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REORGANIZATION PLAN NO. 3 OF 1979

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. RES. 245

NOVEMBER 7 (legislative day, NOVEMBER 5), 1979.—Ordered to be printed

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NOVEMBER 7 (legislative day, NOVEMBER 5), 1979.—Ordered to be printed

Mr. RIBICOFF, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. Res. 245]

The Committee on Governmental Affairs, to which was referred the resolution (S. Res. 245) to disapprove Reorganization Plan No. 3 of 1979, having considered the same, reports unfavorably thereon without amendment and recommends that the resolution do not pass.

I. SUMMARY OF REORGANIZATION

Ecopolitics is replacing geopolitics in international affairs. The security and prosperity of the United States demands effective management of international economic affairs, including our trading relations with the rest of the world. The U.S. economy cannot remain strong unless its international economic standing, including its trade performance, improves. The United States needs a more coherent and successful international trade policy if we are going to reduce our current trade deficit, and improve our long-term international competitiveness. But the development and execution of a first-rate trade policy requires a first-rate organization of the U.S. Government.

The purpose of Reorganization Plan No. 3 is to provide for better leadership and coordination of all aspects of U.S. trade policy, to enhance the ability of the Federal Government to promote U.S. exports, to strengthen administration of the fair trade laws, and otherwise to increase the effectiveness of the government's efforts to make the United States stronger in international trade matters.

To this end, the reorganization would centralize the policymaking and negotiating functions for international trade in an enlarged White House Office of the U.S. Trade Representative (USTR). This office would have responsibility for developing and coordinating the implementation of U.S. trade policy, including commodity and direct investment matters, as well as all the responsibilities now exercised by the Office of the Special Trade Representative. To ensure an effective overall trade policy, the U.S. Trade Representative would have authority to issue guidelines to other agencies determining U.S. policy on major international trade matters. Responsibility for negotiating bilateral and multilateral trade agreements, now split between State, Treasury, and the Special Trade Representative, would be centralized under the U.S. Trade Representative.

The plan proposes to consolidate operational responsibility for day-to-day administration of nonagricultural trade matters in the Department of Commerce. The plan would transfer responsibility for the administration of the antidumping and countervailing duty laws from the Treasury Department to the Commerce Department. The reorganization would bolster the government's export promotion efforts by transferring the commercial attache functions from the State Department to the Commerce Department. The Commerce Department would be reorganized internally so that international trade matters become a leading priority of the Department.

The reorganization also proposes to establish a connection between the investment functions of the Overseas Private Investment Corporation and the USTR, and to establish a connection between the export promotion activities of the Export-Import Bank and both the USTR and the Commerce Department. Finally, the plan would enlarge the mandate and membership of the Trade Policy Committee, the existing interagency committee on trade matters.

The reorganization would enhance the ability of the United States to benefit from the expanded trade opportunities made poossible by the recent conclusion of the Tokyo Round of the multilateral trade negotiations (MTN). It will promote a more coherent and effective trade policy, better enforcement of the fair trade laws, and more consideration of the effect a wide range of decisions will have on the trade posture of the United States in the 1980's. At the same time, at least some members of the Committee believe that this reorganization may well have to be followed by additional steps later to consolidate further the trade functions of the government. Nevertheless, this reorganization takes the first essential step towards organizing the government to develop and implement a first-rate trade policy.

Section II of the report summarizes the serious challenges in international trade facing the United States in the 1980's. It then describes how Reorganization Plan No. 3 will help the government develop and implement the trade policies and programs necessary to meet these international challenges. Section III of the report describes each section of the plan and related executive order in further detail.

II. Reasons for the Reorganization

A. Need for Effectively Organizing the Government's International Trade Functions

The United States has had the luxury of large domestic markets. Historically, it has not sought overseas sales with either the urgency or zeal of other nations. In areas where it has exported goods, the industrial strength and technological superiority of this country ensured the United States a ready market abroad. International trade was not given high priority by the U.S. Government, and this was reflected in the haphazard assignment of governmental trade functions to a variety of different agencies and departments. No rational organization of trade functions was ever adopted. The United States can no longer afford to continue to take a relaxed view toward its international trading position. Because the importance of trade to the United States is so great, and the current challenges now facing U.S. trade are so large, the U.S. Government must be reorganized to play a more effective role in international trade.

Recognizing the effects of global interdependence on the United States

Reorganization Plan No. 3 represents the first effort to reassess and reorganize the structure of the governmental apparatus dealing with international trade issues. Changes in the world economy and the U.S. role in it make it essential to have a new apparatus more capable of promoting and defending U.S. trade interests in the 1980's.

Between 1945 and the present, the world economy has become increasingly integrated and interdependent. Goods, money, technology and often workers travel across national boundaries in increasing numbers. Trading countries, including the United States, can no longer insulate their economies from the economic problems of other countries—whether they are low growth, inflation, or unemployment. Events in foreign lands, such as OPEC oil price increases, poor grain harvests in the Soviet Union, or business cycles in other countries can have a direct impact on the U.S. economy.

The trend toward economic interdependence has been pronounced in the United States, which is perhaps the most self-sufficient of the major industrialized democracies. In 1960 exports of goods and services constituted less than 4 percent of the GNP of the United States. By 1978 they constituted 9 percent. Imports of goods and services amounted to 3 percent of GNP in 1960; by 1978 this figure had grown to approximately 10 percent. Thus, imports and exports of goods and services today represent about 20 percent of this country's GNP.

What this means is that one-third of all U.S. crops is grown for export, and one in eight American workers in manufacturing produces goods for export. Industries such as construction equipment and aircraft, fertilizer, rice and pulp milling equipment have become heavily dependent on overseas markets. Roughly 40 percent of U.S. construction machinery and aerospace equipment is sold overseas. Export markets are also very important for many agricultural products. Exports account for one-fourth to over one-half of total sales of wheat, hides, soybeans, cotton, sorghum, tobacco, rice and corn. Imports supply over one-fourth of U.S. consumption in 12 of 15 key industrial raw materials. Over two-thirds of U.S. imports consists of raw materials or agricultural products that could not be produced in the United States, or could be produced here only at higher cost.

The growing importance of international trade is evidenced by the increased international economic activity and scope of multinational corporations. Foreign earnings, as a percentage of total profits of American corporations, have grown from 8.6 percent in 1957 to 12.1 percent in 1970. By 1978 the figure had grown to almost 33 percent.

Annual sales of U.S. multinationals operating abroad are substantially greater than export sales from the United States. In fact, they exceed the entire GNPs of all but a few countries.

Meeting the growing international competition

In the 1980's the United States will have to meet increasingly aggressive competition in trade from other countries. Since this challenge will continue to grow stronger, it is imperative that the United States improve its own trade performance in order to protect its overseas markets.

The United States is no longer an economic giant with no rivals. There are now other giants. American "know-how" is not the only "know-how" in the world. Others have been innovative and have set basic, long-term economic objectives. Now they are harvesting the results.

U.S. exports as a percentage of total world trade have dropped from 18 percent in 1960 to 11.2 percent in 1978. While the volume of U.S. exports is larger than any other country, the Federal Republic of Germany was a very close second, with 11 percent of world exports in 1978. Japan during he period of 1960 to 1978 increased its share of world trade from 3 percent to 8 percent.

The decline of U.S. preeminence in trade undermines our ability to provide world leadership, but more importantly it has contributed to enormous trade deficits. After enjoying annual surpluses throughout this century, the U.S. balance of trade began to experience deficits in the early 1970's. In 1978 this country experienced a record deficit of $28.5 billion. The projected deficit for 1979 is now about $25 billion.

In the 1980's the United States is likely to face increased competition internationally which could cause trade deficits larger than those experienced in the 1970's. Increased energy costs will force oil-importing countries to be ever more export conscious in an effort to pay for their oil imports. The new emphasis of many developing countries on export-oriented industrialization strategies will challenge the stability of the U.S. manufacturing base, particularly in consumer goods and other products where advanced technology can be absorbed by foreign competitors.

Between 1960 and 1975, exports of manufactured goods by developing countries grew annually at an inflation-adjusted rate of approximately 12 percent. Particularly impressive was the performance of some 8 to 12 countries in East Asia and Latin America, for which annual growth rates in export of manufactured products exceeded 20 percent. While these countries accounted for a large part of the growth in exports of manufactured goods by developing countries, recent statistics suggest that over the next 5 to 10 years some 25 to 30 developing countries should increase significantly their export of manufactured items.

The developed countries will not stand still either in their effort to expand exports to the United States and the rest of the world. Prof. Ezra Vogel of Harvard in his book "Japan As Number 1" underscores the unprecedented challenges from Japan. The successes of Japan in the electronics industry, automobiles, shipbuilding, and watches have been startling. Current Japanese initiatives in such fields as aircraft, computers, and business machines will seriously challenge the United States edge in these fields in the years to come. European cooperation in the aerospace industry will similarly contribute to a general challenge to the U.S. lead in high technology products, the traditional mainstay and most dynamic sector of the U.S. export position.

Continuing trade deficits cannot be simply explained away by pointing to the size of oil imports. The U.S. decline in world markets is apparent in such other areas as manufactured goods. In 1970 Germany moved ahead of the United States as the world's leading exporter of manufactured goods and has since widened its lead. The United States now appears ready to slip into third place in exports of manufactured goods, because Japanese sales were only $300 million less than U.S. sales in 1978. In just 3 years, from 1975 to 1978, the U.S. trade balance in manufactured goods actually dropped from roughly a $20 billion surplus to an actual deficit of over $5.8 billion.

These figures suggest that in addition to the energy crisis there are other, equally serious factors contributing to the U.S. trade deficits. Many observers believe that U.S. trade deficits are not simply a consequence of cyclical factors, but reflect a long term erosion in the U.S. competitive position. In recent years our annual rate of productivity increase, measured in output per man hour, has consistently lagged behind our trading partners. From 1960 to 1973 productivity in the United States increased at an average rate of 3.3 percent. From 1972 to 1977, however, our annual productivity growth was only six-tenths of one percent per year. In 1979 our annual rate of productivity increase has been virtually stagnant. The traditional lead of the United States in technological innovation also appears to be declining. Investment in plant and capital equipment as a percentage of GNP is lower in the United States than in most other developed countries.

There is evidence that unless we rethink and reorder our industrial priorities and policies, the position of the United States in world trade will continue to erode. Continued massive trade deficits will further weaken the value of the dollar, intensify inflationary pressure, and exacerbate our employment problems. For every $1 billion of a trade deficit, the United States foregoes approximately 40,000 new jobs, $2 billion in GNP, and $400 million in Federal tax revenue.

Implementing the MTN agreements and responding to the actions of other governments

Even if the United States were not otherwise inclined to act aggressively to meet the growing challenge in international trade, a more active role in trade matters will be forced upon the U.S. Government by the MTN agreements, and the growing inclination of other governments to support exports actively.

The Tokyo Round of multilateral trade negotiations was conducted under the auspices of the General Agreement on Tariffs and Trade (GATT). The resulting agreements, implemented by legislation the Senate passed on July 26, 1979, by a vote of 90 to 4, represent five and one-half years of politically difficult negotiations to further liberalize trade flows and reduce nontariff barriers to trade. There was agreement among the advanced industrial countries to establish new rules of conduct in five major areas: subsidies and countervailing duties; product standards and technical barriers to trade; government procurement; import licensing procedures; and methods for customs valuation. These codes are intended to reduce arbitrary and discriminatory barriers to trade, and thereby to ensure exporters greater access to foreign markets. International trade will henceforth be governed by an increasingly detailed system of rules and procedures. These agreements can be very beneficial to the United States, but to fully realize these benefits, the U.S. Government must be prepared to promote effectively its trade interests and to defend its new trading rights. Potential trading opportunities will have to be communicated to U.S. exporters, and apparent violations by foreign governments of either the letter or the spirit of the agreements must be detected and challenged. The United States should actively use the new settlement procedures to ensure compliance with the codes. It must pinpoint remaining weaknesses in the system of international trade rules and actively negotiate new agreements to strengthen and expand upon the codes.

At home the new system, and the freer access to U.S. markets that it provides, will present an added burden on this government to implement effectively the laws designed to protect the U.S. businesses from unfair trading practices, and to provide appropriate relief when international trade injures domestic businesses. U.S. concurrence with the new international agreements was based on an assumption that these fair trade laws would be effectively and vigorously administered by the Federal Government.

Another important challenge is poised by increased foreign government ownership or direct partnership in such basic industries as steel, petrochemicals, or the automotive industry. Developing policies to cope with the unfair trade effects of foreign government ownership through vigorous enforcement of the subsidy countervailing duty law, or new international understandings, will be an important task for the U.S. Government in the 1980's. A country may also promote exports through providing export financing in large amounts and on generous terms. For example, in 1977 Japan supported 42 percent of its exports, the United Kingdom 34 percent, and France 30 percent, while the United States supported only 7 percent. Foreign government success in "targeting" special support for industries with export potential has been particularly noteworthy in Japan and other East Asian countries. Whatever the response of the U.S. Government will be to the efforts of other countries to promote exports, it is bound to require the government to play an increasingly active role in trade-related matters.

B. THE INADEQUACY OF THE GOVERNMENT'S CURRENT ORGANIZATION OF INTERNATIONAL TRADE FUNCTIONS

The growing importance of international trade to the U.S. economy, the growing U.S. trade deficits, and the need to implement the new MTN agreements and to meet future international competition all point to one key conclusion. The U.S. Government must develop and implement a really effective overall trade policy. Failure to do so will further weaken the U.S. economy at home and its standing abroad.

The way the government and the country thinks about trade needs to change. The artificial separation between domestic business and economic concerns, on the one hand, and international economic and trade concerns, on the other, should end. The vital importance of international trade to this country must receive greater recognition in the way the government's international trade funtcions are organized.

Yet the current organization of the government for international trade matters makes these goals very difficult to achieve. Today the United States is the only major industrialized country without a ministry of trade, or comparable economic agency. Instead, major U.S. trade functions are located in a number of agencies. Depending on the issue, anywhere from 8 to 12 departments and agencies play important roles in U.S. trade policy formulation and implementation. In most cases, trade is not the major concern of any of the agencies. Although the Office of the Special Trade Representative (STR) is the lead agency for multilateral trade negotiations, the Departments of State and Treasury have primary responsibility for negotiating and managing other trade issues. The function of promoting exports, providing relief when workers and firms are injured by imports, and policy research and development are similarly shared by a number of agencies. Four different Departments—Treasury, Commerce, State, and Defense—each have an East-West trade bureau.

There follows a more detailed description of the haphazard, diffuse, and often uncoordinated nature of the way the Government's international trade functions are currently organized.

Developing and coordinating overall trade policy

Developing and coordinating the implementation of international trade policy is not the primary mission of any department or agency of the government. Three agencies deal primarily with trade matters, the STR, the International Trade Commission, and the Export-Import Bank, but the scope of activities of each is too limited to deal comprehensively or effectively with all the elements of international trade policy.

The scope of issues that affect trade policy, and the number of interests and perspectives that must be coordinated in developing the policy, make it especially difficult to formulate overall trade policy in the absence of a single lead agency. For example, Commerce is primarily concerned with the interest of U.S. industry; Labor with workers; Treasury with tax and monetary relations; Defense with military security; and State with foreign relations. The current organization means that there is no single agency to highlight important trade policy issues emerging in any of these agencies, to coordinate research and analysis on the issue, and to establish a clear set of trade priorities and related policy directives. Without centralized direction, inadequate research may be devoted to the trade issues most in need of investigation. Emerging trade issues may get lost in a department preoccupied with other problems more closely identified with its major mission. And trade policies in an area may vary from year to year depending on which agency or department is especially active at the moment in that particular area.

As a result, important policy decisions may be deferred in the absence of consensus, or either an agency or the President may make a decision before the implication of the decision on U.S. trading needs, and the perspectives of other agencies, are fully considered. An example of this was the U.S. decision in 1973 to institute controls on the exports of soybeans to prevent a feared increase in a rise in domestic price of soybeans. The soybean case managed to create the impression abroad that the United States was not a reliable supplier, thereby compromising years of U.S. export promotion efforts in the agricultural area. The Department of the Treasury takes the lead in determining tax policies concerning the Domestic International Sales Corporation (DISC), deferral on foreign corporate earnings, and section 911 tax relief for certain personal income earned abroad. In doing so it may primarily focus on the revenue consequences of its decision without fully considering the implication of its action on U.S. exports.

Furthermore, the current, confused organization makes it difficult for the United States to speak in international forums with a single, authoritative voice. The 1975 debate within the government over commodity policy towards the developing world illustrates this. This policy differences between state and Treasury received wide press coverage during 1975. The Treasury position at the time was that trade in commodities is best left to the market place. The Secretary of State announced in a speech at the United Nations a different U.S. policy more receptive to evaluating commodity agreements on a case by case basis. The Treasury Department subsequently raised questions about whether the positions expressed by the Secretary of State accurately represented U.S. policy. Similarly, the press reported last year that while the Commerce Department was attempting to persuade Japan to restrain exports to the United States in an effort to balance trade with Japan, the Justice Department may have been cautioning Japan that undue export restraint may violate U.S. antitrust laws.

Finally, the current organization means that no one agency or official may be held accountable by Congress or the public for the overall effectiveness of U.S. trade policy. There is no one official who can speak with the prestige and authority necessary to explain U.S. trade policy to the country generally, or to potential exporters in particular.

The Trade Policy Committee (TPC) is only able to reduce partially the problems caused by the current organization. Many important trade-related issues fall outside the current jurisdiction of the TPC, including East-West, commodity policy, trade in services, export controls, trade finance, international investment policy, energy trade, and policy research. Furthermore the TPC is only an interagency coordinating committee. Its chairman does not possess the authority to adopt a policy decision, or to coordinate the effective implementation of any such policy decision. A better organization is needed to make possible the development and coordination of international trade policy.

Representing the United States internationally

The responsibility for taking the lead role in negotiating trade agreements has been divided among three and sometimes four different agencies. Although STR has had responsibility for multilateral and some noncommunist bilateral trade negotiations, other departments take the lead in other trade-related negotiations. The State Department, backed by Treasury, Commerce, and Agriculture, assumes the lead in negotiating commodity agreements, as well as trade agreements with communist countries. The Treasury Department with the responsibility for administration of the countervailing and antidumping statutes, has negotiated with foreign countries to reduce their subsidies, or to bring pressure on foreign industries to cease predatory pricing practices. Treasury, in addition, tries to negotiate with foreign governments agreements intended to reduce or control competition in government financing of export sales. The Commerce Department has also from time to time played an important role in negotiating trade agreements, including the U.S.-U.S.S.R. trade agreement in 1972.

The 1979 trade and related agreements with the People's Republic of China is the most recent example of the fragmented responsibility for conducting such negotiations. The Secretary of the Treasury, in his capacity as the chief financial officer of the country, and also as Chairman of the Joint U.S.-P.R.C. Bilateral Commission, took the lead in negotiating the issue of claims and assets. The Secretary of Commerce visited China to negotiate on questions of overall normalization of economic relations, including cultural exchanges. The Department of State led an interagency delegation that actually negotiated a trade agreement. Finally the Special Trade Representative visited China to participate in difficult textile negotiations.

When four Cabinet-level negotiators, each representing Departments with different interests and missions, are involved with a series of related negotiations with a single country, it is hard for the United States to articulate the same overall U.S. trade policy at all times. And it is hard for any one Cabinet officer to know the range of issues involved in all the negotiations and how they interrelate, what has been agreed upon by the parties in the other discussions, and how to relate the different issues under discussion in a way that maximizes the bargaining strength of the United States. Astute foreign negotiators are able to detect and to exploit differences among U.S. negotiators, thereby compromising our negotiating strength. The continued fragmentation of negotiating responsibility undermines U.S. efforts to sustain a consistent and strong position in international trade negotiations.

Promoting U.S. exports

Today the U.S. Government spends about one hundredth of one percent of its budget on export promotion efforts. This is less than Japan, Italy, France, or the United Kingdom. A variety of agencies administer with varying success and attention the export promotion programs the United States does have.

Four agencies—Agriculture, Commerce, the Small Business Administration and State—are involved in promoting U.S. exports through marketing assistance and information programs. Although the Agriculture Department's promotional activities (including its corps of agricultural attaches) generally are considered to be effective, the nonagricultural programs have often been criticized for lack of coordination.

Currently 85 percent of all American manufactured exports are accounted for by about 1,900 companies. Among the 25,000 to 30,000 existing exporters, the 95 percent which are small and medium sized still account for only 15 percent of total exports. The Commerce Department estimated that there are an additional 18,000 small to medium sized manufacturers that could profitably export, but which do not do so now. These figures suggest that the category of small and medium sized firms is one area where there is considerable room for improvement in the U.S. export promotion program.

A persistent problem in providing better government support to exporters has been the failure of the business community and the U.S. commercial attaches abroad to work together more successfully. Overseas market information and assistance from commercial attaches who are familiar with the language and customs in which they work can be a valuable help to companies seeking to increase their exports. The fact, however, that these services are currently provided by the State Department through its commercial attaches means that assistance to U.S. business seeking to export its split between the Departments of State and Commerce. The State Department does not have the day-to-day contract with domestic business in this country that Commerce does. As a result, the State Department is not as familiar with the needs of potential exporters as it needs to be in order to do a fully effective job. Furthermore, within the State Department commercial functions do not receive the highest priority. The positions are filled by foreign service officers who are discouraged from making a career in this field because service in the political field has traditionally been considered more prestigious, and more likely to lead to promotions. The skills and training required for commercial representation are not necessarily the same as the job requirements of a career diplomat. The policy of rotating foreign service officers from job to job, and country to country, further increases the difficulty a foreign service officer has acquiring the skills and experience necessary to be an effective commercial attache. Business concern about the current effectiveness of commercial attaches in promoting U.S. exports is illustrated by the following two examples Mr. William L. Wearly of Ingersoll-Rand, provided the committee.

One example was described this way:

> In the fall of 1978 Ingersoll-Rand planned a private fair in Egypt to exhibit construction equipment. The U.S. Embassy in Egypt was asked to send a letter to the Cairo customs office to guarantee payment of customs duties on machinery not re-exported. The local commercial attache replied that his guidelines did not permit issuing such a letter unless the trade fair was controlled by a U.S. manager and had U.S. Government participation. Ingersoll-Rand thus was denied the necessary letter and was unable to exhibit its products. A German competitor was able to get such a letter (a form letter) from the German Embassy in Egypt and therefore was able to exhibit and sell its products to Egypt.

Another concern was described as follows:

> The U.S. Government has still done little in terms of exhibits, fairs, etc., for the U.S. businessman in the Peoples Republic of China. Last month Ingersoll-Rand, as an American corporation, had an exhibit in a British Energy Show to

> get our corporate presence advertised in the PRC. The United States is very late on this point and for years we have been riding on the coattails of our British and Canadian companies in Peking exhibits.[1]

Export financing, which also significantly affects the level of U.S. exports, is the responsibility of two other agencies. The United States may be the only major developed country that maintains separate institutions for financing and promoting exports. The Export-Import Bank is the primary officials source of credit for manufactured exports, while the Commodity Credit Corporation finances agricultural commodity exports. Coordinating export financing is the responsibility of the Treasury Department through its chairmanship of an interagency committee, the National Advisory Committee on International Monetary and Financial Policies (NAC). Export financing is viewed by the Treasury Department as much as an international monetary issue, as an export promotion issue. The STR, which is most likely to emphasize the importance of export credit financing to the overall trade posture of the United States, is not a member of the National Advisory Committee.

A similar separation exists between U.S. support of investments abroad, and U.S. trade expansion programs even though direct investments abroad have a significant impact on exports. The Government's programs supporting and ensuring U.S. investments in developing countries are administered by the Overseas Private Investment Corporation (OPIC). OPIC is linked organizationally to this country's foreign assistance programs through the Director of the International Development Cooperation Agency (IDCA), who chairs the OPIC board. The only link between OPIC and U.S. trade policy is the presence of the Commerce Department on the 11-person OPIC board.

Administering the fair trade laws

Six agencies play important roles in administering programs that regulate imports or provide relief to firms and workers injured by both fair and unfair foreign competition. They are STR, Treasury (including the Customs Service), the International Trade Commission (ITC), Commerce, Agriculture and Labor.

In addition to its role as chief negotiator and policy coordinator, the office of the STR also has operational or programmatic responsibilities for administering title V of the Trade Act of 1974 (Generalized System of Preferences) and section 301 of the Trade Act of 1974 (investigation and remedial action regarding foreign market restrictions, export subsidies, withholding of supplies or other unfair trade practices). The STR, through the Trade Policy Committee, also makes recommendations to the President on escape clause and market disruption cases defined under sections 201 and 406 of the Trade Act of 1974. These are discretionary forms of import relief the President may extend U.S. businesses even in the absence of a violation of the antidumping or countervailing duty statutes.

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[1] Reorganizing the Government's International Trade and Investment Functions. Hearings before the Senate Committee on Government Affairs, 96th Congress, 1st session (July 23, 25 and 26, 1979, and Oct. 18, 1979) (hereinafter referred to as the Trade Reorganization hearings). See the material supplementing the testimony of William L. Wearly, July 25, 1979.

The Antidumping Act of 1921, and the countervailing duty statute (section 303 of the Tariff Act of 1930), are administered by the Treasury Department, with the International Trade Commission responsible for determining injury. In the agricultural area, the Department of Agriculture formulates policy recommendations for use of import restrictions under section 22 of the Agricultural Adjustment Act of 1933. The Department of Labor administers the Trade Adjustment Assistance programs for workers, and the Department of Commerce administers the programs for firms and communities. Section 337 of the Tariff Act of 1930, relating to unfair trade practices, especially in the patent infringement area, is administered by the International Trade Commission, with review by the President.

Such scattered responsibility may result in overlapping actions, and inconsistent policies which make it harder for domestic businesses and foreign exporters to plan their future actions with confidence. During the recent controversy concerning the import of color televisions from Japan complaints were pending on the same or similar set of facts before the Treasury Department under both the antidumping and countervailing duty statutes. At the same time the International Trade Commission was considering whether the practices of Japanese importers were unfair trade practices under section 337. And the Office of the Special Trade Representative was attempting to resolve the problems through orderly marketing agreements pursuant to its discretionary relief authority under section 301.

Perhaps of even more concern, however, is the failure of the Treasury Department to administer the antidumping and countervailing duty statutes in a fully effective manner. Enforcement of these statutes is just one responsibility of the Treasury Department administered by an Office of Tariff Affairs of approximately 13 people, supported by about 76 employees of the Customs Service. The administration of the antidumping and countervailing duty statues must compete with a range of other responsibilities of the Treasury Department, including protecting U.S. monetary interests, and avoiding confrontation with foreign countries that may jeopardize such interests.

Both industry and labor have maintained that the Treasury Department administration of the Antidumping Act has been irregular. They point to the failure to collect antidumping duties already imposed as one of the most serious deficiencies. In 1971 there was an official finding that Japanese television sets were being sold in the United States at less than fair value. Yet it was only in 1978 that the first dumping duties were actually assessed, effectively denying relief to affected domestic industry for 7 years.

A recent GAO study concluded,

> The long periods of time required to conduct investigations, and delays averaging 3 to 3½ years in assessing duties after findings of dumping, make it highly improbable that U.S. industry is being adequately protected by the Act.[2]

It further notes that "rapidly rising import levels and trade deficits of the 1970's seem to have had no effect on the number of antidumping investigations initiated annually." It cites figures in-

[2] "U.S. Administration of the Antidumping Act of 1921," Mar. 15, 1979 at p. ii.

dicating that between 1955 and 1965, when annual imports were less than $20 billion, Treasury processed an average of 35 cases each year. In 1977, when imports reached $146 billion, Treasury began 33 investigations, including 12 which were subsequently withdrawn due to the initiation of the steel trigger price mechanism.[3]

C. NATURE OF REORGANIZATION PLAN NO. 3

The causes of the current trade problems of the United States are too varied and complex to be easily resolved simply through a reorganization. No matter how extensive the reorganization, this alone would not sell more goods abroad, or make U.S. industry more competitive. No matter how extensive the reorganization, a number of different agencies would still have an important role to play in developing and implementing international trade policy. But a good reorganization is an essential prerequisite. While Reorganization Plan No. 3 does not fully integrate into a single agency or department all the trade functions of the government, it takes the first, necessary step toward achieving the kind of organization the government needs to have more effective trade policy. The reorganization does so by building on the strengths and past successes of the STR, and the effective working relationship that developed between the STR and the Commerce Department during the MTN negotiations.

A major purpose of the reorganization plan is to place a single official in the White House, the U.S. Trade Representative, in overall charge of this government's international trade policies. Further, it seeks to improve the ability of the Commerce Department to support U.S. businesses wishing to sell goods or services abroad, and to protect businesses at home from unfair trade practices of other countries. As a result of the reorganization, about 1,000 positions will be transferred from the State or Treasury Departments to the Commerce Department, or existing positions within Commerce reallocated. To enable the USTR to carry out his responsibilities, the Administration will ask this year for supplementary funds to increase the size of the permanent staff of the Office of the U.S. Trade Representative from 59 to 116 persons, including up to 20 existing positions which will be transferred to the USTR from the Departments of State and Treasury.[4] Appendix IV to this report contains a chart of how the Commerce Department proposes to organize its international trade functions, and a chart of the proposed internal organization of the Office of the USTR.

As in the past, additional personnel may be assigned to the USTR from other agencies when necessary. Although the STR now has difficulty attracting and retaining officials when no major GATT negotiations are underway, the permanent authority to be vested in the USTR should make it possible to staff the enlarged office with a permanent corps of trade policy experts. In the future the USTR should be able to hire and retain the top flight personnel he needs, whether or not a major multilateral trade negotiation is underway.

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[3] GAO report at p. 7. The study points out that while the number of cases may have remained the same, the complexity and scope of them may have increased significantly.

[4] Trade Reorganization hearings. Supplementary response of Mr. McIntyre to a question by Mr. Ribicoff, Oct. 18, 1979; and written response of Mr. McIntyre to question 1; Oct. 18, 1979.

The reorganization will help the United States in the following specific ways to deal more effectively with its trade problems.

Developing and coordinating overall trade policy

The reorganization places a single individual with direct access to the President in charge of developing, and coordinating the implementation of, overall U.S. trade policy. In the future the U.S. Trade Representative will provide the principal guidance on trade policy matters to the different agencies and departments of the government.

The fact that the USTR will have as its sole mission the promotion of U.S. international trade interests should help focus the attention of the government and the country on international trade matters. It should help promote full consideration of trade issues whenever and wherever necessary. No longer will key trade functions be located in a large department like State or Treasury where it is just one of a number of interests of the department. In the future there will be less likelihood that trade issues will be overlooked or sacrificed at an early stage of a department's internal consideration of a matter because other interests have priority. Undoubtedly trade considerations will in some cases have to be reconciled with foreign policy or other concerns. But the reorganization should help ensure that the trade issues will at least get more visibility, and more thorough consideration, before any decision is made.

The lead role of the USTR for the development of policy will come from a number of sources. The plan specifically assigns to the USTR primary responsibility "for developing, and for coordinating the implementation of, United States international trade policy." It will be the responsibility of the USTR to define the issues, set the agendas, and to adopt the comprehensive trade policy the United States will need to compete successfully in international trade. The plan further provides that the USTR shall be "the principal advisor to the President on international trade policy," and further provides that the USTR shall advise the President on the impact of any other policies of the U.S. Government on international trade.

The plan authorizes the USTR to issue policy guidelines on major trade issues, and provides that such guidelines shall "determine the policy of the United States with respect to international trade issues." The USTR will have this authority in connection with the trade aspects of policies or programs affecting such matters as the ability of the United States to expand its exports, the ability of the United States to monitor compliance by other countries with the recently adopted MTN or other international agreements, import relief policies, the identification and analysis of trade issues, international trade issues involving energy, or trade issues generally, whether they are dealt with bilaterally or multilaterally.

As the chief representative of the United States for bilateral and multilateral trade negotiations, the USTR will have the authority to establish the U.S. positions in an international trade negotiation, and either to express that position at the negotiations, or to ensure that any other agency to whom the Trade Representative has delegated negotiating responsibility does.

To assist the USTR in carrying out its responsibilities, it may be useful for the USTR to assign a relatively small number of his staff to positions abroad. Close monitoring of MTN implementation by major trading partners will be crucial to realizing the full benefits of the new codes, and to pinpointing areas for future international negotiations. In general, the USTR will have to rely on other agencies, including Commerce and State, to monitor MTN implementation. It may well be, however, that it is more efficient for the USTR to maintain his own staff person, who is intimately acquainted with U.S. negotiating objectives, in a foreign country for a considerable period of time. Such a staff could concentrate on key countries where trading relations with the United States under the new MTN agreements are troubled by difficulties the United States encounters in expanding its exports, or by any other problem. The overseas assignment of such a staff would be in addition to the USTR staff in Geneva, and in addition to any negotiators working overseas in connection with a particular negotiation. When a need for such overseas staff arises, OMB assured the Committee that appropriate positions would be authorized.[5]

In carrying out his policy responsibilities, the USTR will be able to obtain from his own staff, or the staff of other agencies involved in trade matters, the necessary facts and analysis, and to review the judgments and policy options proposed by other agencies administering particular trade programs. At the same time, the USTR and his staff should be accessible to a wide range of viewpoints and interests outside the government. The use of advisory committees that the STR has utilized in the past will be continued and strengthened by the USTR. In taking any action the USTR will be able to consider and weigh a wide variety of competing interests, including the interests of consumers, farmers, manufacturers, labor, importers, and exporters. A Trade Policy Committee with a broadened membership will assist the USTR in considering trade policies. But the recommendations and conclusions of the Trade Representative will be his alone. The purpose of the plan is not to mandate policy by interagency consensus, or to require the Trade Representative to convince other government agencies of the correctness of his position before he may move forward. The USTR has the authority to take decisions even in the absence of consensus or compromise among agencies, and to enforce his decisions on other agencies, subject of course to the ultimate decisionmaking role of the President.

The rule the USTR will play in implementing the MTN agreements illustrates how the USTR can help bring the different aspects of U.S. trade together in a more effective way. Much of what still needs to be done to implement the MTN agreements will require further bilateral and multilateral negotiations. Another important aspect will involve monitoring the compliance of foreign governments with the codes, and resolving specific complaints through a formal international complaint procedure. Yet another important aspect will be informing U.S. business of new opportunities for exports in such areas as procurement, where it is estimated the U.S. could increase exports by $1.3 to $2.3 billion a year. The USTR has the authority to direct such negotiations,

[5] Trade Reorganization hearings. Prepared statement of Mr. McIntyre, Oct. 18, 1979.

to conduct such grievance procedures, to send staff abroad when necessary, and to establish basic policies governing day-to-day efforts both to inform U.S. business of opportunities abroad, and to monitor compliance by other countries with the agreements. The USTR will be able to coordinate all aspects of the government's efforts to implement the MTN agreements. The USTR should be better able to bring about consistent policies where before the competing views of different agencies produced confusion. The difficulty U.S. business or foreign exporters may now have in determining U.S. policy in a particular area will be significantly reduced. In the area of disincentives to exports, for example, the reorganization should make it more possible to clearly fix and explain precisely what U.S. policy is, so exporters and foreign governments can plan for the future with certainty, and U.S. agencies can act with consistency. The absence of such clear guidelines only serves to magnify unnecessarily the effect of disincentives.

Some have expressed concern about the division in the reorganization between the policymaking functions of the USTR, and the day-to-day operational responsibilities of the Department of Commerce and other agencies. Clearly, the USTR does not have line authority over the individuals in other agencies who will be implementing trade policies in accordance with the USTR's policy guidance. This places a premium on the development of close harmonious relationships between the USTR and other relevant agencies, particularly the Department of Commerce. The Committee will expect the USTR, with the support of the President, to use his new mandate to bring together the disparate strands of U.S. trade policy. It expects the other agencies to work cooperatively with the USTR. As the lead policy agency for international trade in the government, the USTR will have the mandate to define the exact allocation of responsibilities between the different agencies and departments which will continue to have a role in trade-related matters. Unless the involvement of the President himself is required, the USTR will have the authority to resolve any questions about the proper allocation of responsibilities among the different agencies or departments.[6]

Congress will look to the USTR for an explanation of executive branch trade policies, and to hold the USTR accountable for the overall success of those policies. The USTR, in turn, will be responsible for keeping the Congress fully informed about U.S. trade policies, and the success of the ttrade policies. In the past the relations between Congress and the USTR have been good. It is imperative that this continue after the reorganization is implemented.

Representing the United States internationally

Currently, the STR is responsible for representing the United States in multilateral trade negotiations under the auspices of GATT, and in certain bilateral negotiations. Section 1(b) (2) of the plan increases the negotiating responsibility of the USTR by conferring broad responsibility on him to exercise lead responsibility for trade negotiations generally. For the first time, the mandate of the USTR will include the commodity negotiations, the East-West trade negotiations, and a variety of direct investment matters now conducted by State. For the first time it will include negotiations under title VII of the

[6] Trade Reorganization hearings. Testimony of Mr. McIntyre, Oct. 18, 1979.

Tariff Act of 1930 (antidumping and countervailing duties), which is currently the responsibility of the Treasury Department. For the first time it will include trade matters, including commodity and specified direct investment matters, arising not only under GATT, but also in the Organization for Economic Cooperation and Development (OECD), the United National Conference on Trade and Development (UNCTAD), and any other multilateral or bilateral forum.

The U.S. Trade Representative should be better able to consider all the trade issues affecting relations between the United States and any particular country, and be better able to direct the variety of trade negotiations in a way that takes account of this overall range of issues in a way that is most advantageous to the United States. The effectiveness of the U.S. Trade Representative in international negotiations will be enhanced further by the fact that the reorganization significantly increases his authority over the development and coordination of overall trade policy, while preserving his unique status as a special representative of the President with direct and immediate access to him. The increased prestige and authority of the USTR should be of significant help to him in international negotiations. Foreign countries will know that the U.S. Trade Representative enjoys the authority to make good on any representations he may make in a broad range of areas. They will know that he will be the primary individual with whom they must deal on a broad range of issues. No longer will foreign negotiators be able to take advantage of any differences between U.S. agencies, or the failure of the U.S. agency in one negotiation to know about negotiations on another related trade issue led by a different U.S. agency.

Promoting U.S. exports

The reorganization will improve the ability of the government to promote exports of U.S. goods.

1. *General Policies.*—Overall policy direction will come from the USTR. The USTR will be able to determine what effect the activities of a number of agencies and departments have on the overall level of U.S. exports. He will be able to coordinate and monitor this country's promotion efforts in both the agricultural and nonagricultural area. Where policies or actions are impeding exports, or allowing export opportunities to go unexploited, the USTR will be able to take steps to resolve the problem.

The testimony of a member of the President's Export Council summarized the importance of this aspect of the reorganization:

> Too often in the past the exporter has been buffeted from seemingly divergent interests of the Departments of Commerce, State, Treasury, Defense, and Justice. Having the Office of U.S. Trade Representative serve as chairman of a new inter-agency committee will, we think, serve to foster the vital expansion needed in this country's exports.[7]

The reorganization makes the USTR a member of the Board of the Export-Import Bank, and a member of the National Advisory Committee on International Monetary and Financial Policies, which is involved with the policies of the Export-Import Bank, as well as

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[7] Trade Reorganization hearings. Prepared statement of Mr. Harry E. Gould, July 25, 1979.

Commodity Credit Corporation. These memberships will help USTR integrate the activities of the Export-Import Bank and the Commodity Credit Corporation more fully into the rest of the government's export expansion efforts. He can help ensure that the interests and needs of these agencies are considered in the White House and before Congress when overall trade policy is made. The USTR will also help ensure that the policies of these agencies are consistent with overall U.S. export policy when such questions arise as whether credits are being inappropriately extended for sales where private financing is available; whether there is a disproportionate emphasis on lending to large corporations; or whether there is a disproportionate emphasis on loans which increase foreign competitiveness at the expense of domestic producers.

The reorganization similarly recognizes the significant impact that U.S. foreign direct investments have on the generation on U.S. exports, and the relationship of the programs of the Overseas Private Investment Corporation to the Government's efforts to increase U.S. exports. As a result of the reorganization, the USTR will become a voting member of the Board of Directors of OPIC, and Vice Chair. Mr. Askew assured the committee that, as such, he will play an active role in OPIC affairs. The Director of the International Development Cooperation Agency (IDCA) will continue to chair the Board. In separate letters to the Committee, the Director of IDCA, the Special Trade Representative, and the Director of OMB each acknowledged the significant impact of U.S. foreign direct investment on the generation of U.S. exports, and the relationship of the OPIC program to the government's efforts to increase the volume and value of U.S. exports. The administration further assured the committee that "both the Trade Representative and the IDCA Director have agreed to try to focus OPIC more heavily on export expansion." [8]

Under the reorganization, the USTR will be in a position to advise the President directly on the relationship between the OPIC programs and other government programs and policies affecting the level of U.S. exports. When matters concerning OPIC arise in the future, such as the preparation next year of new authorizing legislation for the agency, the USTR will be working closely with other senior officials to insure that OPIC policies and programs take full account of the need to promote U.S. exports.

The committee wishes to emphasize the importance with which it views the relationship between the activities of OPIC and the country's overall efforts to expand exports. No trade reorganization can be complete without a careful review of the advantages and disadvantages of linking OPIC to the government's trade functions more closely than provided/or by this reorganization. The committee therefore views as an important part of the history of this reorganization the pledge Mr. McIntyre made in his letter to the committee that the Administration will give "careful consideration" next year when OPIC's authority is reauthorized "to the relationship between the OPIC program and the government's efforts to increase the volume and value of U.S. exports."

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[8] The letters appear in app. III to this report. See also Trade Reorganization hearings, supplementary response of OMB to a question by Senator Javits, Oct. 18, 1979.

2. *Commercial Attaches.*—The plan transfers from the State Department to the Commerce Department 162 commercial attache positions in over 60 countries, along with 486 related positions filled by foreign nationals and 10 administrative positions.[9] This, and the accompanying internal reorganization of Commerce, will provide a stronger capability to promote nonagricultural products as a complement to the current efforts of the Agriculture Department. Along with the other transfers, it will help alter the basic orientation and mission of the department.

The transfer of commercial attaches from the State Department to the Commerce Department will strengthen the export promotion efforts of the U.S. Government by bringing those functions under the same agency that has continuing contact and concern for U.S. businesses of all sizes in all parts of the country. The reorganization will thus help eliminate the isolation of international trade programs from domestic business programs. If properly implemented, it will enable the businessman in any part of the United States to be in better contact with trade opportunities anywhere else in the world simply by calling the Commerce Department regional office. The reorganization will help ensure that the work of the commercial attaches better meet the needs of U.S. exporters because the standards and guidelines governing their action will be established, under the guidance of the USTR, by the same department that is in close contact on a day-to-day basis with domestic business and their concerns.

The transfer should lead to the development of an integrated and prestigious commercial corps encompassing domestic and foreign business services. Through serving periodic assignments in Department of Commerce field offices, and through rotational assignments in the private sector, commercial officers in such a corps would develop a broad understanding of the American economy and techniques for expanding exports. By transferring the commercial functions to a department willing to give it a high priority, the Government should be better able to attract, retain, and reward people with the unique skills needed to be effective commercial attaches, and better able to create an activist, highly motivated commercial service. The Commerce Department assured the committee that it "is dedicated to creating a highly professional foreign commercial corps with one main responsibility: the promotion and support of American export sales." [10]

3. *Implementing the MTN Agreements.*—The transfer of commercial attaches, and the general upgrading of trade concerns in the Department, will improve the ability of the Commerce Department to monitor on a day-to-day basis the implementation of the MTN agreements. To be effective, the commercial attaches must play a key part in this effort. By moving this function from State to Commerce, the possibility will be reduced that effective enforcement will be tempered by a desire not to affect political relations with that country. All of the Department's other trade related functions will also contribute to its ability to monitor the agreements, including the work of the commercial attaches, the sectoral analysis work, investigations of allegations

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[9] Trade Reorganization hearings. Written response of Mr. McIntyre to Question 10, Oct. 18, 1979.

[10] Trade Reorganization hearings. Statement of Secretary of Commerce Kreps, Oct. 18, 1979.

that foreign exporters have engaged in unfair trade practices, the policy analysis work done in connection with the Department's participation in the activities of the Export-Import Bank, and all its other related functions.

Among its other activities. Commerce will be able to monitor the countervailing and antidumping procedures of other signatory states; monitor compliance by other countries with the new code on the methodology of product health and safety standards; and monitor compliance by other countries with the new code on customs evaluation.

According to the President's message accompanying the reorganization plan, the implementation responsibilities of the Commerce Department will include:

Monitoring agreements and targeting problems for consultation and negotiation;

Operating a Trade Complaint Center where the private sector can receive advice as to the recourse and remedies available;

Aiding in the settlement of disputes, including staffing of formal complaint cases;

Identifying problem areas for consideration by the Trade Representative and the Trade Policy Committee;

Educational and promotion programs regarding the provisions of the agreements and the processes for dealing with problems that arise;

Providing American business with basic information on foreign laws, regulations and procedures;

Consultations with private sector advisory committees; and

General analytical support.[11]

4. *Services.*—Seven out of every ten working Americans are employed in the service sector. In 1978 services accounted for 30 percent of all U.S. import and export trade and produced a $23 billion surplus. Removing barriers to the international exchange of services may be one of the next important efforts discussed in such international organizations as OECD or GATT. The reorganization recognizes the importance of the service sector in U.S. trade, by increasing the resources the Department of Commerce and the USTR will devote to the services industry.

The USTR will be working to bring services within the coverage of the new nontariff codes negotiated with the MTN. The STR already has begun to increase its role in the service area by introducing services issues for discussion in the Trade Committee of the OECD, and initiating an analsyis of how the GATT code could be extended to services. The USTR will provide central policy direction for dealing with issues concerning trade in services, and will maintain close liaison with the private sector on service trade issues through a new private sector services policy advisory committee.[12]

The proposed reorganization of the Commerce Department will ensure that in the future the service sector will receive more continuing and higher level consideration. OMB told the committee that the Department of Commerce would improve substantially the analytic,

[11] The President's message accompanying Reorganization Plan No. 3 appears in app. I of this report.

[12] Trade Reorganization hearings. Written response of Mr. McIntyre to questions 9 and 27, Oct. 18, 1979.

data gathering, and policy development it devotes to the international trade and investment problems of American service industries." The focus of the Department's services effort will be a new Finance, Investment and Services unit headed by a Deputy Assistant Secretary. A total staff of 15 persons within this unit will work on services. Counting related work in other parts of the Department, OMB estimates that the resources within the Department devoted to service-related activities would increase by more than 50 percent to approximately 35 professional work-years.

The following are among the areas which the new Finance, Investment, and Services unit will address, according to OMB:

(1) Improvement of the international data base on service industries;
(2) Analysis of U.S. regulation of international services;
(3) Analysis of the tax treatment of international services;
(4) Analysis of the impact of U.S. antitrust laws and Webb-Pomerene on the growth and operation of international services;
(5) Survey of the treatment of services in U.S. commercial treaties;
(6) Provisions for handling service problems in international organizations;
(7) Revision of the Foreign Service Reporting Manual to include services coverage; and
(8) Analysis of the adequacy of current U.S. financing programs for U.S. service exports.[13]

The Department will also work actively with the USTR in international negotiations directed at removing barriers to trade in service industries. To that end the Commerce Department will be restructuring and expanding the role of the service industries in the Industry Sector Advisory Committee.

5. *Productivity.*—The Department of Commerce especially will bear increased responsibilities as a result of the reorganization for improving the productivity of U.S. industry. The President stated in the message accompanying the reorganization that "fostering the international competitiveness of American industry will become the principal mission of the Department." Improved productivity, of course, is an integral part of competitiveness.

As part of the reorganization the Commerce Department will establish a new Bureau of Industrial Analysis. One of the responsibilities of the new bureau will be to provide information and analysis dealing with productivity. According to the Administration other parts of the Department which will have increased responsibilities and resources for dealing with productivity issues include the Assistant Secretary for Science and Technology, and the Deputy Under Secretary for Regional Affairs.

The Under Secretary of Commerce has established a task force to develop options and recomendations for further increasing the involvement of the Commerce Department in productivity issues following this reorganization. The Task Force is examining specific ways the

[13] Trade Reorganization hearings. Written response of Mr. McIntyre to questions 26–30, Oct. 18, 1979.

Commerce Department can increase its activity with respect to productivity in two areas. The two areas are expanded analysis of both overall and individual industry productivity issues; and programs to increase the Department's assistance to whole industries through measures to enhance technology, and to individual firms through the providing of technical assistance. Implementation of the recomendations of the Domestic Policy Review of Industrial Innovation, will also involve the Patent Office and other parts of the Commerce Department.

OMB summarized the future role of the Commerce Department in productivity issues as follows:

> It is not possible to predict exactly where in the Department these functions will ultimately reside, nor the size of the office or offices devoted to these exercises. However, given the Department's wholesale restructuring to accomodate new trade functions and the high level of interest in productivity, you may be assured that the commitment will be meaningful.[14]

6. *Conclusions.*—The administration provided the committee with the following description of how the Commerce Department would be able to promote exports more effectively under the proposed reorganization.

> The reorganization brings under one roof sectoral analysis, trade analysis, domestic field operations, export planning, and overseas commercial activities, in a manner similar to the organizational structures used by a number of our foreign competitors. This integrates analysis with operations. Most importantly, it facilitates planning.
>
> For example, studies carried out by Commerce's proposed Bureau of Industrial Analysis can identify industries, and industry segments, with the highest export potential. Market potential analysis carried out by the offices under the Assistant Secretary for Trade Development can identify the most promising market opportunities. With these facts established, offices under the Assistant Secretary for International Economic Policy can determine the trade policy environment for products and foreign markets. Once all these are in hand, the Department can provide increasingly valuable assistance to prospective new exporters.
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> Further, trade analysis, coupled with basic analysis of the international competitiveness of our industries, will be used to plan the geographic and industry allocation of our promotion activities.
>
> Of equal value will be the feedback from the field, which now will be directly available to Commerce. The observations of those working directly with U.S. business abroad can now be fed back into the planning process to ensure more accurate assessments of our programs' effectiveness and better plans more directly targeted on exporter needs.
>
> More generally, information and cooperation flow more freely when organizational boundaries are kept to a mini-

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[14] Trade Reorganization hearings. Testimony and supplementary response to a question by Mr. Ribicoff, and the written response of Mr. McIntyre to question 31, Oct. 18, 1979.

> mum, and the consolidation of trade functions within Commerce will reduce such boundaries.
>
> Finally, it must be recognized that trade problems are increasingly taking on the form of sectoral problems. That is, trade policy issues are becoming formulated in industry-wide terms. Accordingly, the integration within Commerce of sectoral analysis and policy analysis capabilities represents a step consistent with the evolution of our main trade problems. Better handling of these problems by Commerce will work directly to the advantage of American exporters.[15]

The reorganization provides the Department of Commerce and the USTR with an important opportunity to reexamine the nature of the U.S. export promotion program, particularly the role of the commercial attache. How aggressive should the U.S. Government be in promoting U.S. exports abroad? What procedures and services which the U.S. Government provides business really pay off in terms of significant increases in exports? To what extent should the U.S. Government concentrate on assisting small or medium-sized firms, or firms that have not exported to date, and to what extent can the government provide assistance to large companies, or established exporters, which would result in significantly increased exports? These and other similar questions should be carefully examined if the showing of the U.S. as an exporter is going to improve.

In the end, of course, a wide number of factors will determine the ability of the United States to reduce its trade deficit. Perhaps the most important factors are ones which depend more on private business, their attitudes and their skills, than on the Commerce Department. Businesses will have to reassess their thinking, and begin to give more priority to efforts to sell their goods and services abroad. Nevertheless, the reorganization equips the USTR and the Commerce Department to play a more significant role in this area than they have in the past.

Administering the fair trade laws

The reorganization is designed to improve the administration of the fair trade laws.

The reorganization plan transfers responsibility for administering the antidumping and countervailing duty laws from Treasury to the Commerce Department. The investigative work now performed by officials in the Customs Department will be combined in Commerce directly with the officials responsible for making the final decisions. Pursuant to this plan, there will be transferred to the Commerce Department about 13 existing positions in the Office of Tariff Affairs, and about 76 existing positions in the Customs Service. By separate statute, already signed by the President on September 29, 1979, 130 new positions have been established to assist in the administration of the antidumping and countervailing duty laws. These too will be transferred to the Commerce Department. In all, the Commerce Department will have about 219 positions available to it to work on antidumping and

[15] Trade Reorganization hearings. Written response of Mr. McIntyre to question 15(b), Oct. 18, 1979.

countervailing duty matters, significantly more personnel than were previously assigned to this function in the Treasury Department.[16]

In Commerce the administration of these laws are more likely to receive the priority attention and the resources these important statutes require. No longer will responsibility for these statutes be largely unrelated to the majority of matters of concern to the Department, as is now the case in Treasury. No longer will there be the inefficient split that exists now in Treasury between the investigators in the Customs Service and the decisionmakers in the Office of Tariff Affairs. Furthermore, the reorganization places responsibility for the statutes under an Assistant Secretary who will be appointed by the President, and confirmed by the Senate. This will allow Congress to hold this Assistant Secretary directly responsible for the administration of these laws.

In addition to the antidumping and countervailing duty laws, the reorganization will also transfer from Treasury to Commerce responsibility for the administration of embargoes,[17] and responsibility for investigations concerning the effect of any imports on national security. The Commerce Department already exercises a number of trade regulatory responsibilities. Following the reorganization, there will be consolidated in the Commerce Department responsibility for the antidumping and countervailing duty laws, embargoes, national security investigations, the foreign trade zone program, the special statutory import programs, and export licensing and controls.

Even in the absence of unfair trade practices, it is important to identify areas where there will be increasing competition from imports. The combined analytical and program resources of the Commerce Department both at home and abroad will enable it to identify potential foreign competition at an early stage, before it has affected a domestic industry, and then allow it to take action to alert the domestic industry to the threat before it affects the domestic economy.

The U.S. Trade Representative will also be actively involved in basic policy issues involving antidumping and countervailing duties pursuant to its authority under section 1 of the plan. This will involve the USTR in coordinating overall U.S. policy with respect to unfair trade practices. The policy role the USTR plays in this area must be consistent with the applicable policy expressed by Congress in the antidumping and countervailing duty laws, and the detailed standards spelled out in these statutes.[18] The USTR will also play a lead role in negotiating agreements with foreign exporters which would enable the Commerce Department to suspend or discontinue enforcement proceedings, but the final responsibility for deciding whether to suspend or discontinue the procedures will be with the Commerce Department.

The U.S. Trade Representative, as the STR does today, will also remain in charge of any discretionary relief under section 301, and continue to advise the President on other forms of discretionary relief, including matters referred to the President under section 337 of the

[16] Trade Reorganization hearings. Written response of Mr. McIntyre to question 2, July 23, 1979.

[17] See the President's Message accompanying submission of the plan in app. I of this report. See also Trade Reorganization hearings. Written response of Mr. McIntyre to question 6(b), Oct. 18, 1979.

[18] See Section III of this report, section-by-section analysis of section 1(b) of the plan.

Trade Act of 1930. The USTR will determine whether to initiate section 301 cases, and decide such cases, supported by the staff work of the Departments of Commerce or Agriculture.[19]

The reorganization will therefore promote effective enforcement of the antidumping and countervailing duty laws by a department that has trade as a prime mission. The role of USTR in overall policy issues concerning unfair trade practices will ensure the coordination of the antidumping and countervailing duty laws, in a general policy way, with the remainder of the import relief laws, and with the remainder of U.S. trade policy generally.

III. Section-by-Section Analysis of the Reorganization

SECTION 1—THE USTR

Section 1 of the plan spells out the functions of the Office of the United States Trade Representative.

Subsection (a).—This subsection redesignates the Office of the Special Representative for Trade Negotiations as the Office of the United States Trade Representative. The new name more accurately reflects the fact that the U.S. Trade Representative will have overall responsibility, on a permanent basis, for developing and coordinating U.S. trade policy in this country, and for representing the U.S. on trade matters abroad. No longer will the responsibilities of the Office be confined simply to negotiating special international agreements, as the current name suggests.

Subsection (b).—This subsection bestows on the USTR the lead role for representing the United States on trade matters abroad, and for developing and coordinating the effective implementation of U.S. trade policy at home. The authorities and responsibilities transferred or assigned to the USTR by the reorganization are in addition to the functions the STR already exercises. These existing functions of the STR will continue to be exercised as well by the USTR.

Subsection (b)(1).—This paragraph gives the USTR the primary responsibility for developing, and for coordinating the implementation of, U.S. international trade policy. It also changes the name of the Special Representative for Trade Negotiations to the U.S. Trade Representative in conformity with subsection (a).

The term "trade" as used throughout the reorganization, including both the plan and the executive order, is intended to include service issues.[20] The USTR will assume responsibility for the development and coordination of commodity policy as part of its broad policy responsibilities under section 1(b)(1). The term "commodity," as used throughout the reorganization, includes a wide variety of agricultural products and raw materials, including such agricultural products as sugar, wheat, soybeans, coffee, meat, and cocoa, and such nonagricultural items as rubber, tin, copper, and other hard minerals.

The policy responsibilities of the USTR under section 1(b)(1) include direct investment matters to the extent they relate to inter-

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[19] Trade Reorganization hearings. Written response of Mr. McIntyre to question 8(b), July 23, 1979, and Question 6(a), Oct. 18, 1979.

[20] Trade Reorganization Hearings. Written response of Mr. McIntyre to questions 9 and 30, Oct. 18, 1979.

national trade policy. The President's message accompanying submission of Reorganization Plan No. 3 gave the following examples of direct investment matters for which the USTR would have lead policy responsibility: direct foreign investment in the United States, direct investment by Americans abroad, operations of multilateral enterprises, and multilateral agreements on international investment to the extent such issues relate to international trade.

As a natural corollary to the lead responsibility of the USTR for the development and the coordination of international trade policy, the second sentence of paragraph 1 provides that the USTR will also serve as the principal advisor to the President on international trade policy. The term "international trade policy" in this sentence is once again intended to be a broad term including commodities, and direct investment matters to the extent they relate to international trade policy.[21] The responsibility of the USTR under section 1(b)(1) of the plan for developing and coordinating international trade policy, and for serving as the principal advisor to the President on trade matters, applies to all international trade matters, including commodity and direct investment matters, whether or not the USTR will have lead responsibility for negotiating international agreements on such matters. For example, energy matters involving international trade will be coordinated by the USTR even though the USTR will not have lead responsibility for negotiating international energy agreements. Though the USTR will not have lead responsibility for negotiating certain multilateral agreements concerning barriers to investment, the responsibility of the USTR for developing and coordinating an international investment policy will apply to all direct investment matters to the extent they relate to trade, (for example restrictive business practices, technology transfers, and operations of multinational corporations). Similarly, the responsibility of the USTR under this paragraph will apply to all U.S. export expansion activities, including the reduction of disincentives to exports, even though the USTR will not be a voting member of the Board of the Export-Import Bank, or chair the Board of the Overseas Private Investment Corporation.[22]

In carrying out his responsibilities under paragraph (1) the USTR will be expected to identify areas where trade policy needs to be established, or existing trade policies clarified or revised. In addition to establishing, clarifying or revising U.S. trade policy, one of the most important roles of the USTR will be to oversee the implementation of U.S. trade policy. The USTR will have the responsibility to see to it that the departments and agencies of the government implement U.S. trade policy in a consistent and effective manner.

In addition to trade policies, there will be a wide range of other policy issues which do not principally involve international trade, but which will affect such trade matters. The final clause in subsection (b)(1) makes the USTR responsible for advising the President on the impact of such other policies on international trade, including

[21] Trade Reorganization Hearings. Written response to question 9, Oct. 18, 1979.
[22] Trade Reorganization Hearings. See e.g. prepared statement of Mr. McIntyre, Oct. 18, 1979 and written response of Mr. McIntyre to questions 8(a) and 21, Oct. 18, 1979 and, to question 7(c), July 23, 1979.

commodities and direct investment. Broad questions about the enforcement of the antitrust laws will affect competition among businesses in the United States and affect U.S. consumers. But the antitrust enforcement policy can also affect the ability of companies to combine in certain ways to increase exports. Other issues impacting on trade might involve tax policy, or foreign assistance to developing countries, political relations with a foreign country, or health, safety, and other regulatory policies. Although the USTR will not be the chief U.S. representative at negotiations with foreign governments on international aviation or telecommunication agreements, such matters may affect U.S. trade policy and fall within the USTR's authority to advise the President on the impact of policies on international trade.

It will be the responsibility of the USTR under the last clause of paragraph (1) to be sure that the trade aspects of any other U.S. policies are fully explored and considered before any decision is made. In doing so the USTR may directly advise the President about the trade aspects of such issues, or he may get in touch directly with another agency that is considering a decision which will affect trade. In addition, the USTR will have the right to participate in a wide range of interagency committees or meetings where such issues are discussed in order to promote consideration of the trade implications of any proposed course of action. The USTR may also use the Trade Policy Committee to discuss the trade implications of a wide variety of such issues even if they are not primarily trade issues.[23]

The development of an effective overall U.S. trade policy will require the USTR to exercise his authority under the plan to address and answer a wide range of specific questions. Trade policy is not something that the USTR will be able to develop in the abstract. The following are among the many specific questions on which the USTR will have the authority and responsibility to develop and implement policies on his own, or to make policy recommendations to the President and other agencies.

(1) What should the regulations be for competitive export financing? How can the United States best use the resources of the Export-Import Bank to support trade objectives? How far should the U.S. go to avoid losing markets to exporters from countries which offer better financing terms?

(2) Are the tax incentives the U.S. offers for exports appropriate? Are the credits and deferrals the U.S. offers effective stimulants to trade? Are they still needed to offset the advantages offered by other nations?

(3) To the U.S. doing all it can to enhance markets for U.S. services sold overseas? With 70 percent of the U.S. labor force in the service sector and 65 percent of the GNP in services, what can the U.S. do to make services attractive exports?

(4) How can we make the U.S. tourism industry realize its potential more fully? What is a reasonable projection of foreign currency earnings from tourism?

(5) How should we respond to third world requests for tariff preferences and trade concessions? Can the U.S. cushion domestic

[23] Trade Reorganization Hearings. Written response of Mr. McIntyre to question 12, Oct. 18, 1979.

industries while encouraging growth in the third world—which now buys 38 percent of U.S. industrial exports?

(6) How can the U.S. make our overseas investment policy more effective? Foreign investments by service industries earned $17 billion last year. How does the U.S. integrate such overseas investment into international economic policy? What steps should the U.S. take to ensure that overseas investment stimulates exports, rather than reduces them?

(7) What should the response of the U.S. be to the European Economic Community's preferential agreements with former colonies, especially in Africa? Is this distortion of the free movement of goods acceptable for political reasons, or should U.S. producers have a greater share of the trade with these countries?

(8) Should the antitrust laws be modified to allow U.S. companies to engage more effectively in foreign operations since other countries permit such combinations?

(9) How can the commercial attaches be put to best use? What role should the top political officers in any embassy abroad play in promoting the sale of U.S. goods and services?

This list is illustrative, rather than exhaustive. It is intended to illustrate the breadth of the concerns the USTR must address.

Subsection (b)(1) establishes the principle that recommendations on international trade policy matters, and the impact of other policies on U.S. trade, will be conveyed to the President through the USTR. The USTR will, in turn, be responsible for seeing to it that any policy decisions of the President on trade matters are carried out by the affected agencies and departments. The USTR will carry out his responsibilities under subsection (b) (1) in consultation with the Trade Policy Committee, and with the advice of that committee. The USTR will chair the TPC, and the office of the USTR will provide the staff for the committee.[24] In acting under this subsection the USTR will be expected to consider any views expressed to him by other departments and agencies. Accordingly, subsection 1-102(d) of the proposed Executive Order that the President will issue to implement the reorganization provides that in advising the President, the USTR "shall take into account and reflect the views of the members of the [Trade Policy] Committee and of other interested agencies." [25] This only requires the USTR, when submitting any formal memorandum to the President, to note the fact, where relevant, that differing views were expressed to him by other agencies. However, the content of any decision reached by the USTR, or any recommendation submitted to the President, will be that of the USTR alone. The USTR need not modify his conclusions or decisions to accommodate the views of other agencies and departments. While the plan encourages interagency consultation and advice, the USTR alone will have final and exclusive responsibility for deciding how to carry out the functions entrusted to him. The only exception to this will be if the President personally overrides the decision of his principal advisor on matters ultimately entrusted by law to the President.[26]

[24] Trade Reorganization Hearings. Written response of Mr. McIntyre to question 7(d), July 23, 1979.

[25] The draft executive order appears in Appendix II of this report.

[26] Trade Reorganization Hearings. Written response of Mr. McIntyre to questions 2 and 3, Oct. 18, 1979.

Subsection 1(b)(2).—Paragraph (2) describes USTR's responsibilities for the conduct of international trade negotiations, including commodity and direct investment negotiations. The provision establishes the general principle that the USTR will be in charge of trade negotiations. As the office with lead responsibility for negotiations it will be up to USTR to decide what the position of the U.S. in the negotiation will be, subject of course to the ultimate direction of the President. The USTR will be expected to consult as appropriate with the members of the Trade Policy Committee, or the subcommittee which will be particularly involved with négotiations, the Trade Negotiating Committee. Section 1–102(b) of the draft Executive Order accordingly provides that the Trade Negotiating Committee shall advise the USTR on the management of negotiations. But the responsibility for managing the negotiations will rest with the USTR, not the Trade Negotiating Committee, or the full Trade Policy Committee.[27] The USTR will have the principal say on the size and composition of any delegation accreditated by the State Department to any negotiation for which the USTR bears lead responsibility.[28]

The USTR may, in its discretion, delegate all or part of his lead responsibility for negotiating a specific agreement to another agency. But the USTR is under no requirement to do so. The USTR may, if he chooses, send instructions to U.S. ambassadors abroad, instructing them to consult on his behalf with the foreign government in accordance with his instructions, but he need not do so.[29]

The responsibilities of the USTR to represent the U.S. internationally are spelled out in more detail in section 1–101 of the draft Executive Order.

The responsibilities of USTR will include acting as chief representative of the United States for all activities of, or under the auspices of, GATT. This includes U.S. policy on any trade, administrative, budgetary, personnel, or other matter coming before GATT. Funds to support the work the USTR must do in connection with U.S. participation in GATT will be appropriated directly to the USTR. In accordance with the State Department role in coordinating U.S. payments to international organizations, however, financial contributions to GATT will continue to go through the State Department.[30] GATT will be the principal international forum for implementing and interpreting the new MTM agreements. It is expected that the Office of the USTR will therefore be heavily involved in GATT work. To carry out its GATT responsibilities, the USTR will assign officials to Geneva on a permanent basis in order to represent the United States to the GATT.[31] A memorandum signed by the State Department and the Office of the U.S. Trade Representative will describe the relationship between the employees of the Office of the U.S. Trade

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[27] Trade Reorganization Hearings. Written response of Mr. McIntyre to question 2, Oct. 18, 1979.

[28] Trade Reorganization Hearings. Written response of Mr. McIntyre to question 17, Oct. 18, 1979.

[29] Trade Reorganization Hearings. Written response of Mr. McIntyre to question 5 Oct. 18, 1979.

[30] Trade Reorganization hearings. Written response of Mr. McIntyre to question 4, Oct. 18, 1979. See also section 5(d) of the plan.

[31] Trade Reorganization hearings. Written response to Mr. McIntyre to question 4, July 23, 1979.

Representative assigned to Geneva, and the U.S. Mission in Geneva headed by the State Department.

Paragraph (ii) of subsection 1–101(a) of the Executive order provides that the USTR will be the chief U.S. representative at all discussions, meetings and negotiations in the Organization for Economic Cooperation and Development when trade or commodity issues are the primary issues under consideration. Paragraph (iii) of the same subsection of the Executive order similarly provides that the USTR shall be the chief U.S. representative for negotiations in UNCTAD and other multinational institutions when trade or commodity issues are the primary issues under consideration.

These two paragraphs provide in effect that the USTR shall take the lead in all activities of the OECD, UNCTAD or any other multilateral institution when trade or community matters are the primary matter in issue. Examples of OECD activities for which the USTR will be the chief representative include the activities of the OECD steel committee, the services committee, and the OECD committee on international trade, including the OECD trade pledge. The term "negotiations," as used throughout subsection (a) of the Executive order, is a defined term. It includes "discussions and meetings with foreign governments and instrumentalities primarily concerning preparation for formal negotiation, and policies regarding implementation of agreements resulting from such negotiations." The definition is a broad one intended to cover pre-negotiation meetings and discussions, and post-negotiation meetings and discussions, as well as the formal negotiations themselves. It includes preparatory meetings and discussions which may lead eventually to formal negotiations, as well as those which are likely to result in negotiations. The provision concerning OECD contains an additional, specific reference to "discusssions and meetings" in addition to the one already implied by the order's definition of "negotiations" only because of the unique nature of some activities of OECD. Some OECD meetings or discussions are used to prepare for negotiations somewhere outside of OECD. Consistent with the general intent of the Executive order to include all meetings and discussions primarily involving trade or commodity issues, an additional reference to discussions and meetings was thus added to paragraph (ii) to ensure that USTR's lead role would not be limited inadvertently because of the unique nature of some OECD discussions or meetings.[32]

Paragraph (iv) provides that the USTR shall be the chief representative of the United States for other bilateral or multilateral negotiations to the extent trade or commodity issues are the primary issues under consideration. Examples include East-West trade matters formerly the responsibility of the State Department, bilateral and multilateral agreements on textiles, the United States-Canadian automotive agreement, and the international negotiations on meat. If commodity agreements are negotiated under the Common Fund Umbrella, the USTR will have lead responsibility.[33]

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[32] Trade Reorganization hearings. Written response to Mr. McIntyre to question 8(b), Oct. 18, 1979.

[33] Trade Reorganization Hearing. Written response of Mr. McIntyre to question 3, July 23, 1979.

Issues may arise under paragraph (ii), (iii), or (iv) which discuss other matters which do not directly involve trade or commodity, but which may have an effect on trade matters. This could include discussions concerning development assistance to Third World countries, the non-trade aspects of technology transfer, environmental regulations, transportation agreements, or conferences in UNCTAD on international financial institutions, or on technical assistance to developing countries for energy development. The U.S Trade Representative would not be expected to take the lead in such discussions, although he should certainly be a part of the negotiations if he wishes, in order to be the principal expert on the delegation for trade matters. Even if the USTR is not the lead negotiator on a particular matter, the U.S. approach to these issues will be coordinated on an interagency basis through the Trade Policy Committee or other committee. The USTR will play an active role in this coordinating process.[34] On the other hand, the U.S. Trade Representative will act as the chief U.S. representative for matters in these organizations which focus more on trade issues than any other issue, even if other issues are also involved.

The USTR will not have lead responsibility under the Executive Order for the conduct of export credit negotiations, although the President by executive order could transfer this responsibility at a later time to USTR without the need for further Congressional action. Nevertheless, the USTR will be expected to play a significant and active role in this area. Export credit may significantly affect the volume and quality of U.S. exports. It may raise questions about the legality of some government actions under the countervailing duty laws. It is an important element in international trade policy. The USTR will play a key role in this area, therefore, as the official responsible for developing and coordinating international trade policy, and for advising the President on international trade matters. Although it will be the responsibility of the Treasury Department to decide who will lead U.S. delegations to export credit negotiation, the Administration testified that the Treasury Department will involve the Trade Representative to a significant degree in such negotiations to insure that trade policy implications are fully understood and considered.[35]

Paragraph (v) provides that the USTR will lead all negotiations authorized under sections 704 and 734 of the Tariff Act of 1930. These negotiations concern the suspension or discontinuance of enforcement proceedings brought under the antidumping and countervailing duty laws. The USTR will be in charge of such negotiations and have full responsibility to conduct them as he thinks best, so long as he complies with the explicit and detailed requirements of the statute applicable to such negotiations. However, the USTR should work closely with the Commerce Department, for the Department retains final authority, as the administering authority under the antidumping and countervailing duty laws to decide whether to accept such assurances in accord with the specific criteria established by those laws, and to suspend the antidumping or countervailing duty proceeding pending before it.[36]

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[34] Trade Reorganization Hearing. See e.g. Written response of Mr. McIntyre to questions 20 and 22, Oct. 18, 1979. See also paragraph 5 of the Memorandum of Understanding on Direct Investment Matters appearing in Appendix II of this report.

[35] Trade Reorganization Hearings. Supplementary response of the administration to a question by Mr. Javits, Oct. 18, 1979.

[36] Trade Reorganization Hearings. Prepared statement of Mr. McIntyre, Oct. 18, 1979.

Paragraph (vi) of the draft Executive Order makes the USTR the chief representative of the U.S. for "negotiations concerning direct investment incentives and disincentives and bilateral investment issues concerning barriers to investment." A memorandum of understanding between the State Department and the Office of the U.S. Trade Representative specifies the specific multilateral negotiations under this paragraph for which the State Department will continue to play the lead role.[37] In all other negotiations involving direct investment matters, the USTR will act as the chief U.S. representative, although the USTR will provide for an active role in such negotiations for the State Department when significant foreign policy considerations are also involved. Examples of investment negotiations in which the USTR will play the lead role include bilateral or multilateral agreements on schemes offered by a country to attract production facilities through subsidies or other incentives, or on laws limiting investments by the imposition of performance requirements or other disincentives. It is also the intent of the reorganization to confer on the USTR responsibility for negotiating bilateral agreements affecting the whole panoply of other means, in addition to incentives and disincentives, by which governments regulate investments. This includes negotiating investment treaties ensuring foreign investors treatment equal to that received by a country's own citizens, treaties establishing procedures for resolving investment disputes, or the like.

Section (1)(b)(3).—This paragraph of the plan describes with greater specificity aspects of USTR's overall responsibility to coordinate the implementation of United States international trade policy. USTR's role in developing and coordinating the implementation of trade policy will take many different forms. Paragraph 3 provides one way the USTR may exercise these responsibilities. It authorizes the USTR to issue policy guidance to other departments and agencies on certain basic issues of policy and interpretation to the extent necessary to ensure coordination of international trade policy. So that there is no question about it, the plan expressly states as a matter of law that the policy guidance issued by the USTR shall determine the policy of the United States. The affected agencies and departments are clearly required by the provisions of the plan to comply with the guidelines once they are issued by the USTR.[38]

The authority provided by this paragraph is in addition to any authority granted by the remainder of the reorganization, or already exercised by the Special Trade Representative. In addition to the issuance of policy guidance, the USTR will have a variety of other means available to him to ensure the effective development and coordination of U.S. trade policy. For example, his responsibility to act as the chief U.S. representative in negotiations, and his status as the principal advisor to the President in trade matters, will give the USTR authority to make decisions and to adopt and coordinate the implementation of policies which will complement his authority to issue policy guidance under this paragraph.

The authority provided by this paragraph extends to basic issues of policy and interpretation with respect to the international trade

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[37] The memorandum appears in Appendix II of this report.
[38] Trade Reorganization Hearings. Testimony of Mr. McIntyre, Oct. 18, 1979.

aspects of matters (including commodities and direct investment matters to the extent they relate to trade) which arise in the exercise of the specified functions. The guidelines the USTR will issue under paragraph 3 will establish U.S. policy with respect to the international trade aspect of the issue, whether the matter arises in connection with the U.S. government's own internal decisionmaking process or in discussions or negotiations with foreign countries and instrumentalities; whether the issue arises in the context of a decision or negotiation which principally involves trade matters, or in a different context; and whether it arises in discussions or negotiations in which the USTR is acting as the chief representative of the United States, or in discussions or negotiations in which another agency is authorized to play the lead role (e.g. energy). To the extent the issues that arise do not involve international trade, the USTR will have no authority to issue binding guidelines under the authority of this paragraph. Any guidelines the USTR issues must also be consistent, of course, with any other law as established by statute. In coordinating trade policy, of course, the guidelines the USTR issues need not conform in all respects with regulations or interpretations previously issued by other agencies so long as the USTR's actions are consistent with the underlying statute.

The provisions of paragraph 3 apply to the following five broad areas:

1. Bilateral and multilateral trade and commodity issues generally

The paragraph authorizes the USTR to establish basic policy concerning both trade and commodity matters whether they are carried out bilaterally or multilaterally. The wording of these catch-all phrases is very inclusive. Clause (A) covers any trade or commodity matters dealt with by GATT, OECD, UNCTAD, or any other multilateral organization. Clause (E) covers any trade or commodity policies of the United States that develop on a bilateral basis. Clause (F) contains a separate reference to energy, thereby emphasizing the importance of this issue to overall trade policy.

2. Implementation of bilateral and multilateral agreements

Clause (A) of paragraph 3 also concerns the implementation of bilateral and multilateral trade and commodity agreements, and the assertion and protection of U.S. rights under such bilateral and multilateral trade and commodity agreements.

The authority under this aspect of clause (A) covers a wide range of issues, including the 1979 MTN agreement negotiated under the auspices of GATT, as well as any trade or commodity agreements that may be negotiated under the auspices of OECD or UNCTAD. The USTR may act under this provision, for example, to ensure that proposed action by any other agency, such as an agricultural quota or fish quota, complies with any GATT agreement. The provision authorizes the USTR to issue guidelines covering the wide spectrum of policy issues concerning U.S. efforts by the Commerce Department, the Agriculture Department, or other agencies to monitor implementation of the 1979 agreements by foreign countries and to take full advantage of any opportunities the U.S. may have to increase exports abroad. The USTR will be similarly responsible for providing basic policy guidance on the way the U.S. monitors the compliance with any bilateral trade or commodity agreement. Among other matters, this provision applies to policy questions arising in connection with U.S. trade with Communist countries, the U.S. Generalized System of Preferences, and the coffee, sugar, tin and wheat commodity agreements. The provision authorizes the USTR to issue policy guidelines governing what steps the U.S. should take bilaterally or multilaterally to correct any failure by any country to comply with the terms of the agreement.

3. Promotion of exports

Clause (B) covers the expansion of exports from the United States. This is a broad phrase covering in a general way all U.S. efforts to increase the amount of both agricultural and nonagricultural exports from the U.S., including efforts to reduce disincentives to exports. It will be the responsibility of the USTR to formulate and oversee the implementation of a comprehensive export policy, and to provide basic policy guidance to ensure conformity with such a comprehensive export policy. The guidelines will address such matters as the size of export promotion programs, the type of activities the program emphasizes, and the criteria used to assess the effectiveness of the program. The guidelines will seek to ensure that laws governing the exports from the United States are administered consistently and efficiently, with as little red tape as possible. Where appropriate, the USTR will provide recommendations to Congress for new laws to promote the U.S. export policy. Day-to-day operating responsibility for administering the programs will remain with other agencies or departments.

4. Unfair trade practices

Clause (D) covers overall U.S. policy on unfair trade practices. The role of the USTR will be to provide, consistent with the standards and requirements spelled out in the applicable statutes, overall policy guidance on the government's actions to remedy or prevent unfair trade practices, and to coordinate such actions with the rest of overall U.S. trade policy. The USTR should use its authority under this provision to help ensure that the government's actions in this area are as certain, predictable, and even-handed as possible. According to OMB clause (D) includes, in addition to the antidumping and countervailing duty laws, "sections 201, 301, and 406 of the Trade Act of 1974 (19 U.S.C. 2251, 2411, and 2436). The USTR will provide guidance, as well as staff support, when matters under section 337 of the Tariff Act of 1930 (U.S.C. 1337) are referred to the President." [39]

What this clause covers is basic U.S. policy. Section 5 transfers the day-to-day operational responsibility for administering the antidumping and countervailing duty statutes solely to the Department of Commerce. The responsibility the International Trade Commission now has for administering section 337 of the Tariff Act of 1930 will remain in the Commission. This provision does not authorize the USTR to issue a guideline or order at the time a particular unfair trade practices complaint is pending before another agency which specifically refers to the pending complaint, and which directs that agency how to decide

[39] Trade Reorganization Hearings. Written response of Mr. McIntyre to question 6(a). Oct. 18, 1979.

the facts of the particular case. Any guidance the USTR issues will address general policy issues or problems. It will not adjudicate in place of the Commerce Department a particular named complaint pending at the time the guidance is issued.

5. Policy research

Clause (C) applies to policy research on international trade, commodity and direct investment matters. Section (1)(b)(1) of the plan places in the USTR responsibility for developing U.S. trade policy. Pursuant to this the USTR will define the policy issues that need to be addressed, and direct the application of necessary resources both to research and analyze the policy issues defined by the USTR, and to prepare the memorandum or other material summarzing the results of the research and analysis. When important policy issues arise it is imperative that the USTR be able to pull together the various resources of the different agencies and obtain quickly the best analysis he needs to make the necessary policy decisions. Another important role of the USTR will be to anticipate issues in the trade area which will be important in the future, and to do the necessary planning to enable the United States to be prepared for these issues when they arise. Given the limited number of resources available in the Government for such purposes, this policy analysis will be most effective if the issues are chosen with care, defined with precision, and researched and analyzed as well and as efficiently as possible. Policy research by one agency may duplicate research by another agency unless it is coordinated. This wording addresses these needs by giving the USTR the authority to issue guidelines governing the research and analysis of trade policy issues.

Section (1)(b)(4).—Paragraph 4 reaffirms the special nature and status of the USTR as a direct advisor and assistant of the President. As such, he will be acting both at home and abroad under the guidance and authority of the President. The President retains the authority to direct the actions of the USTR consistent with any provision of law, and to delegate additional responsibilities to him in addition to those spelled out in the reorganization.

Section (1)(c).—Section (1)(c) of the plan redesignates the Deputy Special Representatives for Trade Negotiations as Deputy United States Trade Representatives. This is consistent with the provision in section 1(b) redesignating the Special Representative for Trade Negotiations as the United States Trade Representative.

SECTION 2—DEPARTMENT OF COMMERCE

Section 2 of the plan describes the role of the Department of Commerce.

Subsection (a).—This subsection provides that the Secretary of Commerce shall have general operational responsibility for major non-agricultural international trade functions of the United States Government. This distinguishes the role of Commerce from that of USTR, which will have general policy responsibility, and the Agriculture Department, which will have operational responsibility for trade functions relating to Agriculture. The subsection lists the major functions for which Commerce will have operational responsibility. A number of these responsibilities are already in Commerce. Others are transferred to Commerce, or the role of Commerce in such matters enhanced, by this reorganization. Areas in which this reorganization enhances the role of the Commerce Department include commercial representation abroad and export development generally, the administration of the antidumping and countervailing duty laws, and monitoring compliance with international trade agreements.

Subsections (b), (c) and (d) establish the small number of new supervisory positions necessary for Commerce to carry out its added responsibilities. Currently, the Commerce Department has in addition to the Secretary, an Under Secretary. The reorganization changes the Under Secretary position to a Deputy Secretary position, and establishes the new position of Under Secretary for International Trade. It also establishes two additional Assistant Secretaries.

The establishment of these positions will make possible a major internal reorganization of the Commerce Department designed to give international trade a priority status within the department, and to improve in general the ability of the department to carry out its enlarged responsibilities.

The responsibility of the Deputy Secretary will be similar to the role of Deputy Secretary in other departments. According to the President "fostering the international competitiveness of American industry will become the principal mission of the Department of Commerce" as a result of the reorganization. This requires close coordination between the domestic and international responsibilities of the Department. In addition to acting as the principal assistant to the Secretary, therefore, it will be the job of the Deputy Secretary to ensure that the department's domestic programs and its international trade functions are coordinated. Improving the U.S. trade position will require changing the perspectives of U.S. businesses, as well as improving the efforts the United States makes to promote the sale of its goods abroad. For example, all programs of the Commerce Department, whether or not under the Under Secretary for International Trade, will need to reflect the importance of increasing productivity and the relationship between increased productivity and the ability to increase U.S. exports.

The Under Secretary for International Trade will be responsible on a day-to-day basis for a wide range of trade functions. He will report directly to the Secretary and be directly responsible to him for the overall development and management of the Department's trade functions.[40]

Below the Under Secretary for International Trade will be an Assistant Secretary for Trade Administration who will be responsible for administration of the import relief laws (antidumping and countervailing) and the administration of the export control laws. Under the Assistant Secretary there will be a Bureau of Import Administration and a Bureau of Export Administration. Each will be headed by a Deputy Assistant Secretary. The Bureau of Import Administration will be responsible, according to the statement the Commerce De-

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[40] Trade Reorganization Hearings. Written response of Mr. McIntyre to question 25, Oct. 18, 1979.

partment submitted to the committee, "for the investigation, monitoring, and enforcement of antidumping and countervailing duty cases, for Foreign Trade Zones, and for statutory import programs." The Bureau of Export Administration "will be responsible for export licensing, short supply controls, anti-boycott compliance, and industrial mobilization."

There will also be an Assistant Secretary for Trade Development. This official will be in charge of the commercial attaches transferred to Commerce from State, in addition to the U.S. Commercial Service, the Bureau of Trade Development and the Bureau of East-West Trade. The Commercial Service will have offices across the United States to work with U.S. firms able to export its goods abroad. According to the Department of Commerce, the mission of the U. S. Commercial Service will shift under the reorganization to become primarily export-oriented. The Bureau of Trade Development will include responsibilities for the Worldwide Information and Trade System and other information programs, as well as planning and developing the programs carried out by the domestic and foreign commercial services. The Bureau of East-West Trade will concentrate on helping U.S. firms do business in Communist countries.

Finally, reporting to the Under Secretary for International Trade will be an Assistant Secretary for International Economic Policy. The Commerce Department's responsibility for implementing the non-agricultural aspects of the MTN, including monitoring foreign compliance with the agreements, will be centralized in the Bureau of Trade Agreements under this Assistant Secretary. The Assistant Secretary for International Economic Policy will have three other bureaus under him as well. According to the Department of Commerce statement the Bureau of Finance, Investment and Services "will be the focus of the Department's expanded effort to identify the broad spectrum of international business and economic issues that affect U.S. service industries." It will also monitor foreign investment in the United States, recommend actions to improve the U.S. investment position, and examine financial and related issues affecting trade. The Bureau of Policy Planning and Analysis will be concerned with a wide range of ways to improve the U.S. export position, including an analysis of the incentives and disincentives to U.S. exports and the basic competitiveness of U.S. industry. The Bureau of Textiles and Apparel will concentrate on textile and apparel issues.

In addition to the functions operating under the Under Secretary for International Trade, the Department of Commerce will upgrade its sectoral analysis capability by establishing under the Chief Economist a Bureau of Industrial Analysis to operate in a similar fashion to the Bureau of Economic Analysis now operating under the direction of the Chief Economist. The establishment of this office will help meet the need for a stronger and more comprehensive industrial analysis capability within the government. It will be the responsibility of the Bureau to provide industry analysis to serve the needs of government policymakers and industry. In part to provide the Commerce Department with the positions it needs in order to staff this new bureau, the department has initiated a freeze on 120 positions currently vacant in the Industry and Trade Administration. This will allow the department to recruit qualified personnel especially for this new bureau.[41]

SECTION 3. EXPORT-IMPORT BANK OF THE UNITED STATES

Section 3 places both the Trade Representative and the Secretary of Commerce on the Board of Directors of the Export-Import Bank as ex officio, non-voting members. This will help ensure that export financing policy is consistent with export promotion efforts and trade policy generally. As ex officio members of the Board, the USTR and Commerce will have access to all relevant documents and information in the possession of the Export-Import Bank, as well as notice of, and the opportunity to attend, all meetings of the Board. Both the Secretary of Commerce and the USTR may delegate responsibility under this section to any official under him, so long as the official attending the meetings is at the rank equivalent to an Assistant Secretary or above.[42]

SECTION 4. OVERSEAS PRIVATE INVESTMENT CORPORATION

Subsection (a).—This subsection provides that the Trade Representative will serve as a full voting member, and vice chair, of the Board of Directors of the Overseas Private Investment Corporation. As a member and vice chair of the Board, the USTR will have access to any information in OPIC that it needs, and it will have an opportunity to consult directly with the President of OPIC and other officials of the agency. If in any case the USTR is not able to fulfill his responsibilities under this section by personally attending each meeting of the Board, he may meet the requirements of this section by sending an official at the Assistant Secretary level or above.[43]

The Special Trade Representative has assured the Committee that he will participate actively in the affairs of the agency. And the Director of IDCA has assured the Committee that he will "work closely with the Trade Representative to see that OPIC does all it can, consistent with the laws governing OPIC, to promote expansion of exports from the United States." [44] In order to achieve this close working relationship, the USTR and the Director of IDCA should consult with each other on a regular basis, not only in preparation for meetings of the Board of Directors, but at other times as well. As the President's principal adviser on international trade matters, the views of the USTR on the trade aspects of matters before OPIC will be entitled to special weight.

Subsection (b).—This subsection enlarges the overall membership of the board of OPIC by providing for the additional membership of a representative from the private sector. The OPIC board now consists of 6 private members and 5 government representatives. The ad-

[41] Trade Reorganization Hearings. Prepared statement of Secretary of Commerce Kreps Oct. 18, 1979.

[42] Trade Reorganization Hearings. Written response to questions 16, Oct. 18, 1979.

[43] Trade Reorganization Hearing. Written response of Mr. McIntyre to question 16, Oct. 18, 1979.

[44] See letters of October 29, 1979 from Ambassador Askew and Mr. Erhlich to Senator Ribicoff appearing in appendix III of this report.

dition of the USTR will add a sixth government representative to the Board. The addition of a seventh representative from the private sector is therefore necessary to preserve the current ratio of membership on the board.

SECTION 5. TRANSFER OF FUNCTIONS

Section 5 contains the actual transfers of specific statutory responsibilities. The reorganization also transfers other major responsibilities or functions which are not now specifically placed by statute in any agency. Accordingly, they are not included in this section, although section one of the reorganization plan has the effect of transferring these responsibilities or functions. Responsibilities or functions transferred by section 5, or any other part of the reorganization plan, may not be reassigned except through subsequent congressional approval.

In some respects the functions transferred by this plan will be further explained and itemized by the executive orders the President will issue when the plan is implemented. The draft executive order governing the responsibility and functions of the USTR as chief representative of the U.S. appears in Appendix II to this report. In addition, the President will, by executive order, transfer from Treasury to Commerce responsibility for administering trade embargoes. He will do so by amending or superseding the outstanding executive orders delegating presidential authority under section 5(b) of the Trading With the Enemy Act. In addition, the authority of the President under the International Emergency Economic Powers Act may be delegated to the Secretary of Commerce by executive order.[45]

Section 5(a)(1)(A).—Section 305(b) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(b)) now provides that the Secretary of the Treasury will provide advisory rulings and final determinations on whether an article is eligible for waiver by the President, under section 301 of the Trade Agreements Act, from the application of discriminatory procurement laws. The Buy America Act is an example of such a law. The reorganization plan would transfer the authority to make such determinations on rules of origin to the Secretary of Commerce, but would require consultation with the Secretary of the Treasury.

Section 5(a)(1)(B).—Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1962) directs the Secretary of the Treasury, upon request, to conduct an investigation to determine the effects on national security of the importation of any article into the United States. If the Secretary of the Treasury determines that imports of the article would threaten national security, he so advises the President. The plan would transfer the authority of the Secretary of the Treasury under section 232 to the Secretary of Commerce.

Section 5(a)(1)(C).—Section 303 and title VII of the Tariff Act of 1930 (19 U.S.C. 1303, 1671 *et seq.*) are the countervailing duty and antidumping laws. The plan transfers to the Secretary of Commerce the current responsibilities of the Secretary of the Treasury for administering these laws. The provision specifies that the Customs Service

[45] Trade Reorganization Hearing. Written response of Mr. McIntyre to question 6(b), Oct. 18, 1979.

will nevertheless continue to perform certain ministerial functions for the Commerce Department. These ministerial functions will be (1) the accepting of such deposits, bonds, or other deposits as the Secretary of Commerce deems appropriate; and (2) assessing and collecting such duties as directed by the Secretary of Commerce. The Customs Service will exercise these functions in accordance with the directions of the Commerce Department. Commerce will coordinate these activities with the Customs Service in the same way that 40 other agencies coordinate with Customs the performance of such services as drug traffic interdiction (Drug Enforcement Administration), animal and plant quarantine (USDA), and statistics (Census Bureau).[46]

The paragraph also directs the Customs Service to provide the Commerce Department with such of its important records as requested by the Commerce Department relating to the antidumping and countervailing duty functions transferred to Commerce. Testimony received by the Committee emphasized the importance to the Commerce Department of having full access to statistical data collected by the Customs Service at ports of entry in the U.S. when the department administers the antidumping and countervailing duty laws. It is essential to effective enforcement of the antidumping and countervailing duty laws that the Customs Service provide the Commerce Department with the information it needs in this respect. This section requires the Customs Service to provide such information. OMB assured the Committee that Commerce and the Customs Service will enter into an inter-agency agreement that will "assure access by appropriate Commerce officials to all documents and data received or generated by the Customs Service that may be necessary or useful in administering these laws and programs."[47]

Section 5(a)(1)(D).—Sections 514, 515, and 516 of the Tariff Act of 1930 (19 U.S.C. 1514, 1515, and 1516) are the administrative and judicial review provisions applicable to antidumping and countervailing duty cases pending prior to January 1, 1980, the effective date of the 1979 amendments to the basic antidumping and countervailing duty laws. The transfer of these Treasury functions to the Commerce Department complements the transfer of the basic countervailing duty and antidumping laws. The transfer will permit Commerce to process antidumping and countervailing cases pending when the basic transfer occurs.

Section 5(a)(1)(E).—Section 318 of the Tariff Act of 1930 (19 U.S.C. 1318) authorizes the Secretary of the Treasury to extend the time for the performance of any act in the case of war or national emergency, and to waive duties with respect to imports of certain emergency supplies. The plan transfers these functions to the Secretary of Commerce only insofar as they relate to the antidumping and countervailing duty laws. The Commerce Department will exercise the functions in consultation with the Secretary of the Treasury.

Section 5(a)(1)(F).—Section 502(a) of the Tariff Act of 1930 (19 U.S.C. 1502(a)) authorizes the Secretary of the Treasury to

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[46] Trade Reorganization Hearings. Written response of Mr. McIntyre to question 9, July 23, 1979.

[47] Trade Reorganization Hearing. Written response of Mr. McIntyre to question 11, Oct. 18, 1979.

promulgate regulations under the customs laws and to disseminate information. It also authorizes the Secretary of the Treasury to direct Customs employees to perform certain customs functions. The plan transfers this authority to issue regulations and disseminate information to the Commerce Department with respect to the antidumping and countervailing duty laws only. The Commerce Department will exercise this responsibility in consultation with the Treasury to the extent it involves matters which the Customs Service will continue to carry out for the Commerce Department pursuant to section 5(a)(1)(c).

Section 5(a)(1)(f) also transfers to the Commerce Department section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)). Section 502(b) specifies the circumstances under which a customs duty determination shall be reversed or modified. The transfer of this authority with respect to antidumping and countervailing duty laws is required to give the same effect to determinations by Commerce under such laws as are given to other customs determinations by the Treasury Department.

Section 5(a)(1)(G).—Section 617 of the Tariff Act of 1930 (19 U.S.C. 1617) authorizes the Secretary of the Treasury to compromise certain claims under the customs laws. The plan transfers this authority to the Secretary of Commerce to the extent such law applies to antidumping and countervailing. Reference to this provision in the plan is not intended to change in any way the meaning or applicability of this provision, or to express any conclusion as to whether or not section 617 applies to antidumping and countervailing duties.

Section 5(a)(1)(H).—Section 2632(e) of the Judicial Code (28 U.S.C. 2632(e)) provides that when the United States is an adverse party, service of the summons in the Customs Court shall be upon the Secretary of the Treasury. The transfer of this function to Commerce with respect to the antidumping and countervailing duty laws means that in such cases service will be made upon Commerce.

Section 5(a)(2).—This provision requires the Secretary of Commerce to consult regularly with the U.S. Trade Representatives in exercising countervailing duty and antidumping functions, and to consult with the Trade Representative regarding any substantive regulation proposed to be issued to enforce such functions. This provision reflects the role of the USTR will have in shaping overall U.S. trade policy, including policies practices relating to unfair trade, pursuant to section 1 of the plan. The USTR may wish to consider following the same procedure in other policy areas as well.

Section 5(b).—This subsection transfers trade promotion and commercial functions, along with related personnel laws, from the Department of State to Commerce. Clause (A) of this provision transfers to the Secretary of Commerce all trade promotion and commercial functions now performed by the State Department in full-time overseas trade promotion and commercial positions. Clause (B) gives the President the authority to transfer any other trade promotion and commercial functions. This is an authority which is separate and in addition to the transfers mandated by clause (A). There may be cases when a function in an important trading country does not fall within clause (a), but a significant portion of the position's functions involves overseas trade promotion and commercial positions. Or the individual filling the position may spend his time on functions closely related to trade promotion and commercial functions. The provision gives the President the necessary flexibility to transfer additional positions to hte Commerce Department when he concludes it would help promote the U.S. export efforts.[48]

Whether or not Clause (B) is invoked when the reorganization goes into effect, Clause (A) requires the transfer of any full-time trade promotion or commercial position. Following implementation of the reorganization, there should no longer be any State Department officials devoting full time to these activities.

Section 5(b)(2).—This provision authorizes the President to permit the Secretary of Commerce to utilize Foreign Service personnel authorities in carrying out the functions transferred by section 5(b)(1). It is the present intent of the Commerce Department to apply the Foreign Service Act, rather than the Civil Service System, to the commercial positions transferred to it. Any foreign service officer who transfers from the State Department to Commerce under this provision will continue to be covered by the Foreign Service Retirement System without the need for any further legislation. State Department officials now serving in commercial attache positions abroad which are transferred by the plan will, upon the end of their present tour of duty, transfer to the Department of Commerce's Foreign Commercial Service or be assigned to other positions within the Department of State. The Foreign Commercial Service the Department of Commerce is expected to establish will be entirely under the control and direction of the Secretary of Commerce. It will not be subject to the control of the Secretary of State, who shall continue to administer a separate system applicable to the Foreign Service Officers remaining in the State Department. The system the Department of Commerce establishes will allow for the rotation of personnel between foreign posts, positions in Washington, and field offices throughout the United States. It will include a provision allowing the department to hire qualified businessmen for a single tour, or as career members of the Foreign Commercial Service.[49]

Section 5(c).—This provision transfers to the President the existing responsibility of the East-West Foreign Trade Board, under section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)), to make quarterly reports to the Congress on East-West trade. Transferring this responsibility to the President will make it easier to coordinate the preparation and issuance of these reports with other, similar reports required by other laws.

Section 5(d).—This provision transfers from the Department of State to the U.S. Trade Representative the fiscal year 1980 appropriations for representation of the United States concerning matters arising under the General Agreement on Tariffs and Trade, and trade and

[48] Trade Reorganization Hearing. Written response of Mr. McIntyre to question 10, Oct. 18, 1979.

[49] Trade Reorganization Hearings. Written response of Mr. McIntyre to question 13, Oct. 18, 1979.

commodity matters dealt with under the auspices of the U.N. Conference on Trade and Development. This provision helps carry out the intent of the plan that the USTR should henceforth act as the chief representative of the United States insofar as the activities of GATT, and the trade and commodity matters in UNCTAD, are concerned. To make this role as chief U.S. representative fully effective, the USTR needs to have the necessary funds under his own direct control. The authority in existing law that places such funds under the authority of the Department of State is therefore transferred to the USTR. Future requests by the Administration for the funds necessary to carry out these functions will, of course, be included in the funds requested for the USTR.

Section 5(e).—This provision transfers to the Trade Policy Committee the functions of the East-West Foreign Trade Board under section 411(a) and (b) of the Trade Act of 1974 (19 U.S.C. 2441(a) and (b)). These include monitoring East-West trade and receiving certain reports on technology exports to nonmarket economy countries. The transfer of these functions will enhance the ability of the Trade Policy Committee to assist the USTR in carrying out his responsibility for developing and coordinating East-West trade policy under section 1 of the plan, including subsection (b)(1) and subsection (b)(3)(E).

SECTION 6. EAST-WEST FOREIGN TRADE BOARD

Pursuant to authority in the Reorganization Act of 1977 (P.L. 95–17), which provides for the abolishment of an entity no longer exercising any functions, section 6 abolishes the East-West Foreign Trade Board as a separate entity. The continued existence of the Board is no longer appropriate since section 5 of the plan transfers all the functions of the Board to the President, or to the Trade Policy Committee.

SECTION 7. RESPONSIBILITY OF THE SECRETARY OF STATE

Section 7 of the plan reiterates that nothing in the plan is intended to derogate from the responsibility of the Secretary of State for advising the President on foreign policy matters. This includes the foreign policy aspects of international trade and trade-related matters. Under the plan the USTR will serve as the principal advisor to the President on international trade policy. Such international trade policy will often have a foreign policy aspect to it. The USTR will serve as the principal advisor to the President on such matters, and develop and coordinate the implementation of such policies. It will do so after consulting with the members of the Trade Policy Committee, including the State Department, and after considering the views of the committee, including the views of the State Department on the foreign policy aspects of the decision. The provision makes clear, however, that nothing in the procedure, and the lead role thereby reserved for the USTR, is intended to prevent the Secretary of State and the President from conferring directly on foreign policy matters.

SECTION 8. INCIDENTAL TRANSFERS; INTERIM OFFICERS

This section provides for the necessary transfers of personnel, property, and appropriations to reflect the transfers of functions provided for by the reorganization. The section also provides that the President may designate individuals to exercise the authorities of Deputy Secretary of Commerce, the Under Secretary of Commerce for International Trade, and the two additional Assistant Secretaries of Commerce, pending the appointment and confirmation of any individual for the positions. One or more individuals may not, in total, so serve in any one of these positions for longer than 60 days.

SECTION 9. EFFECTIVE DATE

This section provides for the effective date of the plan. The plan shall take effect October 1, 1980, or at such earlier time or times as the President shall specify following review of the plan by Congress.

The President indicated in his message accompanying submission of the plan that he intends to activate at least the transfer of the antidumping and countervailing duty laws by January 1, 1980. This will ensure that the reorganization of these functions will be in effect when the new U.S. trade laws implementing the MTN agreements go into effect. The Committee believes that in order to help ensure that the MTN agreements prove to be a success for the United States, it is essential that this reorganization be implemented as quickly as possible.

IV. History of the Proposal

In the 95th Congress, the Committee held hearings on S. 1990, a bill introduced by Senators Roth and Ribicoff to establish a Department of Trade and International Investment. The hearings were conducted on February 24 and May 1, 1978.

In the 96th Congress a number of bills were introduced to establish a new department of trade or to reorganize existing departments or agencies to play a more active role in trade matters. The bills referred to the Committee were S. 377, S. 891, S. 937, S. 1471, S. 1493, and S. 1550. Further, section 1109 of the Trade Act of 1979, implementing the MTN agreements, required the President to submit to Congress by July 10, 1979, a proposal to restructure the international trade functions of the executive branch.

The Committee held a series of hearings on July 23, 25, and 26, 1979 on the various proposals to reorganize the international trade functions of the government. At that time Ambassador Strauss and Mr. McIntyre described the Administration's proposals for reorganization in general terms, although no formal reorganization plan was submitted. The Committee also received testimony from Senator Stevenson and 13 witnesses from the private sector.

On September 25, 1979, the President formally submitted Reorganization Plan No. 3 to Congress. On September 26, 1979, as required by statute, Senate Resolution 245, disapproving the plan, was introduced and referred to this Committee. On October 18, 1979, the Committee held a final day of hearings, at which time the administration testified on the plan. In addition, one witness from the private sector asked to appear before the Committee at that time.

The following is a list of the witnesses that testified before the Committee in 1979 on proposals to reorganize the international trade functions of the government.

July 23

Ambassador Robert Strauss, Special Trade Representative; Mr. James McIntyre, Director of OMB, Senator Adlai E. Stevenson.

July 25

Mr. William L. Wearly, Chairman and Chief Executive Officer, Ingersoll-Rand Co., on behalf of the National Association of Manufacturers.

Hon. Orville Freeman, former Secretary of Agriculture, and President and Chief Executive Officer, Business International Corp.

Mr. Harry Gould, on behalf of the President's Export Council.

Mr. William Sneath, Chairman of the Board, Union Carbinde Corp., on behalf of the Business Roundtable.

Mr. Charles Carlisle, Vice President, St. Joe Minerals Corp., on behalf of an ad hoc Coalition of 33 industrial and labor organizations.

Mr. Bruno Weinschel, on behalf of the Institute of Electrical and Electronics Engineers.

Mr. Lee A. Greenbaum, on behalf of the American Importers Association.

Mr. William Tobias, Director of Marketing and Development, Massachusetts Port Authority, on behalf of the Smaller Business Association of New England.

July 26

Mr. Robert W. Galvin, Chairman of the Board, Motorola, Inc., on behalf of the Industry Policy Advisory Committee for the Multilateral Trade Negotiation.

Mr. Robert Peabody, President of the American Iron and Steel Institute and Mr. Richard Schubert, President, Bethlehem Steel Corp., on behalf of the American Iron and Steel Institute.

Mr. Richard O'Leary, of the Onan Corporation, on behalf of the U.S. Chamber of Commerce.

Mr. Ron Shelp, Vice President and Director, American International Underwriters Corporation, and Chairman of the International Service Industry Committee, U.S. Chamber of Commerce.

Mr. John E. Carlson, of the M. M. Sundt Construction Co., on behalf of the Associated General Contractors of America.

October 18

Mr. James McIntyre, Director of OMB.

Mr. Roger R. Regelbrugge, President, Korf Industries, Inc.

In addition, Senator Cannon and 16 groups or individuals submitted written statements or letters to the Committee on the reorganization.

The great majority of those witnesses appearing before the Committee or submitting statements supported reorganizing the government's trade functions to make U.S. policies more effective, and to ensure greater priority within the government on this country's trading problems. The following list summarizes the wide variety of groups that, in addition, expressed a position to the Administration on the reorganization plan. Most of these groups also expressed support for the reorganization.[50]

GROUPS ENDORSING THE REORGANIZATION

Business

Business Round Table
U.S. Chamber of Commerce
American Textile Manufacturers Institute
Emergency Committee for American Trade
American Paper Institute
U.S. Apparel Council
National Foreign Trade Council
American Society of Association Executives
Ad Hoc Subsidies Coalition
National Machine Tool Builders'Association
American Apparel Manufacturers Association
American Yarn Spinners Association
Man-Made Fiber Producers Association
National Knitted Outerwear Association
Work Glove Manufacturers Association
Textile Distributors Association
National Association of Uniform Manufacturers
National Knitwear Manufacturers
National Association of Hosiery Manufacturers

Individual firms

Union Carbide
General Electric
Westinghouse
Gold Kist

Union

AFL-CIO
Amalgamated Clothing and Textile Workers Union
International Ladies' Garment Workers Union
United Hatters Union

Agriculture

National Grange
National Council of Farmer Cooperatives
Millers' National Federation
American Farm Bureau Federation
National Cotton Council of America

GROUPS OPPOSING THE REORGANIZATION

American Foreign Service Association
American Retail Federation

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[50] Trade Reorganization Hearings. Supplementary response of Mr. McIntyre to a question by Senator Roth, Oct. 18, 1979.

The members of the Committee were polled concerning the reorganization on November 1, 1979. The members of the Committee voted against S. Res. 245, which would disapprove Reorganization Plan No. 3, as follows:

Yeas	*Nays*
	Ribicoff
	Jackson
	Eagleton
	Chiles
	Glenn
	Sasser
	Pryor
	Levin
	Percy
	Javits
	Roth
	Stevens
	Mathias
	Danforth
	Cohen
	Durenberger

V. Estimated Cost

Set forth below is a statement furnished by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

Congressional Budget Office,
U.S. Congress,
Washington, D.C., November 5, 1979.

Hon. Abraham Ribicoff,
Chairman, Committee on Government Affairs,
U.S. Senate 3308 Dirksen Senate Office Building,
Washington, D.C.

Dear Mr. Chairman: At the request of your staff, the Congressional Budget Office has reviewed Senate Resolution 245, disapproving Reorganization Plan Number 3 of 1979, a reorganization plan to consolidate trade functions of the United States government, as transmitted by the President to the United States Congress on September 25, 1979.

This plan would assign the responsibility for developing and coordinating U.S. international trade and direct investment policy to the Office of the United States Trade Representative (USTR). The Department of Commerce (DOC) would assume operational responsibility for implementing the policies developed by the USTR for all trade functions other than agriculture. The plan would become effective January 1, 1980.

To facilitate these changes, 130 staff positions currently available for the antidumping and countervailing duty activities of the Treasury Department would be transferred to DOC. In addition, all full-time personnel engaged in overseas trade promotion and commercial activities who are presently part of the Foreign Commercial Service in the Department of State would be assigned to DOC to help promote U.S. export sales. All transferred positions would be integrated with DOC's existing trade programs, requiring a one-time relocation expenditure, which the Office of Management and Budget has estimated will cost approximately $600,000 in fiscal year 1980.

The trade reorganization plan would consolidate the expanded trade functions in DOC under a newly created position of Under Secretary for International Trade, and two new Assistant Secretary positions. It is estimated that these three additional senior DOC personnel and clerical support will cost approximately $220,000 in fiscal year 1980, which assumes that the positions would be filled approximately two-thirds of fiscal year 1980. It is estimated that these costs, adjusted for inflation, will rise to approximately $420,000 annually by fiscal year 1984.

Furthermore, in order for the USTR to carry out the additional responsibilities outlined in the trade reorganization plan, it is estimated that approximately 60 additional USTR staff will be required. Assuming that these positions would be filled for two-thirds of fiscal year 1980, the estimated cost would be approximately $2.1 million in that year, increasing to $4.2 million annually by fiscal year 1984.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

Appendix I—Reorganization Plan No. 3 of 1979

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1979, to consolidate trade functions of the United States Government. I am acting under the authority vested in me by the Reorganization Act of 1977, chapter 9 of title 5 of the United States Code, and pursuant to section 1109 of the Trade Agreements Act of 1979, which directs that I transmit to the Congress a proposal to restructure the international trade functions of the Executive branch.

The goal of this reorganization is to improve the capacity of the Government to strengthen the export performance of United States industry and to assure fair international trade practices, taking into account the interests of all elements of our economy.

Recent developments, which have raised concern about the vitality of our international trade performance, have focused much attention on the way our trade machinery is organized. These developments include our negative trade balance, increasing dependence upon foreign oil, and international pressures on the dollar. New challenges, such as implementation of the Multilateral Trade Negotiation (MTN) agreements and trade with non-market economies, will further test our Government trade organization.

We must be prepared to apply domestically the MTN codes on procurement, subsidies, standards, and customs valuation. We also must monitor major implementation measures abroad, reporting back to American business on important developments and, where necessary, raising questions internationally about foreign implementation. MTN will work—will open new markets for U.S. labor, farmers, and business—only if we have adequate procedures for aggressively monitoring and enforcing it. We intend to meet our obligations, and we expect others to do the same.

The trade machinery we now have cannot do this job effectively. Although the Special Trade Representative (STR) takes the lead role in administering the trade agreements program, many issues are handled elsewhere and no agency has across-the-board leadership in trade. Aside from the Trade Representative and the Export-Import Bank, trade is not the primary concern of any Executive branch agency where trade functions are located. The current arrangements lack a central authority capable of planning a coherent trade strategy and assuring its vigorous implementation.

This reorganization is designed to correct such deficiencies and to prepare us for strong enforcement of the MTN codes. It aims to improve our export promotion activities so that United States exporters can take full advantage of trade opportunities in foreign markets. It provides for the timely and efficient administration of our unfair trade laws. It also establishes an efficient mechanism for shaping an effective, comprehensive United States trade policy.

To achieve these objectives, I propose to place policy coordination and negotiation—those international trade functions that most require comprehensiveness, influence, and Government-wide perspective—in the Executive Office of the President. I propose to place operational and implementation responsibilities, which are staff-intensive, in line departments that have the requisite resources and knowledge of the major sectors of our economy to handle them. I have concluded that building our trade structure on STR and Commerce, respectively, best satisfies these considerations.

I propose to enhance STR, to be renamed the Office of the United States Trade Representative, by centralizing in it international trade policy development, coordination and negotiation functions. The Commerce Department will become the focus of non-agricultural operational trade responsibilities by adding to its existing duties those for commercial representation abroad, antidumping and countervailing duty cases, the non-agricultural aspects of MTN implementation, national security investigations, and embargoes.

THE UNITED STATES TRADE REPRESENTATIVE

The Trade Representative, with the advice of the Trade Policy Committee, will be responsible for developing and coordinating our international trade and direct investment policy, including the following areas:

Import remedies.—The Trade Representative will exercise policy oversight of the application of import remedies, analyze long-term trends in import remedy cases and recommend any necessary legislative changes. For antidumping and countervailing duty matters, such coordination, to the extent legally permissible, will be directed toward the establishment of new precedents, negotiation of assurances, and coordination with other trade matters, rather than case-by-case fact finding and determinations.

East-West trade policy.—The Trade Representative will have lead responsibility for East-West trade negotiations and will coordinate East-West trade policy. The Trade Policy Committee will assume the responsibilities of the East-West Foreign Trade Board.

International investment policy.—The Trade Representative will have the policy lead regarding issues of direct foreign investment in the United States, direct investment by Americans abroad, operations of multinational enterprises, and multilateral agreements on international investment, insofar as such issues relate to international trade.

International commodity policy.—The Trade Representative will assume responsibility for commodity negotiations and also will coordinate commodity policy.

Energy trade.—While the Departments of Energy and State will continue to share responsibility for international energy issues, the Trade Representative will coordinate energy trade matters. The Department of Energy will become a member of the TPC.

Export-expansion policy.—To ensure a vigorous and coordinated Government-wide export expansion effort, policy oversight of our export expansion activities will be the responsibility of the Trade Representative.

The Trade Representative will have the lead role in bilateral and multilateral trade, commodity, and direct investment negotiations. The Trade Representative will represent the United States in General

Agreement on Tariffs and Trade (GATT) matters. Since the GATT will be the principal international forum for implementing and interpreting the MTN agreements and since GATT meetings, including committee and working group meetings, occur almost continuously, the Trade Representative will have a limited number of permanent staff in Geneva. In some cases, it may be necessary to assign a small number of USTR staff abroad to assist in oversight of MTN enforcement. In this event, appropriate positions will be authorized. In recognition of the responsibility of the Secretary of State regarding our foreign policy, the activities of overseas personnel of the Trade Representative and the Commerce Department will be fully coordinated with other elements of our diplomatic missions.

In addition to his role with regard to GATT matters, the Trade Representative will have the lead responsibility for trade and commodity matters considered in the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD) when such matters are the primary issues under negotiation. Because of the Secretary of State's foreign policy responsibilities, and the responsibilities of the Director of the International Development Cooperation Agency as the President's principal advisor on development, the Trade Representative will exercise his OECD and UNCTAD responsibilities in close cooperation with these officials.

To ensure that all trade negotiations are handled consistently and that our negotiating leverage is employed to the maximum, the Trade Representative will manage the negotiation of particular issues. Where appropriate, the Trade Representative may delegate responsibility for negotiations to other agencies with expertise on the issues under consideration. He will coordinate the operational aspects of negotiations through a Trade Negotiating Committee, chaired by the Trade Representative and including the Departments of Commerce, State, Treasury, Agriculture and Labor.

The Trade Representative will be concerned not only with ongoing negotiations and coordination of specific, immediate issues, but also—very importantly—with the development of long-term United States trade strategies and policies. He will oversee implementation of the MTN agreements, and will advise the President on the effects of other Government policies (e.g., antitrust, taxation) on U.S. trade. In order to participate more fully in oversight of international investment and export financing activities, the Trade Representative will become a member of the National Advisory Council on International Monetary and Financial Policies and the Boards of the Export-Import Bank and the Overseas Private Investment Corporation.

In performing these functions, the Trade Representative will act as the principal trade spokesman of the President. To assure that our trade policies take into account the broadest range of perspectives, the Trade Representative will consult with the Trade Policy Committee, whose mandate and membership will be expanded. The Trade Representative will, as appropriate, invite agencies such as the Export-Import Bank and the Overseas Private Investment Corporation to participate in TPC meetings in addition to the permanent TPC members. When different departmental views on trade matters exist within the TPC as will be the case from time to time in this complex policy area, I will expect the Trade Representative to resolve policy disagreements in his best judgment, subject to appeal to the President.

THE DEPARTMENT OF COMMERCE

The Department of Commerce, under this proposal, will become the focal point of operational responsibilities in the non-agricultural trade area. My reorganization plan will transfer to the Commerce Department important responsibilities for administration of countervailing and antidumping matters, foreign commercial representation, and MTN implementation support. Consolidating these trade functions in the Department of Commerce builds upon an agency with extensive trade experience. The Department will retain its operational responsibilities in such areas as export controls, East-West trade, trade adjustment assistance to firms and communities, trade policy analysis, and monitoring foreign compliance with trade agreements. The Department will be substantially reorganized to consolidate and reshape its trade functions under an Under Secretary for International Trade.

With this reorganization, trade functions will be strengthened within the Department of Commerce, and such related efforts in the Department as improvement of industrial innovation and productivity, encouraging local and regional economic development, and sectoral analysis, will be closely linked to an aggressive trade program. Fostering the international competitiveness of American industry will become the principal mission of the Department of Commerce.

Import remedies

I propose to transfer to the Department of Commerce responsibility for administration of the countervailing duty and antidumping statutes. This function will be performed efficiently and effectively in an organizational setting where trade is the primary mission. This activity will be directed by a new Assistant Secretary for Trade Administration, subject to Senate confirmation. Although the plan permits its provisions to take effect as late as October 1, 1980, I intend to make this transfer effective by January 1, 1980, so that it will occur as the new MTN codes take effect. Commerce will continue its supportive role in the staffing of other unfair trade practice issues, such as cases arising under section 301 of the Trade Act of 1974.

Commercial representation

This reorganization plan will transfer to the Department of Commerce responsibility for commercial representation abroad. This transfer would place both domestic and overseas export promotion activities under a single organization, directed by an Assistant Secretary for Export Development, charged with aggressively expanding U.S. export opportunities. Placing this Foreign Commercial Service in the Commerce Department will allow commercial officers to concentrate on the promotion of U.S. exports as their principal activity.

Initially, the transfer of commercial representation from State to Commerce will involve all full-time overseas trade promotion and commercial positions (approximately 162), responsibility for this function in the countries (approximately 60) to which these individuals are assigned, and the associated foreign national employees in those countries. Over time, the Department of Commerce undoubtedly will review the deployment of commercial officers in light of changing trade circumstances and propose extensions or alterations of coverage of the Foreign Commercial Service.

MTN implementation

I am dedicated to the aggressive implementation of the Multilateral Trade Agreements. The United States must seize the opportunities and enforce the obligations created by these agreements. Under this proposal, the Department of Commerce will assign high priority to this task. The Department of Commerce will be responsible for the day-to-day implementation of non-agricultural aspects of the MTN agreements. Management of this function will be a principal assignment of an Assistant Secretary for Trade Policy and Programs. Implementation activities will include:

monitoring agreements and targeting problems for consultation and negotiation;

operating a Trade Complaint Center where the private sector can receive advice as to the recourse and remedies available;

aiding in the settlement of disputes, including staffing of formal complaint cases;

identifying problem areas for consideration by the Trade Representative and the Trade Policy Committee;

educational and promotion programs regarding the provisions of the agreements and the processes for dealing with problems that arise;

providing American business with basic information on foreign laws, regulations and procedures;

consultations with private sector advisory committees; and

general analytical support.

These responsibilities will be handled by a unit built around the staff from Commerce that provided essential analytical support to STR throughout the MTN negotiation process. Building implementation of MTN around this core group will assure that the government's institutional memory and expertise on MTN is most effectively devoted to the challenge ahead. When American business needs information or encounters problems in the MTN area, it can turn to the Department of Commerce for knowledgeable assistance.

Matching the increased importance of trade in the Department's mission will be a much strengthened trade organization within the Department. By creating a number of new senior level positions in the Department, we will ensure that trade policy implementation receives the kind of day-to-day top management attention that it both demands and requires.

With its new responsibilities and resources, the Department of Commerce will become a key participant in the formulation of our trade policies. Much of the analysis in support of trade policy formulation will be conducted by the Department of Commerce, which will be close to the operational aspects of the problems that raise policy issues.

To succeed in global competition, we must have a better understanding of the problems and prospects of U.S. industry, particularly in relation to the growing strength of industries abroad. This is the key reason why we will upgrade sectoral analysis capabilities throughout the Department of Commerce, including the creation of a new Bureau of Industrial Analysis. Commerce, with its ability to link trade to policies affecting industry, is uniquely suited to serve as the principal technical expert within the Government on special industry sector problems requiring international consultation, as well as to provide industry-specific information on how tax, regulatory and other Government policies affect the international competitiveness of the U.S. industries.

Commerce will also expand its traditional trade policy focus on industrial issues to deal with the international trade and investment problems of our growing services sector. Under the proposal, there will be comprehensive service industry representation in our industry advisory process, as well as a continuing effort to bring services under international discipline. I expect the Commerce Department to play a major role in developing new service sector initiatives for consideration within the Government.

After an investigation lasting over a year, I have found that this reorganization is necessary to carry out the policy set forth in section 901(a) of title 5 of the United States Code. As described above, this reorganization will increase significantly our ability to implement the MTN agreements efficiently and effectively and will improve greatly the services of the government with regard to export development. These improvements will be achieved with no increase in personnel or expenditures, except for an annual expense of about $300,000 for the salaries and clerical support of the three additional senior Commerce Department officials and a non-recurring expense of approximately $600,000 in connection with the transfers of functions provided in the plan. I find that the reorganization made by this plan makes necessary the provisions for the appointment and pay of a Deputy Secretary, an Under Secretary for International Trade, and two additional Assistant Secretaries of the Department of Commerce, and additional members of the Boards of Directors of the Export-Import Bank and the Overseas Private Investment Corporation.

It is indeed appropriate that this proposal follows so soon after the overwhelming approval by the Congress of the Trade Agreements Act of 1979, for it will sharpen and unify trade policy direction, improve the efficiency of trade law enforcement, and enable us to negotiate abroad from a position of strength. The extensive discussions between Administration officials and the Congress on this plan have been a model of the kind of cooperation that can exist between the two branches. I look forward to our further cooperation in successfully implementing both this reorganization proposal and the MTN agreements.

JIMMY CARTER.

THE WHITE HOUSE, *September 25, 1979.*

Reorganization Plan No. 3 of 1979

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, September 25, 1979, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

REORGANIZATION OF FUNCTIONS RELATING TO INTERNATIONAL TRADE

Section 1. *Office of the United States Trade Representative*

(a) The Office of the Special Representative for Trade Negotiations is redesignated the Office of the United States Trade Representative.

(b)(1) The Special Representative for Trade Negotiations is redesignated the United States Trade Representative (hereinafter referred to as the 'Trade Representative"). The Trade Representative shall have primary responsibility, with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) (hereinafter referred to as the "Committee"), for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters and, to the extent they aer related to international trade policy, direct investment matters. The Trade Representative shall serve as the principal advisor tao the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade.

(2) The Trade Representative shall have lead responsibility for the conduct of international trade negotiations, including commodity and direct investment negotiations in which the United States participates.

(3) To the extent necessary to assure the coordination of international trade policy, and consistent with any other law, the Trade Representative, with the advice of the Committee, shall issue policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of the following international trade functions. Such guidance shall determine the policy of the United States with respect to international trade issues arising in the exercise of such functions:

(A) matters concerning the General Agreement on Tariffs and Trade, including implementation of the trade agreements set forth in scection 2(c) of the Trade Agreements Act of 1979; United States Government positions on trade and commodity matters dealt with by the Organization for Economic Cooperation and Development, the United Nations Conference on Trade and Development, and other multilateral organizations; and the assertion and protection of the rights of the United States under bilateral and multilateral international trade and commodity agreements;

(B) expansion of exports from the United States;

(C) policy research on international trade, commodity, and direct investment matters;

(D) to the extent permitted by law, overall United States policy with regard to unfair trade practices, including enforcement of countervailing duties and antidumping functions under section 303 and title VII of the Tariff Act of 1930;

(E) bilateral trade and commodity issues, including East-West trade matters; and

(F) international trade issues involving energy.

(4) All functions of the Trade Representative shall be conducted under the direction of the President.

(c) The Deputy Special Representatives for Trade Negotiations are redesignated Deputy United States Trade Representatives.

Section 2. *Department of Commerce*

(a) The Secretary of Commerce (hereinafter referred to as the "Secretary") shall have, in addition to any other functions assigned by law, general operational responsibility for major nonagricultural international trade functions of the United States Government, including export development, commercial representation abroad, the administration of the antidumping and countervailing duty laws, export controls, trade adjustment assistance to firms and communities, research and analysis, and monitoring compliance with international trade agreements to which the United States is a party.

(b)(1) There shall be in the Department of Commerce (hereinafter referred to as the "Department") a Deputy Secretary appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall receive compensation at the rate payable for Level II of the Executive Schedule, and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(2) The position of Under Secretary of Commerce established under section 1 of the Act of June 5, 1939 (ch. 180, 53 Stat. 808; 15 U.S.C. 1502) is abolished.

(c) There shall be in the Department an Under Secretary for International Trade appointed by the President, by and with the advice and consent of the Senate. The Under Secretary for International Trade shall receive compensation at the rate payable for Level III of the Executive Schedule, and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(d) There shall be in the Department two additional Assistant Secretaries appointed by the President, by and with the advice and consent of the Senate. Each such Assistant Secretary shall receive compensation at the rate payable for Level IV of the Executive Schedule, and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

Section 3. *Export-Import Bank of the United States*

The Trade Representative and the Secretary shall serve, ex officio and without vote, as additional members of the Board of Directors of the Export-Import Bank of the United States.

Section 4. *Overseas Private Investment Corporation*

(a) The Trade representative shall serve, ex officio, as an additional voting member of the Board of Directors of the Overseas Private Investment Corporation. The Trade Representative shall be the Vice Chair of such Board.

(b) There shall be an additional member of the Board of Directors of the Overseas Private Investment Corporation who shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall not be an official or employee of the Government of the United States. Such Director shall be appointed for a term of no more than three years.

Section 5. *Transfer of Functions*

(a)(1) There are transferred to the Secretary all functions of the Secretary of the Treasury, the General Counsel of the Department of the Treasury, or the Department of the Treasury pursuant to the following:

(A) section 305(b) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(b)), to be exercised in consultation with the Secretary of the Treasury;

(B) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862);

(C) section 303 and title VII (including section 771(1)) of the Tariff Act of 1930 (19 U.S.C. 1303, 1671 *et seq.*), except that the Customs Service of the Department of the Treasury shall accept such deposits, bonds, or other security as deemed appropriate by the Secretary, shall assess and collect such duties as may be directed by the Secretary, and shall furnish such of its important records or copies thereof as may be requested by the Secretary incident to the functions transferred by this subparagraph;

(D) sections 514, 515, and 516 of the Tariff Act of 1930 (19 U.S.C. 1514, 1515, and 1516) insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979;

(E) with respect to the functions transferred by subparagraph (C) of this paragraph, section 318 of the Tariff Act of 1930 (19 U.S.C. 1318), to be exercised in consultation with the Secretary of the Treasury;

(F) with respect to the functions transferred by subparagraph (C) of this paragraph, section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)), and, insofar as it provides authority to issue regulations and disseminate information, to be exercised in consultation with the Secretary of the Treasury to the extent that the Secretary of the Treasury has responsibility under subparagraph (C), section 502(a) of such Act (19 U.S.C. 1502(a));

(G) with respect to the functions transferred by subparagraph (C) of this paragraph, section 617 of the Tariff Act of 1930 (19 U.S.C. 1617); and

(H) section 2632(e) of title 28 of the United States Code, insofar as it relates to actions taken by the Secretary reviewable under section 516A of the Tariff Act of 1930 (19 U.S.C. 1516(a)).

(2) The Secretary shall consult with the Trade Representative regularly in exercising the functions transferred by subparagraph (C) of

paragraph (1) of this subsection, and shall consult with the Trade Representative regarding any substantive regulation proposed to be issued to enforce such functions.

(b)(1) There are transferred to the Secretary all trade promotion and commercial functions of the Secretary of State or the Department of State that are—

(A) performed in full-time overseas trade promotion and commercial positions; or

(B) performed in such countries as the President may from time to time prescribe.

(2) To carry out the functions transferred by paragraph (1) of this subsection, the President, to the extent he deems it necessary, may authorize the Secretary to utilize Foreign Service personnel authorities and to exercise the functions vested in the Secretary of State by the Foreign Service Act of 1946 (22 U.S.C. 801 *et seq.*) and by any other laws with respect to personnel performing such functions.

(c) There are transferred to the President all functions of the East-West Foreign Trade Board under section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)).

(d) Appropriations available to the Department of State for Fiscal Year 1980 for representation of the United States concerning matters arising under the General Agreement on Tariffs and Trade and trade and commodity matters dealt with under the auspices of the United Nations Conference on Trade and Development are transferred to the Trade Representative.

(e) There are transferred to the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) all functions of the East-West Foreign Trade Board under section 411 (a) and (b) of the Trade Act of 1974 (19 U.S.C. 2441 (a) and (b)).

Section 6. *Abolition*

The East-West Foreign Trade Board established under section 411 of the Trade Act of 1974 (19 U.S.C. 2441) is abolished.

Section 7. *Responsibility of the Secretary of State*

Nothing in this reorganization plan is intended to derogate from the responsibility of the Secretary of State for advising the President on foreign policy matters, including the foreign policy aspects of international trade and trade-related matters.

Section 8. *Incidental transfers; interim officers*

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the appropriate agency, organization, or component at such time or times as such Director shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation originally was made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agency abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of the reorganization plan.

(b) Pending the assumption of office by the initial officers provided for in section 2 of this reorganization plan, the functions of each such office may be performed, for up to a total of 60 days, by such individuals as the President may designate. Any individual so designated shall be compensated at the rate provided herein for such position.

Section 9. *Effective date*

The provisions of this reorganization plan shall take effect October 1, 1980, or at such earlier time or times as the President shall specify, but not sooner than the earliest time allowable under section 906 of title 5 of the United States Code.

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APPENDIX II—DRAFT EXECUTIVE ORDER

INTERNATIONAL TRADE FUNCTIONS

By the authority vested in me by the Trade Agreements Act of 1979, the Trade Act of 1974, the Trade Expansion Act of 1962, section 350 of the Tariff Act of 1930, Reorganization Plan No. 3 of 1979, and section 301 of title 3 of the United States Code and as President of the United States, it is hereby ordered as follows:

Section 1–101. The United States Trade Representative

(a) Except as may be otherwise expressly provided by law, the United States Trade Representative (hereinafter referred to as the "Trade Representative") shall be chief representative of the United States for:

(i) all activities of, or under the auspices of, the General Agreement on tariffs and Trade (GATT);

(ii) discussions, meetings, and negotiations in the Organization for Economic Cooperation and Development when trade or commodity issues are the primary issues under consideration;

(iii) negotiations in the United Nations Conference on Trade and Development and other multilateral institutions when trade or commodity issues are the primary issues under consideration;

(iv) other bilateral or multilateral negotiations when trade, including East-West trade, or commodities is the primary issue under consideration;

(v) negotiations under sections 704 and 734 of the Tariff Act of 1930;

(vi) negotiations concerning direct investment incentives and disincentives and bilateral investment issues concerning barriers to investment.

For purposes of this subsection, the term "negotiations" includes discussions and meetings with foreign governments and instrumentalities primarily concerning preparations for formal negotiations and policies regarding implementation of agreements resulting from such negotiations.

(b) The Trade Representative shall invite such members of the Trade Negotiating Committee and representatives of other departments or agencies as may be appropriate to participate in the negotiations and other activities listed in subsection (a).

(c) The Trade Representative may delegate to any member of the Trade Negotiating Committee, or any other department or agency as may be appropriate, primary responsibility for representing the United States in any of the negotiations and other activities set forth in subsection (a).

(d) The Trade Representative or any other department of agency to whom responsibility for representing the United States in a negotiation or other activity has been delegated pursuant to subsection (c) hereof, shall consult with the Trade Policy Committee on the policy issues arising in connection with the negotiations and other activities listed in subsection (a).

Section 1–102. The Trade Policy Committee

(a) As provided by section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872), the Trade Policy Committee (hereinafter referred to as the "Committee") is continued. The Committee shall have the functions specified by law or by the President, including those specified in section 1(b)(3) of Reorganization Plan No. 3 of 1979.

(b) The Committee shall be composed of the following:

(i) The Trade Representative, who shall be chair.
(ii) The Secretary of State.
(iii) The Secretary of the Treasury.
(iv) The Secretary of Defense.
(v) The Attorney General.
(vi) The Secretary of the Interior.
(vii) The Secretary of Agriculture.
(viii) The Secretary of Commerce.
(xi) The Secretary of Labor.
(x) The Secretary of Energy.
(xi) The Director of the Office of Management and Budget.
(xii) The Chairman of the Council of Economic Advisers.
(xiii) The Assistant to the President for National Security Affairs.
(xiv) The Director of the United States International Development Cooperation Agency.

Each member of the Committee may designate an officer of his agency, whose status is not below that of an Assistant Secretary, to serve in his stead when he is unable to attend any meetings of the Committee. The Chair may invite representatives from other agencies to attend the meetings of the Committee.

(c) (1) There is established, as a subcommittee of the Committee, a Trade Negotiating Committee which shall advise the Trade Representative on the management of negotiations referred to in section 1–101(a) of this order. The Committee chair, the Secretary of State, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Labor, the Secretary of Commerce.

(2) The Trade Representative, with the advice of the Committee, may create additional subcommittees thereof.

(d) In advising the President on international trade and related matters, the Trade Representative shall take into account and reflect the views of the members of the Committee and of other interested agencies.

Section 1–103. Prior Executive Orders

(a) Sections 2(b), 3(a), the first sentence of (c), (e) and (f), and 6 of Executive Order 11846 of March 27, 1975, are revoked.

(b) Executive Order ——— of ——— is revoked (temporary GATT order).

(c) Section 1(b) of Executive Order 11269 of February 14, 1966, is amended by adding "the United States Trade Representative," after "the Secretary of State,".

(d) (possible amendment of Executive Order 11703 of February 7, 1973).

MEMORANDUM OF UNDERSTANDING REGARDING THE RESPONSIBILITIES OF THE DEPARTMENT OF STATE AND THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE FOR OECD, UNCTAD FOR OTHER MULTILATERAL/BILATERAL ACTIVITIES DEALING WITH MATTERS OF DIRECT INVESTMENT POLICY

The Executive Order to be issued in connection with Reorganization Plan No. 3 establishes certain United States Trade Representative (USTR) responsibilities in the area of investment. Consistent with the Executive Order the following Agreement has been reached between the USTR and the Department of State:

1. The Department of State shall be chief representative of the United States for activities of the OECD Committee on Investment and Multilateral Enterprises and its subgroups, except that State and STR shall share responsibilities for activities dealt with in the subgroup on national treatment.

2. The Department of State shall be chief representative for United States participation in UNCTAD negotiations concerning restrictive business practices and transfer of technology.

3. The Department of State shall be chief representative for United States participation in negotiations, under U.N. auspices, on a code of conduct for transnational corporations and negotiations of an agreement concerning illicit payments.

4. The Department of State shall continue to be chief representative of the United States for such other multilateral negotiations or activities for which the Department is presently acting as chief representative of the United States.

5. The policy developed in connection with such activities will be worked out on an interagency basis under the TPC or other interagency basis in which USTR participates fully. USTR shall also have the right to be included in any delegation representing the United States in such negotiations or other activities.

6. In carrying out its lead responsibility with respect to bilateral and multilateral investment matters, USTR will work in close cooperation with the Department of State in determining negotiating assignments which shall include USTR-State co-chairmanships where such arrangements are appropriate because of significant foreign policy considerations.

BEN H. READ

Under Secretary for Management, U.S. Department of State.

ROBERT D. HORMATS,

Deputy U.S. Trade Representative.

APPENDIX III—CORRESPONDENCE CONCERNING THE OVERSEAS INVESTMENT CORPORATION

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., October 29, 1979.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Governmental Affairs,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: As you know, Reorganization Plan No. 2 of 1979 made the Director of the International Development Cooperation Agency the Chair of the Board of Directors of the Overseas Private Investment Corporation. Reorganization Plan No. 3 of 1979, now before the Congress, provides that the U.S. Trade Representative shall be Vice Chair of the OPIC Board.

In the course of Congressional consideration of the foreign assistance and trade reorganization proposals, concerns have been expressed about the status and mission of OPIC. I recognize the significant impact of U.S. foreign direct investment on the generation of U.S. exports, and the relationship of the OPIC program to the Government's efforts to increase the volume and value of U.S. exports.

The Administration will be transmitting new authorizing legislation for OPIC early next year. I assure you that in preparing that legislation, we will give careful consideration to the relationship between the OPIC program and the Government's effort to increase the volume and value of U.S. exports, as well as to the development concerns expressed in the OPIC legislation enacted last year.

I appreciate your continuing cooperation in the trade and other reorganization efforts.

Sincerely,

JAMES T. MCINTYRE, Jr.,
Director.

THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS,
Washington, October 29, 1979.

Hon. ABRAHAM RIBICOFF,
U.S. Senate,
Washington, D.C.

DEAR SENATOR RIBICOFF: As you are aware, the trade reorganization proposal now before the Congress will make the U.S. Trade Representative the Vice Chair of the Board of Directors of the Overseas Private Investment Corporation.

I recognize the significant impact of U.S. foreign direct investment on the generation of U.S. exports, and the relationship of the OPIC programs to the Government's efforts to increase the volume and value of U.S. imports. I will of course have in mind the impact of OPIC's activities on U.S. exports when participating in OPIC affairs. I intend to participate actively in the affairs of the agency.

I expect to work closely with other senior officials of the Administration next year when the status of OPIC is reexamined in connection with the transmission of new authorizing legislation, particularly in terms of the impact the legislative options would have on this country's international trade position.

Sincerely,

REUBIN O'D. ASKEW.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY,
Washington, D.C., October 29, 1979.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Committee on Governmental Affairs, Room 3308, Dirksen Senate Office Building, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As Director of the International Development Cooperation Agency, I serve *ex officio* as Chair of the Board of Directors of the Overseas Private Investment Corporation. As you know, the trade reorganization proposal now before the Congress will make the U.S. Trade Representative the Vice Chair of the OPIC Board.

I recognize the significant impact of U.S. foreign direct investment on the generation of U.S. exports and the relationship of the OPIC program to the Government's efforts to increase the volume and value of U.S. exports. I will of course have this in mind when considering projects and policy issues that come before the OPIC Board. In making recommendations to the President on matters concerning OPIC, I will consider the impact OPIC has on international trade as well as on U.S. development policy.

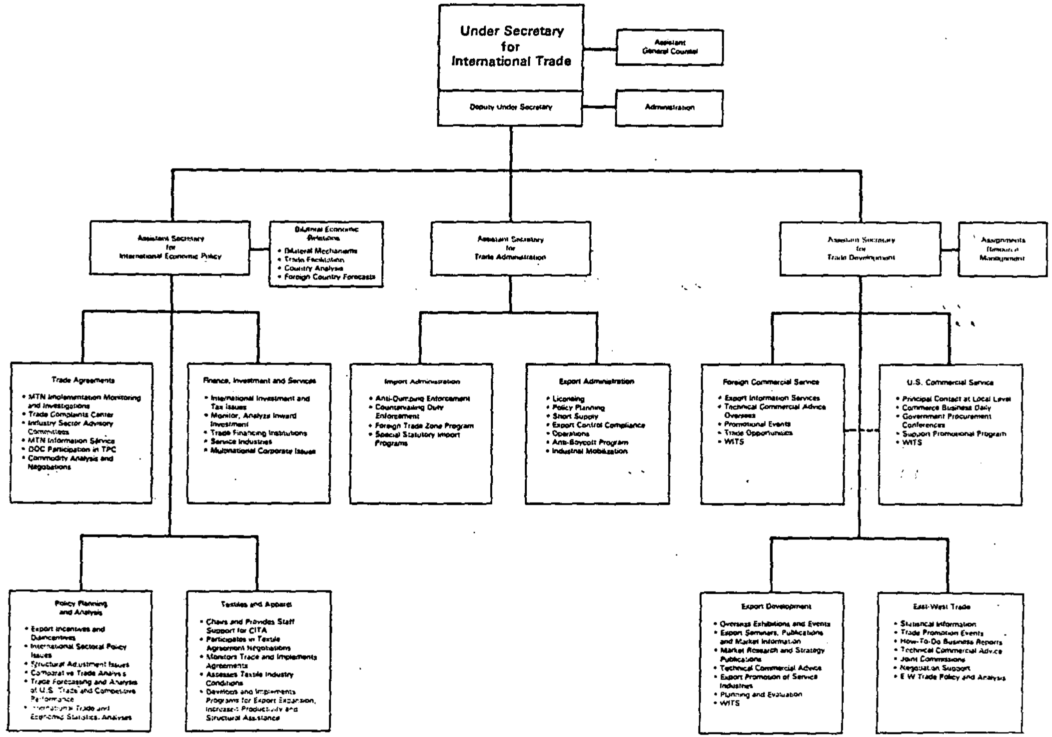
I want to assure you that I intend to work closely with the Trade Representative to see that OPIC does all it can consistent with the laws governing OPIC, to promote expansion of exports from the United States. I shall afford full consideration of his views on the trade aspects of issues coming before the OPIC Board.

Cordially,

THOMAS EHRLICH.

APPENDIX IV

Proposed Trade Component of the Department of Commerce



OFFICE OF THE U. S. TRADE REPRESENTATIVE