable world trading system through reform of rules and practices which will be fair to all nations, and to provide adequate and measured response to unfair trade practices. Titles III and IV relate to these goals.

The third goal is to open the world trading system to encompass all areas of the world. Titles V and VI would enable an expansion of mutually beneficial trade opportunities with Communist countries and developing countries.

I wish to comment on two matters which may be of particular interest to the Committee. The first refers to the broad authorities we are requesting to enable the President to enter into agreements with foreign countries for the reduction of tariff and other trade barriers. Specifically, what are our negotiating objectives? To put it another way, why are we asking for the authorities contained in Title I of the Trade Reform Act?

The Administration has two main objectives in trade negotiations. First, we seek a more open trading world through the reduction of barriers to trade because we believe that the more rational and efficient allocation of resources and the availability of a greater variety of goods at lower prices which result from further expansion of world trade is to the benefit of all nations.

Our second main objective is to reform the international economic system itself, of which the trading system is a part, by changing outmoded international trading rules, practices, and institutions to conform to today's realities in a manner which will be accepted and applied by all major trading countries. Even if there is satisfactory resolution of current trade issues, the longer term implications of the institutional defects of the GATT are serious. These defects make it difficult for the system of international economic cooperation to "keep abreast" of changing conditions and circumstances. If institutions for developing these norms are inadequate, the settlement of disputes becomes more difficult and political and economic contention among nations increases.

The forthcoming trade negotiations must differ substantially from those in the past which focused primarily on tariffs. As tariffs have been reduced, the relative importance of other forms of trade barriers has increased, insulating large areas of trade from the adjustment process and restricting market access for the exports of more efficient producers. Preferential trading arrangements have become prevalent, their discriminatory elements impeding the trade of countries outside the arrangements and distorting international investment decisions.

While we distinguish two main objectives, they are closely interrelated. Their various elements must be negotiated in combination with each other in order to achieve the goals. Negotiations which seek the lowering of trade barriers must also include the development of adequate safeguard mechanisms and trade norms and institutions which ensure that the international trading system works effectively. The negotiations must cover all barriers which distort trade and as they pertain to both agriculture and industry. Otherwise, the gains from reducing one type of barrier can be lost through its replacement by another form of trade restriction. All product sectors have potential to benefits from a more liberal trading system. For the trade and monetary systems to work effectively none can remain or become insulated permanently from market forces and the international adjustment process.

Considerable discussion has already taken place in the GATT and the OECD of possible approaches for solving these problems. Negotiating techniques on tariffs *could* include their elimination on most products, across-the-board percentage reductions, negotiations on particular product sectors which would include other trade barriers, harmonization of tariffs among major countries which could involve some tariff increases as well as decreases, item-by-item negotiations, or a combination of these techniques.

We are also talking about a wide variety of other trade barriers—quantitative restrictions, government procurement policies, subsidies to exports, product standards, various systems of customs valuation, charges at the border including variable levies are only a few. Given their heterogeneous nature and the fact they involve a variety of domestic laws in all countries, no single negotiating approach to solutions is appropriate. Some might lend themselves to international codes of conduct, such as product standards and government procurement practices, others to general principles of international behavior, some others might be converted to tariffs and then reduced, and some might be eliminated.

Our major trading partners have joined us in declarations to undertake multilateral and comprehensive negotiations on "all elements of trade" to begin this fall. Clearly these will be very complex and very difficult negotiations. Their broad scope calls for balance in terms quite different from the traditional concept of "reciprocity" in a tariff negotiation. In the words of the joint declarations, the negotiations will be conducted on the basis of "mutual advantage and mutual commitment with overall reciprocity."

Given the interrelated nature of the objectives, the negotiations must proceed on various of their elements at each stage. Each element may require a different negotiating technique, in combination they involve a series of techniques. They require that United States negotiators have flexibility, leverage, and credibility at the bargaining table. The greater the United States input at each stage, the greater the potential for maximum participation by other countries. The purpose of Title I of the Trade Reform Act is to provide the authorities the President needs to achieve these comprehensive goals.

In order to make this major undertaking a success the President needs the advice and ideas of industry, agriculture, labor, and consumer groups. We are currently working on procedures for extensive consultations with the private sector. In particular, we need the participation of the Congress. The Administration intends to work closely with the Congress at each stage of the negotiations. Specific provisions in the Act are designed to enable the Congress to play a major role. We also invite Congress to establish better mechanisms for liaison and cooperation between the Executive and Legislative branches in the trade policy area.

This leads me to the second matter I wish to discuss, that of specific powers granted to the President under the proposed Act, and how they compare with previous grants of authority by the Congress in the trade field. A related matter is how the proposed authorities pertain to our international trade obligations.

International trade is the subject of a uniquely successful partnership between the Executive Branch and the Congress. The partnership arises because the United States Constitution grants to Congress the power to regulate commerce with foreign nations, and to the President the executive power that makes him the representative of the United States in dealing with foreign nations. Broad scale trade negotiations will take place and they will succeed if the Congress declares this to be its will, and not otherwise. For while the President has his Constitutional authority to negotiate trade agreements, with respect to most matters he lacks the authority to implement these agreements on behalf of the United States.

In 1934, the Congress decided that unilateral trade restricting actions should give way to internationally negotiated mutual reductions in trade barriers. From the beginning of the Reciprocal Trade Agreements Program, Congress has recognized that international trade matters, particularly negotiations on tariffs, require a greater degree of delegation to the President than do domestic matters. The legislative history of the 1934 Reciprocal Trade Agreements Act clearly manifests this understanding. The Trade Expansion Act of 1962, in particular, contained substantial delegations of authority by the Congress in the trade field.

For the most part the authorities in the Trade Reform Act renew prior authorities which have lapsed and make some of them permanent, or make existing authorities more explicit. Delegations in the Act of new authority or the removal of limitations on prior authorities are specifically designed to deal with international trade problems that are important today, but were less significant in prior decades. They are consistent with the need for significant changes in the international economic order.

The first delegation proposed is the authority to implement trade agreements which require the reduction or increase of tariffs. This provision would renew the standard trade agreements program delegation of authority. The Trade Expansion Act authorized substantial tariff reductions overall plus the elimination of duties on a significant portion of United States trade. With tariffs much lower overall today than they were prior to the Kennedy Round, limited authority would not provide sufficient or appropriate scope for the variety of negotiating techniques needed to reduce remaining tariff protection. The real limit on tariff increases, on the other hand, is the willingness of foreign countries to agree to higher United States tariffs.

It is particularly important that our negotiators have the full support of the Congress with respect to negotiations on trade barriers other than tariffs. It is also in this area that constructive partnership between the Executive and Legislative branches is most essential. Advance authority would maximize the chances of success in this area from a negotiating point of view. This is not possible, for in many cases only the Congress can provide the means for eliminating these barriers, particularly if they require changes in domestic laws.

The proposed Act delegates advance authority to implement agreements on a limited range of measures closely related to tariffs in order to enhance our negotiating credibility, thereby the possibilities of achieving the reduction and elimination of foreign trade restrictions of interest to us. New procedures are necessary to provide for implementation of agreements on other trade barriers.

The proposed Congressional veto procedure moves from the existing system of granting advance implementing authority on tariff agreements to the President to a closer cooperative relationship of the President and the Congress in the trade agreements area. The parameters of an agreement would be outlined to the Congress well *before* an agreement is concluded for review and guidance. Either House of Congress would have the final word on implementation of an agreement through veto by a majority vote. This new process balances the requirements of limits on the delegation of domestic authority and the requirements of successful negotiation.

The delegations of advance authorities with respect to tariffs and other trade barriers in Title I, together with the limited continuing tariff authority in Title IV of the Act are authorities which deal with permanent alterations of the levels of import restrictions. Most of the other delegations of authority in the Act are designed to increase or reduce trade restrictions to respond to particular trade problems.

More explicit authority for use of trade measures to help correct any serious balance-of-payments problems which could arise in the future would help ensure that import relief and adjustment assistance measures do not bear the burden again of dealing with overall foreign competition.

There remain difficult problems of domestic adjustment to increased competition which would increase for particular segments of the economy as trade barriers are reduced further. No single sector of the economy should bear the burden for the benefits of trade expansion for the economy overall. Existing relief and assistance mechanisms require major revision to provide the means for orderly adjustment to increased imports.

Let me now turn to another matter of considerable importance. A few provisions in the Act would authorize the President to take actions which would not necessarily be in accordance with United States international obligations. The two principal examples are (1) section 301, which continues and expands the authority for the President to respond to unfair trade practices of foreign countries, and (2) section 401, which grants explicit and more flexible authority than that available under existing law to raise tariffs as a surcharge to deal with serious balance-of-payments problems.

The Administration does not want to create any impression that we are taking our international obligations lightly. The contrary is the case. No provision of the Act itself violates international obligations or *requires* that an international obligation be violated. In some limited cases the Act contains authority for the President which *could* be exercised in a way which would be inconsistent with current international rules. Any appearance of provisions inconsistent with international obligations should be viewed in the context of proposals we are making for reform of the international rules, in the monetary system for example.

Section 252 of the Trade Expansion Act authorized actions which could be breaches of United States international obligations. This authority was only used once, and then in a way that was consistent with international obligations.

The argument for abiding by our international obligations is strong. If the United States were to act contrary to international obligations, this would encourage other countries to take similar action, thereby making international obligations a less effective tool of international diplomacy. The damaging effect this may have on our national interests is another major reason for the United States to conform to its own international obligations.

In sum, although the Trade Reform Act contains some new and expanded authorities, they are consistent with and reinforce four decades of Congressional-Executive partnership in the trade agreements program. What is sought are not unprecedented delegations of authority, but workable solutions to the problems of trade negotiations and other trade matters in the context of current needs of the trade agreements program.

TRADE REFORM ACT OF 1973

Testimony for the Record by Ambassador William Eberle, United States Special Representative for Trade Negotiations, with Ambassador William Pearce, Deputy Special Representative for Trade Negotiations, and Mr. John H. Jackson, General Counsel, Office of the Special Representative for Trade Negotiations.

Gentlemen:

In this document, designed to be tabled and inserted for the record, and not presented orally, I intend to present for your information an explanation and statement of reasons supporting each major portion of a proposed bill transmitted to the Congress by the President on April 10, 1973, entitled the "Trade Reform Act of 1973" and introduced as H.R. 6767. I will take up each major

title of that bill in time, and try to indicate to you what this Administration intended by the provisions, what were the reasons and arguments which persuaded the Administration to recommend the provisions in the form contained in this bill, how they compare with prior law, and in general how those provisions are likely to be utilized by the President.

TITLE I—AUTHORITY FOR NEW NEGOTIATIONS

Some of the most important provisions of the Act are contained in Title I which is designed to reestablish authorities necessary to conduct and to implement the results of a new round of trade negotiations. These authorities are of two basic types: (1) *tariffs:* authority to eliminate, reduce, impose, or increase tariffs, or to maintain existing duty treatment on products, provided such changes, if any, are pursuant to trade agreements concluded with foreign countries during the next five years; and (2) *other barriers:* a mandate to negotiate agreements with foreign countries on other trade barriers; a new optional procedure for submitting agreements to Congress for review and possible veto by resolution of either House; and advance authority to implement agreements on a limited number of specified barriers. In addition, the Title would reenact the procedures in the Trade Expansion Act of 1962 which require the prior advice and views of the Tariff Commission, Executive agencies, and the public with respect to tariffs, with comparable Executive branch procedures on other trade barriers which are the subject of negotiations.

One of the major purposes of the Trade Reform Act is to provide the President the necessary authority and Congressional support to achieve two main overall objectives: (1) a more open and equitable world trading system through the progressive reduction of barriers which distort trade; and (2) reform of world trading rules and practices which will be accepted and applied by all major trading countries, including a multilateral safeguard guideline to provide a more orderly trading system and to assist adjustment and avoid dislocations.

Barriers to agricultural and industrial trade take many forms. Tariffs continue to afford significant protection on many products. and other trade barriers and trade-distorting measures have become relatively more important as tariffs have been reduced. The proliferation of preferential trading arrangements in recent years discriminate against exports of the United States and other countries not parties to the arrangements. The negotiations will be broader in scope than the prior negotiations which focused primarily on tariffs. To achieve our objectives, they must deal with the whole complex of barriers to trade in agricultural and industrial products, and open up new approaches to deal with problems arising from discrimination.

In February 1972 the European Community and Japan joined with the United States in written declarations undertaking to seek authority for "multilateral and comprehensive negotiations" to begin this fall which "shall be conducted on the basis of mutual advantage and mutual commitment with overall reciprocity." Foreign countries with parliamentary systems of government will bring to the negotiating table broad authorities to alter their trade barriers. While the President has the Constitutional authority to negotiate and conclude agreements affecting tariffs, since the June 1967 lapse of authority in the

Trade Expansion Act, he has not had authority to implement such agreements insofar as they affect tariffs or other domestic laws.

Since 1934 the Congress has periodically delegated the President authority to implement the results of reciprocal tariff agreements. The proposed Act would continue this precedent. This authority is necessary to ensure maximum participation and commitment by other countries to reduce their trade barriers. The goal of the negotiations should be set as high as possible. To achieve its objectives, the United States cannot afford to allow other countries to limit the scope of the negotiations at the outset by pointing to limitations in the United States authority. If the initial scope is narrowed, the opportunity to deal with barriers to our trade will be sharply reduced. The authorities requested provide the President the flexibility and bargaining leverage required to deal with all anticipated negotiating problems.

Tariffs

Congress in the past has granted authority for the President to reduce or increase United States tariffs up to specified maximum amounts. The most recent grant of authority, in the Trade Expansion Act of 1962, enabled the President to implement the results of negotiations leading to tariff reductions of up to 50 percent below the then existing duty levels. This limitation did not apply to duties of five percent or below, trade agreements with the European Community on agricultural commodities, or to certain tropical agricultural and forestry products. In these cases tariffs could be reduced to zero by agreement. In addition, the Act provided authority to eliminate all tariffs on products for which the United States and the European Community, of which the United Kingdom was expected to be a member, accounted for at least 80 percent of world trade.

These provisions in the Trade Expansion Act represented very substantial tariff reducing authorities, particularly since overall tariff levels were about 50 percent higher prior to the Kennedy Round of trade negotiations than they are today. Present tariff levels on dutiable industrial products average about eight percent for the United States.* Consequently, even though the statutory authority in the proposed Act imposes no lower limit on tariff reductions, the scope of the power to achieve trade expansion through tariff reductions is in practice limited by the lower tariff levels from which the new negotiations would begin. Specific percentage limitations on tariff reducing authority would result in only small percentage point reductions overall and could leave a significant number of restrictive duties largely intact.

The significance of tariffs has also been diminished by exchange rate realignments in the past two years. The Smithsonian and February 1973 monetary agreements combined resulted in an overall appreciation of the major currencies of Europe and Japan against the dollar of about 25 percent. Even if all tariffs were to be eliminated immediately, the effect would not by any means offset the benefits to United States industries in domestic and foreign markets resulting from the more realistic relationships of the major world currencies.

Limited authority to reduce or increase tariffs would be insufficient for the type of multilateral negotiations now envisaged. First, it would

*By comparison, tariff levels average about eight percent for the European Community, 11 percent for Japan and 14 percent for Canada.

greatly reduce the scope of the President's bargaining leverage and flexibility at the negotiating table. Negotiations on tariffs could take several forms, employing a variety of techniques. The GATT and OECD have been considering a number of possible tariff negotiating approaches in their pre-negotiation preparations. These possibilities include an across-the-board or linear approach; negotiations on particular product sectors which would include negotiations on trade restrictions other than tariffs; harmonization of duty rates among countries overall or on particular products or product sectors, which could involve increases as well as decreases of tariffs; item-by-item negotiations; or combinations of these techniques.

If other countries were willing, a broad authority would enable the President to negotiate the phased elimination of tariffs on most products over an extended period or to negotiate a combination of actions. For example, an agreement could result in the elimination of duties on some products, reductions of tariffs by the same or varying amounts on others, and no reductions or tariff increases on other products.

Second, a lesser authority would not provide sufficient negotiating leverage to obtain a solution to some of the major trading problems of particular concern to the Administration and to the Congress. One problem of increasing importance is the proliferation of preferential trading arrangements in recent years. According to one study, these arrangements account for over one-quarter of most of world trade and over one-half of the imports in some of the most important markets for United States exports.

Limited tariff authority would severely restrict the bargaining power necessary to obtain a solution to problems raised by the discriminatory aspects of these trading arrangements. Foreign countries will have an excuse to continue their resistance to changes in these agreements if the scope of United States trade authority is restricted. The large number of parties to these arrangements constitutes a considerable voting power in the GATT. Solution to the problem of tariff discrimination may, therefore, be less difficult to achieve in the context of trade negotiations than through reform of the applicable GATT Article XXIV provisions.

Authority to increase tariffs contained in the Trade Expansion Act of 1962 was subject to a limit of 50 percent above the duty rates existing on July 1, 1934. Title I of the proposed Act would enable the President to increase tariffs without a percentage limit in the context of trade agreements. However, this authority is subject to agreement of the negotiating parties, which again is a practical limit to the authority. The authority would not be used to raise tariffs across-the-board. Rather, it is required for possible use in specific types of cases in the context of trade negotiations. For example, tariff relationships in particular product sectors might warrant the harmonization of duty rates among major countries involving some tariff increases as well as decreases. This approach was used in the steel sector during the Kennedy Round. The authority might also apply to the issue of tariff disparities on a number of products.

The authority to increase tariffs, in conjunction with the authority provided in section 103, could be used to convert other types of trade barriers to fixed tariffs and then to schedule their reduction. For example, quantitative import restrictions and other such measures insulate large areas of trade from the adjustment process. The conversion of such barriers to price-based measures could work toward the overall objective of adjustment, including greater responsiveness to currency changes.

While 1934 tariff levels are high on most products, it is conceivable that conversion to tariffs of other trade barriers on some products which have low statutory rates of duty could necessitate raising tariffs to more than 50 percent above the statutory levels. Practical constraints, such as agreement by our trading partners, and the inflationary impact on the domestic economy would preclude any widespread use of substantial tariff increases.

Trade Barriers Other Than Tariffs

Trade barriers other than tariffs have become increasingly important restrictions to exports of all countries partly as a result of regional trading arrangements in Western Europe and the increasing influence of environmental considerations. An inventory prepared in the GATT of identifiable trade barriers in effect in member countries consists of about 800 notifications. These have been organized into 27 categories of barriers.

Some of these measures restrict imports directly, such as quantitative limitations and state trading; others, such as government procurement and product standards, give preference to domestic producers; some measures impede imports but were instituted for social reasons, such as health and sanitary regulations; some constitute additional charges at the border, such as variable levies; others subsidize exports rather than restrict imports. Some of these barriers have a major trade impact, others do not. In most cases it is difficult to quantify their impact on trade with any degree of precision. All have a cost to the countries affected.

Given the wide variety of such measures, their links to domestic legislation in all countries, and their varying impact on trade, there is no single negotiating approach for seeking multilateral solutions. Agreements on most types of measures would also require larger commitments from some countries than others. Therefore, there are few areas where solutions could be implemented independently of agreements on other trade barriers. Some barriers, however, might be the subject of international codes, such as product standards and government procurement practices. In other areas government regulations might be harmonized or general principles of behavior adopted. Other practices might be eliminated or converted to tariffs. It is also conceivable that agreements on some or all of these barriers might be made contingent on the successful conclusion of the negotiations as a whole.

The greater the President's authority in advance to implement agreements of mutual trading benefit, the greater will be his negotiating credibility abroad. Foreign countries have expressed little interest in negotiating future agreements without some degree of assurance that such agreements are potentially acceptable to the Congress and that procedures for implementation are clear.

The Administration attaches a great deal of importance to the reduction of trade barriers other than tariffs in the forthcoming negotiations. If the trade legislation emphasizes primarily tariff authority, foreign countries may wrongly draw the conclusion that the United

States attaches relatively low priority in the negotiations to other trade practices.

The primary purposes of the provisions in section 103 are two-fold: (1) to provide the President with as much negotiating flexibility and leverage as possible to meet any negotiating situation; and (2) to provide a new mechanism for liaison and cooperation with and consideration and review by the Congress with respect to agreements that require legislation for implementation. The Administration would, in addition, welcome the Congress making specific further provision for better coordination and consultation between the Legislative and Executive branches to ensure effective cooperation on all matters relating to the trade agreements program.

Section 103 contains a statement of the Congress urging the President to negotiate with foreign countries for the reduction, elimination, or harmonization of barriers and other distortions of international trade in order to provide better market access for United States exports. While the President can negotiate international agreements on any subject, a specific mandate from the Congress to negotiate on these trade barriers is very desirable for negotiating purposes. The statement would make it clear to foreign countries that the United States is serious in its intention to seek solutions to trade barriers and other trade distorting measures, and that the negotiators have the support of the Congress in seeking agreements. The reports of the House Ways and Means and Senate Finance Committees on the Trade Act of 1970 contained statements encouraging international discussion, but not a clear-cut mandate for negotiations on trade barriers.

It is difficult to frame general implementing authority which can apply to the various types of agreements covering trade barriers other than tariffs, particularly when a number of domestic laws may apply. Consequently there are three categories of procedures for the implementation of such agreements, considered in section 103. The "mandate" in section 103 (a) and (b) does not add to the current power of the President to implement such agreements. In some cases he may already have authority (under piror statutes on the Constitution) to implement agreements. In other cases he could submit an agreement in the Senate as a treaty, or seek new legislation from the Congress.

Section 103(c) of the Act provides a second procedure for implementing agreements. It would give the President advance authority to implement agreements without further recourse to Congress with respect to a limited list of subjects including methods of customs valuation, establishing the quantities on which assessments are made, and harmonization of requirements for marking the country of origin. Agreements relating, for example, to the American Selling Price basis of valuation, section 402(a) of the Tariff Act of 1930 (Final List) the wine gallon/proof gallon basis of assessment, and simplification of the methods of valuation could be implemented under this authority.

Advance authority on these matters would provide some bargaining leverage to obtain concessions of significance to United States exporters. These foreign concessions would not necessarily have to be in the customs field, or on the same subject. The items selected for inclusion on the advance implementation list are not selected because they represent wrongs or weaknesses in the United States system, but rather because they are of interest to our trading partners and could lead to reciprocal offers from them on other or similar matters. It is hoped that the Congress will see fit to add categories which it believes are appropriate for this type of treatment.

Customs valuation and assessment practices are closely related to tariffs themselves. Advance authority on these matters would enable the President to negotiate agreements to ensure that measures which pertain to the detailed application of tariffs are not increased or applied in an arbitrary manner which could offset the benefits derived from lower tariffs. The authority to raise tariffs might be used to convert certain of these measures to tariff equivalents and then to schedule their reduction. For example, the current duty on photographic film items under the Final List is 5 percent ad valorem. If the Final List treatment ceased, the duty would have to be raised to 5.3 percent ad valorem to collect equivalent duties.

With respect to marks of origin, the intent is not to use the authority to eliminate the requirements, but to seek agreement on their application. In 1958 the GATT recommended rules to reduce the difficulties and inconveniences which marking regulations may cause to exporting countries. An agreement could standardize and harmonize these requirements. It could also limit their application to cases where such marks are necessary for the information of the purchaser as opposed to an unnecessary burden to trade. Administrative costs would be reduced as well as annoyances to traders.

A new optional procedure under section 103 for implementing agreements could apply in cases where additional Congressional authority is necessary to change domestic laws. It constitutes the third and last category of procedure sought for implementing agreements other than on tariffs. Under this procedure the President would give the Congress at least 90 days notice of his intention to use the procedure in advance of concluding an agreement. After the agreement is concluded, the President would frame orders required for its implementation. These he would lay before Congress along with the agreement for 90 days. If within 90 days neither House of Congress disapproves by the majority of its authorized membership, the agreement and the orders would enter into effect.

The procedure is intended to increase the President's ability to negotiate agreements with foreign countries by expediting the process by which agreements can be implemented. It reduces the uncertainties inherent in present procedures whereby the Congress must take positive action before agreements involving domestic laws can take effect.

At the same time, the procedure provides a mechanism for the Congress to give proper consideration to any agreement before and after its completion, and thereby be more closely involved in shaping the trade agreements program. The advance notice provides both Houses and the appropriate Congressional committees an opportunity to consider the issues involved, to hold hearings to obtain the views of the public, and to influence the form of the agreement through recommendations or expressions of concern to the Executive Branch. Either House of Congress would be able to express its opposition to the new international rules for reducing or harmonizing trade barriers by vetoing the particular agreement.

There are precedents in the trade field for the use of a Congressional veto procedure. For example, section 7 of the Trade Agreements Extension Act of 1951, as amended in 1958, and section 351 of the Trade Expansion Act provide that Congress can override the President's decision not to implement the forms of import relief recommended by the Tariff Commission in an escape-clause investigation. The House of Representatives also authorized this procedure in the proposed Trade Act of 1970 with respect to implementing the agreement on American Selling Price negotiated in the Kennedy Round.

The Congressional veto mechanism is structured so that the President would determine when to use it. It does not in any way diminish the availability of existing Presidential authorities and other Constitutional procedures to implement agreements on quantitative import restrictions and other trade barriers. These include, as stated above, the President's Constitutional or existing statutory authority to negotiate and implement agreements in a limited number of cases where additional legislation is not required, submission of an international agreement to the Senate for approval as a Treaty (as in the case of the International Wheat Agreement), or negotiation of an agreement and then seeking implementing legislation from Congress.

Prenegotiation Requirements

Chapter 2 of Title I contains the procedures to be followed prior to the negotiation of trade agreements. These provisions are identical in substance to sections 221 through 224 of the Trade Expansion Act. Their purpose is to ensure that the tariff authority will not be used to the detriment of domestic interests. These procedures also enable the public and Government agencies to provide full information and advice to the President with respect to our foreign objectives and domestic interests on all trade barriers for his consideration in the negotiating process. Meetings of advisory groups for this purpose would be exempt from the requirements relating to open meetings and public participation under the Federal Advisory Committee Act. The exemption would enable disclosure of information without compromise of United States negotiating positions, or trade secrets and proprietary information.

The prenegotiation procedures require the Tariff Commission to advise the President of its judgment as to the economic impact that a change in tariff on any article which may be the subject of negotiation might have on domestic industry, agriculture, or labor. The President may begin the early stages of a negotiation, but he is precluded from making any negotiating "offer" on tariffs which might be binding if accepted, until he has received a summary of public hearings and the advice of the Tariff Commission, unless the six-month period for receiving this advice has expired.

The President may reserve any article from the negotiations. In addition, section 406 provides for the mandatory exception of articles from trade concessions which are subject to relief measures or on which action would impair the national security.

Section 102 requires that any reductions in tariffs be staged by using at least five annual stages of reduction. However, a tariff can be reduced up to three percent ad valorem in any one year. Thus a tariff reduction totaling 15 percent ad valorem or more would take at least five annual reductions to become fully effective. An overall six percent ad valorem reduction, on the other hand, could be accomplished in two annual staged reductions, although the President is authorized to extend the staging over a longer period of time. Reductions of 10 percent or less could be exempt from staging. For example, a reduction from 50 percent ad valorem to 45 percent ad valorem would not have to be staged. Where it would simplify the computation, the President has authority, within limits, to round individual stages.

Annual reductions are thus limited in magnitude to avoid giving rise to major adjustment problems for domestic industry or workers. In addition, however, there will be a number of cases where domestic conditions warrant the staging of concessions over more than five years, and the statute in no way precludes the longer staging. If a trade barrier were converted to a duty of 50 percent, for instance, the duty might then be staged downward to zero at the rate of five percent per year over 10 years.

TITLE II—RELIEF FROM DISRUPTION CAUSED BY FAIR COMPETITION

One of the major purposes of the Trade Reform Act is to provide the President the authority necessary for the United States to participate with foreign countries in the negotiation of a more open and equitable world trading system. The expansion of world trade under as few restrictions as possible will result in the overall benefit of the American economy. Trade stimulates more productive and efficient domestic industries through the competitive process. It also creates job opportunities and higher incomes, furnishes consumers a wider choice of products at lower prices, and provides a larger supply of essential materials.

The reduction of foreign tariff and other trade barriers to provide greater access abroad for American products will require the reduction of our trade barriers. Consequently, a freer trading system requires some adjustment at home. Title II of the Act is designed to ease the hardship which could result for particular industries and workers which have difficulty adjusting quickly to increases in import competition. The Administration proposes major changes to existing import relief and adjustment assistance provisions. The purpose of these changes is to provide a more effective mechanism and more efficient procedures for domestic industries to obtain temporary relief and workers to receive assistance in cases of injury by increases in imports, in order to spread the burden of adjustment throughout the society, rather than placing it heavily on a small group of persons or firms.

The economic cost of erecting trade barriers against imports is to sacrifice some of the benefits from international trade which would otherwise accrue to industry, workers, consumers, and taxpayers. At the same time it is in the national interest, in fact the responsibility of the nation as a whole, to share the costs of adjustment through relief and assistance measures to ensure the economic and social well-being of particular segments of the economy.

The basic purpose of import relief and assistance measures should be to facilitate adjustment of industries and workers to import competition in an orderly way. The adjustment may take the form of a transfer of resources to new and more productive uses. Or the relief may enable a basically viable industry to take measures to meet more intense competition in the same line of activity. To achieve the adjustment purpose, relief should be granted to the extent and only for the period of time necessary to permit a particular industry or group of workers to adapt to competitive pressures. It should provide an incentive for adjustment, not become a means to retain and support inefficient and noncompetitive industries and firms behind the shelter of permanent trade barriers. In addition to the import relief provisions, the staging of tariff reductions is already one adjustment mechanism.

Import Relief for Industries

Current import relief measures under the Trade Expansion Act are inadequate to deal with the disruptive effects of sudden and substantial increases in imports. Some industries have been denied relief because they could not meet the stringent eligibility criteria. In only two out of 25 cases where an industry has petitioned the Tariff Commission for import relief under the Trade Expansion Act have a majority of the Commissioners reported that the requirements for eligibility have been met. In only another six cases were the Commissioners equally divided on the question of serious injury.

Pressures on both the Congress and the Executive Branch have increased to utilize constitutional and legislative measures other than those measures provided by section 352 of the Trade Expansion Act. Consequently, more realistic criteria and expedited Tariff Commission deliberation ar necessary to deal adequately with serious adjustment problems.

Section 201 eases significantly the existing stringent criteria for determining eligibility for import relief. First, it removes the requirement of existing law that the Tariff Commission determine whether the increased quantities of imports result "in major part" from previous trade agreement concessions.

The "link" to prior tariff concessions is the criterion that most petitioners have failed to meet. It is not a fair and reasonable test for determining eligibility for import relief. It is very difficult and sometimes impossible to demonstrate a cause and effect relationship between increases in imports and tariff reductions, some of which may have taken place decades ago. In some cases, imports of products which cause injury now were not even in existence when the concessions were made, or are being imported from different sources of supply. The Trade Act of 1970 as passed by the House of Representatives would have removed this statutory causal link as proposed by the Administration.

The second major difficulty for petitioners in obtaining eligibility for import relief under the Trade Expansion Act is the requirement that increased imports be the "major factor" causing serious injury. An industry may be in serious difficulties due to a number of reasons. The cause may be changes in technology, changes in consumer tastes, domestic competition from substitute products, plant obsolescence, or poor management, as well as import competition. The "major" cause of injury has been interpreted to mean that cause which is greater than all other causes combined. To require that imports be more than 50 percent responsible for the injury imposes too rigid a test for providing adequate access to import relief. Section 201 substitutes "primary" for "major" cause. Primary cause is a more liberal and realistic criterion. "Primary cause" is defined in the Act as that cause which is greater than any single other cause but not necessarily greater than all other causes combined.

Section 201 also contains a new provision for determining that imports are the cause of serious injury. In addition to its investigation to determine the existence or threat of serious injury, the Tariff Commission will also determine, upon request, whether there exists a condition of "market disruption." The criteria for a finding of market disruption are four-fold, namely: (1) that imports of like or directly competitive articles are substantial, (2) that there has been a rapid increase in imports of the article both in absolute terms, and (3) relative to domestic consumption, and (4) that imports are offered at prices substantially below those of comparable domestic articles. In all cases, however, the Tariff Commission must find actual or threatened serious injury as well as the existence of increased imports. If the Tariff Commission finds both market disruption and serious injury, the finding of market disruption will constitute *prima facie* evidence that the increased imports are the primary cause of the injury.

The market disruption test is not to be used by the Tariff Commission as a substitute for other separate criteria under section 201 for determining the existence or threat of serious injury to an industry. The purpose of the market disruption provision is to simplify the burden of demonstrating that imports are the *primary cause* of the serious injury. If the Tariff Commission finds market disruption and also finds serious injury the finding of market disruption constitutes *prima facie* evidence that imports are the primary cause of the injury.

If a petitioner establishes a case of market disruption, no other causes of injury need to be weighed against increased imports unless another interested party or the Tariff Commission on its own motion raises the possibility that other causes are present. The Tariff Commission must conduct a full investigation of market disruption and consider all relevant factors, whether or not an importer or other interested party has presented evidence to demonstrate that some factor other than increased imports is the primary cause of injury. The Commission would consider the *prima facie* evidence of primary cause rebutted if it finds or an interested party presents some credible evidence that another factor is the primary cause of injury. If the *prima facie* case is rebutted, then the regular showing that increased imports are the primary cause of the serious injury must be made if the Tariff Commission is to make an affirmative finding under section 201(b).

The exact procedures for Tariff Commission consideration of these tests will have to be worked out by the Tariff Commission through regulations or rulings. To ensure an opportunity for the presentation of opposing views, the Tariff Commission could announce publicly at the time of the request that it will investigate the presence of market disruption.

Numerous bills have been introduced in the Congress in recent years to legislate domestic safeguards by limiting annual imports to maximum levels set by specific arithmetic criteria, usually based on the proportion of imports to total domestic consumption in a previous period of years. No single arithmetic formula is applicable to the greatly varying circumstances which may cause competitive pressures in different industries. Consequently, safeguards based on formulas are arbitrary rather than equitable and preclude the consideration of other economic factors which may be the actual cause of injury. They also can lead to relief for industries which do not need it and to rigid regulation of world trade. The determination of whether there is serious injury to a domestic industry and whether imports have been the primary cause of the injury should be based on a qualitative judgment. The Tariff Commission may find, for example, that poor management, or failure to produce a product which satisfies consumer demand is the primary cause of injury, rather than imports.

Section 201 entitles a petitioner or the President, the Special Representative for Trade Negotiations, or the House Ways and Means or Senate Finance Committees to request, or the Tariff Commission to institute on its own motion, an investigation by the Tariff Commission to determine whether increased imports of an article are the primary cause of actual or threatened serious injury to a domestic industry producing like or directly competitive articles. A petitioner must describe the objective for which the relief is sought, such as to adjust to new competitive conditions. A petitioner, such as a trade association, firm, union, or groups of workers must also be representative of an industry. This provision continues present Tariff Commission practice with respect to the acceptance of petitions.

The Tariff Commission must take all relevant economic factors into account in determining whether or not there is serious injury to an industry. As under the Trade Expansion Act, these factors include profit performance, unemployment or underemployment levels, and idling of productive facilities. In each case the decline must be "significant", that is the Tariff Commission will only find an industry eligible for relief if the problem is industry-wide. Otherwise, the benefits resulting from import relief measures for an entire industry with only a few small ailing firms would be offset by the costs to the overall national economy of raising trade barriers and providing unnecessary protection for healthy firms.

The Tariff Commission must report its findings to the President within three months from the date the petition or request is filed, unless a two-month extension is necessary to conduct a full and fair investigation in complicated cases. The shortening of the time period from six months provided under the Trade Expansion Act is to expedite the granting of import relief in cases of serious injury.

Following receipt of a Tariff Commission report containing an affirmative finding of injury, the President has 60 days to make a determination under section 202 whether to provide import relief. The time period is 120 days in the case of a tie vote of the Tariff Commission because such a case probably involves a more difficult decision. The decision whether to provide import relief involves a number of international and domestic considerations. The listing of specific factors which the President must take into account in his determination only makes explicit in the law the national interest considerations which the President has in fact weighed under existing practice.

Consistent with the purpose of providing relief the President must consider whether the industry is making an effort to compete more effectively with import competition, based on information provided by the Tariff Commission under section 201. He must also consider whether the temporary import relief is likely to promote adjustment by enabling a basically viable industry to adopt measures to become more competitive, or to enable the transfer of resources to more productive uses. Failure to provide such relief might cause severe economic and social hardship to workers and communities in a particular geographic area of the country in which the industry is concentrated. The President has the help of the Executive departments in obtaining information and advice.

On the other hand, the granting of relief may have a significant inflationary impact for all American consumers. The compensation which the United States might owe to foreign countries in the form of tariff reductions on other commodities might result in increased imports of other products, possibly leading to injury to other segments of the economy. Or, if the compensation the United States might offer to foreign countries were judged by them to be inadequate, retaliation against United States exports could occur which would have an adverse impact on our sales abroad. The President is in the best position to weigh all these factors which bear on the national interest in determining whether and in what form to provide import relief. Therefore, under this proposed Act the Tariff Commission will no longer recommend a remedy for serious injury.

The President may decide to provide import relief in one or more of the forms authorized under section 203, or he may direct the Secretary of Labor to expedite consideration of petitions for adjustment assistance for workers. Or he may take a combination of these actions. If the President decides not to provide import relief, he must submit a report to both Houses of Congress stating the reasons for his decision.

Section 203 expands the type and degree of import relief measures in cases of a Tariff Commission finding of serious injury caused by imports beyond those presently available under section 351 or 352 of the Trade Expansion Act. The relief may take the form of orderly marketing agreements with one or more foreign countries, imposition of tariffs on duty-free items or increases in existing tariffs (including tariff-rate quotas), imposition of quantitative or other import restrictions, or withdrawal of the application of 806.30 and 807.00 of the United States Tariff Schedules. The President may apply a combination of these measures. The purpose of expanding the relief measures is to provide additional flexibility to fashion a remedy for serious injury which is appropriate to the particular circumstances of each case.

The President must grant import relief within 60 days of his decision under section 202 to provide import relief. This period may be extended from 60 to 180 days if the President announces his intention to negotiate one or more orderly marketing agreements. Since the purpose of import relief is to facilitate orderly adjustment of an industry to new competitive conditions, the new provisions impose stricter time limits on the duration of relief and require that it be phased out over a certain period.

One of the major changes from existing law is to provide greater flexibility with respect to orderly marketing agreements as a possible import relief measure. Section 352 of the Trade Expansion Act provides that the President may negotiate orderly marketing agreements in lieu of providing other forms of import relief, such as tariffs or quotas. He is forced to choose between two remedies, and if he elects the one he cannot revert to the other. The Trade Bill of 1970 as passed by the House of Representatives would have eliminated the "in lieu of" language and would have provided that an orderly marketing agreement could be concluded even after other forms of relief had been proclaimed. Such an agreement could also have replaced, in whole or in part, any earlier actions.

Section 203 contains amendments similar to those in the Trade Act of 1970. For example, the President could proclaim across-the-board quotas or tariff increases and then negotiate agreements with the principal supplying countries. Once these agreements were implemented, he could terminate the prior actions, in whole or in part. For example, he could terminate tariff increases but continue the suspension of items 806.30 and 807.00. However, import relief in the form of tariff increases or the imposition of duties must always be applied on a most-favored-nation (MFN) basis.

Section 352 of the 1962 Trade Expansion Act provides that if the President has concluded a multilateral agreement among countries accounting for a significant part of world trade in the article covered by the agreement, he can apply the terms to countries which are not parties to the agreement. Similar authority is contained in section 204 of the Agricultural Act of 1956, as amended. The proposed Trade Reform Act contains this type of authority with some important modifications.

Section 203(c) provides that the President may apply restrictions to non-signatories in order to carry out "one or more agreements . . . among countries accounting for a significant part of United States imports of the article covered by such agreements." In order to exercise this authority with respect to non-signatory countries, there must be at least two foreign countries which have entered into agreements with the United States, either in the form of one multilateral agreement or a series of bilateral agreements. One agreement with one country could not serve as the sole basis for imposing restraints on non-signatories.

Another change from existing law is that the quantitative test is in terms of a significant part of United States imports of the article covered by the agreement, rather than a significant part of "world trade" in the article. "World trade" is an ambiguous term which can be defined in various ways, and is not directly relevant to the United States action. The term "significant" is not defined and it is intended that it not be restricted by a specific percentile amount.

Section 203 provides new authority to suspend the application of items 806.30 and 807.00 as an import relief measure. Item 807.00 provides that on imports of articles assembled abroad in whole or in part of components fabricated in the United States, duty is assessed on the value of the articles excluding the value of these components. Item 806.30 provides similar customs treatment for metal articles exported for processing and returned to the United States for further processing.

The Administration has devoted a great deal of study to the economic factors affecting the use of these tariff provisions. It has concluded, as did the Tariff Commission, that elimination of these items would, on balance, have an adverse effect on the United States merchandise trade balance and would result in a net loss of jobs for American workers. However, cases may arise in which it would be appropriate to suspend the benefits of these tariff items to imports of articles which are causing serious injury to a domestic industry. This authority would be exercised on an MFN basis even though in most cases the action would only affect one or two countries. The authority to suspend "in part" could be used to impose a limitation on imports entered under these tariff items, or to withdraw the benefits of these items only on imports of certain articles which the Tariff Commission has found cause serious injury.

Section 203 enables more effective import relief in the form of tariff increases by eliminating the statutory ceilings on such increases. Under the Trade Expansion Act, tariff increases cannot result in a rate of duty more than 50 percent above the 1934 rates, or 50 percent ad valorem in the case of a duty-free article. Any limitations tied to the 1934 rates are not uniform in effect. In some cases, these rates are low and the tariff increases permitted cannot provide effective relief. The President should have authority to set tariffs at any level in cases where a tariff increase is the most effective form of relief.

Under the Trade Expansion Act, relief may be applied for an initial term of four years. It can be extended for additional periods, each not to exceed four years, following an investigation and report by the Tariff Commission. Under the new provisions, import relief could be applied for an initial term of up to five years, with one possible two-year extension following an investigation by the Tariff Commission. When the relief has expired, after five or seven years, the same industry cannot petition for import relief under section 201 until at least two years have expired. This waiting period is designed to emphasize the temporary nature of import relief and to emphasize the adjustment purpose of that relief.

The import relief would be phased out during its initial term. In the case of a five-year term, the first reduction in relief would commence after the first three years. The President could provide import relief for a shorter term than five years. In this case the first reduction of relief presumably would begin at some point earlier than three years although this is not explicitly required by the statute. If the President decides to continue import relief beyond the initial period, he can provide the degree of relief which applied at any time during the initial term. For example, if a tariff of 10 percent is increased to 20 percent and then reduced to 15 percent in the fourth year and to 12 percent in the fifth year, the extension of relief for two years could be at a tariff level of 12, 15, or 20 percent, or any other rate between 10 and 20 percent.

The Tariff Commission would furnish to the President at his request reports on developments in an industry which is benefitting from import relief. Under existing law, the Commission makes reports to the President on an annual basis. The annual report is a burden on the Commission and, in many cases, the data base has not changed sufficiently in one year to justify this kind of investigation.

Under existing law, a domestic industry can request the Tariff Commission to undertake an investigation with respect to any proposed modification in import relief. For example, if the President has provided for staged tariff reductions, the industry in question can request an investigation with respect to the implementation of any of these reductions. Under section 203 of the proposed Act an industry can petition the Tariff Commission only at that point when the initial term of import relief is to be fully terminated.

All of these proposals are consistent with the overall purpose of import relief, namely to enable an orderly adjustment by an industry to new competitive conditions. The time limits on the duration of import relief and the phasing out of the relief, in particular, are intended as an incentive to accomplish this objective.

Adjustment Assistance for Workers

The eligibility criteria for assistance under the Trade Expansion Act were designed to limit the scope and prevent the misapplication of compensation by making certain that workers were, in fact, displaced and firms seriously injured as a result of increased imports due to concessions under trade agreements. Consequently the eligibility criteria have been too restrictive, and the administrative procedures too time-consuming and inefficient to deliver benefits when they are most needed.

The program of adjustment assistance for workers proposed under Title II of the proposed Act departs significantly from and replaces the current program. The stress is placed on adjustment through comprehensive programs. Changes in the criteria for eligibility and in administrative procedures are designed to ensure more liberal and expeditious access to benefits.

Workers displaced from employment by import competition are only one of many categories of workers adversely affected by government policies, technological change, or market forces. The Government has a responsibility to the national economy to ensure that any worker involuntarily unemployed for whatever reason receives assistance which can help him to obtain alternative employment quickly. Problems of adjustment faced by workers displaced by import competition resulting from trade liberalization policies are essentially no different from those faced, for example, by workers employed on a military base closed down by the Government or workers in a firm which goes out of business because of poor management policies in meeting domestic competition. In each case the individual worker may suffer severe hardship for these policies of which he has been the victim rather than the cause.

Consequently the proposals are designed to phase the special income-maintenance program for workers affected by imports into an improved program under which workers displaced for whatever reason receive benefits according to a uniform standard. Separate legislation submitted to the Congress to amend the Internal Revenue Code will provide for the establishment of Federal minimum standards for weekly benefit levels under State unemployment insurance program to ensure that all workers covered by these programs receive comparable benefits whatever the cause of their involuntary unemployment.

These minimum standards would become generally effective on or after July 1, 1975, if proposed legislation is passed as presented. Federal supplements would make them available to trade-impacted workers immediately under the terms of this Act.

Under Title II of the Trade Reform Act cash benefits for workers would consist of the unemployment insurance benefits which the workers would normally receive under existing State standards. In addition, the Federal Government would make available supplemental payments wherever necessary to bring the amount the worker receives under existing State unemployment insurance laws up to the level to which the worker would be entitled under the new minimum Federal standards. When all State benefit programs provide amounts equal to or in excess of the new standard, the Federal Government would no longer pay supplements to State unemployment insurance. The Trade Adjustment weekly benefits under this Trade Act would simply "fade away" because of non-use. It is important to note, however, there is no termination date. Unless and until the general Federal standards program is enacted and becomes effective (or all State benefit amounts are independently brought up to the same standard), weekly benefits under the trade adjustment assistance program will continue.

Under the Trade Expansion Act trade-impacted workers receive cash readjustment allowances in place of unemployment insurance. This allowance is equal to 65 percent of the worker's average weekly wage or 65 percent of the national average weekly wage in manufacturing, whichever is less. The total of any earned income plus the adjustment allowance cannot exceed 75 percent of the worker's average weekly wage. The maximum possible readjustment allowance is presently $101.00 a week.

Until the Federal standards are achieved, eligible trade-displaced workers would be entitled to receive supplementary unemployment insurance payments from Federal funds wherever necessary to bring their weekly cash payments up to 50 percent of their average weekly wages or to the maximum level of two-thirds of the appropriate State average weekly wage, whichever is lower. The weekly payments available to a worker who qualifies under this Act may be lower or higher than those available now to workers who meet the more stringent eligibility tests of the Trade Expansion Act. If a worker had wages higher than the State average weekly wage (in employment covered by the unemployment insurance system), and that State average weekly wage was the same as or higher than the national average weekly manufacturing wage, the worker's weekly payments under this Act would be as high as or higher than under the Trade Expansion Act. In most other cases, they would be the same or lower.

Apart from the level of weekly benefits, the new proposals would liberalize the eligibility requirements for assistance and expedite the process of determination and delivery of benefits and other services to facilitate the adjustment process. The Secretary of Labor will conduct the entire process of investigating and determining whether a group of workers meets the eligibility requirements, in addition to issuing certification. The entire process will be completed within 60 days of the filing of the petition with the Secretary by a group of workers. The Tariff Commission will be involved only if requested by the Secretary.

The eligibility criteria are considerably liberalized, compared to the Trade Expansion Act of 1962. The causal link between increased imports and previous tariff concessions is removed, as in import relief cases. Increased imports need only contribute "substantially" to worker unemployment or underemployment, rather than be the "major" cause. Under existing criteria, only about 34,000 workers have been certified eligible to apply for adjustment assistance; petitions of many more have been turned down. While some workers might receive somewhat lower cash benefits under the new system, easier access to assistance could increase the number of eligible workers, perhaps as much as five times. The new expeditious procedures will provide the benefits in time to be of real assistance.

In addition to cash benefits, improved service programs will be a permanent feature of the adjustment assistance program. The Secretary of Labor will make every reasonable effort to obtain counseling, testing, placement, and other supportive services through State agencies to aid displaced workers in obtaining alternative employment. The Secretary shall also endeavor to assure the provision of appropriate training to trade-impacted workers under manpower and other service programs on a priority basis when alternative employment is not available. Supplemental assistance payments for subsistence and transportation expenses incurred while the worker is in training will be continued up to the same amounts now authorized under the Trade Expansion Act.

In addition to weekly benefits, there are several benefit allowances designed to help a worker adjust, which are a permanent part of the trade adjustment assistance program for workers even after general Federal standards for unemployment insurance come into force.

A worker may receive a job search allowance of up to $500.00 to cover 80 percent of his costs if he must search for suitable employment outside of the commuting area in which he lives. If the worker does secure employment outside of his commuting area, he may receive a relocation allowance consisting of 80 percent of the reasonable and necessary expenses of transporting himself, his family, and household effects to the new location. He will also receive a cash payment equal to three times his average weekly wage or a maximum of $500.00.

Phase-out of the Federal role in providing special income maintenance recognizes that the assistance required by workers can be better administered at the State level to reflect local conditions. While the maximum duration of cash readjustment payments will be reduced under the new unemployment insurance system, the liberalized eligibility criteria together with the streamlined delivery of assistance should provide assistance when it is most needed and can be most effective.

TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

Title III contains revisions to the four principal statutes which provide the President authority to deal with unfair trade practices of foreign countries or sellers abroad. The first concerns authority under section 252 of the Trade Expansion Act to respond to unreasonable or unjustifiable foreign trade restrictions or other acts which discriminate against or otherwise burden United States trade. The remaining provisions concern responses to unfair competitive practices in the import trade contained in the Antidumping Act, 1921, the countervailing duty law (section 303 of the Tariff Act of 1930), and section 337 of the Tariff Act of 1930 with respect to patent infringement.

Section 301 expands the President's authority to deal with unfair foreign import restrictions, provides new authority to act against countries which limit United States exports through the use of export subsidies, and simplifies the conditions under which the authority may be used.

The proposed amendments of the Antidumping Act and the countervailing duty law will serve to strengthen materially these statutes as instruments which can nullify the impact on United States industry and labor of unfair foreign trade practices, while at the same time, making the investigations conducted under these laws more efficient and fair. As tariff levels have been reduced over the years in successive rounds of multilateral negotiations, unfair trade practices have become increasingly significant barriers to the unfettered flow of international trade. Accordingly, the legislative tools to cope with these practices need to be sharpened.

Amendments to the present law concerning patent infringement provide a more equitable system for dealing with imports which infringe United States patents. The Federal Trade Commission Act would also be amended by a companion bill which authorizes the FTC to investigate and regulate other unfair methods of competition such as monopoly practices in the importation of products into the United States.

Unfair Foreign Import Restrictions and Export Subsidies

Section 301 revises and extends the President's existing authority to restrict imports from countries which unreasonably or unjustifiably restrict our exports. Section 252 of the Trade Expansion Act provides such authority only under a complex array of conditions which vary according to the practices or exports involved. As the President stated in his transmittal message on this Act, the United States must be in a position to respond effectively and even-handedly to practices which unfairly prejudice our export opportunities abroad.

Section 252 of the Trade Expansion Act authorizes the President generally to withdraw concessions and, in some cases, to impose duties or other import restrictions on the products from a foreign country which maintains unjustifiable or unreasonable import restrictions which burden or discriminate against the United States trade. The principal authority is to impose or increase tariffs up to the statutory Column 2 rates of duty. In the case of unjustifiable import restrictions on our agricultural exports, the President may impose duties in excess of the statutory rates or impose other import restrictions, such as quotas, against the offending country.

The existing statute contains a number of defects. First, section 252 gives the President greater legal authority to deal with unfair restrictions on agricultural than on industrial exports. The Trade Act of 1970, as approved by the House of Representatives and the Senate Finance Committee, would have removed this distinction. Similarly, section 301 of this Act would remove this arbitrary distinction, giving the President full authority to deal with unfair foreign restrictions on both agricultural and industrial exports.

Second, section 252 distinguishes "unjustifiable" from "unreasonable" import restrictions. Unjustifiable connotes illegality, for example, a violation of a country's obligations to the United States under the GATT or under a Treaty of Friendship, Commerce, and Navigation. The word "unreasonable" refers to acts which are not necessarily illegal or "unjustifiable."

Since the effects on United States economic interests may be the same whether a restriction is unjustifiable or merely unreasonable, the President's authority to deal with "unreasonable" import restrictions should be the same as his authority to deal with "unjustifiable" ones. The GATT does not regulate a great variety of administrative practices which can be used to discriminate against United States exports. The President should also have authority to respond to these types of unfair acts.

The President's authority under section 252 to deal with unreasonable import restrictions is qualified by the requirement that he have due regard for the international obligations of the United States. This requirement does not apply when the President is responding to unjustifiable import restrictions. The President should consider the international obligations of the United States in all cases, whether the acts complained of are unjustifiable or unreasonable. However, disputes concerning the extent of international obligations should not limit the President's domestic legal authority to act on behalf of United States interests.

The President would resort to action which is inconsistent with international obligations only after all other possible measures which are consistent were used and failed to remedy the problem. Even the action inconsistent with international obligations would only be taken on a matter of important principle and in the national interest. Existing provisions of the Trade Expansion Act authorize actions which could be breaches of United States international obligations. Section 252 is one example of such a provision. This authority has been used only in one case, however, and never in a way which was inconsistent with our international obligations.

The third major change under section 301 is to broaden the President's authority beyond the withdrawal of trade agreement concessions. Except in the case of restrictions on agricultural products, the President's retaliatory authority is limited under section 252 to the imposition of additional duties up to the Column 2 or statutory rates. In some cases these rates are very low. Whether the withdrawal of tariff concessions would be an effective remedy will vary in each case, depending on the 1930 rates applied to those products of which the offending country is the principal supplier. Section 301 removes this ceiling because it is both awkward and unpredictable. There might be cases in which a quota would be a more effective remedy, for example, if a foreign country imposes an illegal quota on certain United States exports.

The fourth change provides a new authority which would deal with the situation in which a foreign country unfairly subsidizes its exports to third-country markets, thereby displacing the sale of competitive United States exports. The House of Representatives and the Senate Finance Committee approved such an amendment in the Trade Act of 1970. The GATT prohibits export subsidies and sanctions the use of countervailing duties to offset the amount of the subsidy. Export subsidies to third countries may, in certain cases, be just as injurious to domestic industries as subsidies on products exported to the United States.

Finally, section 301 explicitly authorizes the President to take actions on a MFN basis or only against the offending country. In most cases, action would be taken only against the offending country, as contemplated by GATT Article XXIII. However, cases might arise which warrant retaliation on a MFN basis, for example, under GATT Article XXVIII. Section 252 could be used on a MFN or non-MFN basis but contained no explicit language on this point.

The range of practices against which section 301 could be used includes all the practices covered by section 252 of the Trade Expansion Act. For purposes of simplification, explicit reference was dropped to tolerance of international cartels and use of variable levies. Section 301 authority is applicable to these practices, however.

Antidumping Act

The proposed amendments to the Antidumping Act would make several technical and procedural changes. Recent administrative and procedural improvements initiated by the Treasury Department have resulted in a more rapid and efficient completion of investigations. The proposed amendments would codify some existing practices and provide for additional procedural and technical changes to improve further the administration of the Antidumping Act.

The proposed amendments would impose time limits for deciding cases under the Antidumping Act. The amendments would set a six-month or in more complex cases, a nine-month limit, from the date of publication of the Antidumping Proceeding Notice for a decision that dumping may be present (a tentative decision as to whether "sales at less than fair value" are present). This would result in a nine- or twelve-month deadline for final action. These deadlines could be extended up to three months in particularly difficult cases provided the Secretary of the Treasury publishes a Federal Register notice of such an extension, indicating that the tentative fair value decision cannot reasonably be made within the aforementioned time limits. This change would incorporate into the Act nearly identical provisions of the Treasury's Antidumping Regulations which have been in effect since January 8 of this year. These changes assure prompt action by the Secretary of the Treasury, yet provide sufficient time for full and fair investigations.

Another amendment would require a hearing on the record before any final determination of the Treasury or Tariff Commission is made in an antidumping investigation. The subsection changes existing law with respect to hearings as follows: (1) hearings presently conducted by the Treasury Department and the Tariff Commission will be required by the statute, in contrast to present procedures under which regulations issued by the Treasury Department and the Tariff Commission provide interested parties an opportunity to be heard only at the discretion of each agency; and (2) a transcript will be required of each hearing. No other change is contemplated in the present hearing procedures conducted by the two agencies.

The transcript of the hearing plus all papers filed in connection with the investigation would form the basis for the final determination and, with the exception of material accorded confidential treatment, would be publicly available. It is necessary, of course, to protect from disclosure confidential sales, production and similar information submitted in any case, the release of which would be likely to injure the competitive position of the person or firm supplying the information. If foreign and domestic business interests could not be protected against the disclosure of such confidential information, they would be unlikely to be willing to furnish such information and the Treasury and the Tariff Commission would be unable to conduct fair and thorough investigations.

Also, in order that interested persons may be more fully informed regarding the basis of decisions made by the Treasury Department and the Tariff Commission, the Department and the Commission would be required to publish, in their decisions, a detailed rationale for each determination, which would set forth the basis for the resolution of each material issue of law or fact.

There are also several technical amendments of the definition of "purchase price" and "exporter's sales price." First, the definition of purchase price would be amended to provide that any export tax be *subtracted* from purchase price rather than *added* to it, as is now the case, in making the necessary calculations for price comparison purposes. This harmonizes the purchase price treatment of export taxes with that under the exporter's sales price definition which already provides for the subtraction of any export tax included in the price to the United States. This is necessary to avoid leaving in the calculation of the price to the United States a distorting element which is not contained in the price in the home market. This amendment would correct an error which has existed in the statute since its original enactment and which artificially reduces or eliminates any dumping margin that would otherwise exist.

Second, the definition of both "purchase price" and "exporter's sales price" would be amended to harmonize the treatment of foreign tax rebates with the present administrative treatment of tax rebates under the countervailing duty law. This would insure that tax rebates of the type considered bounties or grants under the countervailing duty law would not be allowed to distort price comparisons made under the Antidumping Act. No adjustment to the advantage of the foreign exporter would be permitted for rebates of taxes unless the direct relationship between the rebated tax and the exported product or its components could be demonstrated. For example, if the exported product benefited from the rebate of a tax on the mortgage on the plant that produced the product, that rebate could not be used in the calculation of dumping to reduce the dumping margin.

Third, the purchase price and exporter's sales price provisions would be amended to assure that merchandise benefiting from tax rebates which the Secretary of the Treasury had already determined to be a bounty or a grant, and therefore subject to a countervailing duty, would not be unfairly penalized by being subject to antidumping duties as well, by virtue of the same tax rebate.

The exporter's sales price provisions of the Antidumping Act would also be amended to provide that when merchandise which is the subject of an antidumping investigation or finding, is imported by a person or corporation related to the exporter and subjected to further processing before being resold to an unrelated purchaser in the United States, the additional value of such processing or added materials will be subtracted in computing exporter's sales price. This amendment would harmonize the statute with the present administrative practice of the Treasury Department and remove any doubt that merchandise imported in an exporter's sales price situation and changed in form or condition before being resold to an unrelated purchaser is within the purview of the Act.

Countervailing Duty Law

Section 330 makes several important changes in the present countervailing duty statute. This law presently requires the Secretary of the Treasury to assess additional duties on dutiable imports benefiting from bounties or grants.

First, the countervailing duty law would be extended to cover duty-free imports, including imports which are duty free as a result of preferential treatment under Title VI of the Act. However, countervailing duties would only be assessed on duty-free imports if the Tariff Commission determined that the subsidized imports caused material injury to United States industry. The present law's exemption for duty-free merchandise makes little sense today, especially after successive rounds of tariff reductions, through which some items of a competitive nature became duty free.

This injury requirement will apply only so long as such a determination is required by the international obligations of the United States, i.e., under the GATT. The GATT requires a material injury determination in countervailing duty cases. However, the United States countervailing duty law was in existence at the time GATT was created and the absence of an injury requirement is consistent with United States GATT obligations because of the GATT's "grandfather clause" which allows the continued application of certain mandatory legislation pre-dating the GATT. This statutory provision complies with the technical requirements of the GATT without prejudicing the position that the United States may finally take internationally on the question of the role of injury requirements in countervailing duty actions.

Second, a 12-month statutory time limit is established for reaching decisions after the formal countervailing duty investigation is opened. The initiation of the formal investigation is signified by publication of a Countervailing Duty Proceeding Notice in the Federal Register. Treasury's Countervailing Duty Regulations would be amended so as to provide for publication of such a notice generally within 30 days after the receipt in satisfactory form of information relating to the payment or bestowal of a bounty or grant on exports to the United States. This time limit would apply only to information received after the date of enactment of the statute. We believe that twelve months would be an adequate period for all issues to be resolved.

Third, the Secretary of the Treasury would be authorized to refrain from countervailing merchandise subject to effective quantitative limitations on its exportation to, or importation into, the United States should he consider such limitations an adequate substitute for countervailing. This section is designed to avoid the excessively restrictive effect that a countervailing duty might have on merchandise already subject to a quota or restraint arrangement. The Secretary of the Treasury would have discretion to determine that countervailing in a particular case would be significantly detrimental to the economic interests of the United States.

Unfair Methods of Competition

Section 337 of the Tariff Act of 1930 declares unlawful unfair methods of competition in the import trade, the effect or tendency of which is to seriously injure a domestic industry or to monopolize trade and commerce in the United States. The Tariff Commission is empowered to investigate alleged violations of the statute and to report its findings to the President. If the President is satisfied that the statutory criteria have been met, he must direct the Secretary of the Treasury to issue an exclusion order barring the importation of the goods involved in the unfair acts. Pending a full investigation, the President may direct the issuance of a temporary exclusion order in which case the goods can be entered under bond payable to the United States.

Although the Congress, in enacting section 337 in 1930, intended that the statute have a broad scope and cover all unfair methods of competition in the import trade, virtually all of the cases under this section have involved patent infringement, that is, the unlicensed importation of articles falling within the claims of a United States patent. The effect of the amendments is to limit the statute to patent infringement cases. A companion bill will authorize the Federal Trade Commission to issue exclusion orders in respect of other unfair methods of competition in the importation of products which are causing injury to a domestic industry or which are impairing competition or monopolizing trade and commerce in the United States.

Section 337 as a patent infringement statute contains certain anomalies. In particular, the need to show that an industry has been injured and that the industry in question was economically operated are not relevant to the question of patent infringement. In addition, it is inappropriate to require a Presidential determination in such cases. The purpose of section 337 should be to provide patent holders with an effective remedy against infringing imports. This remedy, an exclusion order against all imports infringing a United States patent, should also more closely approximate the relief available to a patentee who seeks to enjoin patent infringement by domestic manufacturers.

A court will not enjoin infringement unless the patent is beyond question valid and enforceable. Therefore, section 350 preserves the respondent's right to challenge the validity or enforceability of the complainant's patent in the Federal courts. Thus, the Commission will defer to the courts on the question of patent validity whenever the patent involved is being seriously challenged in a pending suit. However, in order to protect the patentee, the Commission would consider whether or not the importation constituted an infringement assuming the validity of the patent. If the Commission found infringement, it would issue exclusion orders conditional on the results of the court proceedings and permit imports under bond payable to the patentee.

The present statute permits the issuance of a temporary exclusion order (pending completion of the full investigation) and in such cases imports are permitted under bond, running to the United States Government, in an amount equal to the value of the merchandise. Given the basis on which the bond is computed, a temporary exclusion order has the effect of an embargo. The solution contained in section 350 is to permit imports under bond payable to the *patentee*, based on such an amount as will protect the patentee's interest. For example, if the patentee's normal royalty is five percent of the value of the goods, that would be one measure of the amount of the bond, and it is especially appropriate that the bond run to the patentee rather than to the United States Government.

Although the present statute provides for judicial review of a Tariff Commission determination in the Court of Customs and Patent Appeals, there is a serious legal question as to whether the Court has jurisdiction to take such cases, since the Commission's determination now takes the form of advice to, and is not binding on, the President. Section 350 eliminates this legal question and clearly provides for judicial review in the Court of Customs and Patent Appeals.

TITLE IV—INTERNATIONAL TRADE POLICY MANAGEMENT

Title IV contains a number of authorities for the President and limitations on Presidential action which should be made part of permanent law. Some of the authority requested is implicit in existing law, but should be clarified. Other authorities existed under the Trade Expansion Act but have lapsed. In addition, some new provisions are requested to deal with economic problems which are broader than strictly trade matters.

First, the President should have explicit and more flexible authority to deal with serious balance-of-payments problems. Trade restrictive measures should be used in only exceptional cases as one remedy for basically monetary problems. However, the raising or lowering of import barriers on a temporary basis can sometimes provide an additional effective measure to complement monetary measures for correcting a serious balance-of-payments deficit or persistent surplus.

Second, the President requires certain permanent authorities to manage and administer the trade agreements program in an effective and efficient manner. These authorities would enable the President to exercise fully our rights and obligations under the GATT. Authority to enter into supplementary trade agreements of limited scope could provide increased market access for United States exports after the broader tariff authority under Title I expires. Authority to compensate for the withdrawal of concessions under trade agreements would enable the United States to fulfill its obligations to foreign countries. Authority to reduce trade barriers on articles which are not available in sufficient quantity to meet domestic demand would help curb inflationary pressures. Authority to terminate trade agreement actions at any time would also be continued. In addition, a permanent authorization is needed for annual appropriations to finance the United States contributions to the GATT.

The principle of most-favored-nation treatment should be reenacted as basic to the trade agreements program. Articles subject to import relief or national security measures are reserved from reductions in duties or other import restrictions while such actions are in effect.

There is provision for public hearings with respect to various actions under this Title.

Balance-of-Payments Authority

Section 401 provides explicit and flexible authority for the President to impose a temporary import surcharge or other import limitations to deal with a serious balance-of-payments deficit, or to cooperate in correcting an international balance-of-payments disequilibrium. It also provides explicit authority for the President to reduce or suspend tariffs or other import restrictions temporarily in the case of a persistent balance-of-payments surplus.

The Executive Branch does not have explicit authority at present to take appropriate action for most of these purposes. Existing authority in the Trade Expansion Act limits the maximum import surcharge to the statutory Column 2 rate of duty for each commodity. Therefore, it effectively precludes uniform application. No satisfactory authority exists for imposing quotas across-the-board, nor for reducing restrictions when the balance-of-payments is in surplus. Under present legislation it would be difficult for the United States to cooperate effectively in international action to facilitate world payments equilibrium through the use of import restraints.

The requested authority would give the President needed tools to take effective action to achieve and maintain equilibrium in the United States balance-of-payments. Recurrent crises in international monetary affairs in recent years, and the massive deterioration in the United States external position testify to the need for a more effective and efficient adjustment process. The structure of exchange rates which has resulted from the exchange rate realignments of December 1971 and earlier this year provide a framework for improving the United States trading accounts and restoring confidence in the dollar. But exchange rate changes alone cannot assure either that equilibrium will be achieved or maintained. A comprehensive approach is required, which includes control of domestic inflation, improved access to foreign markets for United States exports, and basic reforms of the international economic system. Adequate authority to take appropriate action in the trade field is an important element in any program to assure balance-of-payments equilibrium.

The authority under Section 401 to impose restrictive measures in the case of a serious United States balance-of-payments deficit is prudent and necessary. The United States seeks a monetary system in which there are strong disciplines against large and persistent payments imbalances, and hopes that direct trade restrictive measures will prove less rather than more necessary. The intractability of disequilibria in international trading accounts in the past suggests, however, that use of authority of this nature cannot be excluded. Explicit authority for action may in itself also serve to encourage a more effective adjustment process.

The authority would be utilized only temporarily and in exceptional circumstances. These circumstances are defined as those in which (a) a substantial balance-of-payments deficit exists on the average over a period of four consecutive calendar quarters; or (b) there is a serious decline in absolute terms in the United States net international monetary reserve position; or (c) a significant alteration in the foreign exchange value of the dollar has or threatens to take place; and (d) there is an expectation that one or more of these conditions would persist in the absence of corrective measures.

The authority would not be used to prevent disruption of domestic markets by imports. The use of this authority with respect to a significant change in the exchange rate of the dollar includes a situation in which a temporary surcharge might be a more appropriate measure than permitting an immediate depreciation in the exchange rate of the dollar. This provision is not intended, however, to provide authority to counter long-term trends in foreign exchange markets.

United States cooperation in correcting a balance-of-payments disequilibrium as reflected in payments positions of other countries would be authorized when allowed or recommended by the IMF. Multilateral cooperation could include, for example, the implementation of joint actions to limit imports from a country running large and persistent surpluses if that country did not take measures to correct its payments disequilibrium.

This provision is closely related to Administration proposals for international monetary reform. These proposals call for a system of effective and symmetrical incentives for surplus and deficit countries to take action to correct prolonged and excessive payments imbalances. Pressures on deficit countries would in large measure already exist, although we would nevertheless envisage that international concern and action could come into play in the case of prolonged deficits and the absence of corrective measures. In the case of surplus countries, it would normally be expected that they would not delay adjustment as in the past. However, additional means to induce adjustment by surplus countries may be needed. Provision for cooperative action by countries to protect their interests against a surplus country refusing to adjust is necessary in a reformed international monetary system.

In the United States proposals for monetary reform, international action to induce adjustment would take effect if by objective standards (United States proposals call for use of disproportionate reserve changes) a surplus country's reserves rose to a specified level for a specified period and an adequate program of adjustment were not in place. We have proposed specifically that IMF rules might authorize or call upon other countries to impose general import taxes or surcharges against a country refusing to adjust. Such actions could be avoided, or postponed, only if the IMF made a positive finding they were not warranted on the basis of an agreed program of adjustment by the surplus country concerned. If the surplus continued despite the agreed program, authorization for sanctions would take effect after a further period. In any event, the IMF would review the country's position periodically, and make such recommendations and authorizations as it deemed appropriate.

Section 401 specifically authorizes the President to impose a temporary surcharge in the form of duties on any dutiable or duty-free articles as well as to limit imports of such articles temporarily through the use of quotas. Imposition of quotas to deal with balance-of-payments problems are permitted by international agreements to which the United States is a party. While providing an option to impose quotas, the request for authority reflects a conviction that when short-term trade restraints are to be used by countries such price-based measures as surcharges will usually be preferred. Trading rules, as reflected in Article XII of the GATT, in envisaging solely the use of quantitative restrictions to meet balance-of-payments needs, have not kept pace with national preferences on policy instruments, or with the change in trading practices toward less reliance on quantitative restrictions. International rules should be modified to reflect these preferences.

Section 401 sets forth the principle that an import surcharge should be applied on a MFN basis, and quotas applied on a basis which shall aim at a distribution of trade approaching that which foreign countries might expect in the absence of quotas. In most cases MFN application of the trade measures authorized by this section would appear to be most appropriate and most effective. Deviation from the MFN principle and selective application of measures is authorized in certain circumstances. The President is to consider the relationship of such action to the international obligations of the United States.

Actions taken under the balance-of-payments provision must be applied uniformly to a broad range of imported products. However, the President may exempt certain articles because of the needs of the United States economy reflected in such considerations as the unavailability of domestic supply at reasonable prices and the necessary importation of raw materials. The authority to implement import restricting measures or to exempt particular products from such measures cannot be used for the purposes of protecting individual domestic industries from import competition.

If the President exercises his authority to impose quotas, imports of the articles cannot be limited to a level less than the quantity or value imported during the most recent period which the President determines to be representative. Since the quotas are for balance-of-payments purposes and not designed to alter trends in the growth of imports of particular products, any increase since the end of the representative period in domestic consumption of the articles and of like or similar articles must also be taken into account.

The authority for the President to reduce or suspend temporarily tariffs or other import restrictions in the case of a persistent balance-of-payments surplus is the logical counterpart of the authority to take action to protect the United States position in the case of balance-of-payments deficits. The tests for surpluses are symmetrical to the tests for deficits.

It is important that the rules of the international economic system provide incentives for surplus countries to take liberalizing actions to deal with payments surpluses, and that the United States have authority to take such action should appropriate occasions arise. Administration proposals for monetary reform are designed to encourage surplus countries to liberalize by bringing additional pressures to bear for adjustment. The rules should not operate as they tend to now, primarily to make countries reluctant to liberalize unilaterally because of possible impairment of their bargaining position in future trade negotiations. As a strong proponent of effective discipline for surplus countries, the United States should be able to argue the case from a position of being able to take similar action itself should the circumstances arise.

The options available to surplus countries under pressure to adjust are, of course, not limited to trade liberalization. For example, countries may be encouraged to remove controls on the outward flow of capital, to provide concessional untied aid, or to revalue. Under such circumstances, it is important that countries, including the United States, have a full range of tools so that freedom of action is not circumscribed.

It is unlikely that the United States will for some time be in a position where it would find it desirable to take action to temporarily relieve a balance-of-payments surplus. In light of the large deterioration in our external position which has taken place, the United States not only has to return to balance-of-payments equilibrium but run moderate surpluses.

Withdrawal of Concessions and Similar Adjustments

Section 301 of the Act, which revises and expands section 252 of the Trade Expansion Act, provides authority for the President to increase or impose duties or other import restrictions in retaliation against unfair foreign trade practices. There are a number of other circumstances under which GATT rules grant a country the right to withdraw or suspend tariff concessions to another country under a trade agreement, or to terminate an agreement. These circumstances are covered by the provisions under section 402.

The withdrawal or suspension of tariff concessions generally has three types of uses. A country has the right to make offsetting withdrawals in cases where another country has withdrawn concessions under a trade agreement and has not provided satisfactory compensation. For example, if a foreign country renegotiates a trade agreement under Article XXVIII, or withdraws concessions in the formation of a new customs union under Article XXIV:6, involving increases in duties bound in the GATT affecting United States exports, the United States has the right to make offsetting withdrawals of concessions if a settlement is not reached on satisfactory compensation by the other country. At the present time, the United States and other affected countries are negotiating to obtain compensation for tariff increases on bound items in the three countries acceding to the European Communities.

The United States also has the right to initiate a unilateral withdrawal of tariff concessions from a foreign country under Article XXVIII, which may involve the imposition or increase of tariffs or other import restrictions. The United States exercised its rights under Article XXVIII in 1971 to establish a tariff quota on stainless-steel flatware.

Withdrawals may also be multilateral in form. For example, multilateral offsetting action might be called for against a country whose trade measures cause damage to the trade of third countries in order to obtain its compliance with international rules. The Contracting Parties could authorize collective action under Article XXIII.

The purpose of section 402 is to provide additional flexibility in existing law to enable the President to exercise United States rights and obligations as fully as foreign countries under the GATT and other international trade agreements, so as to protect United States trading interests in the context of the procedures of GATT or other trade agreements.

Section 402 of this Act provides two basic authorities, however. First, as described above, it provides authority to withdraw or suspend concessions or other trade obligations and to increase or impose tariffs or other import restrictions where the United States has the right to do so under international trade agreements. In other words, it enables the President to give domestic legal effect to the withdrawal, suspension, or termination of trade agreement concessions to any foreign country in the exercise of our international rights and obligations. The authority enables the President to react to actions by other countries and also to implement the withdrawal of United States concessions under the renegotiation rights of the GATT.

If the withdrawal or termination takes the form of imposing or increasing tariffs, the new duty rate may be set at any level up to 50 percent ad valorem or 50 percent above the statutory rate of duty, whichever is greater. For example, if the present tariff is 20 percent and the Column 2 rate is 40 percent, a new tariff could be set at any level between 20 and 60 percent. Tariff increases may be applied temporarily, and then returned to prior concession levels. Section 402 does not contain independent authority to decrease tariffs although the suspension of a previously negotiated tariff increase, which have been rare in the past, could have this effect.

The use of this authority will be limited to matters pertaining to our rights and obligations under international trade agreements. It is *not* the intention to use this authority either as a substitute or extension of other authorities under this or other Acts. It would not be used, for example, as an additional avenue to provide import relief, or to impose a surcharge.

Much of the authority contained in section 402 already exists in current law, in the termination authority contained in section 255 of the Trade Expansion Act and the implementing authority contained in section 201(a)(2) of that Act. Section 402 of the proposed act is explicit, however, on questions of partial withdrawal of concessions (setting intermediate roles between those presently in existence and those previously in existence) and terminating for a time, that is, suspending, obligations or concessions. This explicit authority in section 402 is necessary to clarify these technical issues which hinder flexible administration of the trade agreements program.

The second basic authority under section 402 enables the President to maintain existing duty levels or other import restrictions even if a trade agreement with another country is terminated. Existing authority does not explicitly provide for the unbinding of tariff rate concessions without increasing the tariffs subject to the concessions. Specific authority to maintain concessions in the absence of a trade agreement would have been useful in at least one case where a trading partner notified termination of its bilateral agreement with the United States. It is not in the United States interest to have its rates of duty dependent upon foreign governmental actions. There is also the possibility that a trade agreement might be terminated but the parties would choose to maintain their tariff concessions in the absence of a trade agreement. The United States should also be able to apply its concessions rates on the basis of de facto mutual benefit, perhaps pending the renegotiation of a terminated trade agreement.

Any decision to deviate from the application of this authority on a most-favored-nation basis would have to be made consistently with all United States international obligations. If more than one international obligation is involved and they are inconsistent, the obligation applicable to the particular case would be determined by international law. Public hearings must be held concerning any authority used under section 402 if requested by any interested person within 90 days after the action is taken.

Supplemental Tariff Agreements

The purpose of section 403 is to provide permanent authority for the President to negotiate with foreign countries and implement supplemental tariff agreements of limited scope. This authority would be most useful after the expiration of the broad tariff negotiating authority under Title I. It would enable the President to take action as may be necessary or advantageous for the administration of the trade agreements program. Authority for this purpose under section 201 of the Trade Expansion Act lapsed on June 30, 1967.

The authority would permit a limited number of small arrangements. It could be used; for example, to remove tariff discrepancies or anomalies without economic rationale which may come to light only after new tariff schedules enter into operation after a major trade negotiation. There might also be opportunities from time to time for the President to negotiate a limited agreement to reduce a limited number of tariff rates in return for improved market access for United States exports. Separate authority is provided under section 404 for the granting of tariff concessions for purposes of compensation.

Implementation of supplemental agreements may take the form of increases or decreases in duties, imposition of tariffs on duty-free products, or the continuation of existing tariff or duty-free treatment. These agreements can only be of limited scope. Duties cannot be reduced below 20 percent of their existing level. The reductions could be staged over a five-year period. Duties cannot be increased to more than 50 percent ad valorem or 50 percent above the statutory rate, whichever is greater.

Furthermore, any duty reductions or the continuation of duty-free treatment under these agreements cannot cover more than two percent of the total value of United States imports during the most recent twelve-month period. Five years must elapse before the same articles can be subject to a second such agreement under this section. The agreements cannot involve tariff reductions on articles which are subject to import relief actions or national security actions. Public hearings must be held prior to the conclusion of any agreements.

Compensation Authority

Under GATT rules a country that withdraws tariff concessions, or increases duties which have been bound against increase, or imposes other import restrictions is subject to retaliatory action by other countries unless it restores the general level of concessions with respect to the trade of countries adversely affected by the action. The country taking action must enter into negotiations with the countries affected and usually has to grant new concessions as "compensation" to replace those withdrawn in an equivalent amount. If a renegotiation settlement cannot be reached, that is, if the compensation is not forthcoming or is not judged adequate, the affected country has the right to retaliate against the country taking the initial action by withdrawing concessions of its own of an equivalent amount.

Section 402 provides authority for the President to impose or increase duties when a foreign country withdraws trade agreement concessions and does not provide adequate compensation to restore the mutual balance of concessions. Section 404 provides authority for the opposite situation, that is when the United States withdraws trade agreement concessions and is required by international obligations to compensate foreign countries adversely affected or face possible retaliation. The authority would be used primarily with respect to import relief measures imposed under section 203 to maintain the level of mutually advantageous concessions. It could also be used if retaliation on a most-favored-nation basis against unfair trade practices of a foreign country under section 301 adversely affects an innocent third country. The withdrawal of concessions under section 402, some supplemental agreements under section 403 which involve duty increases, and the termination of an agreement by the United States under section 408 could also require payment of compensation.

In these circumstances the President would provide foreign countries having an export interest involved in the action an opportunity to consult with respect to concessions which might be granted as compensation, to the extent required by international obligations. The President may decrease tariffs or continue existing duty or excise treatment as compensation to restore the overall balance of concessions. Any duty reductions are limited to 50 percent below the existing rate, and may be staged if appropriate. The limitation does not apply to duties of five percent or less. Duties would not be reduced on any article which is subject to import relief measures or national security action. Public hearings would be held prior to the conclusion of any agreement involving tariff reductions.

Until June 30, 1967, when the tariff reduction authority of the Trade Expansion Act expired, the President had authority to compensate foreign countries for the withdrawal of concessions for import relief or other purposes. A permanent compensation authority has not been requested previously by the Administration since it was not anticipated that the President would lack authority to reduce tariffs for an long as six years. The President should have a permanent compensation authority in order to comply with international obligations which continue after the expiration of tariff reduction authority and to conduct orderly relations with our trading partners. This "compensation" authority should be coextensive with the President's authority to take trade restrictive actions.

Suspension of Import Barriers to Restrain Inflation

On March 30, 1973 the President submitted legislation to the Congress to provide a new, permanent authority to reduce certain trade barriers as one means to curb inflation. Section 405 is identical to this proposal.

In periods of sustained or rapid price increases, the lowering of trade barriers on articles available in insufficient supply to meet domestic demand can provide an effective tool to restrain inflation. Section 405 provides the President authority to reduce or suspend duties, or to increase the level of imports which enter under quota to the extent appropriate to achieve the purpose.

This authority would be used judiciously in the national interest. The authority cannot apply to articles which are subject to import relief or national security actions. Trade restrictions also would not be lowered on particular articles if the President determines that it would cause material injury to firms and workers in a domestic industry or impair the national security. Actions also cannot apply to more than 30 percent of total United States imports of all articles during the period they are in effect. Any action under this authority can only remain in effect one year, unless extended by Congress.

Termination Authority

It is necessary to provide the President with unconditional authority to suspend or fully terminate trade agreement actions. This authority has been a traditional part of the trade agreements program. It is impossible to specify in advance when it would be appropriate to use the termination authority. The most predictable example of when the domestic implementation of a trade agreement might be terminated is when the trade agreement itself comes to an end. But other, less predictable, occassions have called for use of this authority. The invasion of Czechoslovakia in 1948 caused the President to terminate the application of trade agreement rates of duty to that country although the trade agreement was still in effect.

The power to terminate includes the lesser powers to terminate for a limited period of time, i.e., to suspend; to terminate in part by imposing new rates intermediate between the rate previously applied and the original statutory (Column 2) rate; and to terminate in part by imposing new rates on certain items included in a proclamation and not on others.

TITLE V—TRADE RELATIONS WITH COUNTRIES NOT ENJOYING MOST-FAVORED-NATION TREATMENT

Title V authorizes the President, when he determines it to be in the national interest, to enter into commercial agreements with countries presently denied MFN treatment (and thereby subject to Column 2 rates of duty), and to extend MFN treatment in return for reciprocal concessions. The President may also extend MFN treatment to countries which accede to the GATT. Any commercial agreement that provides for MFN or any extension of MFN treatment to a country which has acceded to the GATT may, before it becomes effective, be vetoed by the resolution of an absolute majority of either House of Congress.

All non-Communist countries presently receive MFN treatment. Prior to 1951, the United States extended the benefits of MFN treatment to all countries. At the height of the Korean War, Congress withdrew MFN treatment from all Communist countries, other than Yugoslavia. In 1960, President Eisenhower restored MFN treatment to Poland on the grounds that it was no longer, in the words of the 1951 statute, "dominated or controlled by the foreign government or foreign organization controlling the world Communist movement". At the present time MFN treatment is denied to all Communist countries, other than Poland and Yugoslavia, pursuant to section 231 of the Trade Expansion Act of 1962.

Clearly our political and economic relations with Communist countries have undergone a major change since the early nineteen-fifties. At that time our trade with the Soviet Union and the East European countries was very small, largely as a result of legal barriers, government policy, and popular feeling in the United States. In 1958, for example, President Eisenhower rejected Premier Khrushchev's offer of a comprehensive Soviet-American trade agreement, which included many types of peaceful goods which the Soviet Union wanted either to purchase or offer for sale in the United States.

Since 1966, popular feeling toward trade with Communist countries has undergone a radical transformation and both the Administration and the Congress have liberalized a number of legal barriers to such trade. Given the changes that have taken place in East-West relations, trade should no longer be viewed as a political weapon by either group of countries. Rather, increased trade between Western and Communist countries can be linked to the achievement of a stable peace and international order. Moreover, the prospective trade benefits to the United States are increasingly clear. United States exports of agricultural and high-technology industrial products, in particular, correspond generally to the import needs of Communist countries. Their exports to the United States are likely to remain rather limited even with MFN treatment.

Congress has encouraged increased trade with Communist countries. This is most clearly reflected in amendments made to the Export Control Act in 1969 and in 1972. In 1971, Congress repealed an amendment which had restricted the authority of the President to authorize the Export-Import Bank to extend credit in connection with purchases by Communist countries.

The Nixon Administration has done a great deal to open avenues of trade with Communist countries. The embargo on trade with China has been fully terminated. The export control regulations have been progressively liberalized. Most important, the Administration concluded a major trade agreement with the Soviet Union in 1972. These efforts to normalize relations have generally been well received by the Congress.

Communist countries consider the denial of MFN treatment to be the outstanding economic issue in their relations with the United States. Imports from most Communist countries are now subject to duty rates established in the Smoot-Hawley Tariff Act of 1930. In contrast, products of all other countries are subject to a schedule of duties which have been greatly reduced in a series of bilateral and multilateral trade negotiations from 1934 through 1967.

Bilateral Commercial Agreements

The Administration does not propose the automatic restoration of MFN treatment to Communist countries The United States would grant MFN treatment in return for a variety of concessions which would facilitate the position of American firms doing business with Communist state-trading agencies. For example, under the trade agreement with the Soviet Union which would be implemented under this title, the Soviet Union has agreed that all currency payments will be in U.S. dollars or in freely convertible currencies. It has also agreed to improve facilities for American businessmen to conduct their affairs in the Soviet Union, to encourage the principle of third-country arbitration, to take steps on our request to prevent disruption of our domestic market and to pay their lend-lease obligations. Separate negotiations are underway with respect to copyright matters and the protection of industrial rights and processes.

It is intended that reciprocal MFN treatment in trade agreements with Communist countries should take the form of a series of particular non-discriminatory, or "fair treatment", provisions relating to specific areas of trade relations.

Any commercial agreements under Title V must contain certain mandatory provisions. A bilateral agreement must be limited to an initial period of not more than three years. It can be extended only if the President determines that a satisfactory balance of trade concessions has been maintained during the life of the agreement, and that any future benefits granted will be fully reciprocated by the other party.

Second, a bilateral agreement must be subject to suspension or termination at any time for national security reasons, and must not limit our right to take any action required for the protection of our security interests. In this connection, this title does not in any way affect the U.S. system of export controls or international arrangements, such as the COCOM agreement, for the embargo of exports to Communist countries which are of military significance.

Third, a bilateral agreement must provide for consultations for the purpose of reviewing the operation of the agreement.

Multilateral Trade Agreements

The title provides that the President may extend MFN treatment, without the necessity of concluding a bilateral agreement, to a country currently subject to Column 2 rates of duty which has become a party to an appropriate multilateral trade agreement to which the United States is also a party. At the present time, this provision applies to countries which become members of the GATT. The various obligations which a state-trading country assumes under the GATT are similar in some cases to those which would apply under a bilateral commercial agreement.

For example, when Poland became a member of the GATT, the accession protocol included the following provisions:

(1) An understanding by Poland that it would increase imports from contracting parties as a whole at an average rate of at least seven percent per annum;

(2) Bilateral consultations should Poland or any contracting party request them, with provision for either Poland or the contracting party to suspend GATT obligations toward the other if further consultations with the contracting parties as a group do not lead to a settlement;

(3) Action by a contracting party to restrict imports from Poland on a non-MFN basis should they cause or threaten serious injury to domestic producers and should consultations fail to resolve the issue;

(4) A clause permitting contracting parties which maintain discriminatory quantitative restrictions inconsistent with the GATT to continue to apply them provided that the inconsistency is eliminated by the end of a transitional period of unspecified length; and

(5) Annual consultations on Poland's import targets and actions by contracting parties to remove quantitative restrictions on imports from Poland.

The Romanian accession protocol is similar to that of Poland. However, it does not permit a contracting party to restrict imports on a non-MFN basis. The United States cannot assume GATT obligations toward Romania or any other communist country until Congress authorizes MFN treatment, so the United States has invoked Article XXXV of the GATT excepting Romania from United States GATT obligations.

Hungary, which is currently negotiating accession, has a tariff system which is an integral part of its economic system. Tariff reductions are currently being negotiated individually with other GATT members as part of its accession.

Poland and Yugoslavia already receive MFN treatment. Currently, the potential candidates for MFN treatment under the authority with respect to GATT members are Romania, Hungary, and Czechoslovakia. If other Communist countries accede to GATT. the President could also choose whether to extend MFN treatment to any of them on the basis of the terms of their accession to GATT or to conclude a separate bilateral agreement. This decision would be made on a case-by-case basis, in the light of the obligations assumed by the particular country under GATT and the extent to which additional concessions might be obtained.

In either case, the extension of MFN treatment is subject to veto by the authorized membership of either House of Congress within 90 days after the President submits the agreement to the Congress. Extensions of bilateral agreements, once the initial term has run, are not subject to the veto procedure.

Market Disruption

It is not foreseen that there will be extensive injury to domestic industries due to increased quantities of imports from countries granted MFN treatment under this title. However, section 505 provides an appropriate basis for dealing with imports from countries with state-directed economies if injurious competitive pressures are incurred from time to time by domestic producers.

Section 505 contains separate criteria from those under Title II for determining eligibility for relief with respect to imports from countries receiving MFN treatment under Title V. A petition may be filed with the Tariff Commission or an investigation otherwise initiated under section 201 with respect to such imports. In its investigation, the Commission will determine whether there is, or likely to be material injury to a domestic producer of a like or directly competitive article, and whether such imports are causing market disruption. Material injury is intended to be a lesser degree of injury than serious injury, the standard in section 201. The Commission must find both material injury and market disruption for the domestic industry to be eligible for import relief under this section. Section 505 also authorizes the President to restrict imports from a country granted MFN treatment under this title without taking action on non-injurious imports of like products from other countries, irrespective of whether MFN treatment is granted through a bilateral agreement or pursuant to that country's accession to the GATT.

Special safeguard measures in the bilateral commercial agreements themselves could provide a further means of dealing with injurious imports. This approach could take the form of a reaffirmation of the special GATT obligations entered into by non-market economy members to hold consultations in order to develop mutually acceptable solutions to actual or threatened market disruption, with provision for immediate restrictive action by the importing nation in critical circumstances. Or, if a country has entered into a bilateral agreement with the United States, the agreement could provide that each government will take appropriate measures to ensure that its exports to the other country will not cause or threaten market disruption. This provision is included in the agreement with the Soviet Union.

Repeal of Other Laws

Section 706 of this Act would repeal the Johnson Debt Default Act and the embargo on seven types of furs and skins which are the product of the Soviet Union or the Peoples Republic of China.

The Johnson Debt Default Act, enacted in 1934, prohibits certain financial transactions by private persons in the United States with foreign governments which are in default in the payment of their obligations to the United States. The prohibited transactions include the making of loans and the purchase or sale of bonds, securities, or other obligations of the foreign government. The Johnson Debt Default Act does not apply to countries which are members of the World Bank and the International Monetary Fund. In practice, the Act only applies to Communist countries. The exceptions are Romania and Yugoslavia, which are members of the World Bank and the International Monetary Fund, and Albania and Bulgaria, which are not in default of their obligations for purposes of the Act.

The intention of the Johnson Debt Default Act was not to regulate East-West trade, but to protect United States citizens from the sale of securities issued by governments with a history of default. In spite of opinions of the Attorney General that normal commercial credits are not affected, the existence of the Act discourages commercial transactions involving long or unusual financing methods.

It is questionable, for example, whether the Act applies to loans from foreign branches of United States banks; whether foreign branches of American investment banks can underwrite bond issues; whether long-term project loans can be made to these countries, and whether equity investments in the form of loans would be permitted.

The Johnson Debt Default Act is a competitive disadvantage for United States firms because it has the effect of discouraging sales of American plant and equipment which might otherwise be exported. At a time when the United States has successfully concluded a lend-lease agreement with the Soviet Union and is negotiating or contemplating debt settlements with other Communist countries, the retention of the Johnson Debt Default Act is an unnecessary barrier to East-West trade.

The fur embargo was first enacted in 1951, at the same time that MFN treatment was withdrawn from Communist countries. This is an extraordinary form of discrimination. The Trade Act of 1970 as passed by the House of Representatives would have repealed the fur embargo.

TITLE VI—GENERALIZED SYSTEM OF PREFERENCES

In his Latin American policy address in October 1969, the President announced his decision that the United States would participate in a system of generalized tariff preferences subject to Congressional approval. In October, 1970, the major industrialized countries agreed to seek authority as necessary for the early establishment of a mutually acceptable system of non-reciprocal and nondiscriminatory generalized tariff preferences. To permit the introduction of generalized tariff preferences by developed countries, the GATT Contracting Parties adopted a ten-year waiver of MFN obligations under GATT Article I.

It is generally recognized that the developing countries must achieve a more rapid and sustained growth in their export earnings in order to finance the increasing amount of capital goods and other materials essential to their economic development. Approximately 80 percent of the foreign exchange earnings of developing countries derive from exports primarily of agricultural products and industrial raw materials.

In recent years the share of developing country exports relative to total world trade has declined. Imports of manufactures from developing countries constitute only about 11 percent of total United States imports of manufactures, and less than six percent for all developed countries combined. The purpose of generalized tariff preferences for semi-manufactured and manufactured products is to promote diversification of exports and thereby the economic growth of developing countries through increased access to developed country markets.

Basic Provisions

The basic United States generalized preference system under Title VI of the Act would consist of duty-free treatment of imports from developing countries of semi-manufactures and manufactures plus selected other commodities. In administering the United States preference system, the President would grant duty-free treatment only with due regard for its intended purpose, its anticipated impact on domestic producers, and the extent to which other developed countries are undertaking a comparable effort to assist developing countries.

A "competitive need" formula would apply whereby preferential treatment would not be granted initially or would be withdrawn or suspended on an article from a particular developing country which the President determines has supplied a maximum of $25 million of the article or over 50 percent of the total value of United States imports of the article from all sources on an annual basis over a representative period. Once preferential treatment is withdrawn or suspended, subsequent imports of the article from the particular developing country will be subject to MFN rates of duty unless the President restores the preferential treatment at some future date.

The presumption is that preferential treatment will be withdrawn or suspended automatically whenever imports of a particular product from a particular beneficiary reach the upper limits provided in the formula. The President may decide, however, that national interest considerations warrant the continuation of preferential treatment in a few special cases even though imports exceed the formula limits. On the other hand, there may be cases where the withdrawal or suspension of preferential treatment is warranted even though imports have not reached the specific cutoff points. For example, a country may have clearly demonstrated its competitiveness in the article and be preempting potential benefits from the least developed countries.

The proposed system reflects the recommendations of the President's Commission on International Trade and Investment (the Williams Commission). It proposed the granting of preferential treatment only to developing countries which have not already demonstrated their competitiveness in the United States market at MFN rates of duty. It also recommended that the responsibility of providing improved access for developing country exports be shared equitably in overall terms and with respect to individual products among the developed donor countries, particularly with the European Community and Japan.

In July 1971 the European Community instituted a complex tariff-quota system which generally provides for duty-free treatment on imports of semi-manufactured and manufactured products up to predetermined ceilings, above which MFN rates of duty apply. Preferential imports of a particular product from a single beneficiary are limited to 50 percent of the total ceiling for the product. In practice, there are three lists of products: sensitive items to which tariff quotas actually apply; quasi-sensitive products which are subject to frequent surveillance, but on which ceilings are not imposed except by administrative decision; and non-sensitive articles which are not monitored unless a complaint is registered. The Japanese generalized preference system is similar except that certain manufactured products are exempt from preferential treatment.

Evidence available to date suggests that the most restrictive feature of the European tariff-quota system may be the 50 percent limitation on the amount which any single beneficiary country can supply of the preferential ceiling. This provision is similar to the "competitive need" element under the proposed United States system. Analyses by the State Department indicate that United States imports under generalized preferences as a percent of GNP and as a percent of dutiable imports from beneficiary countries will not be disproportionate to imports of the European Community and Japan under their tariff-quota provisions.

Given the complexities of the various systems and differences in administrative regulations, it is impossible to determine precisely the comparative impact on donor country imports in advance. Differences in market demand, domestic supply, product coverage, levels of existing imports, customs administration, and many other factors could produce different results under the same system, or comparable results under varying systems among countries. It is also difficult to decide what particular type of yardstick most appropriately measures burden-sharing. Consequently, the OECD has established a mechanism to keep the various systems under review, to reassess them periodically in the light of actual experience, and to recommend modifications if appropriate.

The generalized tariff preference system proposed by the Administration has certain distinct advantages over a tariff-quota approach. In the first place, preferential access would be limited under the "competitive need" formula only in cases where products from individual supplying countries have demonstrated their competitiveness in the United States market. Under the tariff-quota approach, all developing country suppliers, even relatively minor ones, lose preferential access when individual quotas are filled. Moreover, no single supplying country can know when an individual quota will be filled because they do not know the amount other suppliers are shipping. The day-to-day administration of tariff quotas on anything like the scale and complexity of the European and Japanese schemes would impose a considerable burden and budgetary cost. They would also encourage the type of bureaucratic control apparatus we have sought to avoid in the trade field.

The "competitive need" scheme should also provide the greatest benefits to the least developed countries which need them the most. They would not have to compete in the United States market on equal terms with highly competitive products exported by more advanced developing countries.

The GATT waiver of the MFN principle to permit the introduction of generalized tariff preferences specifically notes the view of developed countries that preferences are temporary in nature, not a binding commitment, and not an impediment to further tariff reductions on a MFN basis. Over the ten-year period imports from developing countries would tend to gradually return to MFN treatment as their industries become more competitive. The system proposed by the Administration should provide an incentive, particularly for the more advanced developing countries, to participate in forthcoming tariff negotiations since their vested interest in the maintenance of preferential tariff margins will decrease.

Beneficiary Countries

One of the purposes of generalized tariff preferences is to provide an alternative to the proliferation of special preferential trading arrangements between the European Community and the developing countries in Africa and around the Mediterranean. These arrangements often involve tariff preferences by the developing countries for imports from the European Community ("reverse" preferences), which discriminate against the exports of the United States and other third countries.

Consistent with this purpose, the President cannot designate as a beneficiary of the United States preferential tariff treatment any developing country which grants "reverse" preferences to the imports of another developed country, unless the country provides satisfactory assurances that it will eliminate these preferences before January 1, 1976. Furthermore, preferential treatment will be withdrawn if the country has not eliminated "reverse" preferences before that date. The condition would not be met if a developing country continues to maintain "reverse" preferences but extends them to the United States as well as another developed country. In effect, benefits of duty-free preferential treatment will only be granted to countries which adhere to the MFN principle.

It is also inappropriate to designate as a beneficiary any country which does not receive MFN tariff treatment. This condition would currently preclude beneficiary status to all Communist countries except Yugoslavia, which has requested beneficiary status, and Poland which has not. Cuba, Bulgaria, and Romania have requested preferential treatment but could not receive such treatment currently under the terms of Title VI of the Act.

The President must take certain criteria into account in designating beneficiary countries other than those automatically excluded under the "reverse" preference and MFN conditions. He must consider whether beneficiary status would serve the purposes of the generalized preference system, whether a developing country has expressed a desire to be a beneficiary, and whether its level of economic development warrants preferential treatment. The President must also take into account whether or not the country has expropriated United States property without providing payment of prompt and adequate compensation. For purposes of burden-sharing, he must also take into account whether or not other major developed countries are extending generalized tariff preferences to the particular country.

Hearings and Procedures

Several provisions in Title VI are designed to ensure that the granting of duty-free preferential treatment on imports from developing countries is not to the detriment of domestic producers and workers. These safeguard provisions are similar to those applicable to the granting of tariff concessions in conjunction with trade agreements under Title I.

The President cannot grant initially, and must withdraw subsequently, preferential treatment on articles which are subject to import relief measures, quantitative import limitations, or national security actions. All other semi-manufactured and manufactured products may be designated eligible for preferential treatment after hearings before the Tariff Commission. A selected number of primary and agricultural products may also be considered for preferential treatment. As the President stated in his message transmitting this Act to the Congress, the Administration does not intend to extend preferential treatment on certain products which are generally regarded as sensitive to imports, such as textile products, footwear, certain steel articles, and watches.

Prior to granting preferential treatment on any product, the President must publish and furnish the Tariff Commission a list of articles which may be considered eligible. He must also receive the advice of the Tariff Commission as to the anticipated effect on domestic producers of granting preferential duty-free treatment on particular articles. Other Government agencies will also provide information and advice. Hearings will be held to obtain views from the public.

To receive preferential tariff treatment, imports of eligible articles must enter the United States customs territory directly from a beneficiary developing country. The Secretary of the Treasury shall also issue regulations to ensure that the sum of the cost or value of materials produced in the beneficiary country, plus the direct cost of processing operations performed in the beneficiary country equal or exceed a certain percentage of the appraised value of the article when it enters the United States. The percentage will apply uniformly to all beneficiary countries. Since it is difficult to determine the effect of a given percentage in advance, the percentage once set may be modified in the light of experience to ensure that beneficiary countries receive the benefits intended. These requirements confine the benefits of the system to developing countries.

The countervailing duty law as amended by Title III of the proposed Act will apply to imports receiving generalized tariff preference as it does to other non-dutiable articles. The application of countervailing duties will be subject to a material injury determination by the Tariff Commission.

If an article on which preferential tariff treatment is being granted becomes subject to import relief measures under Title II of this Act, the preferential treatment will be terminated and the MFN rate of duty restored.

In some cases the restoration of MFN treatment may be a sufficient remedy for injury, and increases in the MFN rate or the provision of other relief measures may be unnecessary. The President cannot establish an intermediate preferential duty rate between zero and the MFN rate as an import relief measure or when modifying or limiting preferential treatment for other reasons.

Statement of the Honorable Frederic W. Hickman, Assistant Secretary of the Treasury for Tax Policy—Thursday, May 10, 1973

My testimony today concerns the relationships of our tax system to international trade policy. I will explain the Administration's proposals for changes in the tax laws relating to income from foreign sources.

Some would use our tax system as a tool to deter foreign investment. We believe that would be a mistake. As Secretary Shultz stated in his testimony yesterday, the evidence is that foreign investment has made a positive contribution to our balance of payments, to our exports and to jobs and prosperity at home.

The Administration's tax proposals rest on the conviction, stated in the President's trade message, that "Our income taxes are not the cause of our trade problems and tax changes will not solve them." The basic dislocations and distortions that exist with respect to international trade and investment must be solved by hard bargaining with other countries. The route to increased domestic investment for exports lies in realistic monetary exchange rates and in assuring fair access to foreign markets for United States made products. It does not lie in inhibiting foreign investment by use of the tax laws.

Our proposals for tax changes deal with distortions created by existing tax laws, both domestic and foreign. What is wrong with the tax system we aim to remedy. But we do not propose to use our tax laws to correct or to mask broader problems not caused by taxes.

THE PRESENT SYSTEM—BASIC CONCEPTS

Under exsting law, we impose an income tax on individuals and an income tax on corporations. Corporate earnings which are distributed are taxed twice—once to the corporation when it earns them and again to the shareholders when they receive them. We do not purport to tax foreign citizens or foreign corporations except on income earned in the United States.

These general principles apply to U.S. investment at home and abroad. Thus, we tax the world-wide income of a corporation that is incorporated in the United States, and we tax a foreign corporation on income earned in the United States. But, we generally do not tax a foreign corporation on income earned outside the United States, whether or not that corporation is controlled by United States owners. However, when the income of such a corporation is distributed as a dividend to its shareholders, if those shareholders are United States citizens, residents or corporations, we tax them on the dividends they receive. In order to eliminate double taxation of the same income at the corporate level, we give a tax credit to corporate shareholders for foreign income taxes paid by the foreign corporation.

The result is that foreign subsidiaries compete in foreign markets under the same tax burdens as their foreign competition. As a foreign corporation operating abroad, it pays tax abroad and not in the United States. However, at the stockholder level, the earnings are subject to U.S. tax under the general rules applicable to shareholders. When income is repatriated from the subsidiary to the United States shareholders it is taxed to the shareholders at regular U.S. tax rates, subject to a credit for foreign income taxes. This credit cannot exceed the amount of tax due to the United States on the foreign income, so that it does not reduce tax liability on U.S. source income.

EFFECTS OF THE PRESENT SYSTEM

Our present system of taxing foreign source income has on the whole served as well. It minimizes the intrusion of taxes into investment decisions. At present, a business can—and typically does—decide whether or not to invest in a particular foreign country on the basis of market and business factors, knowing that it will be taxed in that country just as its local competitors are taxed.

Thus, the present system has maximized the responsiveness of investment to the forces of a free market. By being competitive abroad, American-owned foreign businesses have opened major new markets to American companies and have promoted exports, prosperity, and jobs at home.

Table 1 indicates the contribution which American investment abroad is making to our balance of payments problem. The income flowing back to the United States from investments abroad is today roughly twice as large as the flow of new investment out. Foreign investment makes a major contribution on the basis of repatriated earnings alone, to say nothing of the indirect benefits which flow from the opening of foreign markets to Americans.

Not too many years ago, foreign tax rates were substantially lower than U.S. tax rates, and it was argued by some that those lesser tax rates were a critical factor in many investment decisions to locate abroad. Whatever the logical merits of that position, the facts have changed very significantly in recent years. Tax rates in the major industrial nations which are open to U.S. investment are now in roughly the same range as U.S. tax rates. This is apparent from Table 2. In addition to the income tax rates indicated on Table 2, it is important to keep in mind that the foreign governments listed collect additional withholding taxes at rates ranging up to 35 percent in the payment of dividends and interest flowing from foreign subsidiaries to U.S. shareholders. Thus, in many cases, the combination of foreign income and withholding taxes exceeds the rate at which a corporation's income would be taxed in the United States. Under these circumstances, it is apparent that comparative tax rates are of only marginal significance in normal cases and major countries.

Table 3 illustrates still a further fact, that foreign subsidiaries repatriate about half of their foreign earnings and reinvest about half abroad. Students of corporate activity know that corporations today must reinvest a substantial portion of their earnings if they are to stay healthy and competitive. The pay out rate for foreign corporations indicated in Table 3 is comparable to the dividend pay out ratio for American industry generally. There may, of course, be individual cases in which companies reinvest abroad solely to avoid the additional tax occasioned by repatriation. But in the aggregate, the situation seems to be a fundamentally healthy one in which normal percentages of income are returned to the United States and taxed here.

TAX PROPOSALS OF H.R. 62

H.R. 62 proposes two major changes in the existing tax system. It would eliminate the credit for taxes paid to foreign countries and it would abolish the rule that shareholders are taxed on dividends only when those dividends are paid to them. We have considered these proposals at length and have concluded that they are undesirable because they would destroy the neutrality of our tax system with respect to decisions to invest abroad. Let me deal briefly with each of the two proposals.

1. Proposals to replace the foreign tax credit with a deduction for foreign taxes

No major nation taxes foreign source income in the manner or to the extent contemplated in H.R. 62. Every major industrial nation has devised some system for preventing double taxation of the same income by itself and other nations. These unilateral rules have been supplemented by international conventions for the avoidance of double taxation. There are two methods generally employed to that end. One method is simply to exempt from domestic tax income having its source in some other nation. This is the method followed, for example, by France. A second method is to tax foreign source income domestically but to allow credit against domestic tax for foreign taxes paid on the same income. This is the method followed by the United States.

Within countries there may be double taxation of the same income at different political levels. For example, in our country both the states and the federal government may tax the same income. Where that occurs, the nation must work out internally the interrelations between local and national taxes in order to arrive at a total level of tax which is tolerable. As a practical matter that kind of accommodation is simply not possible between nations, as the levels of total tax in each nation have become relatively high.

Let me illustrate the level of tax which would result if we were to allow foreign taxes only as a deduction. If, for example, $100 of corporate income pays $46 of corporate tax in England, a deduction for that tax would leave the remaining $54 subject to tax at 48 percent in the United States. The corporation would pay an additional $26 of U.S. tax for a total of $72 tax on each $100 at corporate income. That would be an effective tax rate of 72 percent.If the remaining $28 were taxed when distributed to shareholders, at say 50 percent, the result would be an effective tax rate on distributed corporate income of 86 percent. That is an unrealistic level of taxation. People simply will not invest if the tax collector claims too large a share of the profits.

Thus, the primary reason why elimination of the foreign tax credit is unrealistic is that it would, in fact, be nearly confiscatory.

2. Proposal to accelerate taxation of shareholders

H.R. 62 would abandon the general rule that shareholders are taxed on corporate income only when that income is received. The proposal would accelerate the time at which shareholders are taxed on foreign source income by disregarding the corporate entity and taxing such income directly to the shareholders as earned. That is a fundamental change in our system of corporate taxation and in rejecting it we were influenced by the following considerations:

(1) There is no persuasive evidence that the present system distorts investment decisions except in unusual cases. As previously noted the income and withholding tax rates in the major industrial nations are sufficiently close to U.S. rates that any differences would be unimportant.

(2) Such a system would mean that American-controlled corporations operating abroad would in many instances be at a substantial disadvantage compared to their foreign competitors with respect to the tax burden on profits retained in the business.

(3) Where there is a disadvantage at the corporate level, only American-controlled companies would be subject to it and there would be a substantial incentive, if not a necessity, for Americans to divest themselves of control. That would entail a substantial loss in American investment values and a substantial decrease in the ability of American firms to manage their foreign investments. We do not believe that to be desirable.

(4) The revenue gain to the Treasury from accelerating the taxation of shareholders would be minor in comparison to the depressing effect on U.S. economic activity abroad. We estimate that the acceleration of the tax on shareholders would produce about $300 million of additional revenue to the United States. One of the chief effects of such a proposal would be simply to increase the amount of tax which corporations pay to foreign governments. Let me illustrate why that is so by assuming a corporation which earns $100 and is subject to a 40 percent income tax rate in country X. The company knows that when it ultimately repatriates its

95-146 O - 73 - 12

earnings there will be an additional 10 percent withholding tax due to country X. If taxation of the U.S. corporate shareholders were accelerated and they were required to pay $48 of tax to the United States, it would make sense for the foreign subsidiary to declare a dividend of the $60 which remains net after taxes in country X and to pay a $6 withholding tax to country X on that amount. It would then have paid a total of $46 tax to country X, all of which would be creditable against the $48 of tax owing to the United States. It would thus satisfy its potential withholding tax liability to country X without increasing its total tax. The net result is that the company's tax has increased from $40 to $48, but of that $8 increase, only $2 goes to the U.S. treasury and the remaining $6 goes to the treasury of country X. The results would be different where the rates are different from those assumed, but the point is that a substantial amount of additional tax would go to foreign governments.

For all these reasons, we believe it desirable to stay with the general rule that corporate earnings are taxed to shareholders only when received.

1961-1962 CONGRESSIONAL REVIEW OF FOREIGN SOURCE INCOME

These issues are not new. In 1961 and 1962, Congress reviewed in depth U.S. tax policy with respect to the taxation of foreign income and concluded that it was generally appropriate to tax the earnings of United States controlled foreign corporations when those earnings are distributed to U.S. shareholders, i.e., to continue to apply the same rules that we apply to shareholders of U.S. corporations. This Committee rejected a general proposal to tax the undistributed income of foreign corporations to their U.S. shareholders. The Report of the Committee on Ways and Means on the Revenue Act of 1962 stated that:

> "Testimony in hearings before your committee suggested that the location of investments in these countries is an important factor in stimulating American exports to the same areas. Moreover, it appeared that to impose the U.S. tax currently on the U.S. shareholders of American-owned businesses operating abroad would place such firms at a disadvantage with other firms located in the same areas not subject to U.S. tax. (H.R. Rep. No. 1447, 87th Congress, 2d Session 57-8 (1962).)

However, Congress recognized in 1962—and the Administration's proposals recognize now—that changes in our tax structure should be made where the tax rules themselves create inequities or artificial distortions in investment decisions. Thus, in 1962 the Congress provided a special rule for foreign source income of holding companies and certain selling and service subsidiaries operating in foreign "tax havens," and in that limited situation accelerated the time at which U.S. shareholders were taxed on that income. Also in 1962, the law was changed to ensure that untaxed and undistributed profits of a controlled foreign corporation, whether or not operating in a tax haven, would not escape ordinary income tax as a result of a sale or liquidation of the foreign corporation.

THE ADMINISTRATION'S PROPOSALS

We have three proposals for legislative change. They are advanced in the belief that our system is fair in its general application, but that in certain limited situations we need changes in our tax system to neutralize distortions in investment decisions and revenue collections caused by certain features of some foreign tax systems.

TAX HOLIDAYS

There has been an increasing tendency for both developed and developing countries to provide "holidays" from their income taxes in order to attract investment in manufacturing. This can mean that no income tax, or very little tax, is paid with respect to the earnings of certain foreign corporations until the income is distributed as a dividend. This kind of deliberate and wholesale tax enticement does often control investment decisions. We believe that is a tax distortion and that it should be neutralized.

We are requesting amendment of the tax laws so that earnings from new or additional U.S. investments in manufacturing or processing facilities which take advantage of such tax incentives will be taxed to the U.S. shareholders at the time they are earned. Where such an incentive is availed of, the income of the foreign corporation will be taxed currently thereafter, regardless of whether the incentive is in effect for a subsequent year, unless the corporation ceases to be engaged in manufacturing or processing operations. We are prepared, in appropriate circumstances, to enter into tax treaties with other countries, subject to Senate approval, to recognize incentives under appropriate safeguards.

In order to give the Secretary of the Treasury or his delegate broad authority to define by rules or regulations the general categories of foreign tax investment incentives subject to the rule and to determine whether specific practices or benefits constitute such an investment incentive, the proposal will define a foreign tax investment incentive in broad terms. It will include any income tax related benefit, however effected, which is intended to encourage or has the effect of encouraging investment in the foreign country which provides the benefit, and whether or not granted to nationals as well as foreigners. Such a benefit may be provided by law, regulation, or individually negotiated arrangements. However, the fact that there is a generally low rate of tax in a country will not be considered by itself a tax incentive. It is intended that only major tax concessions would be affected. Examples of benefits or practices of the type which constitute investment incentives include tax holidays (which are partial or complete exemptions from tax for a period of time); deductions for reinvestment reserves; certain grants; and certain depreciation rules bearing no relationship to useful life.

RUNAWAY PLANTS

We also believe that the United States has a legitimate interest in taxing currently the income of a corporation that has moved abroad to take advantage of lower tax rates to manufacture goods destined for the United States. To accomplish this we propose, in addition to the tax holiday rule, that where a U.S. owned foreign corporation has more than 25 percent of its receipts from the manufacture of goods destined for the United States and is subject to a significantly lower tax rate, the income of such corporation will be taxed currently to the U.S. shareholders. A foreign tax will be deemed significantly lower where the foreign effective tax rate is less than 80 percent of the United States statutory corporate tax rate. The tests as to the percentage of exports to the United States and the effective foreign tax rates will be applied annually.

APPLICATION OF TAX HOLIDAY AND RUNAWAY PLANT RULES

Our proposal for tax holidays and runaway plants will add a new section to the Internal Revenue Code providing that a U.S. shareholder (i.e., a shareholder who is a U.S. person owning 10 percent or more of the stock) of a controlled foreign corporation will be treated as having received his pro rata share of the corporation's earnings and profits for a taxable year if the corporation is one that receives a tax holiday or a similar tax investment incentive or is a runaway plant. A controlled foreign corporation is one having more than 50 percent of its combined voting power owned by U.S. shareholders. The tax holiday and runaway plant rules would be in addition to those added by the Congress in 1962 in its tax haven legislation, and the mechanism for taxing the shareholders would be comparable, but without certain escape clauses that were provided in the 1962 legislation.

A corporation will be regarded as engaged in manufacturing or processing operations if the unadjusted basis of the tangible property and real property used in its manufacturing or processing operations exceeds 10 percent of the unadjusted basis of all tangible property and real property of the corporation. Corporations engaged in other businesses, such as mining, would be unaffected. The provisions will apply to any new investment or additional investment in existing manufacturing or processing operations after April 9, 1973. In the case of additional investment or replacement of existing investment, a transitional rule is proposed so that these provisions will not be applicable until the increased investment exceeds 20 percent of the investment on April 9, 1973.

FOREIGN LOSSES

We have also proposed that where U.S. taxpayers have used foreign losses to offset other income taxable by the United States and those foreign losses are not taken into account by the foreign jurisdictions in later years, then the United States will, in effect, recapture those losses by a reduction of the foreign tax credit or an inclusion in the gross income of the taxpayer in later years. This proposal modifies the present system under which the United States bears the cost during the loss years, but receives none of the revenue during the profitable years. In these circumstances, we wish to be certain of our fair share of the tax revenues.

The reduction in the tax credit would apply where the taxpayer itself continues to operate abroad in profitable years. However, since initial losses are frequently anticipated, one tax planning technique has been to operate in a branch form to deduct losses against U.S. income during the start-up period followed by incorporation of the foreign branch as a foreign subsidiary at or near the time the operation becomes profitable. In order to prevent this maneuver, the legislation proposes the recapture of losses by taking the previous losses into income upon the incorporation of a branch or comparable change in its tax status.

TABLE 1.—U.S. DIRECT FOREIGN INVESTMENT: BALANCE-OF-PAYMENTS FLOWS, 1970 AND 1971

[In millions of dollars]

	1970		1971	
	Net capital outflow	Income inflow [1]	Net capital outflow	Income inflow [1]
All areas	4,400	7,920	4,765	9,455
Developing countries [2]	1,162	3,784	1,940	4,743
Developed countries	3,238	4,136	2,824	4,713
Canada	908	1,301	226	1,397
Europe	1,914	2,200	2,083	2,595
EEC	994	1,198	1,305	1,392
All other Europe	920	1,002	778	1,203
Western Hemisphere	568	1,375	668	1,460
Other areas	1,010	3,045	1,788	4,004

Source: U.S. Department of Commerce, Survey of Current Business, November 1972.

[1] Includes after-tax branch profits plus dividends, interest, royalties, fees, and film rentals net of foreign withholding taxes.

[2] Includes unallocated international direct investment.

TABLE 2.—STATUTORY (1972) TAX RATES FOR SELECTED COUNTRIES

Country	Statutory corporate income tax rate	Withholding rates on dividends [1]
Canada	[2] 50	15
Mexico	[3] 42	15
Panama	[4] 50	8
Argentina	33	12
Brazil	[5] 30/5	20
Venezuela	[6] 50/60	15
Belgium	[7] 35/10	15
France	50	5
Germany	[8] 51/15	15
Italy	[9] 43	5
Netherlands	48	5
Sweden	40	15
Switzerland	[10] 29	5
United Kingdom	[11] 40/38.75	15
Republic of South Africa	[12] 43/25	15
Japan	[13] 36.75/26	10
Philippines	[14] 35	35
Australia	47.5	15

[1] Where a reduced rate of withholding is applied for parent-subsidiary dividends, that rate is shown.

[2] 21 percent of 1st $35,000, and 50 percent of the excess.

[3] Progressive rate structure of 5 to 42 percent.

[4] Corporations are taxed according to a progressive rate structure with bracket progression. The highest percent on the excess is 50 percent.

[5] 30 percent of taxable income and 5 percent on distributed profits of other than service corporations.

[6] Progressive rate structure with a maximum rate of 50 percent of income over 28,000,000 bolivares. Corporations engaged in oil and mining activity are subject to a rate of 60 percent on gross increments.

[7] 30 percent for distributed income with a floating rate on undistributed income, maximum is 35 percent on excess over B.Fr. 5,000,000. 10 percent surcharge on basic rate.

[8] Tax on undistributed profits/distributed profits. Distributed profits also bear substantial local taxes.

[9] Companies in Italy are subject to both the income tax, at rates varying from 18 to 25 percent, and to the company tax of 18 percent.

[10] Federal tax is a maximum of 7.2 percent; however, the cantons assess a progressive corporation tax. The maximum rate is 29.78 percent including Federal and communal rates.

[11] A corporate tax of 40 percent is levied on all corporate profits and a 38.75 percent tax is applied on distributed profits.

[12] The normal tax on companies is 43 percent. There is a 25 percent tax on undistributed profits. Mining income is taxed at 40 percent except for diamond mining (45 percent) and gold mining (special formula).

[13] Undistributed profits are taxed at a maximum rate of 36.75 percent. Distributed profits are taxed at a maximum rate of 26 percent.

[14] Corporate tax is 25 percent of first 100,000 pesos and 35 percent of the excess.

TABLE 3.—PAYOUT RATIOS OF EARNINGS OF U.S. SUBSIDIARIES ABROAD

[Figures in millions of U.S. dollars]

	Developed countries		Other areas		All areas	
	1970	[1] 1971	1970	[1] 1971	1970	[1] 1971
I. All industries:						
(a) Dividends paid	2,247	2,472	1,144	1,510	3,391	3,982
(b) Foreign Withholding taxes	298	319	118	129	416	448
(c) Dividends received	1,949	2,153	1,026	1,381	2,975	3,534
(d) Reinvested earnings	2,075	2,375	874	741	2,948	3,116
(e) Total earnings (a+d)	4,322	4,847	2,018	2,251	6,339	7,098
(f) Payout ratio (a as percent of e)	(52)	(51)	(57)	(67)	(53)	(56)
II. Manufacturing:						
(a) Dividends paid	1,499	1,584	299	294	1,799	1,878
(b) Foreign Withholding taxes	206	214	51	53	257	267
(c) Dividends received	1,293	1,370	248	241	1,542	1,611
(d) Reinvested earnings	1,252	1,508	282	277	1,534	1,785
(e) Total earnings (a+d)	2,751	3,092	581	571	3,333	3,663
(f) Payout ratio (a as percent of e)	(54)	(51)	(51)	(51)	(54)	(51)

Source: Department of Commerce, "Survey of Current Business."
[1] Preliminary.

Note: Data exclude interest earnings as well as royalties and fees.

Statement of the Honorable Earl L. Butz, Secretary of Agriculture—Friday, May 11, 1973

In my view, the Trade Reform Act of 1973 is one of the most important pieces of economic legislation to come before the Congress in recent years. We need this bill.

1. We need it to take full advantage of the growth potential of this country's agricultural sector;

2. We need it to help generate the domestic and foreign economic expansion we must have to maintain a high level of employment at more stable price levels;

3. And we need it to reduce our increased trade deficit through expanded agricultural exports.

I firmly believe we cannot achieve any of these objectives unless we negotiate the reduction of barriers which distort the flow of agricultural trade among nations. And I am further convinced that negotiations leading to this result cannot be accomplished unless the President is granted the tools contained in the bill before this Committee—tools which would give him broad negotiating authority, yet strengthen his ability to protect domestic industries threatened by unfair trade practices or injurious imports.

Why are liberalizing trade negotiations for agriculture so important at this juncture?

Growing exports are vital to the health of our agricultural sector. Exports are responsible for about 15 percent of cash farm income and it could be reasoned that exports provide about one-fifth to one-quarter of net farm income. That is because land and other fixed costs are already in place for domestic production, and they continue whether we export or not. Exports add to farm returns and permit farmers to farm at nearer full capacity with lower per unit costs.

This year we are exporting the produce of more than 80 million acres, equivalent to nearly 30 percent of harvested cropland. This means that the production from one-fourth to one-third of the land being cropped by U.S. farmers today depends on export markets. These figures could be even higher as we bring more land into production to meet the upsurge in demand.

Until recently, this country has had costly programs to take land out of production—about 60 million acres just a year ago. This has resulted in less than full efficiency, and in higher unit costs.

This year, under the impact of stronger foreign and domestic demand, we are bringing former set-aside land back into production. Farmers can use more of their land, which costs the same whether idle or not, and make fuller use of their machinery and their know-how to produce more food and feedstuffs from virtually the same capital investment they have had before.

When farmers can lower average costs from what they would have been under restricted production, and at the same time increase supplies, the result can't help but benefit the farmer in terms of higher income and the consumer in terms of greater abundance of food.

The American farmer wants to produce at the fullest capacity practical, and exports permit him to do so to his own benefit, and to the benefit of the American public. Better access and stable access to overseas markets is essential if this country truly wants to release the full productive potential of its agriculture.

Agricultural exports also stimulate domestic economic growth. Agriculture remains by far the largest industry in this nation today. It is related to the employment of around 16.5 million people, or about one-fifth of the total U.S. labor force, and it generates over 16 percent of total GNP.

The impact of the dramatic upsurge in farm exports of recent months already is being felt in the non-farm economy. Based on an estimate of more than 5,000 jobs generated in warehousing, transportation, trade and elsewhere for each $100 million of grain exported and 4,200 jobs per $100 milion in soybeans, we calculate that increased exports this fiscal year of grain and soybeans alone have meant well over 100,000 new jobs off the farm.

We estimate that this year's exports mean $150 million more in receipts for the transportation and warehousing industries this year than last. First-quarter deliveries of covered hopper cars numbered 4,117, double last year's figure. And railroads and shippers had over 9,000 on order as of April 1 this year. Barge builders have back-logged orders representing a year-and-a-half of work. Some ports are operating 24 hours a day, 7 days a week.

What is more, these increases in the number of jobs and the amount of income being generated directly by agriculture mean that there will be more demand for consumer goods and services produced by other sectors of our economy. Thus a growing agriculture can be beneficial for the entire country.

But agriculture is a key to domestic economic growth not only because of its size, but also because of its efficiency. Output per man hour in agriculture has increased by 3½ times since 1950, about twice the increase for non-farm workers. One farm worker (farmer, hired laborer, or unpaid family laborer) could feed 16 Americans in 1950; today he can feed more than 50.

This remarkable improvement in agricultural productivity since 1950 has made it possible for American consumers to increase their per capita consumption of beef by 30 percent, while at the same time foreign countries were more than doubling their purchases of American farm products.

This remarkable agricultural productivity has reduced the cost of of food in relation to available income over the past 20 years. The American food bill, which took 23 percent of the average after-tax disposable income in 1952, took 15.7 percent in 1972.

Because of its size and efficiency, agriculture is a key growth leader for our domestic economy and the strongest link in the chain of international competition. Demand is booming for agricultural products, both at home and abroad, and American agriculture—because of its increasing productive capacity—is uniquely suited to meet this demand. No other industry today faces quite the same combination of growing worldwide demand and competitive superiority.

In order to take full advantage of this situation, it is imperative that we open up world markets and encourage a freer flow of trade among all nations. Only in this way can we create the largest number of new jobs, the highest incomes, and the greatest purchasing power for our people.

Agriculture makes another important contribution to the economy by contributing a surplus to the trade balance, and it is capable of increasing that surplus.

Since 1969, agricultural exports have risen from $5.7 billion to an estimated $11.1 billion in fiscal year 1973. Even without the sales to Mainland China and the Soviets, and the price effects of these sales, we still would come up with exports of over $9 billion.

Comparing our calendar year (CY) 1972 exports of $9.4 billion with those of other sectors in the economy, we see that agricultural exports nearly equaled the total value of all our exports of nonelectrical industrial machinery. They are more than double our total chemical exports, and roughly three times the exports of all U.S. consumer goods.

While the CY 1972 trade deficit for nonagricultural products jumped sharply to a record high of $9.3 billion, agriculture was piling up a trade surplus of $2.9 billion. But that doesn't tell the whole story. More than $2 billion of our agricultural imports are coffee, tea, bananas and other products we don't grow. When we get into competition—where it is U.S. agriculture against other suppliers of similar products—and we compare our commercial exports with competitive imports, we have a trade surplus of $4 billion.

Projections for U.S. agricultural exports under current programs and policies give an annual compounded growth rate of about 5 percent. We believe that liberalization of import restrictions in major foreign markets could substantially increase this growth rate. It would be unfortunate to have to pull back our production plant because we failed to get the market access we need to sustain this higher growth rate.

Why is liberalization of agricultural trade feasible now?

Greater interchange between nations is inevitable. Inflationary pressures and consumer demand within countries around the world are causing national and international goals and systems to bend as never before.

Particularly, there is a growing worldwide commercial demand for farm products at reasonable prices. People are getting more income, and spending more of it to eat better. In some places this improvement may mean simply eating more staple foods such as grains. More often it means adding variety to, and improving the quality of, the diet by including more meat and poultry products, a greater selection of fresh fruits and vegetables, and a larger proportion of processed and prepared foods.

Meat, especially, requires far more agricultural resources to produce—and therefore offers an opportunity for substantial increases in sales of U.S. grains and soybeans. Of course, weather has created unusual demand conditions during the past year. But the basic trend toward increased demand remains the same.

In fact, this growing demand is creating a pattern of national pressures which are already beginning to force change in traditional systems of production and trade. In recent months it has caused the European Community to ease restrictions on meat imports; it led the Japanese Government to remove the pork levy and increase beef import quotas and to institute a new review of many other quotas; it caused Canada to reduce tariffs for 1 year on a wide range of meats, fruits, and vegetables; and it induced the Russians to maintain their 5-year livestock production goals in the face of unfavorable harvests of grain and feed crops.

The United States is no exception. We are all aware of the recent pressures for change related to the cost of living. The Agricultural Act of 1970 eliminated commodity-by-commodity acreage restrictions and marketing decisions. Since then many American farmers affected by these program changes have begun farming in ways that would not have been possible under the tighter restrictions of the old law.

Recent actions such as freeing additional set-aside acreage and suspending all direct export subsidy payments have further recognized consumer needs. Our proposals for domestic farm legislation would move agricultural programs still farther in the direction of more freedom for farmers to respond to the market. As the opportunity to trade between nations increases, the United States with its land resources, its technology, and its farming and management skills will be called on for greater production.

For all these reasons I am convinced that international negotiations are both timely and necessary if American agriculture is to profit from its own efficiency and help our economy to achieve its full potential for growth. We must have the provisions of the Trade Reform Act of 1973 in order to do this.

One kind of negotiation we would expect to undertake would be to further develop our trade relations with Eastern Europe, the Soviet Union and with the People's Republic of China. These countries offer the United States excellent possibilities for significantly expanding agricultural exports. But if the Soviet Union is going to come to us for its grains and its citrus, it is going to expect equal treatment on the other side of the trade coin. It is going to expect Most Favored Nation (MFN) treatment. Given the kind of safeguards provided in the President's trade bill, we think providing MFN treatment would be a very worthwhile step and one very much in our interest.

The trade bill would also give the President broadened authority to raise or lower tariffs when negotiating trade agreements. And it would authorize him to negotiate on all nontariff barriers, many of which have never before been subjected to international discipline. These authorities would be used to negotiate freer trade with other GATT members.

We realize that there may be some apprehension about giving the President such broad grants of authority. Among other things, this apprehension may concern the possible removal of agricultural restrictions by Executive order.

Let me say first that the Trade Reform Act contains carefully prescribed procedures which would require public hearings and departmental advice before any such offer could be made in negotiations. Furthermore, any part of the negotiated outcome which requires changes in domestic law would have to come back to Congress for review, where we would expect to demonstrate that we had been hard bargainers and that the benefits we were going to obtain for any concessions offered would be substantial.

Let me also emphasize that if we are going to obtain the kinds of benefits I have been describing from our trading partners, then we, too, must be prepared to liberalize, including doing such things as expanding or eliminating Section 22 quotas.

We are learning with experience that protectionism breeds distortions in trade and production; we are learning that with a little more liberality on everybody's part, market expansion would probably take care of many of the problems most feared by protected sectors.

For example, the dairy industry has been highly protected around the world. Surpluses have built up and certain of our trading partners have resorted to large export subsidies in order to market these surpluses. In a liberalized trading situation we would expect that these export subsidies would be terminated, thereby ameliorating much of the adverse effect for U.S. producers.

Let me point out finally, that because the trade bill does request so much flexibility for the President—flexibility which he must have if he is to negotiate successfully—it also provides more safeguards than in any previous trade legislation.

Various authorities would enable the President to retaliate against unfair trade practices, to provide temporary border protection for domestic industries (including agriculture) threatened with serious import injury, and to deal with special problems, such as inflation and balance of payments disequilibrium. All of these authorities would be readily available should they be needed.

But just as the President needs flexibility on the negotiating side, he also needs it on the safeguards side. If we are to negotiate for a more liberal trading world, it would be a step backward to define too narrowly those circumstances which might from time to time require restrictive action.

In my view, we have an unprecedented opportunity in American agriculture to seize the advantage offered by changes in world economies, in life styles, and in traditional systems to move forward into a new era of growth and prosperity, not only for agriculture, but for the Nation.

This legislation will give us that chance.

Statement of the Honorable Frederick B. Dent, Secretary of Commerce—Friday, May 11, 1973

Mr. Chairman and members of the committee, I am pleased to have this opportunity to appear before you today to comment on the provisions of H.R. 6767, titled the Trade Reform Act of 1973.

The trade bill which is before you will provide the President with the authorities he must have if he is to work effectively for a more open and equitable world trading system. Armed with such authorities, he will be able to to act from a position of strength in the hard bargaining of international trade negotiations. The proposed bill is specifically designed to underpin our efforts to insure that American exporters are given full and fair opportunity to compete in the constantly growing overseas market. At the same time, the bill will provide more flexibility and better safeguards at home with which to handle the injurious effects of sudden import surges.

Before going into the specifics of those provisions of special interest to the Department of Commerce, let me provide you with a brief overview of recent developments in the U.S. trade picture and, to the extent one can at this point, touch upon the trade outlook for the immediate future.

THE U.S. TRADE PICTURE

As you know, the U.S. trade position deteriorated sharply again in 1972. The deficit on our trade account was $6.3 billion. Part of the deterioration was an initial result of the Smithsonian Agreement of December 1971. The rise in the value of most major foreign currencies relative to the dollar caused import prices to climb, so that the same quantity of a particular imported item produced a larger import bill. This so-called perverse price effect had been anticipated for the near term. The other major reason for last year's trade account deterioration involved the business cycle, both here and abroad. The booming U.S. economy generated strong import demand, while the relatively restrained pace of business activity in many markets abroad provided less of a stimulus to our sales.

The trade balance for the last few months does show some welcome improvement. It is too soon to know, however, whether this trend will continue. In fact, there might possibly be some deterioration in the trade picture in the months ahead because the February 12 devaluation of the U.S. dollar may again produce a short-term perverse price effect on imports.

The big question, of course, is when the positive effects of the latest devaluation will take hold. The Smithsonian currency realignment offers little guidance. Seventeen months after the agreement, it is still not clear to what extent imports have been curtailed because of higher prices. It does appear, however, that overseas sellers are passing on the price increases induced by the dollar devaluation faster this time than after the Smithsonian adjustment. On the other hand, with the U.S. economy booming and personal incomes already high and still rising, demand at home for foreign products continues very strong.

On the export side, we should do very well this year in selling both agricultural and manufactured products. Certainly, some gains should be realized from the greater competitiveness of U.S. products because of the devaluation of the dollar. I will have more to say about this export picture later.

It is hazardous to predict how we will end up this year, in view of the enormous uncertainties involved and the absence of statistical estimating techniques of proved validity. Our best guess at the moment is that the United States will have another trade deficit in 1973 in the same general magnitude as last year's, possibly somewhat less. By the end of 1973, however, we should see noticeable improvement.

TARIFF AUTHORITY

Let me turn now to the proposed trade bill. I feel strongly that the provisions in the bill, taken as a whole, are a responsive and responsible answer to the hard questions we face in trade policy. I should like to concentrate on those features of the bill which are of special interest to the Department of Commerce.

In the area of tariffs, authority has been requested for five years to eliminate, reduce or increase duties on all products in the context of negotiated agreements. Such authority would give the President the negotiating leverage he needs to secure a total package, incuding reduction of agricultural and nontariff trade barriers.

Industrial tariff averages in major developed countries have been reduced through past negotiations to relatively, low levels—averaging below 10 percent—but numerous high tariffs remain. We would like to see a continuation of the downward trend. Of course, there must also be substantial progress on nontariff barriers and agriculture, as well as on an international system of safeguards to deal with transitional adjustment problems.

Section 101 would permit a combination of tariff actions in a trade agreement. Such actions could include the elimination of some duties, reduction of others by the same or varying amounts, to reductions on some products, and increases in tariff to achieve rate harmonization in certain product sectors.

This authority and flexibility in the tariff area is necessary to bring U.S. credibility to the bargaining table and provide the conditions necessary for the success of the trade negotations.

NONTARIFF BARRIERS

Over and above the issue of tariff duties, we expect the multilateral trade negotiations to encompass a wide spectrum of national laws, regulations and administrative practices which inhibit or distort the flow of goods across national borders. Those laws and practices give rise to a complex web of nontariff impediments to the free movement of exports. In recent years, increasing concern has been directed toward the distorting effects on international trade of such nontariff barriers, commonly known as NTB's. Consequently, the Administration intends to give high priority in the new round of negotiations to those nontariff measures employed by other countries which discriminate against U.S. exports.

Efforts in this area, particularly in the GATT, have produced some forward movement but much greater advances must be made. It is our conviction, however, that characteristics peculiar to NTB's dictate that more rapid movement is feasible only in a broader context. There are few industrial NTB categories where solutions can be self-balancing and put into effect independently of concessions in other areas.

There are no easy answers or simple solutions to the hard questions of how best to equip our representatives for negotiations in this complex field. Given the importance of meaningful progress on NTB's to our overall trade objectives, however, it is vital that our negotiators be supported by a clear mandate of the Legislative Branch and have at their disposal authority that will provide negotiating flexibility and bargaining leverage roughly equivalent to that of our trading partners.

In seeking such authority, the Administration has carefully taken into account the role and responsibilities of the Congress. We believe that Section 103 of the proposed trade bill gives the requisite negotiating authority while ensuring continued close cooperation and continual consultation with the Congress.

The bill has been drafted to cover a range of alternative procedures. The procedures envisioned, for example, would permit the President to negotiate and enter into NTB agreements through the use of advance Congressional authority in certain defined areas such as country of origin marking and customs valuation.

For the broader range of NTB's, the bill includes an optional Congressional veto procedure applicable to agreements for which the exercise of additional Congressional authority is necessary or appropriate. In such cases, the President would give 90 days notice to both Houses of Congress of his intention to use this procedure. The advance notice would give the appropriate congressional committees the opportunity to hold hearings, receive comments from the public and make recommendations concerning the contemplated agreements. Then, after another 90-day period, dating from the time the President delivers a copy of the agreement and his proposed implementing orders to both Houses of Congress, the President would be authorized to move ahead with implementation, unless the majority of the membership of either House of Congress states its disapproval of the agreement. As I noted, this is an optional procedure since the President can, if he thinks it appropriate, use his existing authorities. For example, he could submit such agreements to the Congress on an *ad referendum* basis or for approval as a treaty.

GOVERNMENT-INDUSTRY CONSULTATIONS

A very important aspect of the upcoming trade negotiations is, of course, how best to take into account the views of the private sector. The bill makes adequate provision for public hearings, and provision will also be made for consultations with consumer, business, labor, farm and other interested groups. However, Ambassador Eberle and I have agreed that it is essential to establish new government-industry consultation procedures to assure that the views of U.S. industry are taken into account fully from beginning to end. During the Kennedy Round negotiations, industry representatives felt with good reason that they were not brought into the picture soon enough and were given little opportunity to make any real input into the negotiating process. We propose to indicate immediately a three-stage program of consultations with industry, conducted jointly by STR and Commerce.

For the initial stage, we are planning a series of informal discussions with key industry executives to exchange views and ideas on our objectives, strategy, and how industry can best contribute to and participate in the negotiating process. We then envisage a second stage of informal meetings with technical experts from individual industry sectors to discuss specific industry inputs of technical data and factual information. In the third stage, we envisage formal industry advisory groups at perhaps two levels—a senior advisory group to provide overall policy advice, and technical groups to determine precise U.S. negotiating interests in individual products and product sectors.

I believe you will agree, however, that we cannot have meaningful discussions of our negotiating objectives, strategy and specific product interests with representatives of industry if they must be conducted in a fish bowl during the bargaining process. This is why we have included a provision in the bill exempting selected industry, labor and agricultural groups established for this purpose from the requirements of the Federal Advisory Committee Act to hold open meetings and permit public participation.

IMPORT RELIEF

A feature of this bill which I consider of special importance for U.S. producers of industrial goods is the proposed liberalization of the current provisions of the so-called "escape clause." Liberalization will ease significantly the present stringent eligibility criteria for import relief, and make such relief more accessible to industries injured by imports in three main ways.

First, the test which petitioners have most often failed to meet—to prove that import injury is linked to tariff concessions—will be eliminated. Second, "primary cause" is substituted for "major cause" with respect to the required causal relationship between increased imports and injury. "Primary cause," meaning the largest single cause, is a more reasonable and fairer test than "major cause," which has been interpreted as greater than all other factors combined.

Third, new "market disruption" criteria will simplify the burden of demonstrating that the increased imports in question are the primary cause of the injury. A finding of market disruption would constitute *prima facie* evidence that imports do constitute the primary cause of the claimed injury. Market disruption, in turn, is defined as occurring when imports are substantial, are rising rapidly both absolutely and in terms of total domestic consumption, and are offered at prices substantially below those of comparable domestic products.

It is also important to mention that import relief will also be made more effective by giving the President greater flexibility in providing relief measures.

In summary, the Administration proposals introduce important new safeguard procedures to permit U.S. producers to deal with rapid changes in foreign trade patterns and sudden inflows of particular products from abroad.

PATENT INFRINGEMENT BY IMPORTS

In addition to safeguards against injury from fair competition, the bill also consolidates and revises the four principal statutes dealing with unfair foreign trade practices. I would like to mention that one of these statutes—section 337 of the Tariff Act—has been amended to provide U.S. patent owners with a simpler, quicker and more effective remedy against infringing imports. Non-patent situations would be covered by amendments to the Federal Trade Commission Act as provided for in a separate bill.

EAST-WEST TRADE

Title V of the bill paves the way for the normalization of our trade with the countries of Eastern Europe, the Soviet Union and the People's Republic of China.

There are many advantages to normalizing and expanding trade relations with the non-market countries. Such a step would work to improve still further the political climate between the U.S. and those countries and carry forward the recent efforts of the President in that direction. From an economic standpoint, improved relations are good business since they can provide greater employment and earnings through larger exports, both of agricultural products and of manufactured goods which we hope to sell to those countries. In addition, the potential for imports of energy and other raw materials resources could constitute a significant factor in working to meet these growing needs.

Under this bill, the President would be authorized to extend most-favored-nation treatment on a reciprocal basis to those countries currently denied it, in the context of a bilateral agreement with the U.S. or if the country became a party to a multilateral agreement, such as the General Agreement on Tariffs and Trade (GATT). Such a bilateral agreement, or the extension of MFN treatment pursuant to a multilateral agreement, would not go into effect if disapproval was expressed by either the House or the Senate within 90 days of its submission by the President.

As you know, imports from all non-market countries, except Poland and Yugoslavia, are currently subject to the high tariff rates of the 1930 Tariff Act. We believe that the authority to correct this situation by extending MFN treatment to them is a basic prerequisite for the normalization of our commercial relations. Of course, the issue of MFN treatment will be closely related to the settlement of outstanding financial comercial and business facilitation issues.

Our analysis suggests that U.S. imports of manufactured goods from the non-market economies will not be of sufficient volume to cause material injury to U.S. producers within the foreseeable future. Should the situation arise, however, the bill provides adequate safeguards. First, no agreement may exceed three years in length. Second, should national security considerations require it, the President would be authorized unilaterally to suspend or to terminate the MFN treatment.

Third, the bill contains special procedures for handling any problem of market disruption caused by imports. It sets forth less stringent criteria for findings of import injury in those cases than in the case of market economies. Moreover, in the granting of such relief, the President would be able to impose quotas and higher tariff rates on a selective basis—that is, applied only to imports from the country whose goods are causing the difficulty.

EXPORT EXPANSION

With the adjustments in the relation of the dollar to other currencies and with the anticipated reduction of tariff and nontariff barriers in the world market places, the potential for American producers to expand their exports overseas will be substantially widened. The word "potential" is emphasized because the presence of greater opportunity will not, by itself, create greater export sales. Such sales will come only through hard and persistent efforts on the part of the American producer. These efforts must be backed also by a strong and stable economy at home.

The U.S. has lagged behind its major competitors in recent export growth for the past decade or more. Actually, it is not our import growth which has been excessively out of line as compared to other countries, but our export growth. That is not to say there have not been some disruptive increases in imports of certain items, particularly in consumer goods. The competition of particular imports in our home markets certainly requires our serious concern. In the last 10 years, however, average annual U.S. import growth was only one percentage point higher than the average of other industrialized nations taken as a whole—that is, 12.9 percent for the U.S. as compared with 11.9 percent for the others.

It is in export growth that the U.S. suffers most heavily by comparison. Our export growth in the last 10 years has been barely 9 percent annually; export growth of the other industrialized countries, on the other hand, has been more than 13 percent a year. To put it another way, other major countries exports have risen over 240 percent in the last decade, while U.S. exports have risen only about 130 percent. It is fair to say that it is in the export area that our real problem lies insofar as our international competitive ability is concerned. Our current adverse trade position, coupled with our longer run needs for heavy increases of imported energy fuels with raw materials, virtually dictates that export expansion be given a major national priority.

It is in recognition of those compelling facts, that the Department of Commerce is considering new export expansion initiatives. Our efforts will be directed at taking full advantage of the more open and accessible world markets that provisions in this trade bill, and the new round of negotiations, are designed to bring about.

As you know, in the recent past we have made a number of substantive changes in our laws and institutions which can have a favorable impact on our export performance. Improvements have been made in facilities of the Export-Import Bank for supporting commercial bank and individual company export transactions. U.S. export financing, both through the commercial banks and by the Eximbank, is now generally competitive with corresponding financing provided abroad; and credit is being used, as the Congress has mandated, as an active tool of export expansion.

Under the legislation enacted permitting the establishment of Domestic International Sales Corporations (DISCs), U.S. exporters can now receive tax treatment for their export income more comparable to that afforded by many foreign countries to their exporters. Through March of this year, some 3,850 DISCs had been organized by U.S. business firms.

Commerce programs to support the expansion of U.S. exports have been re-aligned and are now focused on two primary areas: overseas, through direct promotional techniques and marketing assistance; and domestically, to build export awareness supported by specific trade leads, export intelligence, and detailed market analysis.

Abroad, over 100 U.S. export exhibits are held each year in twelve important commercial centers, including London, Frankfurt, Tokyo, and Mexico City. Commerce-organized trade fairs—there were 17 last year—and trade missions both promote export sales and help U.S. firms establish agent and distributor arrangements. Extensive market intelligence and buyer information services support these direct promotion programs. Domestically, the Department assists U.S. firms to compete for major project purchases in overseas markets and provides several thousand specific export trade opportunities annually to individual U.S. firms.

It is my expectation that with these improvements, our export expansion activities will serve an even broader spectrum of U.S. business. Moreover, the features of the trade bill I have outlined will pave the way for a substantial reduction of foreign impediments to our exports.

Mr. Chairman and Members of the Committee, this concludes my statement. I firmly believe that the President's trade proposals deserve your most serious consideration. I earnestly hope that, after due deliberation, they will receive your full support.

Statement of the Honorable Peter J. Brennan, Secretary of Labor—Friday, May 11, 1973

Mr. Chairman and members of the committee: I am pleased to appear here today and add my endorsement to the Trade Reform Act of 1973. I am in favor of this bill both with respect to the protection it and other parts of the President's legislative program will provide for workers; and with respect to the trade negotiating authority.

The bill clearly recognizes that sudden surges of increased imports may cause serious problems for particular industries and for the workers in those industries. The bill, therefore, provides greatly improved measures to enable us to respond quickly with necessary corrective action and with assistance to workers where there is actual or threatened injury.

The provision of Title II dealing with import relief will—

(1) permit workers as well as industries to seek industry-wide relief from increased imports without reference to previous tariff concessions,

(2) simplify the basic tests for such relief,

(3) speed up the decision-making process, and

(4) expand the range of corrective actions which can be taken.

These more effective procedures for industry-wide relief and adjustment should much reduce the vulnerability of workers to sudden increases in imports.

For those cases where workers *are* faced with actual or potential job loss, the bill:

Makes it far easier for them to become eligible for adjustment assistance;

Accelerates the determination of eligibility and the delivery of payments and services;

And authorizes improved relocation benefits and training priority for affected workers.

We estimate that perhaps as many as five times the number of workers will have access to such assistance compared to the number eligible under the existing program.

As for the trade negotiating authority, it is my judgment—from my experience as a negotiator in industrial relations—that the authority the President asks for is essential. Our negotiators must have the tools necessary to get a fair shake for American production and American workers. A negotiator cannot go into a bargaining session with any hope for success unless he has the resources to bargain with; and the other side must *know* that he has those resources.

He must have the support of those for whom he is bargaining.

He must have authority that matches the authority across the bargaining table.

And he must be able to convince the other side that he can withdraw concessions or agreements as well as make them.

The negotiating authority in this bill is designed to equip our negotiators with the appropriate tools so that we may have access to foreign markets on a parity with the access of foreigners to our markets.

Many of our citizens have become fearful of trade, fearful of the ability of American workers to compete in a world economy. We hear claims that increased trade causes mass unemployment, that high U.S. wages are pricing us out of world markets, and that we are losing our economic advantages generally. We should be *concerned* about the employment effects of trade, but we need not be *fearful.*

With respect to the claim that increased imports cause large-scale unemployment, the facts do not support the claim. With your permission, I shall submit some basic materials on this subject for the record, but it is worth noting now that, while the U.S. was incurring the current very large trade deficit, the unemployment rate dropped from 6 percent in 1971 to 5.3 percent in 1972 to a current rate of about 5 percent. What is, perhaps, even more important, employment rose by 2.6 million in 1972—the largest annual employment expansion in a generation and in the face of a sharply rising trade deficit.

Increased imports do, of course, cause some job displacements and require adjustment by groups of workers—in the same way that technological changes or domestic competition or changing tastes cause displacements and require adjustments. I am much concerned about such displacements, but I think that we should not confuse these adjustment problems with the problem of large-scale unemployment.

The contention that U.S. wages are too high and are pricing us out of world markets is misleading. Though the U.S. continues to have the highest wages in the world by a wide margin, wage increases in the U.S., while substantial, have been less rapid in recent years than those abroad. As for unit labor costs, they have recently been rising less rapidly in the U.S. than in other industrialized countries and taken together with the recent exchange rate realignments are cause for optimism rather than fear.

I make these points not to minimize the existence of trade-related employment problems, but to remind ourselves of one overwhelming fact: American workers have the highest living standard in the world because they earn more; and they earn more because they produce more; they have been and they continue to be the most productive workers in the world.

Our workers do not need insulation from foreign competition. What they need is a chance to compete on equal grounds. They need the freer access to foreign markets that this bill and the consequent negotiations will provide. If they can have that access, we need not fear the consequences. To the contrary, we can look forward to new job opportunities opened up by new and larger export markets.

Yet, we know that some American workers can be adversely affected by expanded trade even when the trade is fair. As I have noted, the proposed legislation treats this problem by two kinds of remedies: import restraint and adjustment assistance.

The reduction of trade barriers may in some instances lead to sudden surges of imports which have disruptive effects on the domestic industry and its workers. In such cases, temporary import restraint may be desirable. The bill provides for access to such restraint on terms far easier to meet than is presently the case. Industry or worker representatives would be able to file a petition for import relief for the purpose of facilitating orderly adjustment to import competition. Where the Tariff Commission finds a condition, or threat, of serious injury arising primarily from increased imports, the President would be authorized to raise tariffs, impose import quotas, or negotiate orderly marketing agreements. I would stress that this improved and more rapid access to needed import restraint should serve to reduce the number of situations in which workers may face the loss of jobs from increased import competition.

The second kind of remedy is trade adjustment assistance for workers. The adjustment assistance provision in this trade bill is, I should note, only part of the President's program for assisting displaced workers. His bill proposing Federal minimum standards for unemployment insurance and his proposed legislation on pension protection are the other parts. Together, they make up a broad system of assistance available for trade-displaced workers.

There is widespread conviction that the adjustment assistance program for workers established under the Trade Expansion Act of 1962 has been a failure. The access to the program has been too difficult, the process has been far too time consuming and the delivery of services and assistance to the affected workers has been ineffective and far too late to facilitate the adjustment process.

The Trade Reform Act provides an innovative approach to adjustment assistance for workers which eases access to the program, centralizes and speeds the process of determination and delivery of services, and integrates the system into the basic unemployment insurance program.

Under the Trade Reform Act access to adjustment assistance for workers would be eased, relative to the current system, in the following ways:

1. The link to a previous tariff concession would be eliminated.
2. The basic test would be that increased imports constitute a *substantial* rather than a *major* cause of separation of the workers involved.
3. The entire process of investigation, determination, and certification would be carried out by the Secretary of Labor in no more than 60 days from the filing of a petition; a similar function has been performed by the Department of Labor staff over the past three years in connection with certifications under the Trade Expansion Act of 1962. The Tariff Commission would be involved only if the Secretary so requested.
4. The individual worker within a certified group would qualify if he were employed in adversely affected employment with a single firm for 26 weeks out of the 52 weeks preceding his separation. The requirement that workers be employed for at least one and one-half years out of a three year period would be dropped.

The cash payment levels and their duration would be changed to vary by State and to conform to the proposed Federal standards for unemployment insurance. Until the Federal standards are achieved, eligible trade-displaced workers would be entitled to receive supplementary payments, from Federal funds, wherever necessary to bring their weekly cash payments up to either 50 percent of their average weekly wages or the maximum level which is two-thirds of the appropriate State average weekly wage.

There are a number of improvements proposed in the bill with respect to services for displaced workers. For example, any adversely affected worker who has been totally separated and who cannot be expected to secure suitable employment within his commuting area in which he resides may receive a job search allowance of up to $500 to cover 80 percent of the cost of necessary job-search expenses. When he relocates to take a job, he would receive relocation allowances consisting of 80 percent of the reasonable and necessary expenses incurred in transporting himself and his family and their household effects to the new job location plus a lump sum cash payment equal to three times the worker's average weekly wage up to $500.

The Secretary of Labor is directed to make every reasonable effort to secure counseling, testing, and placement services through State agencies, as well as supportive services needed to prepare a worker for full employment. These services might include, for example, basic education or minor health services related to employability. In addition, as the bill directs, we will move to assure that training is made available to trade-displaced workers on a priority basis in the absence of suitable alternate employment opportunities.

I commend to you these changes in a program sorely in need of change for the following reasons:

1. Under the current trade adjustment assistance program, only 34,000 workers have become eligible to apply for adjustment assistance; some 21,000 have actually received benefits; and about 45,000 have been turned down by the Tariff Commission. Benefits

to most of the eligible workers have come too late to be of real assistance.

2. Though some workers would receive lower weekly cash payments under the proposed system than under the current system, the easier access to the program should increase the number of workers receiving benefits by a substantial amount, perhaps as much as fivefold.

3. The telescoping of the investigation, determination, and certification process into a 60 day period administered by the Secretary of Labor will bring the available benefits to unemployed workers quickly enough to be of real help.

4. Integrating the system into the unemployment insurance programs will greatly simplify its administration at the local level and speed up the assistance program. The bill reflects a move towards the view that the problems of a worker displaced by imports are no different, for the most part, from the problems faced by workers displaced as a result of other government actions, technological change or normal domestic, competitive processes.

In all of these cases, unemployed workers should be entitled to adequate benefits. The proposed unemployment insurance legislation will ensure that the States provide unemployed workers with adequate benefits. Until the bill becomes effective, the Trade Reform Act will continue to provide workers with a Federal supplement to their unemployment insurance to meet the proposed standard of benefits.

5. The relocation benefits and the new job search provision should provide a positive inducement for the displaced worker to go where the jobs are rather than wait for the job to come to him. It should help overcome the reluctance of many American workers—who have become attached to their jobs, homes and communities—to move from distressed areas to areas of greater economic vitality.

A reasonable judgment is that the entire monetary and trade program of the President, including the realignment of exchange rates, the import relief provisions of the trade bill, and the prospective achievement of a fairer trading system should make American products more competitive and help reduce the need for special measures for import impacted workers.

Statement of the Honorable Henry Kearns, President and Chairman, Export-Import Bank of the United States—Friday, May 11, 1973

Mr. Chairman, Members of the Committee:

It is a pleasure for me to appear before you during your consideration of the Trade Reform Act of 1973.

Fifteen years ago it was my privilege to discuss at length our country's external trade with this Committee.

Since that time, in public and private life, world trade has been my full time occupation. In my current capacity as head of the Export-

Import Bank of the United States, this involvement has been most comprehensive. In our consideration of some 5,000 transactions per year (in FY 1972 there were actually 5,477 transactions) in 137 world markets, a continuing kaleidoscope of international commerce passes in our review. Eximbank's staff is encouraged to travel extensively to all markets so that we may learn the up-to-date facts about our country's trade, its potentials and its competition.

I personally have visited 51 countries since assuming my responsibilities at the Bank, and thus I believe we do have a thorough understanding of the world's marketplace.

My latest trip, just concluded, lasted six and one-half weeks, and covered 11 markets, including Australia, Western Pacific countries, the Soviet Union and Poland. On this trip, in 270 separate events, in contact with more than 4,000 people, which included heads of states, government officials, private bankers and businessmen, the current U.S. trade posture was clearly revealed. Deep, frank discussions unmistakably showed the unlimited potentials for U.S. exports today—in my opinion the most promising trade prospects since the days of reconstruction.

In our changing world, no element is more pronounced than commerce among the nations, probably one of the greatest forces for good ever seen by man. With world trade volume increasing at an average of 11.6 percent per year, the challenge to us in the United States is unlimited. We simply must exploit the potentials and overcome the impediments.

Over the the past two years we have observed a seemingly persistent U.S. trade deficit. Yet the latest trade figures recently released for the month of March 1973 are highly encouraging. The rate of import increase has been significantly reduced, and exports for the second consecutive month were at an annual rate exceeding $60 billion. I am convinced that with the measures and efforts already taken by the President, with the adoption of the legislation now under consideration by your Committee, and with active public involvement, we will see an unprecedented period of export expansion. This will provide good jobs for millions of Americans, substantial income and diversification for business and industry, and massive tax revenues for the Federal Government.

As a result of the President's leadership, major trading nations are now in the process of updating the free world monetary system. The outmoded monetary relationships from the Bretton Woods Agreement have been realistically adjusted through revaluation and devaluation. To some, this has forecast only gloom, and some have continued their dire predictions on the economic trade future of this country. I dissent strongly from this view, and I do so because of the experience we have had at Eximbank over the past four years, and from my intensive discussions with buyers and sellers in the United States and abroad.

Among the impediments to the realization of the full trade potentials are the multitude of barriers imposed by the governments of our trading partners. All countries desire to protect their own and at the same time to sell excess production abroad. Today, however, the measure of astute government can hardly be the degree to which trade has been slowed or prevented, but rather it will be a reflection of the benefits that accrue to the people.

We Americans are increasingly aware of our needs for energy, minerals and other types of primary products. It is clear that the wherewithal to buy this increasing flow must come very largely from the sale of our products and services abroad. Early passage of the legislation before you will increase the ability of the United States producer to benefit from the explosive expansion of world commerce.

Among the factors on which I base my conviction for great trade opportunity are: (1) the volume of world trade is destined to accelerate significantly as industrial countries must import more primary products and as developing countries improve their quality of life and emerge into a more productive era; (2) more public and private buyers have the ability to purchase as a result of their increased export sales and from vastly expanded credit facilities; (3) transportation and communications offer the means to market and deliver to a degree hitherto unknown; (4) there is a very high respect for U.S. products, their quality and standardization, packaging and service, and the full range of items produced by a multiplicity of companies; (5) services to buyers and suppliers by the Government were never better; (6) most important, U.S. products are now price competitive in nearly all categories and comparative inflation rates of competing countries tend to increase this advantage.

These factors all converging at one time provide a golden opportunity for the United States trader and an awe-inspiring challenge of his ability. If we fail to fully exploit this combination of economic circumstances, it will most certainly be to the detriment of the economic future of our country.

To exploit fully this golden opportunity, United States negotiators in the upcoming trade discussions must have a thoughtful and comprehensive set of rules and the maximum possible cooperation of the legislative and executive branches. These negotiators must be able to speak with conviction on behalf of the United States so that their bargaining position will not be inferior to representatives of other industrial countries.

It is a "must" that we give our negotiators wide latitude, especially in attempting to remove nontariff barriers which discriminate against the sales of United States goods and services in several countries.

For a long period following the conclusion of World War II, the United States enjoyed a beautiful seller's market. We were the exclusive producer of many products, especially those of high technology and the result of advanced research. Today, however, there are few products indeed that are available only from our country. Even commercial jet aircraft and nuclear power equipment, hallmarks of our exclusive heyday, are coming in for competition from several quarters. We at Eximbank deal with this increasing competition every day. It is my firm belief that a market in hand should be vigorously protected and nurtured while at the same time exploration continues for new markets.

The legislation pending before you, H.R. 6767, further authorizes the President to grant "most favored nation" treatment to countries when it is determined that such action is in the national interest of the United States. This authority is of significant importance. Private and public negotiators are increasingly exploring the possibilities of increased trade with the Eastern bloc countries. We have reached a decisive stage in our relations with the Soviet Union, Poland and Romania. The economy of the Soviet Union especially complements the economy of our own great country in many respects. The Soviets have very large reserves of certain raw materials and basic products which are now needed and will be increasingly needed in the United States. At the same time, we have the high technology, equipment and know-how that the Soviet Union needs to further its economic development. Potentially, the trade between our two countries can grow to significant proportions and probably can do so at a very rapid pace. Mutual benefit can be assured through careful analysis and persistent negotiations, but it is unrealistic to believe that one-way trade can long endure.

Mr. Chairman, I strongly urge prompt enactment of H.R. 6767 to make it possible for the United States to take full advantage of the almost limitless opportunities now available in the growing world markets. We must have total Government and private business cooperation, with bold, forward-looking programs vigorously implemented. This legislation, together with the intelligent and forthright initiatives taken by the President to stimulate U.S. exports, will reverse the balance of payments decline and will enable the United States to fully participate in the golden era of rapidly expanding trade.

Statement of the Honorable Carroll G. Brunthaver, Assistant Secretary of Agriculture—Friday, May 11, 1973

COMMODITY CREDIT CORPORATION

The Commodity Credit Corporation is a wholly-owned Government corporation, incorporated as a Federal Corporation by the Commodity Credit Corporation Charter Act. Its purposes are to stabilize, support, and protect farm income and prices, help maintain balanced and adequate supplies of agricultural commodities, their products, foods, feeds, and fibres, and help in their orderly distribution. In addition to its basic functions, it is used to administer and, in some cases, temporarily finance numerous special activities. These operations are carried out in accordance with its annual budget programs which are submitted to and approved by Congress.

One of the major programs of the Corporation has been providing support of agricultural commodities to producers through loans, purchases, payments, and other means. Support for various agricultural commodities is provided in accordance with applicable laws. Under the Agricultural Act of 1949, as amended, support is mandatory for the basic commodities—corn, cotton, wheat, rice, peanuts, and tobacco—and for the nonbasic commodities—tung nuts, honey, milk, barley, oats, rye, and grain sorghum. The National Wool Act of 1954, as amended, requires support for wool and mohair. Support for other nonbasic commodities is discretionary. The support program may also include operations to remove and dispose of surplus agricultural commodities in order to stabilize prices at levels not in excess of those permissible by law.

The principal methods of providing support are loans to and purchases from producers. Direct purchases are also made from processors as well, depending on the commodity involved. Also, special purchases for the removal of surpluses are made under various laws. For feedgrains, in addition to loans and purchases, producers receive payments. For upland and extra-long staple cotton producers receive payments in addition to loans. For wheat, in addition to loans and purchases, producers receive marketing certificates.

Another important program has been the promotion of the export of agriculutral commodities and products through export payments, credit sales, and other operations. When necessary to encourage export movement from free-market supplies, as well as from its own stocks, the Corporation makes payments on exports of agricultural commodities. The rate of payment generally is the difference between the prevailing world export price and the domestic market price. This type of program may be suspended when not needed or reinstituted in order to make commodities competitive in world markets.

To encourage exports of agricultural commodities, including products thereof, the Corporation conducts an export credit sales program. Under this program the Corporation finances, for a period not to exceed 3 years, commercial export credit sales by exporters of commodities obtained either from Corporation inventories or from private stocks. These commercial transactions are financed under the Corporation's charter authority and section 4 of the Food for Peace Act. Export sales for foreign currencies or on long-term credit have been financed by the Corporation under the Agricultural Trade Development and Assistance Act of 1954, as amended.

The Corporation conducts a program to provide storage adequate to fulfill its program needs. The Corporation has authority to buy bins (in storage-short areas) and equipment for the care and storage of commodities owned by the Corporation or under its control. The Corporation makes loans for the purchase, building, or expanding of facilities for storage and care of commodities on the farm and sells, to producers and others, bins needed for the storage of agricultural commodities. It may also provide storage use guarantees to encourage building of commercial storage, and undertake other operations necessary to provide storage adequate to carry out the Corporation's programs.

Under the supply and foreign purchase program, the Corporation procures from domestic and foreign sources food, agricultural commodities, and products and related materials to supply the needs of Federal agencies, foreign governments, and private and international relief agencies.

The use of the Corporation to carry out various other activities has been specifically authorized by law, such as the wheat certificate program, the set-aside program, land diversion payments, and cotton research and promotion.

As has been noted the programs of the Corporation are directed toward supporting and protecting farm income and prices and maintaining balanced and adequate supplies of agricultural commodities. An essential element in supporting income and prices is making agricultural commodities produced in the United States competitive in the world market. To the extent that negotiations under the Trade Reform Act of 1973 result in removal of trade barriers and correction of other distortions of international trade that limit the availability of foreign markets for United States agricultural commodities, the activities of the Commodity Credit Corporation in this respect may be reduced.

For example, export payments, which have in the past been used to make domestically produced agricultural commodities competitive in the world market, would be eliminated when not necessary for this purpose. If adequate prices are obtained on the world market, programs to support the price of agricultural commodities to producers in the United States may be reduced. In such case, storage facility and other supporting programs could be likewise reduced, since producers and the private trade would be able to handle their stocks without Government assistance.

O