The original documents are located in Box 111, folder "CIEP Meetings and Actions (2)" of the National Security Council Institutional Records at the Gerald R. Ford Presidential Library.

B

1b

GUIDANCE FOR ADMINISTRATION
WITNESSES WHO TESTIFY CONCERNING
FOREIGN DIRECT INVESTMENT IN
THE U.S.

Background

Although foreign direct investment in the U.S. (hereinafter referred to as "FDI") rose from $7.6 billion to $14.4 billion in the decade from 1962 to 1972, there were wide fluctuations in the yearly growth. It varied from a low of $257 million in 1966 to a high of $1,452 million in 1970, which was followed by a sharp drop to $385 in 1971 and a subsequent rise in 1972 to $708. It is certain that 1973 FDI will show a substantial increase over 1972; FDI for the first six months of 1973 was $728 million, and projections for the entire year range from <u>$1 to $1.5</u> billion (See Tab 1 for Statistical Summary).

$796 - BP-Sohio

7 - 10.4% increase which is approx. the same as the average ↑ over past 20 years. (8.6%)

The 1973 growth has been accompanied by widespread publicity given to such developments as the Canada Development Corporation tender offer to Texasgulf and Japanese investment in Hawaii and California. In addition, the devaluation of the dollar, the uncertainty as to future U.S. trade policy, the growing size and sophistication of foreign firms and the depressed state of our stock market have created fears of even larger increases in 1974.

As a result, a number of Congressmen have introduced (or begun drafting) bills which would restrict FDI. For example, the Dent Bill would prevent non-U.S. citizens from owning more than 5% of the voting securities of U.S. companies registered under the Securities Exchange Act of 1934. In addition, Congressman Moss is drafting a bill which would limit foreign control of companies in the energy and national defense sectors. (See Tab 2 for a Summary of Expected Congressional Activity).

Current Policy

U.S. policy with respect to international investment has been based on the premise that the operation of free market forces in determining the direction of worldwide investment flows will maximize the efficient use and allocation of capital resources in the international economy. Accordingly, our basic policy toward FDI has been to admit and treat foreign capital on a basis of equality with domestic capital. We have offered foreign investors no special incentives to attract them to the U.S. and, with a few internationally recognized exceptions, have imposed no special barriers to FDI. In other words, our policy has been to freely admit foreign investors and to treat them on the basis of equality with domestic investors once they are operating within the U.S. Such a policy has been consistent with our overall dedication to the freest possible trade, nondiscrimination against foreigners, and encouragement of competition from all sources. It is also consistent with our obligations under the OECD Capital Movements Code and is reflected in bilateral treaties of Friendship, Commerce and Navigation with most of our major trading partners.

We have, however, imposed some restrictions on FDI in certain sensitive sectors of the economy which have a fiduciary character, relate to the national defense or involve the exploitation of certain natural resources. The most important sectors affected are coastwise and freshwater shipping, domestic radio communications, domestic air transport, acquisition or exploitation of federal mineral lands and hydroelectric power. These restrictions are generally accepted internationally as appropriate exceptions to national treatment and are incorporated into most of our bilateral treaties. Additionally, restrictions on foreign investment, particularly in banking, insurance and land ownership are imposed by many states. A CIEP working group is reviewing state restrictions and incentives along with the general question of state powers to regulate FDI. (See Tab 3 for a summary of the current restrictions on FDI)

Frame of Reference

Any policy with respect to FDI should be consistent with the President's view that:

> "an open system for international investment, one which eliminates artificial incentives or impediments here and abroad, offers great promise for improved prosperity throughout the world" (April 10, 1973 Message concerning the Trade Bill).

In addition, U.S. policy with respect to FDI should be made in the context of the Administration's overall efforts to contribute to the productive reform of the international economic system. As Secretary Shultz noted recently:

"International monetary reform, international trade and investment, and improving the quantity and quality of international development assistance are all aspects of the same problem of constructing an endurable system of economic intercourse. Because they are inextricably linked, because we must negotiate in all these fields with the same countries and frequently with the same individuals, what the United States does or does not do in regard to (one area) will inevitably have a profound impact on what we are able to accomplish in the remaining fields". (November 14, 1973 Statement re IDA and ADB replenishment).

Because of this interrelationship, the adoption of new restrictions on, or incentives for, FDI could seriously undercut our efforts to liberalize trade and investment through international negotiations.

Suggested Approach for Administration Witnesses

No change in current policy is proposed. This means that Administration witnesses should (a) resist Congressional attempts to add restrictions to FDI and (b) state that our policy is to continue to freely admit foreign investors and to treat them on the basis of equality with domestic investors once they are operating within the U.S.

Major Reasons for the Suggested Approach

1. FDI is currently so small in relation to the size of our economy that (a) it has no significant effect on such factors as aggregate demand, employment, the money supply and the implementation of our macroeconomic policy and (b) there is no imminent or prospective threat of foreign domination or control of any significant or critical sector of our economy;

2. New restrictions (or incentives) would be contrary to the President's desire to create an "open system of international investment ... which eliminates artificial incentives or impediments here and abroad ...;"

3. Added restrictions (or incentives) would seriously undercut our efforts to liberalize international investment in multilateral forums like the OECD;

4. Restrictions would invite foreign retaliation and contribute to the growth of protectionism abroad, and new U.S. incentives might encourage competition among countries to attract investment;

5. Given the uncertainty as to the net effects of FDI on our balance of payments and its relative insignificance in our overall balance of payments flows, there is no compelling reason to restrict (or grant incentives to) FDI for balance of payments reasons;

6. Introduction of new restrictions would reduce the economic benefits from FDI (e.g. new competition and technology leading to lower prices and better products and services for U.S. consumers);

7. We already have substantial power under existing laws (e.g. antitrust laws, securities laws, and Defense Department regulations) to protect the economy from foreign control or to prevent foreign access to classified materials;

8. Granting special incentives to attract FDI would discriminate against U.S. business and subsidize its foreign competitors

9. New restrictions would conflict with international obligations which we have assumed in Treaties of Friendship, Commerce and Navigation with many of our major trading partners; and

10. Added restrictions are directly contrary to the efforts of many states to attract foreign investment.

Attachments: The following materials may be useful to Administration witnesses:

1. A brief statistical summary of FDI (Tab 1)

2. A brief summary of proposed Congressional activity with respect to FDI (Tab 3);

3. A summary of the current restrictions on FDI (Tab 2).

4. A summary of economic analysis re FDI (Tab 4).

1c

1

1d

TAB 1

TABLE 1 A

FOREIGN DIRECT INVESTMENT IN THE UNITED STATES; VALUE AT YEAR-END, NET ANNUAL INCREASE AND ANNUAL GROWTH RATE, 1950-1971
(value in millions of dollars)

Year	Value at year end	Net increase in value	Annual growth rate (in percent)
1950	3,391	---	---
1951	3,658	267	7.9
1952	3,945	287	7.8
1953	4,251	306	7.8
1954	4,633	382	9.0
1955	5,076	443	9.6
1956	5,459	383	7.5
1957	5,710	251	4.6
1958	6,115	405	7.1
1959	6,604	489	8.0
1960	6,910	306	4.6
1961	7,392	482	7.0
1962	7,612	220	3.0
1963	7,944	332	4.4
1964	8,363	419	5.3

TABLE 1A Continued

FOREIGN DIRECT INVESTMENT IN THE UNITED STATES; VALUE AT YEAR-END, NET ANNUAL INCREASE AND ANNUAL GROWTH RATE, 1950-1971
(value in millions of dollars)

Year	Value at year-end	Net increase in value	Annual growth rate (in percent)
1965	8,797	434	5.2
1966	9,054	257	2.8
1967	9,923	869	9.6
1968	10,815	892	9.0
1969	11,818	1,003	9.3
1970	13,270	1,452	12.3
1971	13,665	385	2.9
1972	14,363	708	5.2
1973 (6 months)		728	
1973 (est)		1-1.5	7-10.4%

TABLE I

Year	Direct Foreign Investment	Gross Private Domestic Investment
1965	0.4	108.1
1966	0.3	121.4
1967	0.9	116.6
1968	0.9	126.0
1969	1.0	139.0
1970	1.4	137.1
1971	0.4	152.0
1972	0.6	180.2

(Billions of Dollars)

TABLE II

NET NEW CAPITAL INFLOWS TO THE UNITED STATES:
FDI and FPI.

(Millions of Dollars)

	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972
NET NEW CAPITAL INFLOWS TO U.S.	423	397	266	277	- 89	- 300	995	1,267	4,708	3,944	3,220	2,167	4,662
FDI in U.S. 1/	141	73	132	- 5	- 5	57	86	251	319	832	1,030	- 115	160
FPI in U.S.	282	324	134	282	- 84	- 357	909	1,016	4,389	3,112	2,190	2,282	4,502

1/ net capital inflows only; does not include reinvested earnings.

TABLE III

COMPARISON OF U.S. DIRECT INVESTMENT ABROAD WITH FOREIGN DIRECT INVESTMENT IN THE U.S., 1960 - 1972.

(Millions of Dollars)

	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972
U.S. Direct Investment Abroad:													
Cumulative	31,865	34,717	37,276	40,736	44,480	49,474	54,799	59,491	64,983	71,033	78,178	86,198	94,031
Incremental	------	2,852	2,559	3,460	3,744	4,994	5,325	4,692	5,492	6,050	7,145	8,020	7,833
Foreign Direct Investment in the U.S.:													
Cumulative	6,910	7,392	7,612	7,944	8,363	8,797	9,054	9,923	10,815	11,818	13,270	13,655	14,363
Incremental	-----	482	220	332	419	434	257	869	892	1,003	1,452	385	708
Ratio of U.S. DIA to FDI in the U.S.: (Cumulative)	4.6	4.6	4.8	5.1	5.3	5.6	6.0	5.9	6.0	6.0	5.8	6.3	6.5

TABLE IV

SOURCES OF GROWTH OF U.S. DIRECT INVESTMENT ABROAD AND FOREIGN DIRECT INVESTMENT IN THE U.S., 1961 - 1972.

(Millions of Dollars)

	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972
U.S. Direct Investment Abroad:	2,852	2,559	3,460	3,744	4,994	5,325	4,692	5,492	6,050	7,145	8,020	7,833
Net Capital Flows			1,976	2,328	3,468	3,661	3,137	3,209	3,271	4,410	4,943	3,404
Reinvested Earnings			1,507	1,431	1,542	1,739	1,598	2,175	2,604	2,948	3,157	4,521
Other Adjustments			- 23	- 15	- 16	- 75	- 43	108	175	- 213	- 80	- 92
Foreign Direct Investment in the U.S.:	482	220	332	419	434	257	869	892	1,003	1,452	385	708
Net Capital Flows		132	- 5	- 5	57	86	251	319	832	1,030	- 115	160
Reinvested Earnings		214	236	327	358	339	440	488	431	434	498	548
Other Adjustments		- 126	101	97	19	- 168	178	85	- 260	- 12	2	---
Asset revaluation												
(Percentage of Total)												
U.S. DIA:												
Net Capital Flows			57.1	62.2	69.4	68.8	66.9	58.4	54.1	61.7	61.6	43.5
Reivested Earnings			43.6	38.2	30.9	32.7	34.0	39.6	43.0	41.3	39.4	57.7
Other Adjustments			- .7	- .4	- .3	- 1.5	- .9	2.0	2.9	- 3.0	- 1.0	- 1.2
FDI in U.S.:												
Net Capital Flows		60.0	- 1.5	- 1.2	13.1	33.5	28.9	35.8	83.0	70.9	- 29.9	22.6
Reinvested Earnings		97.3	71.1	78.0	82.5	131.9	50.6	54.7	43.0	29.9	129.4	77.4
Other Adjustments		- 57.3	30.4	23.2	4.4	- 65.4	20.5	9.5	- 26.0	- .8	.5	----

TABLE V

U.S. DIRECT INVESTMENT ABROAD AND FOREIGN DIRECT INVESTMENT IN THE U.S.

AT YEAREND, 1972.

(By Area)

(Millions of Dollars)

	U.S. DIA		FDI in U.S.	
	$	%	$	%
TOTAL	94,031	100.0	14,363	100.0
Canada	25,784	27.4	3,612	25.1
Europe	30,714	32.7	10,441	72.7
United Kingdom	9,509	10.1	4,581	31.9
European Economic Community	15,745	16.8	3,874	27.0
Belgium & Luxenburg	2,130	2.3	307	2.1
France	3,432	3.6	321	2.2
Germany	6,262	6.7	807	5.6
Italy	1,978	2.1	108	.9
Netherlands	1,943	2.1	2,331	16.2
Other Western Europe	5,461	5.8	1,986	13.8
Sweden	726	.8	254	1.7
Switzerland	1,911	2.0	1,595	11.1
Other	2,824	3.0	138	1.0
Japan	2,222	2.4	-132	-.9
Latin America & Other Western Hemisphere	16,644	17.7	298	2.0
OTHER	13,934	14.8	145	.9
International Organizations & Unallocated	4,733	5.0		

TABLE VI

U.S. DIRECT INVESTMENT ABROAD AND FOREIGN DIRECT INVESTMENT IN THE U.S., BY MAJOR INDUSTRIES, 1972.

(Millions of Dollars)

	U.S. DIA		FDI in U.S.	
	$	%	$	%
TOTAL	94,031	100.0	14,363	100.0
Manufacturing	39,478	42.0	7,228	50.3
Petroleum	26,399	28.1	3,243	22.6
Finance & Insurance	---	--	2,411	16.8
Other 1/	28,154	29.9	1,481	10.3

1/ For U.S. DIA, amount includes everything but Manufacturing and Petroleum (i.e., Finance & Insurance, Mining & Smelting, etc.)

le

2

1f

TAB 2

EXPECTED CONGRESSIONAL ACTIVITY RE FOREIGN INVESTMENT IN THE U.S.

House Bills:

1. Dent Bills:

(a) H.R. 8951 (Dent-D of Pa) and H.R. 11265 (Dent and Gaydos, Yatron, Chisolm, Podel, Helstoski, Brasco, Eilberg, Mollohan, Holifield, Won Pat, Carney, Long (La) and White)

(b) Referred to House Committee on Interstate and Foreign Commerce Subcommittee on Commerce and Finance.

(c) This is the only bill introduced so far and would restrict non-U.S. citizens from acquiring more than 5% of the voting or more than 35% of the non-voting securities of any issuer whose securities are registered under the Securities Exchange Act of 1934.

2. Lujan Bill:

(a) H.R. 11335 (Lujan-R of N. Mex.)

(b) Referred to House Commerce Subcommittee on Commerce and Finance

(c) Identical to Dent Bills

(d) Significant in that could be a vehicle for Republicans who wanted to co-sponsor a bill restricting foreign investment in the U.S.

3. Moss Bill:

(a) Moss (D of Calif.), Chairman of the Subcommittee on Commerce and Finance of the House Commerce Committee and plans to introduce a bill limiting foreign investment in the energy and defense related industries.

(b) Moss's bill is expected to be introduced prior to the Christmas recess.

4. Revised Dent Bill:

Because the Dent Bill as now written does not distinguish among various industries (as would the Moss Bill), Dent's staff is revising his bill. Thus, a revised Dent Bill which would be less sweeping may be introduced.

5. Rhodes Bill:

John Rhodes (R of Ariz.) is considering introducing a bill that would prohibit foreign takeover of any U.S. corporation which might obtain information affecting national security through its government contracts.

House Hearings:

1. House Commerce-Subcommittee on Commerce & Finance

Chairman Moss is expected to hold hearings on foreign investment in the U.S. after the committee completes hearings on H.R. 5050 (the amendments to the Securities Exchange Act of 1934) in late February or early March.

2. House Foreign Affairs-Subcommittee on Foreign Economic Policy

Chairman Culver plans hearings in early February but has no bill as yet.

Senate Bills:

1. Senator Inouye (D-HA) - Considering introducing a bill aimed at developing an improved data base on FDI. One report suggests that the bill will have the executive branch (most likely Commerce Department) to do an extensive data study on foreign investment in the U.S.

2. Senator J. Bennett Johnston, Jr., (D-LA) - Plans to introduce a bill setting up an independent commission empowered to review and pass on proposed foreign investment in the U.S.

3. Senator Lloyd Bensten (D-Texas) - Has been considering a bill which would forbid the takeover of U.S. firms by foreign government companies. May drop plans for such legislation because of difficulty in distinguishing between private and

government ownership in foreign economies.

Senate Hearings:

1. Subcommittee on International Finance of Senate Banking, Housing, and Urban Affairs

   Chairman Stevenson plans hearings early next year. No bill yet submitted. Purpose: to build a public record in favor of a liberal approach to foreign investment in U.S. by having witnesses like George Ball, Mike Blumenthal, and David Rockefeller.

2. Senate Finance-Subcommittee on Financial Markets

   Although no hearings are planned, Senator Bentsen (the subcommittee chairman) has had discussions with the Dent and Moss staffs about the possibility of holding hearings on restricting foreign investment in his sub-committee.

3. Senate Commerce - Subcommittee on Foreign Commerce and Tourism

   Chairman Inouye may have joint hearings with the Senate Banking Committee Subcommittee on International Finance.

Other:

1. Senate Finance Committee

   CIEP staff had a discussion in late September with the Finance Committee staff and expected that the CIEP Working Group would be asked to do a study of reverse investment for the Committee. To date no request has been received from the Committee.

2. Bills to Regulate Foreign Banking Activities in the U.S.

   Representative Patman has introduced a bill (H.R. 11597) to regulate foreign banking in the U.S. which has been referred to the Committee on Banking and Currency. Representative Dent has introduced an identical bill (H.R. 11690) and Representative Rees of California has introduced a similar (but not identical bill (H.R. 11440).

1g

3

1h

Tab 3

SUMMARY OF THE MAJOR CURRENT RESTRICTIONS ON FDI

1. Restrictions on Foreign Investment in Various Sectors of the U.S. Economy.

There are numerous minor restrictions at the federal and state level affecting foreign investment in the U.S. The Commerce Department lists three reasons for the restrictions -- (1) defense implications, (2) the fiduciary nature of some investment; and (3) exploitation of certain natural resources has historically involved some degree of restrictions on aliens.

The major areas of restriction are listed below:

a. Communications -- Ownership of more than 25% of a domestic radio company by foreigners is prohibited.

b. Transportation -- Domestic air transportation is restricted to U.S airlines, except for certain rights negotiated bilaterally with foreign airlines. Coastwise and freshwater shipping is also reserved to U.S. corporations. Aliens may own controlling interest in fishing or international shipping firms, but are not entitled to construction or operating differential subsidies unless a majority of the stock is owned by U.S. citizens.

c. Power -- Aliens may not obtain licenses to operate facilities for the utilization or production of atomic energy. Only domstic corporations or U.S. citizens may develop water power sites on navigable streams, although such domestic corporations may be controlled by foreigners.

d. Banking -- Foreign banking operations can take four forms: branch (operates with parent name and resources), agency (like branch, but cannot accept deposits), subsidiary (separate capital structure, resources, etc., incorporated in U.S. eligible for FDIC and subject to both state and federal regulation), and representative office (performs no banking functions; exempt from supervisions). At present only New York, California, Illinois, Alaska, Massachusetts, Oregon and the Virgin Islands permit much foreign banking activity aside from representative offices. Even in these states activities are limited.

Federal restrictions are few, aside from certain reporting requirements. Foreign banks are not members of the Federal Reserve System, and thus are not regulated by it, even though as large as many members. Foreign banks can also have branches in more than one state, a privilege not allowed U.S. banks.

e. Land Ownership -- Some states have laws restricting alien ownership of land which restricts both agriculture and mining in those states. (The Agriculture Department is in the process of surveying state restrictions on ownership of agricultural land).

f. Exploitation of Minerals -- Aliens may not acquire or exploit mineral lands owned by the Federal Government; except that, where federal lands are subject to exploitation by citizens (such as coal, oil, gas, and other minerals), aliens may obtain interests in leases of mineral lands through control of domestic corporation entitled to hold such leases, if their country allows reciprocal rights to U.S. citizens.

g. Insurance -- Only three states currently allow foreign ownership and operation of insurance companies.

2. SEC Restraints.

Our securities laws and practices are generally more rigorous than those in many foreign countries and in certain cases may act as a disincentive for potential foreign investors. However, they do not specifically discriminate against foreign investors or issuers. In fact, in applying the securities laws the SEC has tended to accommodate foreign investors through exemptions from, and modification of, certain provisions of their regulations. Our standards of disclosure and fair practice and our record of enforcement may be important factors in attracting foreign capital which more than offset whatever impediments they create. Only the prohibition of foreign membership on the New York and American stock exchanges may serve as a real impediment, by raising the cost of operations to foreign brokers and dealers.

3. Disincentives Created by U.S. Tax Laws

The major tax disincentive to foreign investment in the U.S. is the 30% withholding tax on interest and dividends. The rate is reduced from 30% to lower percentages by treaty with many countries and is, therefore, less significant than would seem at first glance. Moreover, many countries provide tax credits to their citizens and corporations for taxes paid abroad.

4. Antitrust Restraints

Many foreign investors single out our antitrust laws as the biggest deterrant to direct investment in the U.S. However, the antitrust laws are applied equally to both U.S. and foreign corporations in order to preserve competitive markets and to forbid specific anti-competitive practices. Although the antitrust laws may restrict certain foreign investment, it is generally believed that they make the U.S. a more attractive place to invest by maintaining a competitive market.

li

4

1j

SUMMARY OF ECONOMIC ANALYSIS

Introduction

Foreign direct investment has become an important intermediary mechanism for the international transfer of resources, technology and products. It also increases the efficiency and flexibility of the host country economy. In addition, the world as a whole gains from a more efficient allocation of production.

Direct investment belongs to the theory of industrial organization, not international trade or capital movements. An investing firm is at a disadvantage compared to native firms because of the unfamiliar environment and the costs of conducting business far from its headquarters. To overcome this disadvantage the investor must possess a countervailing advantage over the local firm often in the form of economies of scale, technological lead or managerial expertise. Under this explanation business goes abroad to exploit the advantage, to earn a higher rent than it could by selling or licensing it abroad. Empirical studies confirm that the bulk of the international investment in the world today is undertaken by large firms from concentrated industries.

Although the theory of direct investment comes from the theory of oligopoly or monopolistic competition, it often breaks up local monopoly and thereby improves efficiency to the consumers benefit. A country, like the United States, with a high degree of competition and a sophisticated fiscal apparatus is in a good position to capture a portion of the rents.

Thus, from an economic point of view the argument for direct investment is the argument for efficiency; the arguments against are non-economic or based on a premise that the market does not work well. The market may not work well in the case of public goods, such as national defense. A generally accepted justification for restricting foreign investment is national security. It should be emphasized, however, that there exists a tradeoff between national independence and the fruits of economic interdependence. A balance must be struck between the two. The remainder of this paper summarizes the economic consequences of foreign investment. The final report will contain detailed analysis of the points covered in the following sections.

Income and Employment

Investment is one component of aggregate demand along with consumption and government spending. At first glance an increase in the amount (level) of foreign investment would seem to imply a similar increase in the level of investment and therefore aggregate demand. However this ignores the possibility that foreign investment may to some extent substitute for domestic investment. One must be careful about drawing conclusions about the impact of foreign investment without first considering the counterfactual question. That is, what would have happened, had the foreign investment not occurred. In accordance with the industrial organization theory of direct investment one must consider the extent to which the direct investment is the result of a technological lead or advantage that could not be duplicated by domestic firms (or at least not immediately). To the extent the investment is the result of a particular talent on the part of the investor, aggregate demand is increased. (It should be pointed out that U.S. firms investing abroad have been characterized, in part, by their research and development expenditures).

Inward investment therefore does have a direct impact on the level of production and employment in the short-run. However, this investment is currently an insignificant factor in the aggregate employment picture of the United States. Any influence direct foreign investment might have on either the level or changes in the level of employment is small when compared with the effects of the monetary authority's actions or other categories of private or public expenditure. This can be easily seen if we compare direct foreign investment with gross private domestic investment for the years 1965-1972. The figures are in billions of U.S. dollars.

TABLE I

Year	Direct Foreign Investment 1/	Gross Private Domestic Investment 2/
1965	0.1	108.1
1966	0.1	121.4
1967	0.3	116.6
1968	0.3	126.0
1969	0.8	139.0
1970	1.0	137.1
1971	0.1	152.0
1972	0.3	180.2

Note that the magnitudes of both the level and changes in the level of direct foreign investment have been very small. Even if annual inflows reached 2-3 billion dollars they still would comprise only 1-2 percent of gross private domestic investment. Thus, in terms of the impact on aggregate demand and employment the prospects for the next few years are for a slight positive impact.

1. International Economic Report of the President, Table C-13, p. 208
2. Economic Report of the President, Table C-13, p. 208

The magnitude of the positive impact also depends on the level of unemployment. In a slack labor market foreign investment would contribute to labor demand and therefore raise employment levels. In the longer run the impact will depend upon the elasticity of labor supply and how trade flows change as a result of the foreign investment. In order to estimate the net impact, all of the various secondary and tertiery effects would have to be quantified, an impossible task given available data. The investment will, however, effect the composition of labor demand and the distribution of income between labor and capital.

For the case of U.S. investment abroad it was found that the new jobs created were managerial and white collar position while those lost were unskilled and semi-skilled production jobs. If the results are correct, the adjustment burden falls upon the lower skilled occupations. Inward investment, on the other hand, would contribute to the demand for workers at these skill levels. As far as the distribution of income is concerned, traditional analysis would conclude, under normal elasticity assumptions, that the addition of a significant amount of foreign capital to the U.S. capital stock would, on the one hand, depress the rate of return to domestic capital with which it competes, and on the other hand, would raise wages as it would increase the scarcity of labor relative to capital. It can be shown that the gain to labor would surpass the loss to domestic capital, and thus there would be a net gain to the economy as a whole.

In the longer run there should be an increase in the real income of U.S. residents due to the higher capital stock. However, it could be reasonably argued that in the U.S. the amount of foreign capital will, for the for-seeable future, be small relative to the total quantity of domestic capital. Foreign capital is now about $55 billion compared to total private wealth of something over $4,000 billion. This would make for a very small net gain. If studies were made of the net gain to the U.S. economy as a consequence of anything like the present level of foreign capital we may be sure that they would show, if measurable, a small net gain. However, in this connection a further factor should be taken into account. If taxes are levied on foreign earnings, these should be added to the net gain from foreign investment in the United States, and even when the net gain without taxes is small, the taxes will be of a higher order of magnitude because they are levied on earnings not the net gain to the U.S. Tax revenues are one of the primary benefits from foreign investment.

In conclusion, although there may be a slight positive impact on income and employment in the short run, it certainly does not contribute enough to warrant giving incentives to foreign investment. Furthermore, the long run impact cannot be adequately measured. More beneficial aspects of foreign investment come from its impact on the degree of competition which follows.

Competition

The benefit to the host country from increased competition is perhaps the most important contribution of foreign investment. Foreign investors tend to enter industries in which the barriers to entry for *de novo* firms are high. The arrival of a new competitor in a concentrated industry upsets the equilibrium of the existing firms. This can touch off a competitive period in which each firm strives to maintain its market share. This competition could cause new innovation by American firms, lower consumer prices and increase the quality of products.

Investment in a new facility would seem to be a *prima facie* better stimulus to competition than a takeover or the intermediate case of a joint venture. One should not conclude, however, that these represent "passive" investments. The investing firm presumably enters to make a profit and will bring different management techniques, patterns of behavior and perhaps technology with it. These alone may be sufficient to spur the competition with its attendant benefits. If, for good reason, the takeover or merger is felt to diminish the competitive vigor of the industry, traditional antitrust enforcement can be used as in the case of the British Petroleum-Sohio merger in 1967.

Trade and the Balance of Payments

Although the inflow of funds to finance a foreign investment appears as a positive balance of payments item it should not be considered as a fundamental improvement in our payments position. First of all, the investor may choose to finance his investment here in which case there is no positive entry. Second, the improvement is only in the short-term; in the longer run income remittances and royalties and fees paid to the parent firm may outweigh the short-term gain. Just as in the case of trying to assess the impact of U.S. foreign direct investment abroad, it is necessary to consider the counterfactual question of what would have occurred in the absence of foreign investment. In addition it would be necessary to measure the effects of the foreign investment on U.S. foreign trade.

Apart from the initial outlay and the remitted earnings, royalties and fees, foreign investment has secondary and tertiery impacts on the balance of payments through the trade account. To what extent does the investment displace foreign imports? This is a positive item in the U.S. BOP. Would these imports have been reduced anyway and the market share taken up by U.S. firms? To what degree must the investor import capital equipment, parts and components to set up and operate the firm? These are negative BOP items, but the scope and competitiveness of U.S. secondary suppliers may be sufficient to substitute domestic for imported components. Will the U.S.import more complementary products from abroad because of the presence of the foreign affiliate? To what extent will the affiliate export to third countries, and possibly its homeland?

It is easy to see that the impact could be positive or negative and this is compounded by the fact that the analysis must be intertemporal. Investment is for future return and the internationaladjustment mechanism requires time to work. Some studies suggest that the long-run, aggregate net effects of U.S. direct investment activities have been beneficial to the U.S. balance of payments. If they are correct, it would seem a priori probable that the long-term impact of inward foreign investment would have a negative impact upon the U.S. payments balance. It should be pointed out, however, that in the mass of U.S. balance of payments transactions, those related to foreign direct investment activities in the U.S. have been of relatively small significance. These entries in the balance of payments -- both on capital and current account -- have been far overshadowed by the much larger volume of outflows of U.S. direct investment capital and of inflows representing earnings and services remittances by affiliates abroad to their U.S. parents. It is necessary, however, to take account of what impact the dollar devaluations could have on investment inflows.

The exchange rate realignments have caused fundamental and sizeable changes in the relative cost and price relationships between the U.S.and foreign markets. In many cases this should lead to a reappraisal by foreign firms in favor of establishing manufacturing facilities in the U.S. as against continuing to export to this country. This, in itself, would cause a one-shot adjustment in the level of inflows. While it is difficult to attempt any rigorous quantitive projection it is likely that over the next five to ten years, the volume of foreign direct investment inflows may well multiply many times from the average of only about $260 million during the past decade. The annual net inflow is, however, unlikely to grow to magnitudes that would exceed the range of say \$2-\$3 billion, given the management and financial resources that appear potentially available abroad for purposes of direct investment in the U.S. It is relevant to recall that even in its heaviest periods, the outflow of net U.S. direct investment capital abroad seldom exceeded \$3 billion in any one year. (A more detailed analysis of the factors influencing the expected inflow will be contained in the final report). Although these inflows would be of help in eliminating past U.S. deficits it would be unrealistic to look to capital movements of this type as a solution to the dollar overhang problem.

It can be concluded that although encouragement of foreign investment will not fundamentally improve the U.S. balance of payments position, the U.S. certainly cannot afford to discourage inflows. The international payments adjustment process requires time to operate and turning away positive balance of payments entries does not move towards correcting past U.S. deficits.

Technology Transfer

The transfer of technology is widely felt to be one of the most beneficial aspects of foreign direct investment Some authorities believe that the monopolistic advantage possessed by foreign investors is due to knowledge or a technological lead. Knowledge has a "public good" or indivisibility characteristic that does not allow it to be sold in the marketplace. Its creation requires an investment of resources that must be recompensed if there is to be an incentive for investment in research and development. However, once created the knowledge is available at little or no cost to other firms. In order to capture the "rent" or reward from the knowledge creation, foreign investors often choose to establish a subsidiary to exploit their advantage. In a smaller number of cases licensing of the technology is used instead of direct investment. From the host country's point of view the important question is how long will it take before the benefits of the technology are passed on. These benefits will be diffused to the extent that (1) product prices are lowered, through competition or as a result of a cost saving technical advance; (2) factor prices (wages) are raised through competition in the labor market with labor receiving a higher marginal product. Often there is a spillover when the labor trained by the investor leaves for another job; (3) product quality is improved; or (4) the government taxes the investor to obtain a portion of the rent. The United States is in a good position to capture a portion of these rents because of its keen competition and sophisticated fiscal apparatus. The sophistication of U.S. industry will also enhance the probability of rapid diffusion through imitation and adaptive research and development. It should be pointed out in this regard that the U.S. does not have a monopoly on technological advance and that the U.S. consumer will benefit from a higher quality (or wider variety) product developed by foreign interests. This may spur U.S. firms in that industry to innovate and compete. The important question from the consumer's point of view is how long it will take and at what cost? Without the stimulus from foreign investment it may not come about.

There is no adequate way, however, to measure the extent of technology transfer. Most of the evidence cited is anecdotal. One could mention the pharmaceutical and electronics industries that have established in this country as evidence of the benefits from technology. Conceptual problems arise when an attempt is made to breakdown the characteristics of the products where technological lead is prominent.

On the other hand, technology transfer is not unilateral. How much occurs in the other direction? Presence in the U.S. market enables foreign producers to first hand experience with U.S. technological advances. The extent of outward transfer would depend upon the industry. European and Japanese firms tend to be less diversified in their product lines than U.S firms, therefore the scope for transfer is reduced. Furthermore, to what extent can technological transfer out of the U.S. be accomplished through travel, marketing outlets, or trading firms anyway? The increasing sophistication of our competitors in the world today makes the withholding of technology unlikely.

Regional

The impact of foreign investment in a particular region of the country appears quite significant to the citizens of that region. Construction of a new plant means added employment and a higher income level for the community. It will also entail an expansion of related industries and the service sectors of the region. The community's economic base will be improved. On the negative side there may be a distaste for foreign management or other nationalistic responses.

One must keep in mind that the mere recitation of favorable microeconomic effects does not mean that the macroeconomic effect is very large. As discussed earlier the macroeconomic effects of foreign investment are small in comparison with domestic economic aggregates. In addition, the caveat concerning the substitution question must be reemphasized. For example, suppose Volkswagen building a plant in New Jersey results in General Motors not constructing a plant in Michigan. In this case the Volkswagen operation led to higher employment in New Jersey but to lower than expected employment in Michigan. A positive note to this interregional shift in employment is the case of Belgium and the United Kingdom. Both countries have been successful in "channelling" foreign investment into the relatively underdeveloped regions of their countries. In these cases foreign investment was serving as an "adjustment mechanism" by creating jobs in areas of high unemployment. Often this is accomplished by the use of tax incentives to set up in those areas. This is to forfeit tax revenue which is one of the primary benefits of foreign investment.

One negative aspect is the possibility of unemployment in some regions in the country caused by plant closings from foreign competition. If this should result adjustment assistance may be necessary as a transitory aid.

SECTORAL

In general, the sectoral implications of foreign investment in the U.S. are inconsequential. The sectoral distribution of foreign investment is roughly similar to the patterns of U.S. industry and in no sector does foreign investment comprise more than two percent of the total (an exception is oil where Shell and BP command a larger share). Those sectors deemed vital to the national security should hve restrictions on foreign participation as recommended. CHECK

One sector to be singled out is the banking sector because of its possible impact on domestic monetary policy. At the current levels of investment there is virtually no effect on our ability to conduct stabilization policy. Because of the sheer size of the U.S. no effect may be expected even if the level of investment were to increase considerably. At any rate, a separate task force is looking into foreign banking activities.

CONCLUSION

We found that there were benefits to the economy in the form of increased competition, technology transfer, higher labor productivity, tax revenues and slight short-run employment effects. These benefits do not warrant providing incentives to investment, however, for we would be subsidizing foreign interests that compete with American firms and it would be at variance with our present international economic policy. Nor would general restrictions on inward investment be warranted. Indeed, there are no economic justifications for general restrictions.

1k

OFFICE OF THE SPECIAL REPRESENTATIVE
FOR TRADE NEGOTIATIONS
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

LIMITED OFFICIAL USE

MEMORANDUM December 14, 1973

TO : Members of the Council on International Economic Policy

FROM : Ambassador William R. Pearce WRP by JHJ

SUBJECT: Trade Bill: Issues for Senate Consideration

With the important exception of the Title IV - Jackson/Vanik language, the House of Representatives has passed what is on the whole, a very good trade bill. There are many issues that we sought to have resolved differently, but the general policy and tone of the bill is in line with the bill that we proposed.

We are planning our presentation of the trade bill to the Senate Finance Committee to support, at least at the outset, the House bill to the fullest extent possible. It is important to do this for a number of reasons. The Administration may not be present in the conference and we must rely on those members of Congress that have been working towards the same policy objectives that we favor. Moreover, the House bill is the result of a number of compromises in which we modified our original requests in order to avoid seriously detrimental Committee amendments. To seek reversal of some of these decisions in the Senate Finance Committee could lead to results in conference opposite to those desired. Another concern is that opening many issues in the Senate Finance Committee may encourage wholesale changes in the House version of the bill which could be very damaging. It could also delay the bill. While generally supporting the House bill, we will of course be receptive to constructive suggestions from the Senate.

For the reasons stated above, the changes that we consider must be made in the House bill should be kept to a strict minimum as listed in TAB A. A second list of issues (TAB B) contains those matters which should be raised, but not pressed if indications are that such effort would be counterproductive. This list includes issues which were not fully aired in Ways and Means. In addition to the items on these two lists, there are a number of changes of a technical nature (including modest substantive improvements) which can be raised in technical work with the Ways and Means Committee staff. Examples would include some time-limit problems and some clarifying provisions to resolve ambiguities.

The lists attached hereto are the result of interagency discussions held by the trade bill working group (those working in support of the trade bill effort on the hill), after consultation by members of that group with their departments.

For your information, TAB C contains a detailed analysis of the differences between H.R. 6767 (the trade bill as sent to Congress in April) and H.R. 10710 (the bill as adopted by the House). A brief review of the major differences is at the beginning of this tab.

Action Recommended: Approve the general approach to efforts to achieve Senate approval of the trade bill, with changes to be sought as outlined in TABS A and B.

Attachments: TAB A
TAB B
TAB C

WP/JHJ/ti

11

LIMITED OFFICIAL USE

December 14, 1973

TAB A

IMPROVEMENTS TO BE SOUGHT IN H.R. 10710

In the list below, the first two items are so important that they call for the maximum possible effort. The "next priority" items are significant enough to call for a full effort, but failure to achieve the desired results would, presumably, be tolerable.

Highest Priority

1. Title IV - Non-Discriminatory Treatment for Non-Market Countries: The House added the Jackson/Vanik language to condition the authority to extend MFN treatment and further added comparable limits on the extension of government credits. Change desired: Compromise Jackson/Vanik language, or (b) prevent Jackson/Vanik "credit" amendment, or (c) delete Title IV. (p. 129).

2. Countervailing duty amendments: The House established strict time limits within which to act on petitions, and provided for judicial review of the Secretary of the Treasury's decision that a practice abroad was not "bounty or grant." Although some escape from these tight measures is provided during the first four years after enactment by exception for cases which might jeopardize the negotiations, another clause in the House bill limits this escape for the period of only one year in a number of important cases. Change desired: Our objectives will be (a) write into the law (which will be fully enforceable with negative judicial review etc. after 4 years) sensible exceptions to countervailing, such as: practices similar to those U.S. engages in, LDC exports, other serious cases causing international strife, certain tax exemptions or remissions; (b) eliminate one year limit on discretion not to countervail against products from plants owned by developed countries. (sec. 331(3), p. 123 line 13 to p. 124 line 4).

Next Priority

1. Worker Assistance: The House bill provides for the total cost of Worker Adjustment Assistance to be supplied out of a "trust fund" composed of receipts from customs tariffs. In effect, this means that the cost will be from the general revenue fund. There are many reasons why at least a portion of the adjustment assistance payments should be funded from sources which would otherwise have to supply funding for regular unemployment compensation. Change desired: Change financing to provide "supplemental" approach for federal funding (State Unemployment funds would cover portion they would otherwise cover). Second problem: Legislative history on the eligibility criteria of the bill (§ 222) could lead to interpretations that would cause dangerous cost increases. (See especially the "actual or relative" language used to modify increase in imports, at p. 53 of Ways and Means Committee report.) These criteria should be clarified so that the cost of the program will not get out of hand. (Title II, ch. 2, p. 66 ff).

2. Karth "Equivalent Competitive Opportunities in Sectors" amendment: The Karth amendment provides that a principal objective of the negotiations shall be to obtain within each sector of manufacturing and within the agricultural sector, equivalent competitive opportunities in the major trading country markets. It also provides, to the maximum extent appropriate, that NTB agreements be negotiated on a sector basis. Although the seriousness of these provisions are debatable, it seems clear that they will constrain the negotiation and somewhat reduce the opportunities for trade liberalization. Change desired: Modify the impact of the Karth amendment to expand flexibility. Equivalent competitive opportunities in sectors should be one of several stated objectives, and should be applied to assessment of negotiation results and should not require negotiations to be primarily on a sector basis. Reporting requirement after negotiations should look towards broader objectives than sectoral balance of market access. (If there is substantial resistance to modifications and danger that existing flexibility would be lost, this issue should not be pressed but existing provisions defended.) (Sec. 102(3), p. 9 line 1 to p. 10, line 3).

3. GATT revision requirement: The bill provides that the President shall, as soon as practicable, negotiate a list of changes in GATT. The bill as now worded, fails to adequately recognize the practical difficulties of achieving some of the results called for, and could be a source of embarassment at some later time. Change desired: Modify to acknowledge difficulty of obtaining reform and modify to allow attainment through means other than formal amendment of GATT. (Tactical considerations would dictate the manner and extent to which this issue is raised. If major efforts would be counterproductive, minor improvements would be sought.) (sec. 121, p. 15 line 4 to p. 16, line 15).

lm

LIMITED OFFICIAL USE

December 14, 1973

TAB B

Other Substantive Changes for H.R. 10710 (To be raised in an appropriate manner but pressed only if a favorable opportunity arises. Some of these items can probably be worked out at the staff level.

1. Non-MFN application of NTB agreements: Currently Section 127 can be read as requiring MFN application of certain types of NTB agreements. This section should be clarified to indicate that benefits of NTB agreements can be limited to signatories. (sec. 102, p. 7 ff).

2. Non-MFN BOP surcharge: Add authority to exempt countries that would be harmed by surcharge, e.g. U.S. neighbors and LDC's. Currently, non-MFN application of BOP surcharge is limited to actions taken against surplus countries. (sec. 122(c), p. 18, line 24).

3. Worker assistance: Training priorities - without additional provision for giving import impacted workers priority over other workers, it will be difficult for the Secretary of Labor to assure that import displaced workers receive training. There is also a question of whether a factor to be considered in determining group eligibility of workers is whether not only the workers' firm has been injured by imports but the industry has been injured as well. These aspects should be clarified. (sec. 236, p. 77).

4. Firm Adjustment Assistance: A question has been raised as to the proper interest rate for direct loans. The bill provides for standard SBA loan rate for direct loans, which is low, and guaranteed lending at commercial rates. Since the bill favors the use of guarantees over direct loans, it has been suggested that the direct lending rate be increased to narrow or eliminate the difference between it and the guaranteed loan rate.

LIMITED OFFICIAL USE

5. Anti-dumping: The House bill provides for anti-dumping determinations within 6 months, or in more complex cases 9 months, of the initiation of the investigation. The Administration sought a maximum of 12 months for the most complex cases, and it has been suggested that an attempt be made to obtain extra time. (sec. 321, p. 110, line 4).

6. Compensation authority: The compensation authority gives the President the ability to make tariff reductions of interest to countries whose exports suffer as a result of our escape clause actions. The tariff reductions are made on other less sensitive products of interest to the country affected to maintain the balance of benefits under our trade agreements. However, the House-passed bill provides very little tariff reducing compensation authority. It allows a cut of only 30% of the existing rate rather than the rate in effect at the end of the tariff negotiations. The authority should be expanded to 50% of the final concession rate or 5% ad valorem, whichever is more. (sec. 124, p. 23 line 17).

7. Import Relief: The bill requires hearings in the Executive Branch after the Tariff Commission's escape clause determination. However, the President only has 60 days in which to act. Either extra time should be granted or the hearings requirement should be deleted. (sec. 203, p. 61, line 7).

8. Countervailing duties: The House-passed bill adopted the Administration's proposal to extend the countervailing duty law to enable the Secretary of the Treasury to act against subsidies on duty-free goods as well as with respect to dutiable goods. The House bill did not adopt, however, as rigorous an injury standard as that proposed by the Administration. GATT Article VI requires that a domestic industry be materially injured before countervailing duties are levied. The bill provides only that "injury" be found. The material injury standard should be restored. (sec. 331, p. 121, line 14).

9. Patent provisions amending section 337: The bill's provisions did not adopt all of the Administration's proposals designed to improve the section 337 procedures in patent cases. The most important of these is to allow a reasonable bond to be imposed which would allow trade to continue while protecting the patentee's rights. These provisions should be sought in the Senate. (sec. 341, p. 127).

In

LIMITED OFFICIAL USE

December 14, 1973

TAB C

Differences Between HR 6767 (Original Bill) and HR 10710 (House Bill)

Attached is a detailed analysis of the differences between these bills. The salient differences can be summarized as follows:

1. The original bill sought unlimited authority to negotiate agreements to raise or lower tariffs without limits. The House imposed limits on both raising and lowering of tariffs, but these limits are not severely constraining. (Sec. 101).

2. The "Karth" amendment on sector negotiation was added to the bill. (Sec. 102).

3. An industry consultation mechanism for the negotiation was added to the bill. While possibly cumbersome, it could prove useful. (Sec. 135).

4. Escape clause eligibility criteria in the original bill was softened slightly but not seriously. (Sec. 201).

5. The original bill proposal to tie Worker Adjustment Assistance to overall Federal Standards for unemployment compensation (a separate bill) was rejected. (Sec. 221 ff).

6. A modest program of adjustment assistance to firms was added. (Sec. 251 ff.)

7. Countervailing duty law was substantially tightened, with time limits and judicial review. (Sec. 331).

8. The Jackson/Vanik language was added to the MFN Title, (Title IV, Sec. 402.)

MPARISON BETWEEN TRADE BILL OF WAYS AN NS COMMITTEE (H.R. 10710) AND H.R. 6

PROVISIONS OF HOUSE BILL - H.R. 10710	CHANGES FROM ADMINISTRATION BILL-H.R.6767
Section 2. Statement of Purposes Section 2 provides two general purposes for the bill: - to stimulate economic growth of U.S. and maintain and enlarge foreign markets. - to strengthen economic relations with foreign countries through open and non-discriminatory world trade.	Section 2 provided 10 purposes, which were much more specific and were related directly to particular titles and chapters of the bill.
TITLE I: NEGOTIATING AND OTHER AUTHORITY **Section 101. Basic Authority for Trade Agreements** Section 101 provides the President may enter into trade agreements for a period of 5 years and may increase, decrease, or continue duties as part of such agreements. Section 101 limits President's tariff-cutting authority by providing that he cannot reduce existing duties of 5 to 25% ad valorem by more than 60%; or existing duties of more than 25% ad valorem by more than 75% ad valorem or to 10% ad valorem, whichever is higher. The President can eliminate existing duties of 5% ad valorem or less. Section 101 limits President's tariff-raising authority to 50% above the July 1, 1934 rate, or 20% ad valorem above the existing rate, whichever is higher; it provides an exception to this limitation when nontariff barriers are being converted to duties affording substantially equivalent protection.	Section 101 did not provide for determination that existing duties or other import restrictions of a foreign country are unduly burdening and restricting foreign trade of the United States. It contained no limits on the President's tariff-changing authority.

Section 102. Nontariff Barriers to and Other Distortions of Trade

Section 102 urges the President to take all appropriate and feasible steps, including negotiation of trade agreements, to reduce or eliminate barriers to and other distortions of international trade, and authorizes him to enter into trade agreements for this purpose during the five years following enactment of the bill.

Section 102 does not provide for modification of any rate of duty except when converting an NTB to a duty affording substantially equivalent protection. In such cases, the duty resulting from such conversion may be reduced without limit, provided that the previously existing duty on the product involved will still be subject to the limitations of section 101. If section 101 authority is going to be used in such cases, the agreement covering the conversion of the NTB to a duty must be submitted to Congress along with a statement as to proposed duty reductions under section 101 and the Tariff Commission determination of duties affording substantially equivalent rates of protection when converting the NTB.

Section 102 provides that a principal negotiating objective shall be to obtain equivalent competitive opportunities for product sectors within manufacturing and for agriculture as a product sector, that negotiations shall be conducted to the extent feasible on a product sector basis, that product sectors shall be defined by the Special Representative for Trade Negotiations after appropriate consultations, and that the President shall include in his report to Congress a sector-by-sector analysis of the extent to which this objective has been achieved.

Section 103 contained similar language of the expression of Congressional intent with respect to negotiations on NTBs. There was no authority to enter into agreements nor any time limits on the exercise of such authority. Advance authority to implement NTB agreements covering methods of customs valuation (e.g., ASP and Final List), assessment methods (e.g., Wine Gallon), and marking requirements was provided.

Section 103 contained no product sector negotiating objective.

Section 102 provides for:
- consultation with Ways and Means and Finance Committees before entering into an NTB agreement;
- a new implementing procedure whereby an NTB agreement would enter into law only if after resting before both Houses for 90 days, neither House vetoed it by a majority of those present and voting. Technical details for this procedure are spelled out in sections 151 and 152.

Section 103 contained no specific provision f consultations; the President was to determine whether further Congressional action was needed to implement an agreement. It did contain a similar veto procedure, however a majority of the authorized membership of eith House was required for a veto.

American selling price basis of customs valuation is defined as a "barrier" for purposes of section 102.

Section 103. Staging Requirements and Rounding Authority

Section 103 provides that staging can take place in 15 equal annual installments or 3 percent ad valorem per year, whichever allows the greater annual reduction. A reduction of 10 percent or less of an existing duty is not subject to staging requirements. The maximum period for staging is 15 years. Authority is included to round fractional amounts resulting from staging of tariff modification.

Section 102 provided for staging with maximum cuts of 3% ad valorem per year or 5 equal annual reductions. There was no maximum limit on the number of years during which staging could take place. A 10% of existing duty exclusion from staging was included, as was rounding authority for use in staging.

Section 121. Steps to be Taken Toward GATT Revision; Authorization of Appropriations for GATT

It provides that the President shall, as soon as practicable, take such action as may be necessary to promote development of an open, nondiscriminatory, and fair world economic system; including:
- revision of decision-making machinery of GATT;

Section 411 did not specify GATT revisions; it simply authorized appropriations for the U.S. share of GATT expenses.

- rev n of Article XIX of GATT;
- extension of GATT to trade conditions not presently covered;
- adoption of international fair labor standards and public petition and confrontation procedures in GATT;
- revision of GATT articles covering border adjustments for internal taxes;
- revision of balance-of-payments provisions of GATT.

Section 121 authorizes annual appropriations for payment by the U.S. of its share of GATT expenses.

Section 122. Balance-of-Payments Authority

Section 122 provides that the President may proclaim a temporary surcharge of not more than 15% ad valorem, or proclaim temporary quotas if permitted internationally and surcharges will be ineffective:
- to deal with a large and serious balance-of-payments deficit;
- to prevent imminent and significant depreciation of dollar;
- to cooperate with other countries in correcting international balance-of-payments disequilibrium.

The President may reduce duties by not more than 5% or proclaim a temporary increase or suspension of quotas, except where material injury to firms or workers in domestic industry would result,
- to deal with large and persistent balance-of-payments surplus;
- to prevent significant appreciation of the dollar.

Section 401 was completely revised. General economic criteria were contained in the section to describe the situations in which the authority would be available. No limit on a surcharge amount was contained. There was no preference for the use of a surcharge rather than quotas. There was no limit on the tariff cutting available to deal with a U.S. surplus condition. Non-MFN actions were possible, after consideration of U.S. international obligations, and were not limited to exempting all but surplus countries. There was no time limit on the duration of import measures.

Surcharges and quotas must be on a non-discriminatory basis unless President determines purpose of section would be better served by imposing a surcharge only against one or more surplus countries.

Actions under this section shall not remain in effect for more than 150 days unless a longer period is authorized by Congress and are terminable at any time.

Quota restrictions shall be applied so as to approach as closely as possible pattern of trade distribution in absence of restrictions, and all import restricting actions shall be as broad and uniform as possible, and shall not be used as a protective device.

Quota restrictions shall be based on a represenative period, and shall take into account any increase in domestic consumption since that period.

Certain exceptions for products unavailable domestically at reasonable prices, for essential raw materials, for serious supply dislocations, and other similar factors are provided.

Section 122 expresses the sense of Congress that the President seek modifications in international agreements which will give preference to import surcharges as a balance-of-payments measure. If such modifications are negotiated, application of surcharges must be in accordance with internationally-agreed rules.

The President is prohibited from using the termination authority (used in August, 1971) for imposing a surcharge.

<u>Section 123. Authority to Suspend Import Barriers to Restrain Inflation</u>

Section 123 authorizes the President to proclaim a temporary duty reduction or suspension,

Section 405 was a comparable provision. The principle change is that the limit on the or a[illegible]porary increase in the amount which ma[illegible] ente[illegible] under quotas (other than section 22 qu[illegible] if during a period of sustained or rapid price increases, supplies of an article are inadequate to meet domestic demand at reasonable prices. Such proclamations may not exceed 30% of total value of U.S. imports, nor apply to any article where material injury to firms or workers in any domestic industry would result, nor result in impairment of national security or other national interest.

Such action may not exceed 150 days unless a longer period is authorized by Congress; nor may an article which has been subject to such action be eligible for another action until a year has elapsed.

The President shall notify both Houses of any action taken under this section and the reasons therefore.

duration of an action was one yea[illegible]er than 150 days. There was no exclusion [illegible] section 22 quotas.

Section 124. Compensation Authority

Section 124 provides that the President may modify or continue duties, with duty reductions not to exceed 30% of an existing duty, when he enters into agreements with foreign countries to maintain the general level of reciprocal and mutually advantageous concessions after taking import relief action under section 203. The authority begins after the authority granted by section 101 terminates, and is permanent.

Section 404 applied to sections of the bill in addition to section 203. The limitation on duty reductions was 50% rather than 30% of an existing duty. It would have been operative from date of enactment.

Section 125. Authority to Renegotiate Duties

Section 125 provides that the President may enter into trade agreements covering not more than 2% of value of U.S. imports for most recent 12-month period for which statistics available, and reducing duties by no more than 20% below

Section 403 was a comparable provision except that it provided permanent authority to renegotiate duties and was not subject to section 101 limits.

any [illegible]sting rate of duty authority limited t[illegible] yea[illegible] after termination of the section 101 au[illegible]ority. The combined result of actions taken under section 125 and section 101 may not exceed the 101 limits.

Section 126. Termination and Withdrawal Authority

Section 126 provides that trade agreements shall be subject to termination or withdrawal not more than 3 years after effective date, and upon 6 months notice thereafter. It further provides that the President may at any time terminate, in whole or in part, any proclamation made under the Act.

Section 126 also provides that whenever the U.S. withdraws or suspends any trade agreement obligation, the President is authorized in order to exercise U.S. rights (consistently with U.S. international obligations) to increase duties by up to 50% above 1934 rates (or 20% ad valorem above the 1973 rate, whichever is more).

Duties on other import restrictions existing at the time of the termination of an international agreement are not affected by that action for one year unless the President acts to increase the duties to pre-agreement levels. Recommendations from the President as to appropriate rates of duty on affected articles must be forwarded to Congress within 60 days of the termination.

Section 127. Nondiscriminatory Treatment

Section 127 provides that except as otherwise provided duties or other import restrictions on duty-free treatment shall apply equally to the products of all countries.

Sections 408, 409, and 402 were comparable provisions, except that section 402 specificall authorized the same range of actions in respons to terminations of, as well as suspensions and withdrawals under, international agreements. I addition, the section 402 provision on stabilit of rates after international actions, applied t suspensions and withdrawals (sec. 126 applies this provision only to terminations). Sec. 402 contained no one year limitation.

Section 407 was a comparable provision except that the term Most-Favored-Nation Principle was used rather than Nondiscriminatory Treatment in the section's heading.

Section 128. Reservation of Articles for National Security or Other Reasons

Section 128 provides that articles shall be reserved from negotiations and from other duty reductions or other actions relaxing import restrictions, for national security reasons,

Section 406 was a comparable provision, excep that it did not require reports on section 232 actions.

if ... import relief under section 203 of the Act or under 232 or 351 of the Trade Expansion Act of 1962 is in effect, or if the President decides to do so after receiving advice under sections 131, 132, and 133(b) where applicable. An annual report on section 232 of the Trade Expansion Act of 1962 is required, and the President must report to Congress within 60 days after taking any action under that section.

Section 131. Tariff Commission Advice

Section 131 provides that the Tariff Commission shall advise the President within six months of the publication of lists of articles which may be subject to tariff negotiation under sections 101, 102, 124, or 125 as to the economic effects of modifications of duties. Such advice may also include advice as to staging. The President may also request the advice of the Tariff Commission as to the economic effects of modifications of other barriers or distortions of trade.

Section 111 was a comparable provision except that it did not provide for the possibility of Tariff Commission advice on NTBs, or on staging.

In preparing its advice the Tariff Commission shall, to the extent practicable:
- investigate competitive conditions for like foreign and domestic industries;
- analyze all economic factors affecting production, trade, and consumption of each article;
- describe probable nature and extent of any significant change in employment, profit levels, and use of productive facilities which might result;
- make special studies whenever warranted.

In preparing its advice the Tariff Commission shall hold public hearings.

Section 132. Advice from Departments and Other Sources

Section 132 provides that the President shall seek information and advice from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and Treasury, Special Representative for Trade Negotiations, and such other sources as he may deem appropriate before entering into any trade agreement under section 101, 102, 124, or 125.

Section 112(a) was a comparable provision, except that it did not provide for advice with respect to compensation authority (section 124) and renegotiation of duties (section 125).

Section 133. Public Hearings

Section 133 provides for public hearings in connection with any proposed agreement under sections 101, 102, 124, or 125 and for a summary record to be furnished to the President.

Section 113 was a comparable provision.

Section 134. Prerequisites for Offers

Section 134 provides that offers may be made in any negotiations under sections 101, 102, 124, or 125 only after public hearings under section 133 have been held, and Tariff Commission advice provided for by section 131(b) has been received or six months have elapsed as provided in that section.

Section 114 was a comparable provision, except that it only referred to tariff negotiations under section 101.

Section 135. Advice from Private Sector

Section 135 provides that the President shall seek information and advice from the private sector with respect to negotiating objectives and bargaining positions before entering into an agreement under sections 101 or 102. An Advisory Committee for Trade Negotiations shall be established, composed of not more than 45 individuals, to work with the Special Representative for Trade Negotiations during negotiations.

No comparable provision. Section 112(b) contained only a specific exemption from the Federal Advisory Committee Act for trade negotiations advisory groups.

In addition, industry, labor, or agricultural committees shall be established as necessary. Such committees shall provide policy advice; technical advice and information, advice on other relevant factors.

The provisions of the Federal Advisory Committee Act shall apply except that the provisions relating to open meetings, public notice, public participation, and public availability of documents may be lifted whenever abiding by such provisions would seriously compromise the Government's negotiating objectives or bargaining positions.

Information received in confidence shall be protected from disclosure.

STR, Commerce, Labor, and Agriculture shall provide appropriate staff and logistical support. Procedures for consultations with advisory committees shall be worked out by these agencies; the advice of such committees shall not be binding, but the STR shall inform the committees of failures to accept advice or recommendations, and to the extent practicable, the President's report to Congress shall state the reason for not accepting advice or recommendations.

Opportunity shall be provided for continuing informal submission of recommendations and information by any interested private organizations or groups.

Nothing shall be construed to authorize or permit any individual to participate directly in any negotiation of any trade agreement under sections 101 or 102.

Sec[illegible]n 141. Office of the Special Representative for Trade Negotiations

Section 141 provides for an Office of the Special Representative for Trade Negotiations. The Office shall be headed by a Special Representative for Trade Negotiations, and two Deputies, who shall be subject to Senate confirmation. The Special Representative for Trade Negotiations shall:
- be the chief U.S. representative in negotiations under this Act;
- be responsible for administration of the trade agreements program;
- advise the President with respect to non-tariff barriers, international commodity agreements, and matters related to the trade agreements programs;
- be responsible for making required reports to Congress;
- chair the interagency trade organization established by the Trade Expansion Act of 1962;
- be responsible for other functions as directed by the President.

The Special Representative for Trade Negotiations may appoint, employ, and compensate such officers and employees as necessary to carry out his functions, subject to civil service and classifications laws; and employ experts and consultants intermittently. Other authorities necessary for the STR to carry out his functions are also prescribed by this section.

The section provides for continuity between the existing office of STR and that provided by this Act.

There was no comparable provision.

Section 151. Resolutions Disapproving the Entering Into Force of Trade Agreements on Distortion of Trade or Disapproving Certain Other Actions	
Section 151 provides for the exercise of the rule making power of the House of Representatives and the Senate respectively, and establishes the rules applicable to resolutions of disapproval which may be offered with respect to trade agreements under section 102; with respect to quotas and orderly marketing agreements under section 203; under section 302 with respect to Presidential actions under section 301 against unfair foreign practices; and with respect to the entering into force of any agreement referred to in Title IV or the extension of MFN treatment under that title.	There was no comparable provision.
Section 152. Special Rules Relating to Congressional Disapproval Procedures	
Section 152 provides for delivery of required documents to Congress, and for definition of 90-day Congressional veto period referred to in various sections of the Act.	The comparable provision was subsection 103(e
Section 161. Congressional Delegates to Negotiations	
Section 161 provides for the selection of five members of the House Ways and Means Committee (not more than three from the same party) and five members of the Senate Finance Committee (not more than three from the same party) at the beginning of each regular session of Congress to serve as official advisers to the U.S. delegation to conferences, meetings, and negotiation sessions with respect to trade agreements. Members selected shall be eligible for reselection.	There was no comparable provision.

Section 162. Transmission of Agreements to Congress

Section 162 provides for transmittal of any agreement entered into under sections 101, 102, 124, or 125 to the Congress together with a statement in light of Tariff Commission advice as to the reasons for entering the agreement. A summary shall be transmitted to each Member of Congress.

Section 121 was a comparable provision, except that it did not provide for transmittal of a summary to Members, and did not cover compensation agreements (section 124) or agreements on the renegotiation of duties (section 125).

Section 163. Reports

Section 163 provides for an annual report to the Congress from the President on the trade agreements program and other programs provided by the Act; and for an annual report by the Tariff Commission as to the facts on the operation of the trade agreements program.

Section 702 was a comparable provision.

TIT LI: RELIEF FROM INJURY CAUSED BY IMPOR COMPETITION

Section 201. Investigation by Tariff Commission

Section 201 provides that upon filing of an import relief petition by a representative of an industry (copies to be transmitted to STR and agencies); upon request by the President, Senate Finance Committee, or House Ways and Means Committee; or upon its own motion, the Tariff Commission shall investigate and report to the President within six months whether increased imports are a substantial cause of serious injury, or threat thereof, for a domestic industry. In determining what constitutes a domestic industry the Tariff Commission, if it chooses to do so, may treat as a producer's part of a domestic industry only its domestic production and may treat as part of industry only that portion or subdivision which is like or directly competitive with the article being investigated. In so doing, the Tariff Commission shall take into account:

- with respect to serious injury, significant idling or productive facilities, unreasonably low profit levels, significant unemployment or underemployment;
- with respect to the threat of serious injury, a decline in sales, a higher and growing inventory, a downward trend in production, profits, wages, or employment;
- with respect to substantial cause, an increase in imports (actual or relative to domestic production) and a decline in proportion of market supplied by domestic producers.

The Tariff Commission shall, as part of its investigation, report on efforts made by firms

Section 201 was substantially revised by the Committee in the following ways:

- a market disruption test of the import-relatedness of injury has been dropped;
- the test of the import-relatedness of injury has been changed from primary to substantial, defined as a cause which is important and not less than any other cause;
- the list of factors to be taken into account by the Tariff Commission has been defined more explicitly;
- the time limit for the Tariff Commission investigation has been extended;
- a provision directing Tariff Commission to inform appropriate agencies if it finds evidence of unfair trade practices of forei countries for which the law provides other remedies;
- a definition of domestic industry has been included which (1) allows for some segmentation, and (2) allows exclusion of importi subdivisions of firms;
- a provision that the Tariff Commission shal include in its report a provision as to the appropriate remedy has been added.

and workers in the industry to compete more effectively with imports.

"Substantial cause" is defined as that cause which is "important and not less than any other cause".

The Tariff Commission shall promptly notify the appropriate agency if it has reason to believe increased imports are attributable in part to circumstances which come within the purview of the Antidumping Act or the Countervailing Duty Law or other remedial provisions of law.

The Tariff Commission shall hold public hearings during the course of its investigation, and furnish transcripts to the President.

If the Tariff Commission finds serious injury or threat thereof, it shall also include in its report to the President its findings as to the appropriate remedy. The Tariff Commission report shall be made within 6 months and shall be made public, with the exception of confidential information.

No further investigation shall be made with respect to the same subject matter until one year has elapsed, unless good cause is shown. Investigations already in progress under the Trade Expansion Act of 1962 shall be continued, as if instituted under this bill and if no action has been taken by the date of enactment, reports pertaining thereto shall be treated by the President as reports under this Act.

<u>Section 202. Presidential Action after Investigations</u>

Section 202 provides that after receiving an affirmative report from the Tariff Commission that increased imports have been a substantial cause of serious injury or threat thereof with

Section 202 was substantially the same, although there were some differences in the time limits and in the list of factors which the President must take into account.

respect to an industry, the President shall evaluate the extent to which adjustment assistance has or can be made available under chapters 2 and 3, and direct the Secretaries of Labor and Commerce to give expeditious consideration to adjustment assistance petitions if he determines it appropriate.

It further provides that the President may provide import relief under section 203. The President must determine, usually within 60 days, whether to provide such import relief. If he decides not to provide relief, he shall immediately report to Congress.

In determining whether to provide import relief, the President shall take into account:
- the availability of adjustment assistance to affected workers and firms;
- the probable effectiveness of import relief as a means to promote adjustment, efforts being made by the industry to adjust, and other relevant considerations;
- the effect of import relief on consumers and on competition in domestic markets for such articles;
- the effect of import relief on international economic interests of the United States;
- the impact on U.S. industries and firms as a result of international obligations with respect to compensation;
- the geographic concentration of imported products in U.S. markets;
- the extent to which trade is being diverted toward the United States because of third country restraints;
- the economic and social costs if import relief were or were not provided.

An extension of the time limit is provided, if the President requires further information from the Tariff Commission.

Section 203. Import Relief

Section 203 provides that for the purpose of providing import relief, the following order of priorities shall be followed:
(1) increases in, or impositions, of duties;
(2) tariff-rate quotas;
(3) quantitative restrictions;
(4) orderly marketing agreements,
with the further provision that nothing shall prevent the use of a combination of two or more such methods.

It authorizes the President to take whatever steps are necessary to implement import relief if he determines to provide it, and provides that he shall report to Congress what action he is taking and why he selected the method he did.

No duty may be increased to a rate which is more than 50% ad valorem above the rate (if any) existing at the time of the proclamation.

Quotas and orderly marketing agreements must permit imports to enter in quantities or values which are not less than those during recent representative period.

The first three types of import relief must be proclaimed within 15 days of the decision to provide relief under section 202, and the first orderly marketing agreement must be concluded within 180 days. Proclamations may have a delayed effective date (up to 6 months) while agreements are negotiated and may be suspended while the initial agreement is in effect.

Section 203 provides that suspension of Tariff items 806.30 or 807.00 and of restoration of the duty on an article eligible for generalized preferences shall be treated as increases in duties for the purpose of this section. The Tariff Commission shall indicate in the report required under section 201 whether either such

Section 203 has been rewritten and some new provisions have been added. The principal change is the inclusion of an order of priorit according to which import relief must be provided; other new provisions include:
- introduction of a limit on the duty-raisin authority, and a provision against roll-backs under quotas;
- modification of the timing provisions;
- Tariff Commission consideration of whether suspension of Tariff items 806.30 and 807.00 or withdrawal of a generalized preference woul constitute appropriate relief.
- enforcements of orderly marketing agreemen against nonsignatories requires that the agree ments cover a "major" rather than a "significant" part of U.S. imports.

act[illegible] would be the appropriate remedy.

Public hearings must be held before import relief is provided.

Regulations providing for the efficient and fair administration of any quantitative restrictions are spelled out.

Section 203 provides for the phasing down of import relief to begin by the third year. Import relief is to last no longer than 5 years, with a possible 2-year extension.

The Tariff Commission shall review the operation of the import relief program and investigate renewal petitions. After taking account of Tariff Commission advice and seeking advice from the Secretaries of Commerce and Labor, the President may reduce or terminate import relief whenever he determines it to be in the national interest. The Tariff Commission shall provide for public hearings when investigating a renewal petition on a proposal to reduce or terminate import relief.

Two years must elapse between the last day on which import relief is provided for an article and the commencement of a new investigation on the article.

<u>Section 204. Procedure for Congressional Disapproval of Quantitative Restrictions and Orderly Marketing Agreements</u>

Section 204 provides for application of the Congressional disapproval procedure spelled out in sections 151 and 152 whenever quotas or orderly marketing agreements are selected as the method of import relief.

There was no comparable provision.

Chap[illegible]. Adjustment Assistance for Workers

Section 221 provides that representatives of groups of workers may file petitions for adjustment assistance with the Secretary of Labor. The Secretary of Labor investigates, with public hearings upon request.

Section 222 provides criteria for determining whether the workers are eligible for assistance.

Section 223 provides for the certification or eligibility by the Secretary of Labor.

Section 224 provides for a study by the Secretary of Labor of the workers in an industry which is the subject of an import relief investigation. (This section parallels section 264 for firms.)

Sections 231 and 232 provide qualifying requirements for individuals and for weekly benefits in the amount of 70% of the worker's weekly wage in the first 26 weeks, and 65% of his average weekly wage thereafter (not to exceed the average weekly manufacturing wage). Benefits are reduced by 50% of the amount of remuneration for services performed during any week. It also makes special provision for the payment of benefits to workers who are undergoing approved training. The benefit amount shall be reduced by the amount of unemployment insurance to which the worker is entitled, if any. States shall be reimbursed for unemployment insurance paid to such workers, but not in amounts exceeding the total to which the worker is entitled as trade adjustment assistance.

Section 233 provides for a 52-week time limit, with exceptions for workers still in approved training, or workers who reach their 60th birthday on or before the date of separation. Payments cannot be made more than 2 years after the beginning of assistance, with the exceptions just noted above.

Chapter 2 was similar in many respects, but did not provide as high a level of benefits or for financing nominally out of customs revenues deposited in a trust fund. Payments were to be supplemental to unemployment insurance rather than the total cost being borne by the Federal Government.

Section 234 provides that the provisions of State law with respect to unemployment insurance regulations shall apply to adjustment assistance, except where inconsistent with the provisions of this Act.

Sections 235 and 236 provide for training and job placement services.

Section 237 provides for job search allowances.

Section 238 provides for relocation allowances.

Section 239 provides that the Secretary of Labor may enter into agreements with any State or any State agency for the administration of the trade adjustment assistance program.

Section 240 provides that the Secretary of Labor shall administer the program in the absence of a State agreement, and that entitlement to payments is subject to court review.

Section 241 through 244 provide procedures for the reimbursement of States.

Section 245 provides for the creation of a trust fund and the appropriation of amounts from the general fund attributable to the collection of customs duties as necessary to carry out the program.

Sections 246 and 247 establish transitional provisions and definitions.

Cha[illegible] 3. Adjustment Assistance for Firms

Section 251. Petitions and Determinations

Section 251 provides for petitions for certification of eligibility to apply for adjustment assistance to be filed with the Secretary of Commerce, who must promptly file notice of the receipt of the petition and initiation of an investigation. Public hearings on the petition may be held on request. The Secretary of Commerce may certify a firm as eligible to apply for adjustment assistance if he determines: (a) a significant number or proportion of the firm's workers have become or are threatened to become totally or partially separated; (b) sales and/or production of the firm have decreased absolutely; and (c) increased imports of articles like or directly competitive with those produced by the firm contributed importantly to (a) and (b). The determination must be made within 60 days after the firm files a petition.

Section 252. Approval of Adjustment Proposals

Section 252 allows a firm certified eligible to apply for adjustment assistance to file an application with the Secretary of Commerce for assistance within 2 years after the date of certification. The application must include a proposal for economic adjustment of the firm. The Secretary shall approve an application only if the firm has no reasonable access to financing through the private capital market. The firm's proposal must also be reasonably calculated to contribute materially to the economic adjustment of the firm, give adequate consideration to the interests of the workers, and show that the firm will make all reasonable efforts to use its own resources for economic development. The

Adjustment assistance for firms was not included.

certification of eligibility may be terminated whenever the Secretary determines the firm no longer requires assistance.

Section 253. Technical Assistance

Section 253 authorizes technical assistance for developing and/or implementing an adjustment proposal.

Section 254. Financial Assistance

Section 254 provides for financial assistance in the form of direct loans or guarantees of loans. No direct loans can be provided to the extent they can be obtained from private sources at an interest rate no higher than the currently prevailing maximum for loans guaranteed by the SBA.

Section 255. Conditions for Financial Assistance

Section 255 stipulates no financial assistance shall be provided unless the funds required are not available from the firm's own resources and there is reasonable assurance the loan will be repaid. The Secretary must accord priority to small businesses within the meaning of the Small Business Act in making direct loans or loan guarantees. The aggregate amount of direct loans outstanding to any single firm cannot exceed $1 million, guaranteed loans $3 million, at any time. Guarantees may not exceed 90% of the face value of qualifying loans.

Section 256. Delegation of Functions to SBA; Authorization of Appropriations

Section 256 authorizes the Secretary of Commerce to delegate all or part of his functions to the SBA in the case of a small business, except his functions with respect to certification of eligibility.

Sections 257-262. These sections contain standard administrative and protective provisions, definitions of terms, and regulations.

Section 263 contains transitional provisions.

Section 264. Study by Secretary of Commerce When Tariff Commission Begins Investigation; Action Where There is Affirmative Finding

Section 264 requires the Tariff Commission to notify the Secretary of Commerce when it begins an investigation under section 201 of this bill, and that the Secretary then begin a study of: (a) the number of firms in the domestic industry which have been or are likely to be certified eligible for adjustment assistance; and (b) the extent to which orderly adjustment of such firms to import competition may be eased through existing programs. The Secretary must take his report to the President no later than 15 days after the Tariff Commission report under section 201. If there is an affirmative Tariff Commission finding under section 201, the Secretary must inform the firms in the industry about adjustment assistance programs and assist firms in preparing applications and petitions for program benefits. (This section parallels section 224 for workers.)

TITLE III. RELIEF FROM UNFAIR TRADE PRACTICES

Section 301. Responses to Certain Trade Practices of Foreign Governments

Section 301 provides that the President may suspend or withdraw trade agreement concessions or impose duties or other import restrictions, on a non-discriminatory basis or otherwise, whenever he determines that a foreign country is maintaining import restrictions or engaging in acts or policies which unjustifiably or unreasonably impair the value of trade commitments or otherwise burden, restrict, or discriminate against U.S. commerce, or is providing subsidies on its exports to the U.S. or other markets which substantially reduce sales of competitive U.S. products.

The President must:
- take all appropriate and feasible steps to obtain elimination of the practice before taking action;
- consider international obligations;
- take action only against the country involved if its practice is unreasonable but not unjustifiable.
- provide for presentation of views and public hearings upon request with respect to any unjustifiable or unreasonable foreign practice;
- provide for presentation of views and public hearings upon request with respect to any action he proposes to take prior to his action.

The President may:
- request Tariff Commission views as to probable impact on the economy of a proposed action.

Section 301 did not contain a provision covering export subsidies to United States, nor provisions requiring findings by the Tariff Commission and the Secretary of the Treasury in subsidy cases.

It did not require that actions against unreasonable practices be non-MFN.

It did not provide for public hearings, either with respect to restrictions, acts, policies, or practices; or with respect to the effects of any action proposed as a response to an unreasonable trade practice.

It did not otherwise provide for presentation of views with respect to the effect of actions proposed, nor for Tariff Commission views.

With [illegible]pect to foreign subsidies on imports i[illegible] the [illegible]., the President must have, prior to acting:

- the finding of the Secretary of the Treasury that the subsidy exists;
- the finding of the Tariff Commission that U.S. competing sales are substantially reduced,

and must have determined that the Antidumping Act and Countervailing Duty Law are inadequate to deter the practice involved.

Section 302. Procedure for Congressional Disapproval of Certain Actions Taken Under Section 301

Section 302 provides that whenever the President takes an action against a restriction, act, policy, or practice of a foreign country, he shall submit the action to the Congressional veto procedure provided by section 151.

There was no comparable provision.

Section 321. Amendments to the Antidumping Act of 1921

The Antidumping Act of 1921 requires the Secretary of the Treasury to impose dumping duties when there is a determination that imports are entering at less than fair value and the Tariff Commission finds injury. Section 311 provides for time limits on actions by the Secretary, for hearings, and amends certain definitions contained in the original Act. In addition, provisions are added dealing with sales below cost, sales of goods from nonmarket economies, and sales by innocent firms of merchandise similar to that being dumped.

Section 310 was the comparable provision. However, it provided for a 3-month safety valve in addition to the 9-month limit in more complex cases. It did not provide for codification of present Treasury practice relating to nonmarket economies; nor did it contain provisions relating to sales below cost and sales by innocent firms.

Section 331. Amendments to Sections 303 and 516 of the Tariff Act of 1930

Section 303 of the Tariff Act of 1930 requires the Secretary of the Treasury to impose countervailing duties whenever a foreign country confers

Section 330 is a comparable provision. The standard was "material injury" rather than "injury" in duty free cases. Section 330 a bounty or grant on a product which is dutiable when imported into the United States.

Section 321 expands the coverage to include duty-free imports when the Tariff Commission makes an affirmative finding of injury. Such an injury finding shall be required only for such time as it is required by the international obligations of the United States.

Imposition of a countervailing duty shall not be required on any article subject to quantitative limitations where such limitations are determined to be an adequate substitute for a countervailing duty.

For a period of 4 years after enactment, while negotiations are in progress under sections 101 and 102, the Secretary of the Treasury may, after seeking information and advice from such agencies as he deems appropriate, refrain from imposition of an additional duty under this section if doing so would seriously jeopardize the satisfactory completion of the negotiations. With respect to any article which is the product of facilities owned or controlled by a developed country if the investment in, or the operation of, such facilities, is subsidized, the discretion does not apply to cases initiated more than one year after enactment of the bill.

Section 331 amends Section 516 of the Tariff Act of 1930 to provide for judicial review of the determinations of the Secretary of the Treasury regarding whether a countervailing duty for any product should be imposed.

also contained a provision allowing the Secretary of the Treasury discretion not to impose countervailing duties whenever the article was already subject to a quota or whenever the imposition of an additional duty would result, or be likely to result in significant detriment to the economic interests of the United States. There was no time limit on this discretion.

It did not contain a provision requiring judicial review of negative determinations.

Section 341. Amendments to Section 337 of the Tariff Act of 1930

Section 341 would amend Section 337 of the Tariff Act of 1930 to vest in the Tariff Commission (rather than the President, as in existing law) authority to exclude articles concerned in unfair methods of import competition based upon claims of U.S. letters patent.

Public hearings at which defenses may be presented and a judicial review procedure are provided. No change is made in existing section 337 with respect to unfair acts outside of the patent area.

Section 350 would have amended section 337 to provide special procedures for patents and to remove the President from the decisio making process in other unfair acts cases by repealing the remainder of section 337. Companion legislation transferred jurisdicti over unfair methods of competition other tha patent infringement to the Federal Trade Commission. Other provisions of section 350 included issuing orders of exclusion conditional upon court decisions on the issues of patent validity and misuse, provision for a bond running to the patentee sufficient to protect his rights, and a tim limit on temporary exclusion orders.

TITLE IV: TRADE RELATIONS WITH COUNTRIES NOT ENJOYING NONDISCRIMINATORY TREATMENT

Section 401. Exception of the Products of Certain Countries or Areas

Section 401 requires the President to continue to deny nondiscriminatory treatment to countries ineligible for Column 1 treatment on the date of enactment of the bill, except as otherwise provided in Title IV.

Section 402. Freedom of Emigration in East-West Trade

Section 402 prohibits the granting of nondiscriminatory (Column 1) treatment on products from any nonmarket economy country, extension to such a country of credits and credit or investment guarantees through U.S. government programs, or the conclusion of any commercial agreement with any such country after the date of enactment of this bill during the period which the President determines such country: (a) denies its citizens the right or opportunity to emigrate; (b) imposes more than a nominal emigration tax; or (c) imposes more than a nominal tax or other charge on a citizen's right to emigrate to the country of his choice. Nondiscriminatory treatment may be granted to, credits and credit or investment guarantees extended by U.S. government programs to, and commercial agreements concluded with nonmarket economy countries only after the President has submitted a report to the Congress including information that the country is no longer applying these policies. Semi-annual reports will be required thereafter as long as nondiscriminatory treatment, credits or guarantees, or commercial agreements are in effect. This section does not apply to countries eligible for Column 1 treatment on the date of enactment of the bill.

Section 501 was a comparable provision, except it included a subsection authorizing the President to deny nondiscriminatory treatment to all products by a country or area for national security reasons.

There was no comparable provision.

Section 403. Extension of Nondiscriminatory Treatment

Section 403 authorizes the President to extend nondiscriminatory treatment to products of a country which: (a) has entered into a bilateral commercial agreement; or (b) has become a party to a multilateral trade agreement to which the U.S. is a party. Nondiscriminatory treatment shall be limited to the period the U.S. has obligations to the country under an agreement and to the period a country is not in arrears in obligations under a lend-lease agreement with the U.S. The President may at any time suspend or withdraw column one tariff treatment to all of the products of a country receiving such treatment under this Title.

Section 504 was a comparable provision except it did not contain the requirement with respect to lend-lease obligations.

Section 404. Authority to Enter into Commercial Agreements

Section 404 authorizes the President to enter into bilateral commercial agreements providing for nondiscriminatory treatment. The agreement must: (a) be limited to a maximum of 3 years, renewable for additional maximum 3-year periods if a satisfactory balance of trade concessions has been maintained, and reductions in U.S. trade restrictions under multilateral negotiations are reciprocated by the other party; (b) be subject to suspension or termination at any time for national security reasons; (c) provide safeguard arrangements necessary to prevent market disruption; (d) provide rights for U.S. nationals with respect to patents if the country is not a party to the Paris Convention; (e) provide arrangements for the settlement of commercial differences and disputes; and (f) provide for consultations. It may also include arrangements for the protection of industrial rights and processes, trademarks, and copyrights; arrangements for trade promotion; and other arrangements of a commercial nature. Entry into force of the

Sections 502 and 503 were similar provisions except that safeguards against market disruption and arrangements for the settlement of disputes were optional rather than mandatory elements of an agreement. The provision on patent rights was not specifically included.

agre...ent is subject to the Congressional veto procedure under section 406.

Section 405. Market Disruption

Section 405 provides that a Tariff Commission investigation may be initiated under section 201 of this bill with respect to imports of an article from a country granted nondiscriminatory treatment under Title IV. The Tariff Commission will determine whether imports from such a country are causing or likely to cause market disruption and material injury to domestic industry producing like or directly competitive articles. An affirmative determination will be treated as an affirmative determination under section 201(b), except the President may adjust imports of the article only from the country in question.

Section 505 contained the same provisions.

Section 406. Procedure for Congressional Disapproval of Extension or Continuance of Nondiscriminatory Treatment

Section 406 requires the President, whenever he issues a proclamation to grant nondiscriminatory treatment under section 403, to transmit promptly the proclamation, the agreement the proclamation proposes to implement, and his reasons therefor to both Houses of Congress. He must also transmit to the Congress before December 31 of each year the most recent report required by section 402. Under the Congressional veto procedure, extension of nondiscriminatory treatment would not take place (or would cease) if the majority of those present and voting in either House of Congress adopted a resolution of disapproval within 90 days after the documents are delivered.

Section 502(c)(1) contained a similar Congressional veto procedure, except that it applied only to the initial granting of non-discriminatory treatment rather than annually, and consisted of a majority of the authorized membership. It did not include the annual report requirement.

Section 407. Effects on Other Laws

The President will periodically reflect the provisions and proclamations under Title IV in headnote 3(e) of the TSUS.

Section 506 was a comparable provision.

TITLE V: GENERALIZED SYSTEM OF PREFERENCES

Section 501. Authority to Extend Preferences

Section 501 authorizes the President to grant duty-free treatment for any eligible article from any beneficiary developing country, having due regard for (a) the effect of such action on further economic development of developing countries; (b) the extent to which other major developed countries are undertaking a comparable effort; and (c) the anticipated impact of such action on U. S. procucers.

Section 602 was a comparable provision.

Section 502. Beneficiary Developing Country

Section 502 defines "beneficiary developing country" as any country the President designates by Executive Order for purposes of Title V. The President must notify both Houses of Congress prior to designating any country and must notify both Houses 30 days prior to terminating any designation, together with his considerations for the decision in each case. Associations of countries for trade purposes may be treated as one country if no member is excluded from designation. The section includes a list of developed countries which cannot be designated. Countries which do not receive nondiscriminatory tariff treatment cannot be designated, nor countries which grant "reverse" preferences unless they provide satisfactory assurances to eliminate them before January 1, 1976. The President must take into account in determining any beneficiary countries: (a) whether the country has expressed a desire to be designated; (b) its level of economic development; (c) whether other major developed countries are extending it generalized preferences; and (d) whether the country has expropriated U. S. property without adequate and prompt compensation.

Sections 604 and 606 contained similar provisions. Section 604 did not require prior notifications to the Congress with respect to designations of beneficiary countries, did not contain a list of developed countries, or specify the manner in which associations of countries could be treated as one country.

Section 503. Eligible Articles

Section 503 requires the President to publish and furnish the Tariff Commission lists of articles which may be considered eligible. An Executive Order must be in effect designating beneficiary countries before the list is furnished. The prenegotiation procedures under sections 131-134 must be complied with before duty-free treatment is granted on any article. To receive duty-free treatment, an article must be imported directly from a beneficiary developing country, and the value-added in the beneficiary developing country must equal at least 35% and not more than 50% of the appraised value of the article upon entry. The percentage may be modified periodically within this range and must apply uniformly to all articles from all beneficiary countries. No article can be eligible during such time it is subject to import relief measures under section 203 of this bill or section 351 of the Trade Expansion Act.

Section 603 contained similar provisions, except it did not require designating beneficiary countries before furnishing a list to the Tariff Commission, and did not specify a percentage which value added must constitute of appraised value.

Section 504. Limitations on Preferential Treatment

Section 504 authorizes the President to withdraw, suspend, or limit the application of duty-free treatment on any article from any beneficiary country, taking into consideration the factors under sections 501 and 502(c). An intermediate rate between zero and the Column 1 duty cannot be established. The President must withdraw or suspend the designation of a country as a beneficiary if its products are denied nondiscriminatory treatment, or if the country has not or will not eliminate "reverse" preferences before January 1, 1976. Under the "competitive need" formula, preferential treatment will not be granted on a particular article from a

Section 605 contained comparable provisions, except it did not specify a 60-day period following the close of the calendar year for withdrawal of preferential treatment or a national interest determination under the "competitive need" formula.

part lar country if it supplies more than $25 million or at least 50% of the total value of U. S. imports of the article during any calendar year, unless within 60 days after the close of the calendar year the President determines and publishes that withdrawal of such treatment would not be in the national interest.

Section 505. Time Limit on Title; Comprehensive Review

Section 505 provides that duty-free treatment under Title IV shall not remain in effect more than 10 years after the date of enactment of this bill. The President must submit a full and complete report to the Congress on the operation of Title V within 5 years.

Section 607 did not require a report on the operation of the Title in 5 years.

TITLE VI: GENERAL PROVISIONS

Section 601. Definitions

Section 601 defines various terms used in the bill.

Section 705 was a comparable provision.

Section 602. Relation to Other Laws

Section 602 enumerates the provisions of the Trade Expansion Act which are amended or repealed by this bill.

Section 706 was a similar provision, except it provided for repeal of the Johnson Debt Default Act and of the fur embargo.

Section 603. Tariff Commission

Section 603 provides the Tariff Commission may conduct preliminary investigations, determine the manner and scope of its proceedings, and consolidate proceedings; may exercise authority granted to it under other Acts; and shall keep informed on the operation and effect of U. S. trade restrictions under the trade agreements program.

Section 703 was a comparable provision.

Section 604. Consequential Changes in the Tariff Schedules.

Section 604 requires the President to periodically embody in the TSUS the relevant provisions of this and other Acts affecting import treatment and actions.

Section 707 was a comparable provision.

Section 605. Separability

Section 605 is designed to ensure that the invalidity of any one provision of the Act does not affect the validity of the rest of the Act.

Section 704 was a comparable provision.

Section 606. International Drug Control

Section 606 requires the President to embargo trade and investment with any country when the President determines the government of the country has failed to take adequate steps to prevent narcotic drugs produced in or transported through such country from entering the U. S. unlawfully. The suspension shall continue until the President determines the government has taken adequate steps.

There was no comparable provision.

Section 701, authorizing the President to delegate authorities, and Section 708, authorizing limited modifications or amendments to the TSUS, were not adopted.